

*Mestre Family Super Fund*  
*Deed of Establishment*



## DEED OF ESTABLISHMENT

**THIS DEED OF ESTABLISHMENT** is made on the date specified in Appendix A as the Date of Deed.

**BY:**

The person named and described in Appendix A as the Trustee

**RECITALS:**

- A** The Trustee has decided to establish a superannuation fund to be maintained solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Gainful Employment, for the Dependants of Members in the event of the death of a Member and for other purposes permitted under the Relevant Law.
- B** The Trustee has determined to act as Trustee in accordance with the provisions of this Deed.

**IT IS DECLARED:**

**1. ESTABLISHMENT**

The Trustee establishes the Fund which commences on the Date of Deed specified in Appendix A.

**2. RULES**

The Fund shall be maintained, managed and administered pursuant to the rules set out in the attached *SMSF Governing Rules Version 15.01*, which forms part of this Deed.



I  
**APPENDIX A**

<b>DATE OF DEED:</b>	15 April 2016
<b>TRUSTEE:</b>	Mestre Family Super Pty Ltd (ACN 611 879 184) The Vantage, Unit 8, 22 Gladstone Avenue Wollongong NSW 2500
<b>MEMBERS:</b>	Antonio Mestre 18 Birchmore Circuit Truganina VIC 3029  Karen Briggs 18 Birchmore Circuit Truganina VIC 3029
<b>NAME OF FUND:</b>	Mestre Family Super Fund
<b>PROPER LAW GOVERNING FUND:</b>	Victoria



SMSF Governing Rules Version 15.01





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# 1 PURPOSE

## 1.1 Purpose of Fund

The Trustee must maintain the Fund solely for the purpose of providing superannuation benefits for Members in the event of their retirement from employment, for the Dependants of Members in the event of the death of a Member and for other purposes permitted under the Relevant Law, provided that while the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund will be the provision of old-age pensions within the meaning of the Relevant Law.

## 1.2 Maintenance of the Fund as a Self Managed Superannuation Fund

The Trustee must manage the Fund and must exercise its powers and discretions so as to ensure that at all times, subject to rule 1.3, the Fund is a Self Managed Superannuation Fund.

## 1.3 Ceasing to be a Self Managed Superannuation Fund

If:

- (a) the Trustee considers that it is not possible or not reasonably practicable for the Fund to continue to be a Self Managed Superannuation Fund; or
- (b) all of the Members so request in writing,

the Trustee and the Members must do all such things as are required for the Fund to commence to meet the requirements under the Relevant Law to be another type of regulated superannuation fund, including amending these Governing Rules, notifying the Regulator and applying for such approvals as are required in the circumstances under the Relevant Law, and appointing a replacement trustee which meets the requirements under the Relevant Law applicable to the trustee of the relevant type of regulated superannuation fund.

## 1.4 Proper Law

These Governing Rules are governed, must be construed and take effect in accordance with the laws of the State or Territory of the Commonwealth of Australia specified in the Deed. The Trustee, Members and Beneficiaries must accept the jurisdiction of the courts of that State or Territory.

The provisions of section 35B of the Trustee Act 1936 of South Australia do not apply to these Governing Rules.

The provisions of part 2 of the Trusts Act 1973 of Queensland do not apply to these Governing Rules to the extent permitted by the exceptions available, including the full discharge of any Trustee ceasing through retirement or otherwise, when the cessation will result in only a single Trustee remaining.

## 1.5 Fund Subject to Relevant Law

- (a) The provisions in these Governing Rules are to be read subject to the Relevant Law.
- (b) These Governing Rules must be read and construed on the basis that the Relevant Law is deemed to be incorporated into the Governing Rules to the extent that it imposes covenants or obligations on the Trustee in order for the Fund to operate as a Self Managed Superannuation Fund (unless the Trustee and the Members have determined that the Fund should cease to be a Self Managed Superannuation Fund and to commence to be another type of Regulated Superannuation Fund as contemplated by rule 1.3), to qualify for concessional Taxation treatment and to satisfy any other requirements of the Regulator and these Governing Rules must be further read and construed on the basis that:

- (i) where there is any inconsistency between a provision of these Governing Rules and the Relevant Law, the latter prevails to the extent of the inconsistency; and
  - (ii) in the event of any doubt arising as to the effect of the Relevant Law or if there is an inconsistency between the Relevant Law and a provision of these Governing Rules, the decision of the Trustee is final.
- (c) These Governing Rules must not be read or construed and no such provision of the Relevant Law may be so incorporated if to do so would constitute a breach of the power granted by rule 42 to add to, amend, alter, modify, rescind or vary the provisions of these Governing Rules.

## 1.6 Superannuation Guarantee Legislation

The Trustee must administer the Fund in order to facilitate the acceptance of Contributions in accordance with the Guarantee Act and must provide all certificates, reports and other information required under the Guarantee Act.

## 2 FUND TRUSTEES

### 2.1 Nature of Trustee

The Trustee must at all times be a person, persons or body which is or are eligible to be the Trustee under rule 2.2.

### 2.2 Eligibility for Appointment as Trustee

The following persons or bodies are eligible to be the Trustee:

- (a) Individual Trustees who are not Disqualified from holding office as Trustees;
- (b) a Constitutional Corporation:
  - (i) which is not Disqualified from holding office as Trustee; and
  - (ii) no Director of which is Disqualified from holding office as a Trustee; and
- (c) such other persons or bodies as satisfy the Relevant Law or are appointed by the Regulator under the Relevant Law.

### 2.3 Corporate Trustee

Subject to rule 2.8, where the Trustee is a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:
  - (i) a Constitutional Corporation, the Director of which is the Member; or
  - (ii) a Constitutional Corporation, the Directors of which are the Member and another person who is a Relative of the Member; or
  - (iii) a Constitutional Corporation, the Directors of which are the Member and another person who is not a Relative of the Member where the Member is not an Employee of the other person; and
- (b) while the Fund has more than one Member, but less than five Members, a Constitutional Corporation of which all of the Directors are the Members.

### 2.4 Individual Trustees

Subject to rule 2.8, where the Trustee is not a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:

- (i) the Member and another person who is a Relative of the Member acting as Individual Trustees; or
  - (ii) the Member and another person who is not a Relative of the Member where the Member is not an Employee of the other person, acting as Individual Trustees; and
- (b) while the Fund has more than one Member, but less than five Members, all of the Members acting as Individual Trustees.

## **2.5 Later Trustees or Directors**

Subject to rule 2.8, the Members must put in place arrangements to ensure that:

- (a) where the Trustee is comprised of Individual Trustees, before a person commences to act as an Individual Trustee; or
- (b) where the Trustee is a Constitutional Corporation, before a person is appointed as a Director of the Trustee,

the Members are satisfied that the person will become a Member under rule 11.1 following their commencement or appointment or that the Fund will otherwise comply with the trustee and membership requirements of the Relevant Law.

## **2.6 Trustee/Member Rules**

Subject to the Relevant Law, if at any time the trusteeship of the Fund does not meet the requirements of either rules 2.3, 2.4 or 2.8, the Trustee and the Members must:

- (a) restructure the Membership of the Fund; or
- (b) complete such arrangements as are necessary under rule 2.9; and
- (c) ensure that the trusteeship of the Fund meets those requirements no later than 6 months after the trusteeship ceased to meet those requirements.

## **2.7 Continuity of Office**

Any person who acts as an Individual Trustee must, on any person becoming or ceasing to be a Trustee, under this rule 2, do everything necessary to vest the Fund in any new and any remaining Trustees and must deliver all records and other books to such new and remaining Trustees.

## **2.8 Other Persons as Trustees or Directors**

The Members may, and must if such action is required in order to prevent the Trustee from ceasing to meet the requirements under the Relevant Law which relate to the nature and composition of the trustees of Self Managed Superannuation Funds, unless the Fund is to cease to be a Self Managed Superannuation Fund under rule 1.3, take such steps as are necessary to appoint or remove as an Individual Trustee or facilitate the appointment or removal as a Director of a Constitutional Corporation which is the Trustee, the following persons:

- (a) the Legal Personal Representative of a deceased Member in place of the deceased Member, during the period:
  - (i) beginning when the deceased Member died; and
  - (ii) ending when death Benefits commence to be payable in respect of the deceased Member; or
- (b) the Legal Personal Representative of a Member in place of the Member, during any period when:
  - (i) the Member is under a legal disability; or

- (ii) the Legal Personal Representative has an enduring power of attorney in respect of the Member; or
- (c) the Legal Personal Representative or the parent or guardian of a Member who is under a legal disability because of age in place of the Member; or
- (d) an acting trustee of the Fund appointed under the Superannuation Industry (Supervision) Act 1993.

Where a Legal Personal Representative appointed as provided under this rule 2.8 consists of more than one person, whether acting jointly or jointly and severally, that Legal Personal Representative shall have one vote only. If, in accordance with rule 10.2, each Individual Trustee appointed in place of a Member shall have such number of votes as is equal to the value in dollars of the total balances of that Member, where more than one Individual Trustee has been appointed as Legal Personal Representative of a Member, those Individual Trustees shall be entitled to vote, between them, only on the number of votes equivalent to the total balances of that Member.

Any other person may also be a Trustee, or a Director of a Constitutional Corporation which is the Trustee, if the Relevant Law permits that the person may be a Trustee or Director of a Constitutional Corporation which is the Trustee and the Fund would remain a Self Managed Superannuation Fund.

## **2.9 Appointment and Removal of Trustee**

- (a) On the establishment of the Fund, the Trustee is the person, persons or body named and described in the Establishing Deed.
- (b) At all other times, and subject to rules 2.8 and 2.9(i), the Members must determine who will act as Trustee in accordance with this rule 2 and the Relevant Law for the Fund to be maintained as a Self Managed Superannuation Fund and must take such steps as are necessary to appoint or remove the persons or body to or from the office of Trustee to ensure such compliance is maintained, provided that any obligation imposed on a deceased Member by this paragraph shall be performed by the Legal Personal Representative of the deceased Member or, if there is no Legal Personal Representative or the Legal Personal Representative is unable or unwilling to act, then by the remaining Members.
- (c) An Individual Trustee will cease to hold the office of Trustee if the person dies or becomes mentally incapacitated such that:
  - (i) the person is found by two medical practitioners (expressed in writing) to be under a disability and unable to make reasonable judgements to fulfil the role of Trustee; or
  - (ii) a Court or Tribunal of competent jurisdiction decides that the individual is suffering from incapacity to the extent the person is unable to make reasonable judgements to fulfil the role of Trustee,
- (d) If an Individual Trustee who ceases to hold the office of Trustee by virtue of having become mentally incapacitated is the only Member of the Self Managed Superannuation Fund, then:
  - (i) the Legal Personal Representative of that Member is appointed as Trustee in accordance with rule 2.8 or, if no Legal Personal Representative exists or a Legal Personal Representative exists but is unable to act as Trustee; then
  - (ii) the remaining Trustee may appoint an additional individual as Trustee for the purpose of:

- (A) paying the Benefits to or for the benefit of the incapacitated Member, if permitted under the Relevant Law; or
  - (B) transferring the Benefits of the incapacitated Member to an Eligible Rollover Fund, if permitted under the Relevant Law; or
  - (C) appointing a replacement trustee in accordance with the powers contained in rule 1.3.
- (e) The appointment or removal of a Trustee must be in writing and must immediately be advised to any other Trustee.
  - (f) For the purposes of rule 2.9(b) the Members may accept the resignation in writing of any Trustee.
  - (g) Where a new Trustee or an additional Trustee is appointed pursuant to the power of appointment contained in this rule 2, the Fund at that time vests in the person or body, or jointly in the person or body with the other Trustee or Trustees without the necessity for any declaration, transfer, conveyance, registration or other assurance for such appointment to be effective.
  - (h) Where a Trustee is removed or resigns the other Trustees must take such steps to remove that person or body from any registration which may have been made in the course of acting as Trustee.
  - (i) In the event that there are no Members remaining in the Fund, the Legal Personal Representative of the last surviving Member may determine who will act as Trustee for the Fund.

#### **2.10 Trustee Declarations and Diligence**

Each person who is an Individual Trustee or who is a Director of a Constitutional Corporation which is the Trustee must do all such things, make all such declarations and execute all such documents as are required under the Relevant Law to be done, made or executed by a person who holds or who commences to hold such office.

Each person who is a Director of a Constitutional Corporation which is the Trustee must exercise a reasonable degree of care and diligence for the purposes of ensuring that the Constitutional Corporation complies with the covenants and operating standards imposed by the Relevant Law.

### **3 COVENANTS AND OPERATING STANDARDS**

The Trustee for itself, its successors and assigns covenants with the Members to perform and observe the covenants, trusts and conditions of these Governing Rules and the covenants, operating standards and obligations imposed by the Relevant Law so far as they are or ought to be observed by the Trustee, including the following covenants and operating standards:

- (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 Trustee's duties and powers are performed and exercised in the best interests of the Members and 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 Trustee personally; or

- (ii) that are money or assets, as the case may be, of an Employer, or an associate of an Employer;
- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) to formulate, review regularly 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;
  - (v) whether the Trustee should hold a contract of insurance that provides insurance cover for one or more Members of the Fund;
- (g) if there are any Reserve Accounts of the Fund, to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Member or Beneficiary access to any prescribed information or any prescribed documents.

## 4 TRUSTEE'S INVESTMENT POWERS

### 4.1 Authorised Investments

Money forming part of the Fund from time to time which is not required immediately for the payment of Benefits and other amounts authorised by these Governing Rules must be invested in accordance with the investment strategy of the Fund as determined under rule 3(f) in any one or more of the following investments:

- (a) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (b) the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or like securities or Derivatives in or in respect of any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (c) on deposit with any bank or other authorised deposit-taking institution in any type of account, whether secured or unsecured and on such terms as the Trustee may determine;
- (d) on deposit with or on loan to any person or organisation whatsoever (including an Employer which contributes or has contributed to the Fund in respect of a Member) with or without security and at such rate of interest and on such terms as the

Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;

- (e) any Policy or Annuity with an Insurer whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- (f) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (g) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (h) the acquisition of any futures, options or synthetic investments or other Derivatives and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any other property forming part of the Fund; and
- (i) any other investments which the Trustee considers appropriate and which are permitted under the Relevant Law,

and the Trustee has all the powers and authorities necessary to enable it to make each such investment provided that it must not make a loan to or give any financial assistance to a Member or a Relative of a Member and provided further that the Trustee must ensure that all investments are made and maintained in accordance with the Relevant Law.

#### **4.2 Power to Sell and Vary Investments**

The Trustee has power to sell any investments, to vary and transpose any investments into other investments authorised by these Governing Rules and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

#### **4.3 Limited Recourse Borrowing Arrangements**

Notwithstanding any other provision of these Governing Rules, the Trustee may borrow money, or maintain a borrowing of money, under an arrangement under which:

- (a) the money is or has been applied for the acquisition of a single Acquirable Asset, including:
  - (i) expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the Acquirable Asset, but not expenses incurred in improving it; and
  - (ii) money applied to refinance a borrowing, including any accrued interest on it, in relation to the single Acquirable Asset, and no other Acquirable Asset; and
- (b) the Acquirable Asset, whether it be the Original Asset or a Replacement Asset, is held on trust so that the Trustee acquires a beneficial interest in it; and
- (c) the Trustee has a right to acquire legal ownership of the Acquirable Asset, whether it be the Original Asset or a Replacement Asset, by making one or more payments after acquiring the beneficial interest; and
- (d) the rights of the lender of any other person against the Trustee for, or in connection with, or as a result of, whether directly or indirectly, default on:
  - (i) the borrowing; or
  - (ii) the sum of the borrowing and charges related to it;

are limited to rights relating to the Acquirable Asset, whether it be the Original Asset or a Replacement Asset,

or which otherwise meets such requirements as must be met in order for the borrowing to be permitted under the Relevant Law<sup>1</sup>.

#### 4.4 Conflict of Interest of Trustee or Director

- (a) Subject to rule 4.4(b), the Trustee and any Director of a Constitutional Corporation which is the Trustee has the power and is authorised to make or vary any of the investments authorised under these Governing Rules notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- (b) The Trustee and any Director of a Constitutional Corporation which is the Trustee must disclose details of any interest in an investment to which rule 4.4(a) applies in the manner prescribed under the Relevant Law.

#### 4.5 Member Investment Choice

- (a) Without limiting in any way the obligations and powers vested in the Trustee under the preceding provisions of this rule 4, the Trustee may:
  - (i) establish any number of investment strategies;
  - (ii) nominate the assets which will be subject to each particular investment strategy;
  - (iii) offer Members the opportunity of having amounts held in one or more of their Accumulation Accounts or Pension Accounts invested in accordance with a particular investment strategy; and
  - (iv) make rules regarding when and how Members may give the Trustee directions in this respect.
- (b) Where a Member is provided with an opportunity to have an amount in an Accumulation or Pension Account invested under a particular investment strategy or strategies, the Trustee must provide to the Member such information as is required in respect of the investment strategy or strategies by the Relevant Law.
- (c) Where a Member is provided with an opportunity to have an amount in an Accumulation or Pension Account invested pursuant to a particular investment strategy or strategies and either fails or is unwilling to nominate a particular investment strategy, the Trustee must invest the amount in the Member's account in such manner as, in its absolute discretion, it may consider appropriate.
- (d) Where the Trustee establishes more than one investment strategy under rule 4.5(a), it must:
  - (i) establish a sub-account within the Income Account established under rule 15.4 in respect of each strategy; and
  - (ii) debit and credit to each sub-account any amounts including costs, charges and any Taxation attributable to the relevant strategies as the Trustee determines.
- (e) Where the Trustee establishes a sub-account under rule 4.5(d), it must:

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<sup>1</sup> Other rules relating to SMSF Borrowing include but are not limited to rules 4.1(b), 4.1(f), 4.4, 5.1(c), 5.1(d), 5.2 and 9.4.



- (i) determine a Fund Earning Rate in respect of each sub-account;
- (ii) allocate an amount determined by the application of the Fund Earning Rate in respect of each sub-account to each sub-account within a Member's or Beneficiary's Accumulation or Pension Accounts in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the relevant sub-account within the Member's or Beneficiary's Account at the beginning of the Fund Year in respect of which the allocation is being made; and
- (iii) make an appropriate adjustment for amounts (if any) credited or debited to the sub-account during that Fund Year.

#### 4.6 Property Held for a Specified Member

Notwithstanding any other provision of these Governing Rules, the Trustee may, by irrevocable instrument in writing (in this rule referred to as the **Instrument**), determine that a Specified Asset is held in the Fund by the Trustee solely for the benefit of a Specified Member (in this rule referred to as the **Specified Member**) where:

- (a) **Specified Asset** means the asset specified in the Instrument, being an asset transferred by the Specified Member to the Trustee or, if the asset is sold, the proceeds of that sale; and
- (b) A Specified Asset held in the Fund by the Trustee is held solely for the benefit of a Member if:
  - (i) it is held specifically for the benefit of the Member;
  - (ii) it cannot be pooled with the contributions or other assets of, or property held for, another Member; and
  - (iii) no other Member can obtain an interest in it.

## 5 TRUSTEE'S POWERS OF MANAGEMENT

### 5.1 Additional Powers

In addition to the powers which it might have by law and which are otherwise granted to it by these Governing Rules, the Trustee has the following powers:

- (a) to settle, compromise or submit to arbitration any claims, matters or things relating to these Governing Rules or to the rights of Members, former Members and Beneficiaries;
- (b) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members and Beneficiaries and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member, former Member or Beneficiary as a result of any negligence, default, omission, breach of duty or breach of the terms of these Governing Rules and the Trustee may abandon, settle, compromise or release any such legal proceedings as it may consider desirable;
- (c) to borrow in any lawful manner, including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument, and to secure the repayment of money in any manner and on any terms (including with or without security) which the Trustee may deem advisable provided that such borrowing must be permitted under rule 4.3;
- (d) to permit or to procure that the investments of the Fund or any of them are registered in the name of a custodian or a nominee appointed or approved by the Trustee for such purpose, and to permit or to procure such custodian or nominee to

give security over any investment of the Fund registered in the name of such custodian or nominee for the purpose of securing the repayment of borrowings of the Trustee where the proceeds of such borrowings were applied in the acquisition of the relevant investment, provided that the giving of such security must not breach the Relevant Law;

- (e) to give a charge over, or in relation to, an asset of the Fund if:
  - (i) the charge is given in relation to a Derivatives Contract entered into:
    - (A) by, or on behalf of, the Trustee; or
    - (B) by a broker on the instructions, or on account, of the Trustee; or
    - (C) by a broker for the benefit of the Trustee; and
  - (ii) the charge is given in order to comply with the rules of an Approved Body that requires the performance of obligations in relation to the Derivatives Contract to be secured; and
  - (iii) the Fund has in place a derivatives risk statement that sets out:
    - (A) policies for the use of Derivatives that include an analysis of the risks associated with the use of Derivatives within the investment strategy of the Fund; and
    - (B) restrictions and controls on the use of Derivatives that take into consideration the expertise of the Individual Trustees or the Directors of a Constitutional Corporation which is the Trustee; and
    - (C) compliance processes to ensure that the controls are effective (for example, reporting procedures, internal and external audits and internal management procedures); and
  - (iv) the investment to which the charge relates is made in accordance with the derivatives risk statement; or
  - (v) the charge is otherwise able to be given by the Trustee without breaching the Relevant Law;
- (f) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (g) to open and operate an account with any bank or other authorised deposit-taking institution on such terms as the Trustee may determine;
- (h) to purchase an Annuity from an Insurer in order to provide all or a part of any Pension payable in respect of a Member and in the name of the Trustee or, if the Trustee determines, in the name of the Member;
- (i) to retain the services of and to appoint professional or other advisers in relation to the management, investment, administration and conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (j) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its non-Trustee services provided to the Fund in a separate professional capacity;

- (k) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or any investment of the Fund or to the rights of Members, former Members and Beneficiaries in respect of the Fund provided that an indemnity may only be provided to the extent it is not limited by or would be inoperative under the Relevant Law;
- (l) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Fund by that person;
- (m) to appoint a person to chair the meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, may pay a fee or remuneration to such person in respect of such position;
- (n) to insure and keep insured as it sees fit any liability of:
  - (i) the Trustee;
  - (ii) any Directors or officers of a Constitutional Corporation which is the Trustee; or
  - (iii) the Fund to indemnify or reimburse the Trustee or the Directors or officers of a Constitutional Corporation which is the Trustee under rules 7 and 8;
- (o) to enter into any agreement, provide any notice, make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (p) to apply for qualification as a qualifying recognised overseas pension scheme for the purposes of section 169 of the *Finance Act 2004 of the United Kingdom of Great Britain and Northern Ireland* (the **UK Act**), and to provide such information and enter into such agreements as the Trustee considers necessary for the purposes of the Fund receiving recognised transfers from UK pension schemes registered under the UK Act;
- (q) to seek modifications of or exemptions from the application of the Relevant Law to the Fund and the Trustee is relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted;
- (r) to correspond, where the Trustee considers it appropriate or necessary, with Members, Beneficiaries, Employers and other third parties by means of Electronic Communication, including the use of unique identifiers or digital signatures; and
- (s) generally to do all acts and things that the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under these Governing Rules.

## 5.2 Conflict of Interest

- (a) Subject to rule 5.2(b) all the powers and discretions conferred by these Governing Rules or by law on the Trustee, or any Director of a Constitutional Corporation which is the Trustee, may be exercised notwithstanding that such Trustee or Director or any person being a shareholder of a Constitutional Corporation which is the Trustee or a relative of such Trustee, Director or shareholder may:
  - (i) have a direct, indirect or personal interest (whether as trustee of any other settlement, in his/her personal capacity, as a shareholder, director, relative of a Trustee or Director or shareholder of a Constitutional Corporation which is the Trustee, member or partner of any company, organisation or

partnership, unit holder in any unit trust, beneficiary of any discretionary trust or otherwise howsoever) in the manner or result of exercising such power or discretion; or

- (ii) benefit directly or indirectly as a result of the exercise of any such power or discretion,

notwithstanding that the Trustee for the time being is the sole Trustee

- (b) The Trustee and any Director of a Constitutional Corporation which is the Trustee must disclose details of any interest to which rule (a) applies in the manner prescribed under the Relevant Law.

### 5.3 Trustee Discretion

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by these Governing Rules:

- (a) has an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which is final and binding;

provided that,

- (b) the Trustee must not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination; and
- (c) the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by these Governing Rules must be made as required under, and so as not to breach, the Relevant Law, and any such purported exercise shall be of no effect to the extent that it is not made as required under the Relevant Law or would, if effective, breach the Relevant Law.

### 5.4 Trustee Delegation

The Trustee may:

- (a) delegate to any person any of the powers, duties and discretions conferred on it under these Governing Rules on such terms and conditions as it may determine;
- (b) execute such powers of attorney or other instruments as the Trustee considers appropriate for such purpose; and
- (c) vary, limit or revoke any such delegation, power of attorney or instrument,

provided that any such delegation may only be undertaken in accordance with the Relevant Law.

### 5.5 Trustee Direction

Except as provided in these Governing Rules and in such circumstances which are permitted under the Relevant Law, the Trustee is not subject to direction by any person in the exercise of any of its powers.

## 6 LIMITATION OF LIABILITY

### 6.1 Liability of Trustees, Directors and Officers

Neither an Individual Trustee, nor any Director or officer of a Constitutional Corporation which is the Trustee, is liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund except if such Individual Trustee or Director:

- (a) fails to act honestly;

- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- (c) incurs a monetary penalty in respect of a civil penalty order under the Relevant Law.

## **6.2 Loss, Default, Bona Fide Acts, Mistake**

Without limiting the generality of the exemption from liability under rule 6.1, the Trustee will not incur any liability for:

- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (b) any act or default of any former Trustee or any Director or officer of a Constitutional Corporation which was formerly a Trustee, of any Member or of any agent employed in good faith by the Trustee;
- (c) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee; or
- (d) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.

## **6.3 Limitation of Exemption from Liability**

This rule 6 operates only to exempt a person from liability to the extent that the provision of such an exemption is not limited by or inoperative under the Relevant Law.

# **7 INDEMNITY OF TRUSTEE**

## **7.1 Indemnity and Lien**

The Trustee and where applicable its Directors and officers shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise, purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them under these Governing Rules or at law except if that person:

- (a) fails to act honestly; or
- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- (c) incurs a monetary penalty under the Relevant Law,

and the Trustee will have a lien on and may use the money representing the assets of the Fund for the purposes of this indemnity.

## **7.2 Payments in Good Faith**

This indemnity extends to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

## **7.3 Opinion or Advice**

This indemnity extends to circumstances where the Trustee acts on the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and on reasonable grounds to be expert in relation to the matters on which they are consulted.

#### **7.4 Failure to Carry Out Agreement**

This indemnity extends to circumstances where there has been a failure of any person or corporation to carry out any agreement made with the Trustee and to any act or omission on the part of such person or corporation.

#### **7.5 Agents and Servants of Trustee**

This indemnity extends to circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

#### **7.6 Limitation of Indemnity**

This indemnity does not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

### **8 REMUNERATION AND REIMBURSEMENT**

#### **8.1 Remuneration**

The Trustee is not entitled to receive any remuneration from the Fund or any person in relation to the performance of the normal activities of a trustee provided in relation to the Fund.

#### **8.2 Reimbursement**

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

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties) but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (b) such fees and expenses of the Auditor as the Trustee considers reasonable;
- (c) any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (d) all fees, wages and expenses of any barrister, solicitor, accountant, Actuary, fund manager, Administration Manager, Investment Manager, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under these Governing Rules;
- (e) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any periodic or other report or document in relation to the Fund or the making available of any books or documents of the Fund;
- (f) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;
- (g) all and any costs incurred in relation to an investigation of the Fund, the resolution of disputes or the preparation of information and submissions; and
- (h) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices.

## 9 APPOINTMENT OF ACTUARY, AUDITOR AND MANAGERS

### 9.1 Actuary and Auditor

- (a) The Trustee may and shall if necessary for compliance with the Relevant Law appoint a person or firm to the following offices on such conditions as it determines:
- (i) an Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow or who otherwise meets the criteria specified in the Relevant Law for appointment as an Actuary to the Fund; and
  - (ii) an Auditor who is both appropriately qualified and is independent according to any criteria specified by the Relevant Law or who otherwise meets the criteria specified in the Relevant Law for appointment as an Auditor to the Fund.
- (b) In the event that an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of these Governing Rules but the Trustee is under no obligation to be bound by or to act on the advice so provided except in circumstances required by the Relevant Law.

### 9.2 Administration Manager

The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required by the appointee, one or more companies, persons or organisations to act as the Administration Manager of the Fund, to carry out some or all of the administration of the Fund. Such appointment may be made on such terms and conditions as the Trustee considers appropriate.

### 9.3 Investment Manager

- (a) The Trustee has power to appoint in writing one or more persons or companies to act as an Investment Manager for the Fund for such period and on such terms and conditions as the Trustee determines provided that the person or company is qualified to act as an investment manager for the Fund under the Relevant Law and the terms and conditions of appointment are in accordance with and comprise all the requirements of the Relevant Law.
- (b) The Trustee may delegate to any Investment Manager such powers, discretions and authorities relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to such Investment Manager as the Trustee determines and may reallocate assets of the Fund being invested by that Investment Manager.

### 9.4 Custodian

The Trustee has power to appoint one or more persons or companies to act as a custodian for the Fund for such period and on such terms and conditions as the Trustee determines and may delegate and confer on such custodian such powers, discretions and authorities relating to the holding of legal title, the custody of title deeds and documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund as the Trustee determines provided that the person or company appointed to act as custodian is not prohibited from so acting under the Relevant Law.

### 9.5 Consultants and Officers

The Trustee from time to time may appoint such other consultants and officers as it considers desirable for the proper management and administration of the Fund.

## 9.6 Removal

The Trustee may remove from office any person or company appointed to any position under this rule 9 and must remove any such person or company where so required by the Relevant Law.

## 10 GENERAL PROVISIONS

### 10.1 Exercise of Trustee's Rights and Conduct of Proceedings

Subject to the Relevant Law, all powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of these Governing Rules may be fully and effectively exercised, made, done or performed by or on behalf of the Trustee:

- (a) where the Trustee is a company, then by the Directors acting in accordance with its constitution or by any person or persons having the authorisation of such Directors to so act on their behalf; or
- (b) where the Trustee comprises Individual Trustees, then:
  - (i) at a meeting of such persons where decisions are to be made as provided in rule 10.2 or as otherwise required by the Relevant Law;
  - (ii) the quorum for a meeting of the Individual Trustees shall be at least 75% of the Individual Trustees then holding office;
  - (iii) the Individual Trustees may meet in person or by using any technology that gives each Individual Trustee a reasonable opportunity to participate in the meeting;
  - (iv) if all of the Individual Trustees have signed a written resolution which may take the form of a single document or a number of documents in substantially similar form, such resolution shall be taken to have been passed upon being signed by the last of the Individual Trustees to sign.

### 10.2 Voting

Where the Trustee consists of Individual Trustees, then each Individual Trustee shall have one vote each but where any Individual Trustee requires the matter to be resolved by a formal vote, then each Individual Trustee shall have such number of votes as is equal to the value in dollars of the total balances of each of the Accounts maintained in respect of the Individual Trustee in their capacity as a Member or, where one or more Individual Trustee have been appointed in place of a Member under rule 2.8, the Accounts maintained in respect of such Member (rounded up to the nearest dollar) at the time at which the vote is taken. If more than one Individual Trustee has been appointed in place of a Member, the combined vote of those Individual Trustees will be equal to the value in dollars of the total balances of each of the Accounts maintained in respect of that Member. If there is a dispute between the Individual Trustees as to the value of such balances, then the value shall be the value on the date as at which the balances of Member Accounts were last determined by the Trustee and notified to Members.

### 10.3 Family Law

- (a) Subject to the following provisions of this rule 10.3, despite any other provisions of these Governing Rules, the Trustee is empowered to undertake and complete any actions in relation to the Fund or the Benefits or Benefit Entitlement of any Member or Beneficiary required in accordance with the Relevant Family Law.
- (b) The Trustee may at any time and from time to time elect under this rule 10.3(b) for the purposes of the Relevant Family Law that these Governing Rules will not have



operation to permit the Trustee to establish a new interest in the Fund from the interest of a Member or Beneficiary on the request by the Spouse of the Member or Beneficiary under the Relevant Family Law.

- (c) The Trustee may at any time and from time to time determine to revoke an election made under rule 10.3(b).

## 11 MEMBERSHIP OF FUND

### 11.1 Members

Subject to the following provisions of this rule 11, the Trustee may accept such persons to become Members as the Trustee in its absolute discretion determines. Such persons may include persons who are under a legal disability, whether by reason of age or for some other reason. The Trustee may only accept a person as a Member where:

- (a) on acceptance, the total number of Members will not exceed 4;
- (b) the person is not Disqualified from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee;
- (c) if the person is an Employee of any other person who is a Member, the person and the other person are Relatives; and
- (d) the Trustee is satisfied that the person will, at the time of being accepted as a Member, also become an Individual Trustee or a Director of the Trustee under rule 2 or the conditions of rule 2.8 will be satisfied.

The Trustee may require such persons to complete an application for Membership in the form of Schedule A or in such other form as the Trustee determines from time to time.

### 11.2 Admission to Membership

- (a) On receipt of an application for Membership under rule 11.1, the Trustee may determine to admit the applicant to Membership of the Fund.
- (b) Irrespective of whether or not an application for Membership form has been completed, a person will be deemed to have become a Member on a date determined by the Trustee or, where the Trustee makes no such determination, on the date any completed application for Membership is received.
- (c) The Trustee may determine to admit to Membership, and retain as a Member, a person in respect of whom the Trustee holds no balance in either an Accumulation Account or a Pension Account in respect of that Member.
- (d) Subject to any other conditions which may be applied under these Governing Rules, the Trustee may:
  - (i) impose such conditions on an applicant's admission and the rights and duties of the applicant as a Member as it determines;
  - (ii) limit and impose such conditions on Benefits as it determines; and
  - (iii) remove or vary all or any such conditions at any time.
- (e) On admission to Membership, a Member is bound by these Governing Rules in all respects.
- (f) Notwithstanding any other provision of these Governing Rules, the Trustee may, by revocable or irrevocable instrument in writing, determine that no additional person or persons may be admitted to Membership of the Fund.

### 11.3 Members and Beneficiaries to Provide Information

- (a) Each applicant for Membership and any Beneficiary must, if requested by the Trustee:
  - (i) furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund; and
  - (ii) submit to any medical examinations by a registered medical practitioner acceptable to the Trustee which are required by the Trustee.
- (b) Where a Member or Beneficiary fails to comply with the provisions of this rule 11.3, or fails to provide the Trustee with the Member's or Beneficiary's Tax File Number, the Trustee may:
  - (i) suspend the collection of any Contributions in respect of that Member;
  - (ii) withhold any Benefits in respect of that Member or Beneficiary; and
  - (iii) impose such other conditions on the continued Membership of that Member or on the Beneficiary,

as the Trustee deems appropriate.

### 11.4 Incorrect or Misleading Information

Where a Member or Beneficiary furnishes information required by the Trustee which affects or is likely to affect the Benefits payable to or in respect of the Member or Beneficiary; and

- (a) the information supplied is incorrect or misleading; or
- (b) any relevant information is deliberately withheld,

the Trustee may in its absolute discretion alter or amend the Benefits to amounts that would have applied had full and accurate information been supplied.

### 11.5 Information about satisfying a Condition of Release

It is the responsibility of a Member to inform the Trustee that the Member has satisfied a Condition of Release and to provide sufficient information as required by the Trustee to enable it to confirm the specific Condition of Release applicable to the Member.

### 11.6 Anticipated Change of Status

A Member must inform the Trustee as soon as practicable of any event which has or may have effect that:

- (a) the Member becomes an Employee of any other Member where the Member is not a Relative of the other Member; or
- (b) the Member becomes Disqualified from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee.

### 11.7 Status as Self Managed Superannuation Fund

- (a) If at any time, a Member ceases to satisfy rules 11.1(b) or 11.1(c) the Trustee and the Members must complete such arrangements (which may include the Member ceasing to be a Member) as are necessary to ensure that the Membership of the Fund as a whole satisfies those requirements by no later than 6 months after the Member ceased to satisfy those requirements or by such other time as is prescribed under the Relevant Law as the time by which the trusteeship of the Fund must meet the trusteeship requirements for Self Managed Superannuation Funds under the Relevant Law.
- (b) For the purposes of rule 11.7(a):

- (i) a Member may request that all the Member's Benefit or Benefit Entitlement be paid in accordance with these Governing Rules or be transferred or rolled-over to an Approved Benefit Arrangement under rule 19; or
- (ii) the Trustee may transfer a Member's Benefit Entitlement or roll-over a Member's Benefit to an Eligible Roll-Over Fund under rule 20.2.

## **12 MEMBERSHIP NOTIFICATION REQUIREMENTS**

### **12.1 Notice to New Member**

Before or, where the Relevant Law permits, as soon as practicable after the admission of a person as a Member, the Trustee must arrange for the person to be given a written statement containing information and details relating to the Fund as required by the Relevant Law.

### **12.2 Disclosure and Reporting Requirements**

The Trustee must arrange for Members, former Members and Beneficiaries to be provided with information in writing of copies of accounts, records or documents of the Fund as required by the Relevant Law on an annual basis and on other occasions and in such manner required by the Relevant Law.

### **12.3 Notice to Former Member**

As soon as practicable after a person ceases to be a Member, the Trustee must arrange for the former Member or the Legal Personal Representative of the former Member to be given a written statement containing such information and details relating to the Benefits of the former Member required by the Relevant Law.

### **12.4 Disclosure Limitation**

No Dependant of a Member is entitled to obtain information in respect of any details of the operation of the Fund or any matter which may relate to the conduct of the Fund which in the opinion of the Trustee it would be inappropriate to disclose other than as is provided for by this rule 12.

### **12.5 Inspection of Governing Rules and Other Documents**

A copy of these Governing Rules, any other documents as required by the Relevant Law and any trust documents must be made available for inspection by any Member. A copy of these Governing Rules and any other documents required by the Relevant Law must be made available for inspection by a Beneficiary on the request of the Beneficiary and unless otherwise required by the Relevant Law, it is sufficient for the purposes of this rule 12.5 to make a copy of these Governing Rules or such documents available to the Member or Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when that office or business is open.

## **13 CESSATION OF MEMBERSHIP**

### **13.1 Cessation**

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

- (a) unless the Trustee otherwise determines, on payment of all the Member's Benefit to the Member or on the transfer or roll-over of the Member's Benefit or Benefit Entitlement to an Approved Benefit Arrangement or an Eligible Rollover Fund on behalf of the Member;
- (b) following the death of the Member, when all of the deceased Member's interest has been paid or applied in accordance with these Governing Rules;

- (c) unless the Trustee otherwise determines, when Benefits payable to or on behalf of a Member cease to be payable; and
- (d) in respect of a Member for whom the Trustee holds no balance in the Fund, when the Trustee determines.

## 14 FUND ADMINISTRATION

### 14.1 Fund Vested in Trustee

The Fund is vested in and must be managed by the Trustee on the terms and conditions and subject to the trusts, powers, authorities and discretions contained in these Governing Rules.

### 14.2 Fund Assets

The gross assets of the Fund consist of all the cash, investments and other property held by or on account of the Trustee on the trusts of these Governing Rules and include:

- (a) the amount, if any, standing or transferred to the credit of the Fund at or after the date on which these Governing Rules come into effect;
- (b) such Contributions as the Members make to the Fund at any time;
- (c) such Contributions as an Employer makes to the Fund at any time in respect of a Member;
- (d) such Government Contributions as are made to the Fund at any time;
- (e) such Contributions resulting from a Contribution Split by a Spouse of a Member in favour of the Member as are received by the Fund at any time from another Complying Superannuation Fund;
- (f) interest, dividends and distributions of income arising from any investment and the accumulation of that income;
- (g) profits and other benefits arising from any investment and the accumulation of those profits;
- (h) the proceeds (including bonuses) of any Policy held by the Fund;
- (i) money, investments and other property transferred to the Fund as a Roll-Over Superannuation Benefit or otherwise;
- (j) any Shortfall Components received by the Fund;
- (k) any Financial Assistance received by the Fund;
- (l) any amount recorded in the Financial Statements of the Fund as a Future Income Tax Benefit or similar designation; and
- (m) any other Contributions or amounts permitted under these Governing Rules and the Relevant Law.

## 15 FUND ACCOUNTS

### 15.1 Accumulation Accounts

The Trustee must establish an Accumulation Account, including such sub-accounts as the Trustee considers necessary or desirable for the administration of the Fund, for each new Member and, if the Trustee considers it necessary, for other Members.

## 15.2 Credits to Accumulation Accounts

Subject to rule 15.5, the following amounts shall be credited to the appropriate Accumulation Account:

- (a) any amount paid into the Fund in respect of a Member as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to credit;
- (b) any Contributions made by a Member;
- (c) any Contributions made in respect of a Member by an Employer;
- (d) any Government Contribution received in respect of a Member;
- (e) such Contributions resulting from a Contribution Split by a Spouse of a Member in favour of the Member as are received by the Fund at any time from another Complying Superannuation Fund;
- (f) the proceeds of any Policy or Annuity effected or maintained by the Trustee in respect of a Member and paid to the Trustee which the Trustee considers it appropriate to credit;
- (g) such positive earnings as are determined by the Trustee in accordance with rules 4.5(e), 15.4 and 15.6;
- (h) any forfeited amounts allocated to but not paid directly to a Member or Beneficiary under rule 22.4;
- (i) any amounts transferred from the Pension Account of a Pensioner;
- (j) any Shortfall Component paid in respect of a Member;
- (k) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
- (l) any other Contributions made in respect of a Member and permitted under these Governing Rules and the Relevant Law;
- (m) such part of the proceeds from the commutation of a Pension as the Trustee has determined to transfer to the Accumulation Account under rule 39.3(b)(iv) or such other applicable rule;
- (n) any amounts transferred from a Reserve Account; and
- (o) such other amounts as the Trustee may from time to time determine.

## 15.3 Debits to Accumulation Accounts

Subject to rule 15.5 the following amounts will be debited to the appropriate Accumulation Account:

- (a) any amount paid out of the Fund in respect of a Member as a transfer or Roll-Over Superannuation Benefit which the Trustee considers it appropriate to debit;
- (b) any Benefit payments made to or in respect of a Member or Beneficiary, other than payments from a Pension Account;
- (c) the costs of any Policy or Annuity effected or maintained by the Trustee in respect of the relevant Member, subject to rule 15.4(b)(iv);
- (d) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Fund or earnings of the Fund credited to the Accumulation Account or arising as a result of a Roll-Over Superannuation Benefit as the Trustee may determine;

- (e) such of the costs, charges and expenses incurred under rule 8 or an appropriate portion thereof as the Trustee may determine;
- (f) the amount of any lien exercised under rule 7 or an appropriate portion thereof as the Trustee may determine;
- (g) any amount forfeited under rule 22.2;
- (h) such negative earnings as may be determined by the Trustee in accordance with rules 4.5(e), 15.4 or 15.6;
- (i) any amount paid in respect of the Trustee indemnity under rule 7 or an appropriate portion thereof as the Trustee may determine;
- (j) any amount transferred to the Pension Account of a Pensioner;
- (k) the amount of any Levy determined by the Trustee to be appropriate to debit;
- (l) the amount of any Taxation attributable to the Member or Beneficiary;
- (m) the amount of any Contributions which are the subject of a Contribution Splitting Application from a Member and which are paid by the Trustee to another Complying Superannuation Fund or to the account of the Member's Spouse within the Fund in accordance with such application;
- (n) such amount as is referred to in a Release Authority given by a Member or the Commissioner to the Trustee, and which is paid by the Trustee to the Member or to the Commissioner in accordance with such Release Authority; and
- (o) such other amounts as the Trustee may determine from time to time.

#### **15.4 Income Account**

- (a) The Trustee must establish an Income Account for the Fund to which the following, subject to rule 4.5(e), will be credited:
  - (i) all income and profits of the Fund each Fund Year;
  - (ii) any credits arising out of adjustments under rule 15.6;
  - (iii) any amount transferred from a Reserve Account under rule 15.5;
  - (iv) the proceeds of any Policy effected or maintained by the Trustee where the Trustee determines that it should not be credited to any other Account; and
  - (v) any Financial Assistance received by the Fund and not credited to any other Account,

and profits of the Fund include any surplus arising from a valuation undertaken at any time during the year in accordance with rule 15.8.
- (b) The Income Account will, subject to rule 4.5(e), be debited with the following:
  - (i) any loss sustained on the disposal of any investments of the Fund;
  - (ii) any costs or charges incurred under rule 8.2 which are not debited to any other Account;
  - (iii) any debits arising out of adjustments under rule 15.6;
  - (iv) the cost of any Policy effected or maintained by the Trustee where the Trustee determines that it should not be debited to any other Account;
  - (v) any deficiency arising from a valuation undertaken under rule 15.8;
  - (vi) any amount payable or which may become payable by way of Taxation in respect of Contributions, Shortfall Components and income and profits of

the Fund which are not debited to any other Account as the Trustee determines to be equitable;

- (vii) any amount of Levy payable by the Fund and not debited to any other Account; and
  - (viii) any income transferred from the Income Account to a Reserve Account.
- (c) Following the debiting of the Income Account under rule 15.4(b) at the end of each Fund Year the Trustee must determine the Fund Earning Rate, after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable.
  - (d) Subject to rule 4.5(e), an amount determined by application of the Fund Earning Rate must be allocated from the Income Account to each Accumulation Account and Pension Account in proportion to the amount standing to the credit of that account at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the account since that date.
  - (e) Any amount remaining in the Income Account after distribution of earnings under rule 15.4(d) must be transferred to a Reserve Account established under rule 15.5.
  - (f) In the event that the Trustee is required to establish a Fund Earning Rate in respect of a part of a Fund Year, then such interim Fund Earning Rate for that period will be determined by the Trustee in accordance with the Relevant Law on a basis which the Trustee considers to be equitable. The Trustee must, when required by the Regulator or the Relevant Law, notify the Members of the basis of the calculation of the interim Fund Earning Rate.

## 15.5 Reserve Account

- (a) The Trustee has power at any time to establish one or more Reserve Account(s) of the Fund. Subject to the Relevant Law, a Reserve Account may be credited with the following:
  - (i) an amount transferred from the Income Account under rule 15.4;
  - (ii) Contributions held by the Trustee pending allocation to the Accumulation Accounts of Members in accordance with rule 18.7;
  - (iii) some or all of the proceeds of any Policy;
  - (iv) such portion as the Trustee considers appropriate of an amount paid into the Fund as a transfer or Roll-Over Superannuation Benefit;
  - (v) an amount transferred from the Forfeiture Account under rule 22.4(f); and
  - (vi) such other amounts as the Trustee considers appropriate.
- (b) Money held in a Reserve Account does not form part of any Accumulation Account or Pension Account. Any income earned by the Fund on the money held in a Reserve Account must be credited to that Reserve Account.
- (c) A Reserve Account may, at the discretion of the Trustee, be used for the following purposes:
  - (i) to generally give effect to any reserving strategy established by the Trustee to stabilise the investment earnings of the Fund;
  - (ii) to maintain a solvency or other reserve as the Trustee determines to be necessary or appropriate in connection with the payment of a Pension from the Fund;

- (iii) to hold Contributions pending allocation to the Accumulation Accounts of Members in accordance with rule 18.7;
- (iv) to make an Anti-Detriment Payment;
- (v) to provide for such contingencies as the Trustee may determine;
- (vi) to augment the Fund Earning Rate;
- (vii) to meet any Taxation payments payable by the Fund;
- (viii) to pay any expenses or charges payable by the Fund;
- (ix) to pay a Benefit, or augment a Benefit to be paid, to a Member in the event of the Member suffering Permanent Incapacity, Temporary Incapacity or a Terminal Medical Condition or to be paid to one or more of the Dependants or the Legal Personal Representative of a deceased Member;
- (x) to pay to or for the benefit of any Member, Beneficiary or former Member including augmentation of an Accumulation Account or Pension Account or on any other basis that does not breach the Relevant Law; and
- (xi) for any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.

#### **15.6 Adjustment to Accumulation or Pension Account**

In determining the amount standing to the credit of an Accumulation Account or Pension Account at the time a Benefit is calculated or becomes payable, the Trustee must make such adjustment (up to the date of payment) reflecting the Fund Earning Rate then applying as, in its discretion, it considers equitable, and in accordance with the Relevant Law. The Income Account must be debited or credited accordingly.

#### **15.7 Other Accounts**

The Trustee may from time to time establish such other accounts as it considers necessary or convenient for the proper administration of the Fund or as required by the Relevant Law.

#### **15.8 Valuation of the Fund**

- (a) At the end of each Fund Year or at such other time as the Trustee considers appropriate, or as the Relevant Law requires, the Trustee shall:
  - (i) make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date; and
  - (ii) determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account or the relevant sub-account referred to in rule 4.5(d).
- (b) The value so determined in respect of each asset must then be reflected in the balance sheet and other accounts of the Fund.

### **16 FUND RECORDS, DISCLOSURE AND INVESTIGATION**

#### **16.1 Receipt and Payment of Money**

All money of the Fund must be lodged as soon as practicable to the credit of:

- (a) an account in the name of the Fund kept with a bank or other authorised deposit-taking institution as determined from time to time by the Trustee;
- (b) an Insurer for the payment of premiums; or



- (c) the trust account of a solicitor, accountant or Investment Manager appointed under these Governing Rules.

## **16.2 Issue of Receipts**

A receipt given on behalf of the Fund by the Trustee or any other person who may from time to time be authorised by the Trustee in writing to receive any money of the Fund is a sufficient discharge of the person by whom the money is paid in respect of the amount paid.

## **16.3 Records and Accounts to be Kept**

The Trustee must arrange for:

- (a) the keeping of accounts of all money received into and disbursed from the Fund and of all dealings in connection with such money;
- (b) the collection and prompt payment into an authorised account of the Fund or the otherwise appropriate dealing with all money due to the Fund;
- (c) the keeping and safe-custody of all records, books, accounts, minutes, reports and other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law;
- (d) the preparation of Financial Statements and such other or additional accounts and statements in respect of each Fund Year as are required by the Relevant Law; and
- (e) the preparation and lodgement of an annual return to the Regulator and of such other certificates, statements, forms, documents and information in such manner and within the time required by the Relevant Law.

## **16.4 Audit**

The Trustee must:

- (a) make suitable arrangements for the auditing of the Financial Statements and other accounts, books and relevant records of the Fund by the Auditor annually or at such other times as required by the Relevant Law; and
- (b) obtain from the Auditor such certificates, statements, forms and other documents at such time and in such form as required by the Relevant Law.

## **16.5 Disclosure and Reporting Requirements**

The Trustee must arrange to provide to:

- (a) any Member and Beneficiary;
- (b) the Regulator;
- (c) any court;
- (d) any Actuary;
- (e) any Auditor; and
- (f) any other persons specified in the Relevant Law,

such information or documentation, at such time and in such manner as is required by the Relevant Law.

## 17 PAYMENT OF TAXATION AND LEVIES

### 17.1 Tax on Contributions and Shortfall Components

The Trustee or, with the agreement of the Trustee, any other appropriate organisation, may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member. Where such Taxation has been deducted from a Contribution or Shortfall Component a reference to the crediting of the Contribution or Shortfall Component to an Accumulation Account means the crediting of the net Contribution or Shortfall Component after the deduction of such Taxation.

### 17.2 Surcharge

The Trustee may make provision for and may deduct any surcharge or other amount of whatever description levied on the Fund, pursuant to the Superannuation Contributions Tax (Assessment and Collection) Act 1997 and related legislation (including any applicable provisional or advance payments required under that legislation).

### 17.3 Tax on Income

The Trustee may make provision for and may deduct any Taxation payable in relation to the taxable income of the Fund not otherwise deducted under this rule 17 from the Income Account or the Accounts of Members.

The Trustee may, if the Trustee so determines, deduct any amount calculated as a Provision for Deferred Income Tax from the Income Account or the Accounts of Members and record such amount as a liability of the Fund in the Financial Statements of the Fund, regardless of the degree of certainty that the amount calculated will be payable by the Fund in future.

The Trustee may, if the Trustee so determines, add any amount calculated as a Future Income Tax Benefit to the Income Account or the Accounts of Members and record such amount as an asset of the Fund in the Financial Statements of the Fund, despite the fact that it will not generate investment income and regardless of the degree of certainty that the amount calculated will be received by the Fund in future.

### 17.4 Tax on Benefits

The Trustee or, with the agreement of the Trustee, any other appropriate organisation, may deduct from any Benefit payable to any Member or Beneficiary under these Governing Rules any Taxation required to be deducted (or such Taxation as the Trustee considers is required to be deducted) from it.

### 17.5 Payment to Relevant Authority

The Trustee must pay all Taxation and any Levy which is due and payable by the Fund, to the relevant authorities within the required time for payment.

## 18 CONTRIBUTIONS TO FUND

### 18.1 Member and Employer Contributions

A Member or (if applicable) an Employer may, subject to any contributions cap under the Relevant Law which applies so as to prohibit or restrict the contribution of an amount, contribute to the Fund in respect of a Member such amount and in such manner and at such times as each of them in their absolute and uncontrolled discretion determines.

### 18.2 Contributions in Cash or in Specie

Any Contributions made by a Member or an Employer may be made to the Trustee either in cash or by transfer of an asset or assets provided that:

- (a) the assets transferred must be authorised investments as set out in rule 4.1; and
- (b) any transfer of an asset under this rule 18.2 must only be made on the terms and conditions permitted under the Relevant Law.

### **18.3 No Obligation to Contribute**

In the absence of any agreement to the contrary, a Member is not under any obligation to make a Contribution to the Fund in respect of any Fund Year and a Member may remain a Member notwithstanding that a Contribution is not made in respect of that Member in respect of any Fund Year.

### **18.4 Acceptance of Contributions**

Subject to this rule 18, the Trustee may accept any Contribution or Shortfall Component made by or in respect of a Member that is permitted by the Relevant Law, but must not accept any amount:

- (a) if the Regulator so directs;
- (b) if the amount is received from or on behalf of a Member, but is not an employer contribution made in respect of the Member, if the Member's Tax File Number has not been quoted to the Trustee as required under the Relevant Law; or
- (c) to the extent that the amount exceeds a contributions cap applying under the Relevant Law, which contributions cap applies so as to prohibit or restrict the acceptance of any amount or part thereof by the Trustee.

### **18.5 Ineligible Contributions**

If the Trustee ascertains at any time that an amount or part thereof has been received by the Trustee which the Trustee is not permitted to accept under this rule 18, the Trustee must refund such amount (in whole or in part as the case requires) within any time period which may be required by the Relevant Law, less any:

- (a) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to the relevant amount; and
- (b) reasonable administration and transaction charges,

in each case to the extent permitted under the Relevant Law, and the Benefits held for the Member in the Fund shall be those which would have been held if such amount had not been received. The Trustee shall hold all amounts received which the Trustee is not permitted to accept under this rule 18, pending their refund, as a bare trustee for the person entitled to such refund and no such amount, regardless of the manner in which it is held, invested or applied by the Trustee pending its refund by the Trustee, shall form part of the Fund.

### **18.6 Spouse and Other Contributions**

The Trustee may, with the consent of a Member, accept Contributions in any form permitted by the Relevant Law made to the Fund in respect of the Member and, without limiting the generality of this rule 18.6, accept Contributions by the Spouse of a Member or from the trustee of a Complying Superannuation Fund of which the Spouse of a Member is a member, where such Contributions result from a Contribution Split by the Spouse in favour of the Member, notwithstanding that the Spouse may also be a Member in their own right.

### **18.7 Must Allocate Contributions**

The Trustee must allocate Contributions to Members within 28 days of the end of the month in which the Contribution is received or such longer period as is reasonable in the circumstances.

### **18.8 Refund of Excess Contributions**

The Trustee must pay any amount stated in a Release Authority, signed by the Member named in the Release Authority, for the repayment of excess Contributions to the Commissioner or to any other person or entity as directed in the Release Authority, including any additional amounts such as penalties or other levies as included in the Release Authority.

## **19 TRANSFERS AND ROLL-OVERS TO APPROVED BENEFIT ARRANGEMENTS**

### **19.1 Request for Transfer or Roll-Over to Approved Benefit Arrangement**

Where a Member is a member of or is eligible to join any Approved Benefit Arrangement and requests:

- (a) the transfer of the whole or part of his or her Benefit Entitlement; or
- (b) the roll-over of the whole or part of his or her Benefit,

then the Trustee must transfer the whole or any part of the amount in the Fund representing the relevant Benefit Entitlement or Benefit to the trustee of the Approved Benefit Arrangement or, where the Approved Benefit Arrangement is the Fund, to another account maintained in the Fund for the Member, provided that a transfer or roll-over may only be made under this rule 19.1 where the Trustee is satisfied that the transfer or roll-over is permitted by, and is made in accordance with, the Relevant Law.

### **19.2 Amount of Transfer**

The amount of a Member's Benefit Entitlement to be transferred under rule 19.1 must not, subject to rule 28, exceed the amount standing to the credit of the relevant Member's account.

### **19.3 Effect, Method and Timing of Transfer or Roll-Over**

- (a) The Member must effect and execute any documentation required by the Relevant Law or otherwise notified to the Member by the Trustee as being necessary or desirable to enable the Trustee to complete the transfer or roll-over of a Roll-Over Superannuation Benefit to the Approved Benefit Arrangement or to another account within the Fund in accordance with the Relevant Law.
- (b) Upon receipt of a Member's request for a transfer or roll-over under rule 19.1, the Trustee must transfer or roll-over the relevant amount as soon as practicable and in any case within such period as is required by the Relevant Law.
- (c) The receipt of a transfer or roll-over of a Roll-Over Superannuation Benefit by the proper officer of the Approved Benefit Arrangement will constitute a complete discharge of the Trustee of all liabilities in respect of the transferred or rolled-over amount and the Trustee has no responsibility to see to the application of the transferred or rolled-over amount.
- (d) On the transfer or roll-over of a Roll-Over Superannuation Benefit in respect of a Member under this rule 19 to an Approved Benefit Arrangement other than the Fund, all the rights and interest of that Member under these Governing Rules (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or on the occurrence of any event or circumstances affecting the Member) in respect of the amount transferred or rolled-over are entirely extinguished.

#### **19.4 Contribution Split**

The Trustee must give effect to a Contribution Splitting Application lodged by a Member if such application specifies the matters required in such an application under the Relevant Law and is not an invalid application for the purposes of the Relevant Law.

### **20 TRANSFERS AND ROLL-OVERS WITHOUT CONSENT**

#### **20.1 Successor Fund Transfers**

Subject to rule 20.2, the Trustee may transfer the whole or part of a Member's Benefit Entitlement to an Approved Benefit Arrangement without the request or consent of the Member where the Approved Benefit Arrangement is a successor fund within the meaning of the Relevant Law. The Trustee may transfer the Member's Benefit Entitlement to such an Approved Benefit Arrangement whether or not the Member is at the time of the transfer a participant in that Approved Benefit Arrangement.

#### **20.2 Eligible Roll-Over Funds**

In accordance with the Relevant Law the Trustee may, without the request or consent of a Member, and, where required by the Relevant Law, the Trustee must:

- (a) transfer a Member's Benefit Entitlement or roll-over a Member's Benefit to an Eligible Roll-Over Fund; and
- (b) provide any information to the trustee of the Eligible Roll-Over Fund at such time and in such manner as required by the Relevant Law.

### **21 TRANSFERS AND ROLL-OVERS FROM APPROVED BENEFIT ARRANGEMENTS**

#### **21.1 Transfer or Roll-Over of Benefit Entitlements or Benefits**

Where a Member is a member of any other Approved Benefit Arrangement the Trustee may by resolution acquire by transfer or roll-over from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of the Approved Benefit Arrangement or the interest of any person who is a participant or former participant in that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member of the Approved Benefit Arrangement at the time of the transfer or roll-over.

#### **21.2 Rights and Entitlements in Transferred Benefit Entitlements or Benefits**

The Trustee must hold any amounts transferred or rolled over in accordance with rule 21.1 as part of the Fund and reflect such equivalent rights, entitlements and interests in the particular Member's Accumulation Account or Pension Account as existed in the other Approved Benefit Arrangement and are required pursuant to the terms on which the transfer or roll-over was effected and, if the Trustee so determines, the Member may be deemed to have become a Member on the date the Member became a member of the Approved Benefit Arrangement from which the Benefit Entitlement or Benefit was transferred or rolled over.

### **22 FORFEITURE OF BENEFIT ENTITLEMENTS**

#### **22.1 No Recognition of Assignment or Charge**

The Trustee shall not recognise an assignment or charge of a Benefit Entitlement which is prohibited under the Relevant Law, and may in its absolute discretion recognise or decline to recognise an assignment or charge of a Benefit Entitlement which is permitted under the Relevant Law.

#### **22.2 Accumulation Account Residue**

Subject to the Relevant Law, any Member or former Member:

- (a) who has been paid all Benefits which the Trustee considers should be paid under the provisions of these Governing Rules or all Benefits which the Trustee is able to pay to or in respect of the Member or former Member under the Relevant Law; and
- (b) who still has a residual amount standing to the credit of their Accumulation Account, forfeits such amount and such amount must be dealt with as a forfeited Benefit Entitlement.

### **22.3 Forfeiture Account**

- (a) The Trustee has power at any time to establish a Forfeiture Account and must transfer to the credit of a Forfeiture Account any amounts forfeited under rule 22.2 or otherwise forfeited in accordance with these Governing Rules.
- (b) Any money held in a Forfeiture Account does not form part of any Accumulation Account and any income derived by the Fund on the money held in the Forfeiture Account must be credited back to the Forfeiture Account.
- (c) A Forfeiture Account must be applied in accordance with the remaining provisions of this rule 22.

### **22.4 Application of Forfeited Benefit Entitlements**

The Trustee must pay or apply any amounts which have been forfeited and are held in a Forfeiture Account in any one or more of the following ways:

- (a) to or for the benefit of the Member who forfeited the amount (as the case requires) or to the Dependants of the Member or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine;
- (b) to the trustee of the estate of the Member who forfeited the amount;
- (c) to or for the benefit of the Member who forfeited the amount (as the case requires) or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- (d) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund;
- (e) for the provision to other Members or their Dependants of additional Benefits on a basis that does not breach the Relevant Law and is reasonable having regard to all the circumstances;
- (f) for crediting to a Reserve Account to be applied in accordance with rule 15.5;
- (g) for any other purpose approved in writing by the Regulator,

provided that the Trustee may only apply amounts which have been forfeited in such circumstances, in such manner and at such times as are in accordance with the Relevant Law. For the purposes of this rule 22.4, Member includes former Member.

## **23 POLICIES OF ASSURANCE**

### **23.1 Trustee may Effect or Acquire Policy**

The Trustee may effect separate Policies with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one way and partly in another.

The Trustee may otherwise acquire one or more Policies in respect of a Member provided such acquisition is not prohibited under the Relevant Law.

If the Trustee has effected or acquired one or more Policies in respect of a Member who has subsequently become a former Member, the Trustee may continue to maintain such Policy or Policies for as long as it considers the maintenance of such Policy or Policies to be of benefit to the current Members or their Dependants and provided that doing so complies with the Relevant Law.

The Trustee is not responsible or liable to a Member or former Member, their Legal Personal Representative or Dependants should the Trustee determine not to exercise the power to effect, acquire or maintain such Policy or Policies.

### **23.2 Trustee Required to Effect Policy**

Notwithstanding anything in rule 23.1, where:

- (a) the Trustee has informed a Member that a Policy of a specified type (including the quantum of cover) will be effected or acquired in respect of the Member, the Trustee must effect or acquire such Policy unless the Member requests the Trustee in writing not to effect or acquire such Policy; or
- (b) a Member requests the Trustee in writing to effect or acquire a Policy of a specified type (including the quantum of cover) in respect of the Member, and the Trustee agrees to effect or acquire such Policy on the basis that to do so is in the best interests of the Member or the Dependants of the Member, the Trustee must effect or acquire such Policy unless the Member by written notice to the Trustee withdraws, cancels or alters the Member's original request,

provided always that the Trustee is able to obtain such Policy or Policies in respect of the Member either at all or at a cost that the Trustee considers to be reasonable.

### **23.3 Premiums for Policy**

The premiums for any Policy effected, acquired or maintained may be, provided that doing so complies with the Relevant Law, debited to the Income Account, directly to the Accumulation Account or a Pension Account of the Member in respect of whom the Policy is effected, acquired or maintained, directly to the Accumulation Account or a Pension Account of another Member, including for the purposes of holding cross insurance, directly to a Reserve Account or alternatively in such proportions among Members as the Trustee considers to be equitable.

### **23.4 Limitations on Policy**

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member then notwithstanding the Benefits which may be payable under these Governing Rules in respect of the Member, the Trustee may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member as it may determine.

### **23.5 Endowment or Whole of Life Policy**

Where all or any of the Member's Contributions have been applied towards an endowment or whole of life Policy, then the Member's Benefit Entitlement means, in relation to those Contributions and any net earnings which would but for this rule 23.5 be applicable to them, the surrender value of such endowment or whole of life Policy.

### **23.6 Self-Insurance**

Subject to the limitations on self-insurance by a Complying Superannuation Fund under the Relevant Law, the Trustee may continue to maintain one or more Self-Insurance Reserve Account(s) established, prior to 1 July 2013, for the purposes of paying a Benefit, or augmenting a Benefit to be paid, to:

- (a) a Member in the event of the Member suffering Permanent Incapacity, Temporary Incapacity or a Terminal Medical Condition; or
- (b) one or more of the Dependants or the Legal Personal Representative of a deceased Member,

provided that any Self-Insurance Reserve Accounts maintained by the Trustee as at 1 July 2016, or such other date as is specified by the Relevant Law as the date from which a Complying Superannuation Fund must support any insured benefit with a policy of insurance provided by an insurer (**Cessation Date**), cease to be maintained for the purpose of paying a Benefit under this rule 23.6.

Any Self-Insurance Reserve Accounts maintained by the Trustee at the Cessation Date may be deemed by the Trustee, in its absolute discretion, to be continued as a Reserve for a specific or general purpose as nominated by the Trustee or applied to the Accounts of Members in such proportions as the Trustee may determine.

#### 24 TREATMENT OF PRESERVED BENEFITS

Notwithstanding any other provision of these Governing Rules, any Preserved Payment Benefits held by the Trustee which under the Relevant Law are not permitted to be paid out to the Member may, at the discretion of the Trustee, be dealt with in accordance with rule 19, or retained in the Fund subject to rules 25 and 27.

#### 25 PAYMENT OF PRESERVED AMOUNTS

Notwithstanding any other provision of these Governing Rules, the Trustee may determine to pay a Member or Dependant of a Member any Benefit which is a Preserved Payment Benefit on the Member attaining the Payment Age, Retiring from Employment, in the event of Permanent Incapacity, a Terminal Medical Condition, the death of the Member or in other circumstances permitted by the Relevant Law.

#### 26 PAYMENT OF NON-PRESERVED AMOUNTS

Notwithstanding any other provision of these Governing Rules which may be construed to the contrary:

(a) **Member Election**

a Member may elect at any time to withdraw the whole or any part of their Non-Preserved Amount by giving notice to the Trustee in such form and manner as may be determined by the Trustee from time to time;

(b) **Minimum Payment**

the minimum Non-Preserved Amount which may be withdrawn by a Member under rule 26(a) must be determined by the Trustee and notified to Members.

#### 27 COMPULSORY PAYMENT OF BENEFITS

Notwithstanding any other provision of these Governing Rules which may be construed to the contrary, the Benefit Entitlement of a Member must be cashed, or commence to be cashed within the meaning of the Relevant Law, as soon as practicable after the date on which the Relevant Law requires such Benefit Entitlement to be cashed or to be commenced to be cashed.



## 28 **BENEFIT AUGMENTATION**

Prior to payment of a Benefit, the Trustee may determine to pay some part of the Reserve Account under rule 15.5(c)(x) to the Member's Accumulation Account for purposes of the payment of a Benefit.

## 29 **DEALING WITH BENEFITS**

### 29.1 **Payment of Benefits**

Where a Member or Beneficiary is eligible to receive payment of a Benefit under rules 32, 33.1, 34 (subject to rules 34.10(a) and 34.10(b)), 35 or 36(c) the Benefit may be paid as:

- (a) one or more lump sums;
  - (b) one or more Income Streams;
  - (c) a combination of one or more lump sums and one or more Income Streams,
- unless the Benefit must be provided in some other manner under the Relevant Law.

### 29.2 **Retention of Benefits**

The Trustee may in its absolute discretion retain all or any part of any Benefit payable in the Fund provided, however, that all Benefits must be paid at such time and in such manner as required by the Relevant Law. At its discretion and as required by the Relevant Law, the Trustee may pay Benefits upon:

- (a) **Death**  
the Member dies, in which case it must be paid in accordance with rule 34;
- (b) **Payment Otherwise Required**  
the payment of the Benefit is required in accordance with the provisions of these Governing Rules or the Relevant Law; or
- (c) **Discretion**  
the Trustee elects in its absolute discretion to pay the Benefit to the Member or Beneficiary.

## 30 **PAYMENT OF BENEFITS - GENERAL**

### 30.1 **Address for Benefits**

Benefits are payable at the principal office for the time being of the Trustee or otherwise as may be determined by the Trustee and advised to the Member or Beneficiary. The Trustee may forward the Benefits to the postal address or bank account of the Member or Beneficiary last notified to the Trustee or to such other place as the Trustee may determine.

### 30.2 **Notification of Address**

Every Member, Beneficiary, or person to whom a Benefit is payable on behalf of or for the benefit of a Member or Beneficiary, must (except where no further Benefit is payable from the Fund) notify the Trustee in writing or by Electronic Communication at the time the Benefit becomes payable and immediately after the Member or Beneficiary changes address of:

- (a) the place of residence of the Member or Beneficiary and the full postal address of that residence; and
- (b) the bank account (if any) to which the Member or Beneficiary requests that the Benefit be paid.

### **30.3 Receipt for Benefits**

Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

### **30.4 Notification of Claims and Proofs**

Where a Benefit is payable to or in respect of a Member, prior to payment of the Benefit the Trustee must notify:

- (a) the Member, in the case of a Benefit payable to the Member;
- (b) any person named in a Binding Death Benefit Nomination or Non-Binding Death Benefit Nomination held by the Trustee in respect of the deceased Member, the Nominated Beneficiary, the Reversionary Beneficiary, the Legal Personal Representative, any known Dependants or any other person who the Trustee reasonably believes may have an entitlement to or an interest in the Benefit, in the case of a Benefit payable on death of a Member; and
- (c) in any other case, such persons as the Trustee reasonably believes may have an entitlement to or interest in the Benefit,

in writing or by Electronic Communication of the period within which the person may seek to claim an entitlement to the Benefit and where a person has produced to the Trustee such evidence, done all such acts and executed all such documents as the Trustee may reasonably require in order to satisfy the Trustee that the person is entitled to the payment of part or all of the Benefit under these Governing Rules, the Trustee must pay such Benefit provided that the Trustee must also notify, in writing or by Electronic Communication, any person mentioned in rule 30.4 of the period within which the person may object to the payment of the Benefit and may defer the payment of the Benefit until that period for objections has elapsed.

### **30.5 Notification Outside Time Limit**

Where a person has failed to notify the Trustee of a claim or of their intention to make a claim within the period determined by the Trustee under the proviso in rule 30.4, no payment may be made to the person unless the Trustee is satisfied that such a payment may be made from the Fund in accordance with these Governing Rules and the Relevant Law.

### **30.6 No Personal Claim**

No Member or person claiming through a Member or on behalf of a Member or as the Dependant of a Member is entitled to require payment of that Member's interest in the Fund except as may be provided in these Governing Rules.

### **30.7 Payment to Others on Behalf of Members and Beneficiaries**

When any Member or Beneficiary is under the age of 18 years or is under any legal disability or in the opinion of the Trustee it would be in the best interests of the Member or Beneficiary, the Trustee may pay all or part of any Benefit in such one or more of the following ways as the Trustee may determine:

- (a) to or towards the maintenance, education, advancement, support or benefit of the Member or Beneficiary in such manner and on such terms and conditions as the Trustee determines; or
- (b) to any other person who appears to the Trustee to be a trustee for the Member or Beneficiary or Spouse, Child, parent or guardian or a person having custody of the Member or Beneficiary for application on behalf of the Member or Beneficiary,

and the receipt by the person to whom the Benefit is paid is a complete discharge of the Trustee for the payment in respect of the Member or Beneficiary and the Trustee is not bound or concerned to see to the application of the Benefit so paid.

### **30.8 Unclaimed Benefits**

The Trustee must give to the Regulator a statement of Unclaimed Benefits and pay any Unclaimed Benefits to the Regulator at such time and in such manner as required by the Relevant Law.

### **30.9 Death of Member Prior to Benefit Payment**

Where a Member has become entitled to receive a Benefit as a Superannuation Lump Sum and before payment has been made by the Trustee, the Member dies, the Trustee may pay that Benefit in accordance with the provisions of rule 34.

### **30.10 Limitation on Benefit Payments**

- (a) Notwithstanding any other provision of these Governing Rules the Trustee must not pay out any Benefits to Members, Dependants or Beneficiaries where such payment would cause the Fund to breach the Relevant Law.
- (b) Notwithstanding any other provision of these Governing Rules the Trustee must not pay any Benefits to a Member, Dependant or Beneficiary to the extent that it would cause the Fund to fail to be a qualifying recognised overseas pension scheme (**QROPS**) for the purposes of section 169 of the UK Act where and for so long as the Trustee decides that the Fund will be a QROPS.

## **31 TRANSFER IN SPECIE**

### **31.1 Transfer of Investments**

To the extent permitted under the Relevant Law, the Trustee may, with the consent of a Member or Beneficiary:

- (a) to whom a Benefit is payable; or
- (b) in respect of whom a transfer of a Benefit Entitlement or roll-over of a Benefit under rule 19 is to be made,

transfer or roll-over investments of the Fund of equivalent value to the Member or Beneficiary or to the trustee of the Approved Benefit Arrangement in lieu of paying the whole or part of the amount otherwise payable under the provisions of these Governing Rules.

### **31.2 Transfer of Policy**

Where:

- (a) a Member or a Beneficiary is entitled to be paid a Benefit; or
- (b) the Trustee in its discretion determines to pay a Benefit to a Member, a Beneficiary or the Dependants of the Member including any interest in a Policy of any kind on the life of the Member,

the Trustee may, in its absolute discretion and in lieu of surrendering such Policy, assign the Policy to such Member or Beneficiary or to the Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine, and

- (c) the value of such Policy as at the date of assignment must be debited to the relevant Member's Accumulation Account or Pension Account; and

- (d) the Trustee will not be liable to pay any premiums which may become due and payable under the Policy to the extent that they relate to the period after the date of the assignment.

### **31.3 No Beneficial Interest**

Subject to the provisions of this rule 31 and rules 4.5 and 4.6, no Member or Beneficiary may have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole while such asset or assets remain subject to the provisions of these Governing Rules.

## **32 RETIREMENT AND ATTAINMENT OF PAYMENT AGE**

Where a Member:

- (a) Retires from Employment; or
- (b) attains the Payment Age,

and the Member requests that a Benefit be paid, then such Member may be paid the amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made, or such part of such amount as the Member requests.

Such Benefit may be paid as a lump sum or Income Stream (or combination) as provided in rule 29.1.

## **33 INCAPACITY**

### **33.1 Permanent Incapacity**

In the event that a Member suffers, in the opinion of the Trustee, Permanent Incapacity and requests that a Benefit be paid, then such Member may be paid by the Trustee a Benefit equal to the full amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made, or such part of such amount as the Member requests.

Such Benefit may be paid as a lump sum or Income Stream (or combination) as provided in rule 29.1.

### **33.2 Temporary Incapacity**

- (a) In the event that a Member suffers, in the opinion of the Trustee, Temporary Incapacity and requests that a Benefit be paid under this rule 33.2, then such Member may be paid by the Trustee a non-commutable income stream equal to:
  - (i) in the case of a Member in respect of whom the Trustee receives an income Benefit under a Policy effected or acquired in relation to Temporary Incapacity, the amount payable to the Trustee as a result of the Temporary Incapacity of the Member under the Policy; and
  - (ii) in respect of any other Member, an income Benefit determined by the Trustee provided that the total income Benefit received by the Member may not reduce the Member's Benefit Entitlement and any payment of an income Benefit under this rule 33.2 is subject to the limitations contained in the Relevant Law.
- (b) A Member ceases to suffer Temporary Incapacity in the event that the Member:
  - (i) ceases to satisfy the definition of Temporary Incapacity;
  - (ii) attains the Payment Age; or
  - (iii) becomes entitled to another Benefit payable under these Governing Rules.
- (c) Any income Benefit under this rule 33.2 must:

- (i) in the case of a Benefit payable under a Policy, be paid in accordance with, and will cease in the circumstances set out in the Policy; and
- (ii) in any other case, be paid in the manner and in circumstances determined by the Trustee for this purpose from time to time,

and comply with the requirements of the Relevant Law.

## 34 DEATH

### 34.1 Binding Death Benefit Nomination

A Member may Provide to the Trustee one or more Binding Death Benefit Nominations requiring that the Trustee pay Benefits arising on the death of the Member to a person or persons specified in the Binding Death Benefit Nomination or Nominations, being the Legal Personal Representative and/or one or more of the Dependants of the Member and in such manner or form specified in the Binding Death Benefit Nomination or Nominations.

The Trustee will be bound to act in accordance with the directions contained in a valid Binding Death Benefit Nomination provided that the person or persons specified in the Binding Death Benefit Nomination are the Legal Personal Representative and/or one or more of the Dependants of the Member at the death of the Member.

The manner or form specified in the Binding Death Benefit Nomination may, without limitation, include requirements that a portion of the Benefits be paid as one or more lump sums, including by transfer of nominated assets in-specie to one or more specified Beneficiaries, or as one or more Pensions, including requirements as to the terms and conditions of such Pensions.

A Binding Death Benefit Nomination may contain directions concerning the payment of Benefits in the event that a nominated Dependant is not living at the death of the Member, is living but is not a Dependant of the Member on the death of the Member or, for some other reason, is unable to receive their nominated entitlement.

A Binding Death Benefit Nomination will not fail in its entirety by virtue of the fact that a portion of the instructions contained in the Binding Death Benefit Nomination cannot be met by the Trustee.

Any portion of a Binding Death Benefit Nomination which cannot be met by the Trustee must be distributed by the Trustee as if no Binding Death Benefit Nomination existed in respect to that portion of the Benefits of the deceased Member.

A Binding Death Benefit Nomination must meet the requirements set out in rule 34.2.

### 34.2 Form and Receipt of Binding Death Benefit Nomination

To be valid, a Binding Death Benefit Nomination must:

- (a) be in writing; and
- (b) be signed and dated by the Member in the presence of two witnesses who are aged 18 years or over, neither of whom are Dependants nominated in the Binding Death Benefit Nomination, nor Legal Personal Representatives of the Member; and
- (c) contain a dated and signed declaration by the witnesses stating that the Binding Death Benefit Nomination was signed by the Member in their presence; and
- (d) be received on behalf of the Trustee:
  - (i) where the Trustee is comprised of Individual Trustees, by at least one Individual Trustee; or

- (ii) where the Trustee is a Constitutional Corporation, by at least one Director of the Trustee,

including by the Member acting as either an Individual Trustee or Director of the Trustee; and

- (e) be Provided to the Trustee:

- (i) during the lifetime of the Member; or
- (ii) as soon as practicable following the death of the Member,

provided that, if the Trustee has commenced to pay Benefits arising on the death of the Member before presentation of the Binding Death Benefit Nomination to the Trustee, such payment or payments, so long as they are made in accordance with these rules, will not be required to be reclaimed by the Trustee and will be treated as if that payment or those payments were excluded from the Binding Death Benefit Nomination.

### **34.3 Death Benefit Rule**

A Member or Beneficiary may request the Trustee by written notice Provided to the Trustee that the Trustee establish a Death Benefit Rule requiring the Trustee to pay Benefits arising on the death of the Member to a person or persons specified in the notice, being the Legal Personal Representative and/or one or more of the Dependants of the Member, and in such manner or form specified in the notice. The manner or form specified in the notice may, without limitation, include requirements that the Benefits be paid as a lump sum or as a Pension and requirements as to the terms and conditions of such Pension. The Trustee may in its absolute discretion determine whether or not to establish a Death Benefit Rule as so requested by a Member. If the Trustee determines to establish a Death Benefit Rule as requested by a Member, it may do so in any manner allowed for the variation of these Governing Rules under rule 42.1, and such Death Benefit Rule will thereupon be taken to form part of these Governing Rules and the Trustee will be bound, subject to the Relevant Law, to act in accordance with that Death Benefit Rule.

If the provisions of a Death Benefit Rule requested by a Member conflict with the provisions of one or more Binding Death Benefit Nominations or one or more Reversionary Pension Nominations in respect of that Member's Benefits, the provisions of the Death Benefit Rule will apply to the exclusion of any other nomination to the extent that the provisions of the Death Benefit Rule conflict with any such other nomination.

### **34.4 Reversionary Pension and Binding Death Benefit Nominations**

A Binding Death Benefit Nomination will not apply to Benefits which are being paid to a Member at the time of death of the Member in the form of a Pension, to the extent that the Trustee is required under these Governing Rules to pay such Pension to any Reversionary Beneficiary of the Member who is a Dependant of the Member at the time of death of the Member, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law.

### **34.5 Non-Binding Death Benefit Nomination**

A Member may Provide to the Trustee a written nomination, in the form set out in Schedule B or in such other form as is prescribed or accepted by the Trustee, stating how the Member wishes the Trustee to pay Benefits arising on the death of the Member among the person or persons specified in the nomination, being the Legal Personal Representative and/or one or more of the Dependants of the Member.

#### **34.6 Non-Lapsing Binding and Non-Binding Death Benefit Nominations**

A Binding or Non-Binding Death Benefit Nomination will not lapse by reason only of the passage of time.

#### **34.7 Revocation or Amendment of Binding and Non-Binding Death Benefit Nominations**

- (a) A Member may by notice in writing Provided to the Trustee at any time revoke a Binding or Non-Binding Death Benefit Nomination.
- (b) A Member may at any time Provide to the Trustee a subsequent Binding or Non-Binding Death Benefit Nomination, and the receipt of such subsequent nomination shall, unless the subsequent Binding or Non-Binding Death Benefit Nomination contains instructions to the contrary, revoke a prior nomination Provided to the Trustee.
- (c) A Member may at any time Provide to the Trustee multiple Binding or Non-Binding Death Benefit Nominations which, provided each contains directions that they are to apply in conjunction with the other or others, shall not revoke those nominations applying in conjunction. In that event, unless the nominations contain instructions to the contrary, those nominations will revoke any prior nominations Provided to the Trustee.

#### **34.8 Benefits and Anti-Detriment Payments**

On the death of a Member the Trustee must pay the full amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made in accordance with the provisions of rule 34. The Trustee may in its discretion increase any lump sum Benefit paid on the death of the Member by payment of an Anti-Detriment Payment, but only to the extent that the Trustee is satisfied that:

- (a) it will be entitled to a tax deduction in respect of such Anti-Detriment Payment;
- (b) sufficient funds are available to make such Anti-Detriment Payment; and
- (c) such payment would not disadvantage any other Member or Beneficiary of the Fund.

#### **34.9 Interim Benefit Payment**

Where a Dependant or Legal Personal Representative of a Member is to receive any Benefit from the Fund, the Trustee may pay the Benefit in the form of one or more interim lump sums and a final lump sum.

#### **34.10 Payments to Dependents, Legal Personal Representatives or Other Persons**

On the death of a Member the Trustee must:

- (a) if required by a Reversionary Pension Nomination in respect of one or more Pensions payable to the Member, Provided by the Member to the Trustee at or about the commencement of the Pension or Pensions or during the course of the Pension or Pensions, or a Binding Death Benefit Nomination Provided by the Member to the Trustee, or pursuant to a Death Benefit Rule, pay or apply the Benefit in accordance with that Reversionary Pension Nomination, Binding Death Benefit Nomination or Death Benefit Rule; and
- (b) if the Member had not Provided a Reversionary Pension Nomination or a Binding Death Benefit Nomination to the Trustee, or there is no relevant Death Benefit Rule in place, or to the extent that a Reversionary Pension Nomination or a Binding Death Benefit Nomination Provided by the Member to the Trustee is not in effect or cannot be given effect under the Relevant Law, or to the extent that a relevant

Death Benefit Rule established by the Trustee cannot be given effect under the Relevant Law, pay or apply the Benefit to or for the benefit of one or more of the Member's Dependants and Legal Personal Representative in such proportions, form, manner and at such times as the Trustee, in its discretion, and taking into account the provisions of any Non-Binding Death Benefit Nomination Provided by the Member to the Trustee, determines from time to time; and

- (c) if, when ascertaining the Member's Dependants, the potential Dependants include one or more Spouses, the Trustee may apply the tests set down in section 4AA of the Relevant Family Law, in its absolute discretion, to determine whether the deceased Member had been living with any of those potential Spouses as a couple on a genuine domestic basis; and
- (d) if there are no Dependants and there is no Legal Personal Representative:
  - (i) pay or apply the Benefit for the benefit of such Relatives of the Member or other persons as the Trustee determines, in such proportions, form, manner and at such times as the Trustee determines; or
  - (ii) if there are no such Relatives or other persons, deal with the Benefit as though it were a forfeited benefit in accordance with rules 22.3 and 22.4, or as otherwise required under the Relevant Law.

#### **34.11 Discharge of Trustee**

The receipt by a Dependant, the Legal Personal Representative, Relative or other person of a Benefit paid under this rule 34 is a complete discharge of the Trustee in respect of any amount paid to that person and the Trustee is not bound to see to the application thereof.

#### **34.12 Disclaimer of Benefit**

A Dependant or any other person nominated by a deceased Member to receive a Benefit under this rule 34 may disclaim all or part of that Benefit. In that event, the Trustee will pay or apply the disclaimed Benefit to or for the benefit of one or more of the Member's Dependants and Legal Personal Representative in such proportions, form, manner and at such times as the Trustee, in its discretion, and taking into account the provisions of any Non-Binding Death Benefit Nomination Provided by the Member to the Trustee, shall determine.

### **35 TERMINAL MEDICAL CONDITION**

If the Trustee is satisfied that a Member suffers a Terminal Medical Condition, then such Member may be paid a Benefit equal to the full amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made.

Such Benefit may be paid as a lump sum or Income Stream (or combination) as provided in rule 29.1.

### **36 OTHER BENEFIT PAYMENT EVENTS**

Where:

- (a) the Trustee is satisfied that a Member is in severe financial hardship for the purposes of SIS; or
- (b) the Regulator has determined that an amount of a Member's Benefit Entitlement may be released on compassionate grounds; or
- (c) the Trustee is satisfied that the Member has met some other Condition of Release for the purposes of SIS or that the payment of a Benefit is otherwise permitted under Relevant Law or has been approved by the Regulator,



the Trustee may pay such Member such part of the amount standing to the credit of the Member's Accumulation Account at the date on which payment is made as is permitted under SIS.

A Benefit paid under rule 36(c), may be paid as a lump sum or Income Stream (or combination) as provided in rule 29.1.

## **37 GUARDIAN AND DEATH BENEFIT GUARDIAN**

### **37.1 Appointment of Guardian**

The Members may at any time by instrument in writing delivered to the Trustee, appoint a person, persons or body to act as Guardian of the Fund and such appointment shall only be revocable to the extent that all those Members who have appointed that Guardian have not died or come under a legal disability and any such revocation of appointment must be made by the Members unanimously by instrument in writing.

### **37.2 Additional Guardians**

A Guardian so appointed by the Members may from time to time appoint by revocable or irrevocable instrument in writing delivered to the Trustee one or more persons to the position of joint Guardian. However, should the Members revoke the appointment of the Guardian appointed by them pursuant to rule 37.1, then such appointment of joint Guardian shall also be revoked.

### **37.3 Vacation of Office**

The office of Guardian or of one of the parties comprising the Guardian will immediately be determined and vacated if the Guardian, being an individual, dies or becomes mentally incapacitated such that:

- (a) they are found by two medical practitioners (expressed in writing) to be under a disability and unable to make reasonable judgments to fulfil the role of Guardian; or
- (b) a Court or Tribunal of competent jurisdiction decides that the individual is suffering from incapacity.

### **37.4 Resignation**

Any Guardian may resign or renounce such position by notice in writing to any remaining Guardians and the Trustee.

### **37.5 Successors**

- (a) The Members may at the time of appointment or revocation of appointment of a Guardian and in the same form, appoint a successor or replacement Guardian or Guardians and such appointment will become effective immediately upon the revocation, vacation of office or resignation of the Guardian or as otherwise specified in such appointment.
- (b) In default of the Members appointing a successor Guardian or if such person is unable or unwilling to act, then the Guardian may by revocable or irrevocable deed or by Will appoint a successor Guardian and where there is more than one Guardian each Guardian shall be able to appoint their own successor.

### **37.6 Consent to Act**

On their appointment, a Guardian and any successor Guardian shall signify his or her willingness to act in such capacity by notice in writing delivered to the Trustee.

### **37.7 Members to be Notified**

The Trustee shall promptly notify the Members of any change in the position of Guardian.

**37.8 Reserve Powers, Guardian Directions and Guardian Rules**

- (a) An instrument of appointment of Guardian may specify:
- (i) Reserve Powers in addition to the rules contained in rule 37.11;
  - (ii) any directions the Guardian must provide to the Trustee;
  - (iii) any conditions for the appointment to become or remain effective, or
  - (iv) such other rules to govern the Guardian.
- (b) The Trustee will be bound, subject to the Relevant Law to act in accordance with the Reserve Powers or such other directions made to the Guardian or Guardians contained therein and to the extent of any inconsistency with the rules contained herein, the rules and directions set out in the appointment will prevail.

**37.9 Appointments to be Annexed**

The Trustee shall annex to these Governing Rules a copy of all instruments of appointment of Guardian.

**37.10 Removal and Replacement of Trustee**

The Guardian has the power to remove and replace the Trustee if the replacement Trustee meets the requirements of the Relevant Law. Any removal of a Trustee must be in writing and immediately be advised to the outgoing Trustee and any simultaneous or subsequent appointment of replacement Trustee must be in writing and immediately be advised to the Members.

**37.11 Reserve Powers – Guardian Consent**

While there is a Guardian then notwithstanding anything else in these Governing Rules:

- (a) the Members shall not be capable of exercising their powers pursuant to rule 2.9 or providing directions under rules 19.1, 1.3(b) or 43.1(b), and
- (b) the Trustee shall not be capable of exercising their powers pursuant to rules 20, 1.3(a) or 43.1(c);

unless the prior or simultaneous consent in writing of the Guardian is obtained.

**37.12 More than one Guardian**

Where there is more than one Guardian every decision resolution or exercise of a power or discretion required to be or capable of being made by the Guardian shall be validly made if it is made jointly by unanimous consent.

**37.13 Dispute Resolution**

In the event that the Guardians cannot unanimously agree on any matter affecting the Fund or how to exercise their power or discretion the following applies:

- (a) Within 14 days the Guardians are to meet alone to discuss the aspects of the disagreement;
- (b) If the disagreement is not resolved then the Guardians shall set a date for a further meeting within 14 days to further resolve the disagreement;
- (c) If the disagreement is still not resolved an accountant or solicitor with 5 years standing shall be appointed within 21 days to act as a mediator for the purposes of assisting to resolve the disagreement;
- (d) If the disagreement is still not resolved an accountant or solicitor with 5 years standing shall be appointed within 21 days to act as an arbitrator, who will then set a

date for a hearing for the purposes of negotiating with the parties and any decision then made will be binding on all parties.

#### **37.14 Appointment of Death Benefit Guardian**

A Member may by instrument in writing delivered to the Trustee appoint a person, persons or body to act as Death Benefit Guardian for the Member, or remove or replace a Death Benefit Guardian appointed by the Member. Such instrument must be signed and dated by the Member, the signature of the Member must be witnessed by two persons aged 18 or over, and the instrument must include the consent of the relevant person, persons or body to act as Death Benefit Guardian for the Member.

#### **37.15 Trustee to Obtain Consent of Death Benefit Guardian**

Where a Member has a Death Benefit Guardian at the date of death of the Member, the Trustee must not pay or apply the Benefit arising on the death of the Member, under rules 34.10(b) or 34.10(c), without the prior consent in writing of such Death Benefit Guardian unless:

- (a) the Trustee is required under these Governing Rules to pay or apply a Benefit in accordance with a Binding Death Benefit Nomination or a Death Benefit Rule; or
- (b) where Benefits are being paid to the Member at the time of death of the Member in the form of a Pension, to the extent that the Trustee is required to pay such Pension to a Reversionary Beneficiary of the Member who is a Dependant of the Member at the time of death of the Member, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law.

#### **37.16 More than one Death Benefit Guardian**

Where there is more than one Death Benefit Guardian for a Member every direction shall be validly made if it is made jointly, by unanimous consent and in the event of disagreement the dispute resolution procedure set out in rule 37.13 shall be followed.

#### **37.17 Transfers and Roll-Overs**

Where there is no Guardian but where a Member has a Death Benefit Guardian at the date of death of the Member then notwithstanding anything else in these Governing Rules the Trustee must not transfer or roll-over the whole or part of a Member's Benefit or Member's Benefit Entitlement to an Approved Benefit Arrangement or Eligible Roll-Over Fund pursuant to rule 20 unless the prior or simultaneous consent in writing of the Death Benefit Guardian is obtained.

#### **37.18 Guardian and Death Benefit Guardian**

While there is a Guardian, then where a Member has a Death Benefit Guardian at the date of death of the Member, any directions of the Guardian to the Trustee shall prevail over any directions of the Death Benefit Guardian.

#### **37.19 Relevant Law**

Nothing in this rule 37 shall cause or have the effect of causing the Trustee, the Guardian, the Death Benefit Guardian or any other person to breach the Relevant Law.

### **38 INCOME STREAMS - PENSIONS AND ANNUITIES**

#### **38.1 Determination to Pay Pension or Annuity**

Subject to rules 34.3, 34.10(a) and 38.3, but otherwise notwithstanding any other provision of these Governing Rules, at such time as a Benefit or part of a Benefit becomes payable to a Member or Beneficiary in accordance with the terms of these Governing Rules or in accordance with the Relevant Law, the Trustee may at the request of the Member or

Beneficiary and on such terms as the Trustee and Member or Beneficiary may agree but otherwise on such terms as the Trustee determines if the Member or Beneficiary is under a legal disability:

(a) **Pension**

determine to pay a Pension or Pensions from the Fund to the Member or Beneficiary (as the case might be) on the conditions set out in these Governing Rules:

- (i) in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or
- (ii) in respect of any amounts credited to the Pension Account of a Member in accordance with rule 38.5(a)(ii);

(b) **Annuity**

determine, subject to the Relevant Law, to expend the Benefit payable from the Fund in the purchase or acquisition of an Annuity or Annuities in the name of the Member or Beneficiary to provide to the Member or Beneficiary the right to one or more income streams payable from the Annuity provider of one or more of the kinds referred to in rule 38.2:

- (i) in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or
- (ii) in respect of any amounts credited to the Pension Account of a Member under rule 38.5(a)(ii).

### 38.2 Choice of Pension

For the purposes of rule 38.1(a) the Member or Beneficiary may request the Trustee to pay and the Trustee may pay a Pension or Pensions in any of the following ways:

- (a) an Account-Based Pension in accordance with the relevant conditions set out in rule 39;
- (b) a Transition to Retirement Income Stream in accordance with the relevant conditions set out in rule 40;
- (c) a Market-Linked Pension in accordance with the relevant conditions set out in rule 41; or
- (d) If the Relevant Law permits, the Trustee may, at the request of a Member or Beneficiary, pay from the Fund or purchase for the benefit of the Member or Beneficiary any type of Pension other than those types of Pensions referred to elsewhere in these Governing Rules, which type of Pension is acceptable to the Regulator and is permitted under the Relevant Law, on such terms required under the Relevant Law, or on such terms as are permitted under the Relevant Law and as the Trustee and Member or Beneficiary may agree.

### 38.3 Reversionary Pension Nomination

For the purposes of rule 38.1(a), the Member or Beneficiary Pensioner, or their Legal Personal Representative, may Provide to the Trustee a Reversionary Pension Nomination in respect of one or more Pensions, nominating the Reversionary Beneficiary or Beneficiaries to whom each Pension will continue to be paid following the death of the Pensioner.

The Trustee, following acceptance of a Reversionary Pension Nomination, will be bound to act in accordance with the directions contained in the Reversionary Pension Nomination provided that the person or persons nominated are one or more of the Dependants of the

Pensioner at the death of the Pensioner and are eligible to be paid a Benefit in the form of a Pension under the Relevant Law.

A Reversionary Pension Nomination may be Provided to the Trustee prior to commencement of the Pension or, where applicable, during the course of the Pension but prior to the death of the Pensioner.

Subject to the provisions of this rule 38.3, a Reversionary Pension Nomination may be withdrawn, amended or replaced by the Pensioner or their Legal Personal Representative in writing at any time during the course of the Pension but prior to the death of the Pensioner and, if not withdrawn, amended or replaced the Reversionary Pension Nomination will continue in force for the duration of the Pension or Pensions to which it applies.

#### **38.4 Establishment of Pension Account**

- (a) Where the Trustee determines to pay all or any part of the Benefit to the Member or the Beneficiary as a Pension or Pensions the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which accounts the Trustee must transfer amounts determined in accordance with these Governing Rules which the Trustee believes are necessary in order to provide the Benefits as a Pension.
- (b) The Trustee must not permit a Pension Account to be added to by way of contribution or by way of credit of a Roll-Over Superannuation Benefit or in any other manner prohibited under the Relevant Law after payment of a Pension has commenced from that Pension Account.
- (c) For the purposes of financing a Pension to be paid from the Fund under rule 38.2, the Trustee may purchase or acquire an Annuity in respect of the Member payable to the Trustee.

#### **38.5 Operation of Pension Account**

- (a) The following amounts must be credited to the Pension Account of a Pensioner prior to commencement of the Pension:
  - (i) any amount transferred under rule 38.1;
  - (ii) any amount paid into the Fund in respect of a Pensioner as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to credit;
  - (iii) the proceeds of any Policy or Annuity effected or maintained by the Trustee in respect of a Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
  - (iv) such earnings of the Fund ascertained in accordance with rules 4.5(e) and 15.4 as the Trustee may determine to be equitable;
  - (v) any credit arising out of any adjustments made in accordance with rule 15.6;
  - (vi) any Shortfall Component paid in respect of the Pensioner;
  - (vii) any amount of Financial Assistance which the Trustee considers it appropriate to credit;
  - (viii) such other Contributions made in respect of the Pensioner which are permitted by these Governing Rules and the Relevant Law;
  - (ix) any amounts transferred to the Pension Account from a Reserve Account; and

- (x) such other amounts as the Trustee determines from time to time.
- (b) The following amounts are to be debited to the Pension Account of a Pensioner:
- (i) any amount paid out of the Fund in respect of a Pensioner as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to debit;
  - (ii) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary under these Governing Rules;
  - (iii) the costs of any Policy or Annuity effected or maintained by the Trustee in respect of the Pensioner which are not debited to an Accumulation Account in accordance with rule 15.3;
  - (iv) such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the Pension Account of a Pensioner or arising as a result of a Roll-Over Superannuation Benefit as the Trustee may determine;
  - (v) such of the costs, charges and expenses incurred under rule 8 or an appropriate portion thereof as the Trustee may determine;
  - (vi) the amount of any lien exercised under rule 7 or an appropriate portion thereof as the Trustee may determine;
  - (vii) any amount forfeited under rule 22 or dealt with as though forfeited under rule 34.10(d)(ii);
  - (viii) a proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee may determine;
  - (ix) such negative earnings as may be determined by the Trustee in accordance with rules 4.5(e), 15.4 and 15.6 ;
  - (x) any amount paid in respect of the Trustee indemnity under rule 7 or an appropriate portion thereof as the Trustee may determine;
  - (xi) any amount transferred to the Accumulation Account of the Pensioner;
  - (xii) the amount of any Levy determined by the Trustee to be appropriate to debit;
  - (xiii) the amount of any Taxation attributable to the Pensioner;
  - (xiv) such amount as is referred to in a Release Authority given by a Pensioner or the Commissioner to the Trustee and which is paid by the Trustee to the Pensioner or to the Commissioner in accordance with such Release Authority; and
  - (xv) such other amounts as the Trustee may determine from time to time.

### **38.6 Segregation of Pension Assets**

In relation to each Pension payable to a Pensioner, the Trustee:

- (a) may segregate or set apart the assets which represent the Pension Account of the Pensioner for the sole purpose of enabling the discharge of the whole or part of the current liabilities in relation to the payment of Superannuation Income Stream Benefits as those liabilities fall due for payment and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current pension liabilities as the Trustee considers appropriate for the purposes of the Tax Act or as the Relevant Law may require; and

- (b) where the Trustee segregates assets for the purposes of rule 38.6(a), the Trustee must annually, and at such other times as the Trustee determines, review the value of the assets so segregated for the purposes of ensuring the value of the assets is sufficient to discharge the Fund's current liabilities in relation to the payment of Superannuation Income Stream Benefits. Where the value of the segregated assets is not sufficient or is more than sufficient to discharge the Fund's current liabilities in relation to the payment of Superannuation Income Stream Benefits, the Trustee may take such action in relation to those assets as is permitted by the Relevant Law and must take such action as is required by the Relevant Law.

### **38.7 Actuarial Certification**

Where the Trustee determines to pay a Pension under rule 38.2, the Trustee must obtain such certification, at such times and in such form from an Actuary in relation to the Pension or the Fund as is required by the Relevant Law.

### **38.8 Conversion of Pensions**

A Pensioner may elect, by written notice given to the Trustee, to have a Pension which the Pensioner is receiving from the Fund paid in accordance with the conditions applying to a different type of Pension specified in such notice. The Trustee must, subject to the Relevant Law, give effect to such notice received from a Pensioner.

### **38.9 Commutation of Pensions**

A Pensioner may elect, by written notice given to the Trustee, to have a Pension which the Pensioner is receiving from the Fund commuted in accordance with the conditions applying to the Pension specified in such notice. The Trustee must, subject to the Relevant Law, give effect to such notice received from a Pensioner.

## **39 ACCOUNT-BASED PENSION**

### **39.1 Payment Conditions**

Where an Account-Based Pension is payable from the Fund, the following conditions will apply in relation to its payment:

- (a) the Account-Based Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (b) the Account-Based Pension must be paid at least annually;
- (c) the amount of the Account-Based Pension in any year will be such amount as is nominated by the Pensioner and notified to the Trustee in writing, or by Electronic Communication, from time to time, provided that the amount must not be greater than or lesser than the amounts calculated as the maximum (if any) and minimum (if any) limits specified by the Relevant Law for the payment of an Account-Based Pension;
- (d) the Account-Based Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner, or on the death of a Reversionary Beneficiary, or on such other terms as are permitted by the Relevant Law;
- (e) the capital value of the Account-Based Pension and the income from it cannot be used as security for a borrowing; and
- (f) where the Relevant Law identifies matters that are immaterial for determining whether an Account-Based Pension meets the standards set by the Relevant Law, the Trustee will also treat such matters as immaterial.

**39.2 Death**

- (a) If a Pensioner dies while still in receipt of an Account-Based Pension under these Governing Rules, the Trustee must commence to pay the Account-Based Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.
- (b) In the event of the death of a Pensioner in respect of an Account-Based Pension while there is still an amount standing to the credit of the Pensioner's Pension Account, and where:
- (i) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee; or
  - (ii) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law,

the balance of such Pension Account must be dealt with in accordance with rule 34.

**39.3 Commutation**

- (a) The Trustee:
- (i) may on its own initiative or on receipt of a written application from a Pensioner commute the whole or any part of an Account-Based Pension that is payable from the Fund to the Pensioner where the Relevant Law permits the commutation of that Account-Based Pension, on and subject to such terms and conditions as apply to the commutation under the Relevant Law; and
  - (ii) must commute the whole or any part of an Account-Based Pension that is payable from the Fund to the Pensioner where the Relevant Law so requires.
- (b) The Trustee must:
- (i) where the entire Pension is being commuted at the request of a Pensioner, ensure that the minimum amount in respect of the Pension required under the Relevant Law, has been paid or will be paid on or by the date of commutation; or
  - (ii) where the commutation is a partial commutation, ensure that the minimum amount in respect of the Pension required under the Relevant Law, has been paid or will be paid by the end of the relevant Fund Year; and
  - (iii) pay the proceeds of the commutation in respect of the Account-Based Pension being commuted to the relevant Pensioner or, where the commutation has been effected on the death of the Pensioner, in accordance with rule 34; or
  - (iv) at the request of the Pensioner retain the proceeds of that commutation in the Fund and apply them to the credit of an Accumulation Account on behalf of the Pensioner.



## 40 TRANSITION TO RETIREMENT INCOME STREAM

### 40.1 Request to pay

Upon a Member attaining their Preservation Age, the Trustee may, at the request of a Member, pay from the Fund a Transition to Retirement Income Stream on the conditions set out in rules 40.2 and 40.3 and otherwise, subject to the Relevant Law, on such terms as the Trustee and Member may agree.

### 40.2 Compliance with Relevant Law

The Trustee may only pay a Transition to Retirement Income Stream to a Member in accordance with the Relevant Law.

### 40.3 Method of Payment and Security

Where a Transition to Retirement Income Stream is payable from the Fund, the conditions set out in rule 39.1 and the following additional conditions will apply in relation to its payment:

- (a) the total payments (including under a Payment Split) made in respect of the Transition to Retirement Income Stream in a financial year shall not exceed any maximum payment amount specified for these purposes in SIS;
- (b) where the Transition to Retirement Income Stream is commuted in accordance with these Governing Rules and the Relevant Law, the resulting Superannuation Lump Sum must not be cashed unless:
  - (i) the purpose of the commutation is a purpose which is acceptable under the Relevant Law; or
  - (ii) before the commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction is nil; and
  - (iii) where the entire Transition to Retirement Income Stream is being commuted, the minimum amount in respect of the Pension required under the Relevant Law has been paid or will be paid on or by the date of commutation; or
  - (iv) where the commutation is a partial commutation the minimum amount in respect of the Pension required under the Relevant Law has been paid or will be paid by the end of the relevant Fund Year.

### 40.4 Condition of Release

Where a Pensioner has satisfied a Condition of Release in respect of which the cashing restriction is nil the Transition to Retirement Income Stream will become an Account-Based Pension for the purposes of these Governing Rules and the additional conditions set out in rule 40.3 will cease to apply.

### 40.5 Death

- (a) If a Pensioner dies while still in receipt of a Transition to Retirement Income Stream under these Governing Rules, the Trustee must commence to pay an Account Based Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.
- (b) In the event of the death of a Pensioner in respect of an Transition to Retirement Income Stream while there is still an amount standing to the credit of the Pensioner's Pension Account, and where:

- (i) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee; or
- (ii) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law,

the balance of such Pension Account must be dealt with in accordance with rule 34.

## 41 MARKET LINKED PENSION

### 41.1 Method of Payment and Security

Where a Market Linked Pension is payable from the Fund, the following conditions will apply in relation to its payment:

- (a) the Market Linked Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (b) the Market Linked Pension must be paid at least annually to the Pensioner throughout a period permitted by the Relevant Law;
- (c) the amount of the Market Linked Pension in any year must be determined in accordance with the Relevant Law for the payment of a Market Linked Pension;
- (d) the Market Linked Pension does not and will not have a residual capital value;
- (e) if the Market Linked Pension reverts, it will not have a reversionary component greater than 100% of the Benefit payable before the reversion;
- (f) the Market Linked Pension cannot be transferred to any person other than on the death of the Pensioner to one of his or her Dependents or to the Legal Personal Representative of the Pensioner; and
- (g) the capital value of the Market Linked Pension and the income from it cannot be used as security for a borrowing.

### 41.2 Death

- (a) If a Pensioner dies while still in receipt of a Market Linked Pension under these Governing Rules, the Trustee must commence to pay the Market Linked Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.
- (b) In the event of the death of a Pensioner in receipt of a Market Linked Pension while there is still an amount standing to the credit of the Pensioner's Pension Account, and where:
  - (i) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee, or
  - (ii) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law,

the balance of such Pension Account must be dealt with in accordance with rule 34.

### 41.3 Commutation

- (a) The Trustee:
  - (i) may on its own initiative or on receipt of a written application from the Pensioner commute the whole or any part of a Market Linked Pension that is payable from the Fund to the Pensioner where the Relevant Law permits the commutation of that Market Linked Pension, on and subject to such terms and conditions as apply to the commutation under the Relevant Law; and
  - (ii) must commute the whole or any part of a Market Linked Pension that is payable from the Fund to the Pensioner where the Relevant Law so requires.
- (b) The Trustee must pay the proceeds of the commutation in respect of the Market Linked Pension being commuted in a manner permitted under the Relevant Law.
- (c) Following the commutation of a part of a Market Linked Pension, the Trustee may, in its absolute discretion, reduce the total amount of the instalments of any Market Linked Pension payable to the Pensioner. Any reduction is to be of such an amount as the Trustee considers appropriate.

## 42 VARIATION OF GOVERNING RULES

The provisions of these Governing Rules including this rule 42 may be added to, amended, altered, modified, rescinded or varied (in this rule collectively referred to as the **Variation** or **Varied**, as the context requires, unless otherwise stated) from time to time by the Trustee which Variation may be prospective or retrospective and must be effected on the following basis:

### 42.1 Resolution or Deed

The Variation must be:

- (a) by oral declaration, written resolution or resolution by Electronic Communication of the Trustee; or
- (b) by Deed executed by the Trustee.

### 42.2 Notice

On any Variation being effected, the Trustee must, if so required by the Relevant Law, advise the Members in writing of the nature and purpose of the Variation and the effect on their entitlements or rights in accordance with and in the manner and time required by the Relevant Law.

### 42.3 Limitations on Variation

- (a) No Variation may have the effect of:
  - (i) reducing or adversely affecting the rights or claims of a Member to accrued entitlements from the Fund which have arisen prior to the Variation being effected; or
  - (ii) reducing the amount of an entitlement other than an entitlement referred to in rule 42.3(a)(i) that is or may become payable in relation to a period before the date of the Variation, unless:
    - (A) the reduction is required to enable the Fund to comply with the Relevant Law;
    - (B) the Member so affected consents in writing to the reduction; or

- (C) the Regulator consents in writing to the reduction.
- (b) Rule 4.6 of these Governing Rules may not be Varied while a Specified Asset is held in the Fund solely for the benefit of a Specified Member, unless each Specified Member consents in writing to the Variation.
  - (c) Rule 23.6 of these Governing Rules may not be rescinded while a Self-Insurance Reserve is maintained by the Trustee.
  - (d) Rule 34 of these Governing Rules may not be Varied insofar as it deals with the giving, form, effect or operation of a Binding Death Benefit Nomination or with the giving of a notice in respect of the establishment of a Death Benefit Rule or the form, effect or operation of a Death Benefit Rule, or with the terms or effect of a Death Benefit Rule that has been established by the Trustee, while the Trustee holds any Binding Death Benefit Nomination or has made any Death Benefit Rule, unless each Member who has Provided such Binding Death Benefit Nomination or has requested the establishment of a Death Benefit Rule consents in writing to the Variation.
  - (e) Rules 37.1 to 37.13 inclusively and Rule 37.18 of these Governing Rules may not be Varied while there is any person appointed as a Guardian unless the Guardian consents in writing to the Variation.
  - (f) Rules 37.14 to 37.17 inclusively of these Governing Rules may not be Varied while there is any person appointed to act as a Death Benefit Guardian unless each Member who has appointed a Death Benefit Guardian, or if the relevant Member has died or does not have legal capacity, their Death Benefit Guardian, consents in writing to the Variation.
  - (g) No Variation will have the effect of amending, altering, modifying, rescinding or varying an instrument in writing made by the Trustee under rule 11.2(f).

#### 42.4 Further limitation on Variation

No Variation to these Governing Rules may:

- (a) have the effect of providing that the sole or primary purpose of the Fund is other than the provision of old-age pensions within the meaning of the Relevant Law, unless the Trustee is a Constitutional Corporation or the Relevant Law otherwise permits; or
- (b) permit a person or body other than a Constitutional Corporation to be appointed as Trustee, unless the Governing Rules provide that the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of the Relevant Law or the Relevant Law otherwise permits.

## 43 WINDING UP OF FUND

### 43.1 Election to Terminate

The Trustee may elect to wind up the Fund at a certain date (in this rule referred to as the **Termination Date**) in the following circumstances:

- (a) if no Members remain in the Fund;
- (b) on the written request of all of the Members of the Fund;
- (c) if the Trustee determines for any reason that the Fund should be wound up; or
- (d) if required by the Regulator.

### **43.2 Procedure on Winding Up**

Where the Fund is to be wound up the Trustee must:

- (a) give written notice to each Member that the Fund is to terminate on the Termination Date;
- (b) value the assets of the Fund and determine the assets of the Fund available to pay Benefits to Members, former Members and Beneficiaries in accordance with rule 43.3, or to transfer Benefit Entitlements or to roll-over Benefits to an Approved Benefit Arrangement in respect of the relevant Member or former Member;
- (c) determine the amount standing to the credit of a Reserve Account and credit such amount to such account held for Members or Beneficiaries as the Trustee considers appropriate;
- (d) pay all Taxation payments, expenses or charges which are then outstanding or are incurred in connection with the winding up of the Fund;
- (e) arrange to pay or transfer Benefits or Benefit Entitlements to or in respect of Members, former Members and Beneficiaries in accordance with rules 19 or 43.3; and
- (f) attend to all such administrative and regulatory matters as arise in connection with the winding up of the Fund, including the lodgement of returns and notices with Regulators.

### **43.3 Exhaustion of Fund**

The Trustee must pay the following Benefits in the following order to the extent that the assets of the Fund permit:

- (a) Benefits to which Members, former Members, Beneficiaries or their Dependants are entitled at the Termination Date; and
- (b) additional Benefits to Members, former Members, Beneficiaries and their Dependants as the Trustee in its absolute discretion may determine.

## **44 INTERPRETATION - GENERAL**

### **44.1 Plural and Gender of Words**

In these Governing Rules, unless inconsistent with the subject matter or context, words importing one gender include the other gender and words importing the singular number include the plural number and vice versa.

### **44.2 Including and Includes**

In these Governing Rules, the words "including" and "includes" are not words of limitation.

### **44.3 Headings to Rules and Footnotes**

The headings and footnotes in these Governing Rules are for convenience only and should not affect the interpretation of these Governing Rules and rules mean rules of these Governing Rules.

### **44.4 Defined Words**

For convenience, the first letters of words and expressions defined in these Governing Rules are indicated by capital letters, but the absence of a capital letter does not alone imply that the word or phrase is used with a meaning different from that given by its definition.

#### 44.5 Statutory Enactments

References to any statutory enactment must be construed as references to that enactment as amended, modified or re-enacted from time to time and include any enactment in substitution or replacement for such statutory enactment. Any reference in these Governing Rules to a provision of an enactment includes the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for that provision.

#### 45 INTERPRETATION - DEFINITIONS

In these Governing Rules, unless the context otherwise requires:

**Account** means an account established under these Governing Rules;

**Account-Based Pension** means a Pension that complies with rule 39;

**Accumulation Account** means an account established in respect of a Member under rule 15.1;

**Acquirable Asset** has the meaning given to it in SIS;

**Actuary** means a person so appointed (if any) under rule 9.1;

**Administration Manager** means a person so appointed (if any) under rule 9.2;

**Annuity** has the meaning given to it in the Relevant Law;

**Anti-Detriment Payment** means an amount paid by the Trustee on the death of a Member by way of an increase to the lump sum Benefit so that the amount of the lump sum Benefit is the amount that the Fund could have paid on the death of the Member if no tax had been payable on amounts included in Contributions to the Fund in respect of the Member that were assessable income of the Fund;

**Approved Benefit Arrangement** means a fund, account or benefit arrangement to or from which a Benefit or a Benefit Entitlement may be rolled-over or transferred without causing the Fund to be in breach of or to fail to comply with the Relevant Law, including without limitation:

- (a) the Fund;
- (b) another Complying Superannuation Fund;
- (c) a fund which is an approved deposit fund for the purposes of the Relevant Law;
- (d) an account which is a retirement savings account for the purposes of the Retirement Savings Account Act 1997;
- (e) an Annuity arrangement; and
- (f) an Eligible Roll-Over Fund;

**Approved Body:**

- (a) means a body mentioned in Schedule 4 of the SIS Regulations; or
- (b) has the meaning given to it, or to a corresponding term, elsewhere in SIS;

**Auditor** means a person so appointed (if any) under rule 9.1;

**Beneficiary** means a person presently and absolutely entitled to receive a Benefit at the relevant time, but not including a person who is a Member at that time unless the Benefit to which the Member is entitled has arisen in relation to another Member;

**Benefit** means an amount payable by the Trustee out of the Fund under these Governing Rules to or in respect of a Member or Beneficiary;

**Benefit Entitlement** means an amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled including a contingent right to payment of the amount;

**Binding Death Benefit Nomination** means a nomination Provided by a Member to the Trustee as provided in rule 34.1;

**Child** has the meaning given to it in SIS;

**Commissioner** means the Commissioner of Taxation or any duly appointed delegate of the Commissioner of Taxation;

**Complying Superannuation Fund** has the meaning given to it in the Relevant Law;

**Condition of Release** means one or more of the 'Conditions of release of benefits' contained in Part 1 of Schedule 1 of the SIS Regulations.

**Constitutional Corporation** has the meaning given to it in the Relevant Law;

**Contribution Split** means the splitting of Contributions by a person in whole or in part in favour of the person's Spouse as permitted under the Relevant Law;

**Contribution Splitting Application** means an application lodged by a Member with the Trustee requesting the Trustee to give effect to a Contribution Split;

**Contributions** means gross payments to the Fund by Members, Spouses of Members, Employers, and other persons in respect of Members in accordance with the provisions of these Governing Rules prior to the deduction of any Taxation payable in respect of those contributions and includes Government Contributions and payments made to the Fund in consequence of Contribution Splits by the Spouse of a Member in favour of the Member;

**Death Benefit Rule** means a rule established by the Trustee under rule 34.3

**Death Benefit Guardian** means a person, persons or body appointed by a Member in accordance with Rule 37.14;

**Deed** means the deed or resolution adopting these Governing Rules;

**Dependant** in relation to a Member, Beneficiary or former Member (in this definition referred to as the **primary person**) means:

- (a) the Spouse of the primary person;
- (b) a Child of the primary person;
- (c) any person with whom the primary person has or had an interdependency relationship within the meaning given to it in the Relevant Law at the relevant time;
- (d) any other person who, in the opinion of the Trustee, was substantially dependent on the primary person at the relevant time; and
- (e) any other person who qualifies as a dependant of the primary person for the purposes of the Relevant Law;

**Derivative:**

- (a) means a financial asset or liability the value of which depends on, or is derived from, other assets, liabilities or indices; or
- (b) has the meaning given to it, or to a corresponding term, in SIS;

**Derivatives Contract:**

- (a) means an options contract or a futures contract relating to any right, liability or thing; or
- (b) has the meaning given to it, or to a corresponding term, in SIS;

**Directors** means the directors or board of management for the time being of a Trustee that is a Constitutional Corporation and **Director** has a corresponding meaning;

**Disqualified** means, in relation to a person or an entity, disqualified for the purposes of SIS;

**Electronic Communication** means the communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy and includes email, text or short message service (SMS) and other forms of instantaneous correspondence;

**Eligible Roll-Over Fund** has the meaning given to it in SIS;

**Employee** means an employee for the purposes of such provisions of the Relevant Law as apply in the circumstances;

**Employer** has the meaning given to it in the Relevant Law;

**Employment Termination Payment** has the meaning given to it in the Tax Act;

**Establishing Deed** means the document establishing the Fund;

**Financial Assistance** means financial assistance granted to the Fund under any arrangement administered by a Regulator;

**Financial Statements** means the documents which outline the financial activities of the Fund over a specific period of time and may include the statement of financial position, operating statement, and other explanatory statements and notes;

**Forfeiture Account** means an account established under rule 22.3;

**Full-Time** in relation to being Gainfully Employed has the meaning given to it in SIS;

**Fund** means the fund governed by these Governing Rules, the name of which is specified in the Deed;

**Fund Earning Rate** means the earning rate for the Fund (which may be negative) determined under rule 15.4(c) and, where the context requires, includes an interim Fund Earning Rate determined under rule 15.4(f);

**Fund Year** means a period of twelve months ending on 30 June, or such other period ending on such other date as the Trustee may from time to time determine;

**Future Income Tax Benefit** means the estimated amount of future saving in income tax likely to arise as a result of the recoupment of tax losses, including tax losses generated following an Anti-Detriment Payment to one or more Dependents or the Legal Personal Representative of a deceased Member;

**Gainful Employment** in relation to a Member means employment or self-employment for gain or reward in any business, trade, profession, vocation, calling, occupation or employment to the extent required by the Relevant Law and **Gainfully Employed** has a corresponding meaning;

**Governing Rules** means this document and any authorised alterations, additions, amendments, modifications or variations to it;

**Government Contribution** means a payment made to the Fund by the Commonwealth Government pursuant to any arrangement under which the Commonwealth Government makes a superannuation contribution for or in respect of a Member including a super co-contribution and a low income super contribution;

**Guarantee Act** means the Superannuation Guarantee (Administration) Act 1992 and any regulations made under that Act;

**Guardian** means a person, persons or body appointed in accordance with rule 37.

**Income Stream** means a Pension or an Annuity within the meaning of rule 38.1;



**Individual Trustee** means an individual who is appointed to be a Trustee;

**Insurer** means an insurer (if any) with whom the Trustee effects or maintains a Policy or Policies;

**Investment Manager** means a person so appointed (if any) under rule 9.3;

**Legal Personal Representative** means a person who is a legal personal representative for the purposes of the Relevant Law;

**Levy** includes a levy payable by the Fund to the Regulator in accordance with the Relevant Law or any other legislation or regulations which impose a levy or levies on the Fund;

**Market Linked Pension** means a Pension that complies with rule 41;

**Member** means a person, including a Pensioner, who has been accepted as a member of the Fund under rule 11 and who has not ceased to be a member of the Fund under rule 13, and **Membership** means membership of the Fund;

**Non-Binding Death Benefit Nomination** means a nomination Provided by a Member to the Trustee as provided in rule 34.5;

**Non-Preserved Amount** means an amount including a Roll-Over Superannuation Benefit payable to or in respect of a Member or Beneficiary which is not subject to any cashing restrictions at the time of payment in accordance with the Relevant Law;

**Original Asset** in the context of an Acquirable Asset has the meaning given to it in SIS;

**Part-Time** in relation to being Gainfully Employed has the meaning given to it in SIS;

**Payment Age** means the age, the attainment of which constitutes a Condition of Release with nil cashing restrictions for the purposes of SIS;

**Payment Split** means an allocation of a superannuation interest to a current or former Spouse, (whether or not they are a Member), made as a result of:

- (a) a court order altering the property interests of the parties to a marriage under Relevant Family Law; or
- (b) a superannuation agreement under Relevant Family Law;

**Pension** means a pension of one of the types specified in rule 38.2;

**Pensioner** means a Member, including a Reversionary Beneficiary, in receipt of a Pension from the Fund;

**Pension Account** means an account established in respect of a Pensioner under rule 38.1;

**Permanent Incapacity** in relation to a Member has the meaning given to it, or to a corresponding term, in SIS;

**Policy** means a policy of assurance including a policy on the life of a Member or former Member for endowment, term, disablement, accident or sickness insurance, effected or acquired either as an individual policy or as a group policy, a policy covering any two or more of the foregoing risks and a policy which provides that Benefits are payable to the Trustee on the death or disablement of an insured person;

**Preservation Age** in relation to a Member has the meaning given to it in the Relevant Law;

**Preserved Payment** means a payment made to the Fund by an Employer or a Member or by transfer from an Approved Benefit Arrangement which is required to be preserved as provided for in these Governing Rules in order for the Fund to be a Complying Superannuation Fund and Preserved Payment Benefit means a Benefit arising from a Preserved Payment;

**Provide** and **Provided**, in respect to Binding Death Benefit Nominations, Non-Binding Death Benefit Nominations, Reversionary Pension Nominations or other documents provided by the Member to the

Trustee means provided by the Member personally or by another person or persons on behalf of the Member and, in respect to Binding Death Benefit Nominations and Non-Binding Death Benefit Nominations, either during the lifetime of the Member or following the death of the Member;

**Provision for Deferred Income Tax** means the non-current liability for the estimated amount of income tax expected to be assessed in the future as a result of the realisation of currently owned assets or some other factor;

**Regulator** means, as the case requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or such other regulatory body with responsibility for administration of superannuation and the Fund;

**Relative** in relation to a person has the meaning given to it in the relevant context by SIS;

**Release Authority** means a release authority given to the Trustee under the Tax Act;

**Relevant Family Law** means the Family Law Act 1975, regulations made under that Act and any other provisions of the Relevant Law which govern superannuation and family law;

**Relevant Law** means:

- (a) SIS, Corporations Act 2001, Corporations Regulations 2001, Relevant Family Law, Financial Sector (Collection of Data) Act 2001, Superannuation (Resolution of Complaints) Act 1993, Bankruptcy Act 1966, Social Security Act 1991, Veterans' Entitlements Act 1986, Tax Act and any other present or future legislation which the Trustee must comply with in order for the Fund to:
  - (i) qualify for concessional Taxation treatment as a Complying Superannuation Fund;
  - (ii) avoid any penalty, detriment or disadvantage which is or may become payable or imposed in connection with the Fund or anything done or to be done under these Governing Rules; or
  - (iii) meet any other requirements of the Regulator; and
- (b) in relation to the collection, holding, use and disclosure of personal information as defined in the Privacy Act 1988, the National Privacy Principles and any other provisions of that Act,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively;

**Replacement Asset** in the context of an Acquirable Asset has the meaning given to it in section 67B of, or elsewhere in, SIS;

**Reserve Account** means an account established under rule 15.5;

**Reserve Powers** means the powers, rights, decisions, discretions, appointments and other authorisations granted to or conferred on the Trustee or such direction or request made from or by the Members, by, under or for the purposes of these Governing Rules and which are specified in any instrument of appointment of Guardian pursuant to rule 37.8 or as otherwise specified at Rule 37.11, as not to be exercised, made, done, performed or acted upon by or on behalf of the Trustee without the prior or simultaneous consent in writing of the Guardian;

**Retires from Employment** in relation to the payment of Benefits on the retirement of a Member means retirement for the purposes of the Relevant Law and **Retiring from Employment** has a corresponding meaning;

**Reversionary Beneficiary** means a Dependant nominated by a Pensioner or determined by the Trustee as the person who is to receive the Pension upon the death of the Pensioner;

**EXECUTED** as a Deed on the date set out in Appendix A.

**EXECUTED BY MESTRE FAMILY SUPER )**  
**PTY LTD (ACN 611 879 184) as Trustee in )**  
accordance with the Corporations Act: )

*Antonio Mestre*

\_\_\_\_\_  
Director Signature

Antonio Mestre

\_\_\_\_\_  
Director Name



\_\_\_\_\_  
Director Signature

Karen Briggs

\_\_\_\_\_  
Director Name

