

# THE DAMMERS SUPERANNUATION FUND

## TRUSTEE RESOLUTION - GOVERNING RULES

MADE ON THIS *first* DAY OF *MAY*

2009

**NOTED** that recently superannuation law has changed so as to:

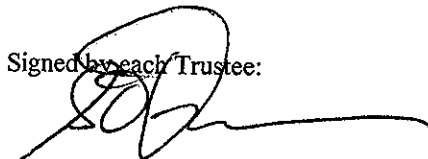
- Enable a superannuation fund member with a terminal medical condition to access his or her benefits.
- Provide for lump sum benefits paid in those circumstances to be non-assessable non-exempt income under the Income Tax Assessment Act.
- Ignore some "transition to retirement income stream" commutation payments for the purpose of the 10% limit on annual payments.
- Remove discrimination against same-sex couples and children of same-sex relationships in superannuation, particularly in relation to the payment and tax treatment of death benefits.
- Permit the full payment of superannuation to all former temporary residents at any time following their departure from Australia.
- Permit superannuation contributions by way of payment from a First Home Saver's Account.
- Halve the minimum required payments in respect of allocated or account based pensions for the 2008/09 financial year.

**NOTED** that the Australian Taxation Office has recently confirmed that superannuation law does not restrict the trustee accepting from a member a binding nomination of the recipients of any benefits payable in the event of the member's death.

**RESOLVED** that:

1. to ensure that the fund's governing rules are consistent with these changes, with effect from the date of this resolution the Trustee replaces the current Rules with SuperRules2009© prepared by SuperGeneration (a copy of which is attached to this resolution or which the Trustee has otherwise reviewed);
2. this resolution does not amend any provision of the governing rules that provides for the payment of a defined benefit pension currently payable from the fund; and
3. for clause 2 the terms "defined benefit pension" and "governing rules" have the same meanings as in the Superannuation Industry (Supervision) Regulations.

Signed by each Trustee:



Arnold Victor Samuel Dammers



Julie Dammers



**Superannuation Lawyers**

322 Rokeby Road  
SUBIACO WA 6008  
T: (08) 9382 1144  
F: (08) 9382 1244

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***SUPERRULES2009©***

## 1 INTERPRETATION

Unless the contrary intention appears:

- A reference to the Deed or the Rules or any other document includes any variation or replacement.
- A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- The singular includes the plural and vice versa.
- A power to appoint includes a power to vary or cancel the appointment.
- When the word **including** introduces a list of items, it does not exclude a reference to other items of the same class.
- A reference to a person includes a firm, a body corporate, an unincorporated association or any authority.

**Account Balance** means the aggregate balance of all Member Accounts of a Member other than the Non-Vested Member Account, plus any proportion of that account that the Trustee determines (or if the individual Trustees or the corporate Trustee's directors do not agree on a proportion, the whole of that account).

**Benefit Direction** means a written notice that:

- directs the Trustee to pay the whole or part of a benefit payable under rule 5.4 to one or more Dependants or the legal personal representative in specific proportions; and
- may include instructions as to the manner of payment (eg lump sum or pension).

**Benefit Nomination** means a written notice that:

- nominates one or more Dependants or the legal personal representative to receive a benefit payable under rule 5.4; and
- may, in respect of each, nominate a specific proportion of the benefit.

**Child** in relation to a person includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the person; and
- (b) a child of the person's spouse; and
- (c) a child of the person within the meaning of the Family Law Act 1975.

**Co-contribution Act** means the Superannuation (Government Co-contribution for Low Income Earners) Act.

**Constitutional Corporation** has the same meaning as in Government Requirements.

**Deed** means the deed establishing the Fund.

**Dependant** of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person the Trustee believes is, or was at the date of death, dependent on the Member or otherwise meets the definition of dependant under Government Requirements.

**First Home Saver's Account** has the same meaning as in the First Home Saver's Account Act.

**Fund** means the superannuation fund constituted by the Deed and the Rules.

**Government Requirements** means any requirements under laws relating to superannuation funds:

- (a) imposed on the Trustee; or
- (b) that the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds.

**Member** means anyone whom the Trustee has admitted to membership and who is still entitled to benefits from the Fund.

**Member Account** means an account kept for a Member under rule 8.7.

**Non-Member Spouse** has the same meaning as in Government Requirements.

**Non-Vested Member Account** means a Member Account kept to record amounts mentioned in rule 8.7(a) and (b) that are not the Member's "minimum benefits" as defined in Government Requirements.

**Permanent Incapacity** means ill-health (whether physical or mental), where the Trustee is reasonably satisfied (and 2 legally qualified medical practitioners have certified) that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**Rules** means these rules.

**Shortfall Component** has the same meaning as in the Superannuation Guarantee (Administration) Act.

**SIS Regulation** means Superannuation Industry (Supervision) Regulation.

**Spouse** in relation to a person includes:

- (a) a man or woman with whom the person is in a relationship registered under a law prescribed for the purposes of section 22B of the Acts Interpretation Act 1901; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

**Tax** includes any duty or government impost.

**Temporary Incapacity** means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity.

**Terminal Medical Condition** means:

- (a) two registered medical practitioners have certified, jointly or separately, that the Member suffers from an illness,

or has incurred an injury, that is likely to result in the Member's death within 12 months after the date of the certification;

- (b) at least one of the practitioners is a specialist practicing in an area related to the illness or injury;
- (c) for each of the certificates, the certification period has not ended.

**Trustee** means the Trustee for the time being under rule 7.

## 2 MEMBERSHIP

### Admission

- 2.1 Anyone may apply to the Trustee for admission as a Member or for the admission of a person for whom the applicant intends to contribute.
- 2.2 The Trustee may reject an application.
- 2.3 Before admitting a person as a Member the Trustee must ensure that the Trustee structure of the Fund meets Government Requirements and may require the person:
  - (a) to be examined by a registered medical practitioner approved by the Trustee; or
  - (b) to give the Trustee any document or information it considers relevant to the administration of the Fund; or
  - (c) to enter into a written agreement with the Trustee, imposing special conditions in respect of the applicant's membership; or
  - (d) any combination of (a), (b) and (c).
- 2.4 If the Trustee admits a person as a Member, membership commences only when the Trustee has approved the application and either:
  - (a) the person has become a Trustee or (if the Trustee is a Constitutional Corporation) a director of the Trustee; or
  - (b) the Trustee has satisfied itself that when the membership commences, the Fund will meet the definition of self managed superannuation fund in Government Requirements.

Terms	Transfer out
2.5 Each Member is bound by the Deed and Rules.	3.2 The Trustee may transfer assets out of the Fund in respect of a Member (with or without the Member's consent) up to the Member's Account Balance. However, the transfer must comply with Government Requirements.
2.6 The Trustee is the Member's attorney to do anything the Trustee considers appropriate to administer the Fund.	
<b>Non-Member Spouse</b>	
2.7 Subject to rule 2.4 the Trustee may admit a Non-Member Spouse as a Member if: (a) Government Requirements require the Trustee to create an interest in the Fund for the Non-Member Spouse; or (b) Government Requirements permit the Trustee to do so and the Trustee elects to do so.	3.3 The Trustee is not responsible for the manner in which the transferee deals with the amount transferred.  3.4 If the Member's total Account Balance is transferred, the Member is no longer entitled to benefits from the Fund.
2.8 The Trustee must do so in a manner that is consistent with Government Requirements.	<b>4 CONTRIBUTIONS Members</b>
	4.1 A Member may make contributions if the Trustee agrees.
<b>Membership ends</b>	<b>SGC shortfalls, Co-contributions and FHSA payments</b>
2.9 A Member's membership of the Fund ends when the Member is no longer entitled to benefits from the Fund and either: (a) the Member has resigned as a Trustee or a director of the Trustee; or (b) the Trustee has satisfied itself that when the membership ends, the Fund will meet the definition of <b>self managed superannuation fund</b> in Government Requirements.	4.2 The Trustee may accept a Shortfall Component or a payment under the Co-contribution Act or from a First Home Saver's Account transferred to the Fund for a Member and must treat it as a contribution for the Member.
	<b>Employers and others</b>
<b>3 TRANSFERS Transfer in</b>	4.3 The Trustee may: (a) accept contributions for a Member from any other person; (b) at its discretion, refuse to accept all or part of a contribution.
3.1 The Trustee may: (a) accept a transfer of assets to the Fund in respect of a Member; and (b) provide benefits in respect of the Member on terms that the Trustee agrees with the Member and in a manner that complies with Government Requirements.	4.4 The Trustee must not accept contributions contrary to Government Requirements. However, if it does and if Government Requirements permit, the Trustee: (a) must repay the contributions to the contributor; but (b) may first make deductions for any liabilities or expenses incurred (and provisions for liabilities and expenses) in relation to the contributions.

### **Splitting of contributions**

4.5 A Member may apply to the Trustee to transfer to the Account of the Member's Spouse some or all of the Member's Account Balance representing contributions made by, for, or on behalf of the Member. The application may include a request to transfer the relevant amount out of the Fund in respect of the Member's Spouse.

4.6 If the Trustee agrees to make the transfer, it must do so within 90 days after receiving the request, but only if the application complies with Government Requirements.

## **5 BENEFITS - ENTITLEMENT**

Rule 5 sets out the circumstances in which a benefit becomes payable from the Fund. Rule 6 deals with when and how the benefit is actually paid.

### **Request - age 65**

5.1 If a Member (who has not otherwise become entitled to a benefit under the Rules) requests a benefit at or after age 65, the Member becomes entitled to a benefit equal to the Member's Account Balance.

### **Death**

5.2 A Member may give the Trustee a Benefit Nomination or a Benefit Direction. When the Trustee accepts a Benefit Nomination or a Benefit Direction from a Member, any previous Benefit Nomination or Benefit Direction from the Member is taken to have been revoked.

5.3 The Trustee may refuse to accept Benefit Directions (or a particular Benefit Direction) without giving any reason.

5.4 If a Member dies the Trustee must pay a benefit equal to the Member's Account Balance.

5.5 If, in relation to any part of the benefit, the Trustee holds a Benefit Direction in relation to any part of the benefit, the Trustee must follow the Benefit Direction in relation to that part of the benefit if:

- the Trustee has accepted the Benefit Direction;
- it has not been revoked; and
- it can be followed under Government Requirements.

5.6 If the Trustee does not hold a current Benefit Direction in relation to any part of the benefit or if the relevant Benefit Direction cannot be followed for any reason, the Trustee must pay that part of the benefit to any or all of the Member's Dependants and legal personal representative in the proportions that the Trustee decides.

5.7 If there is no Dependant or legal personal representative then, if Government Requirements permit, the Trustee may pay that part of the benefit to any other people in proportions the Trustee decides.

5.8 A Benefit Nomination is given for information only and does not affect the Trustee's discretion in distributing the benefit.

5.9 Subject to the instructions in a Benefit Direction as to the manner of payment, the Trustee may pay any part of the benefit as a lump sum or as a pension or in any other form as it considers appropriate including the settlement of a trust for the benefit of any Dependant.

5.10 No pension is payable to a person under rule 5 until the person is a Member. However, the Trustee (and not the payee) may determine which provisions of rule 6 apply.

### **Terminal Medical Condition**

5.11 If a Member requests a benefit while a Terminal Medical Condition exists in relation to the Member, then the Member becomes entitled to a benefit equal to the Member's Account Balance.

### Retirement or leaving employment

- 5.12 If a Member (who has not otherwise become entitled to a benefit under the Rules):
- (a) leaves any business, trade, profession, vocation, calling, occupation or employment because of Permanent or Temporary Incapacity; or
  - (b) retires or retired (before or after joining the Fund) from any business, trade, profession, vocation, calling, occupation or employment; or
  - (c) ceases any employment (at any time and for any reason except death) and the employer has contributed to the Fund for the Member; or
  - (d) having reached age 60, ceases any arrangement under which the Member was employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment; or
  - (e) leaves Australia in circumstances where Government Requirements permit the Trustee to pay a benefit
- the Member becomes entitled to a benefit equal to the Member's Account Balance.

### Request – Transition to Retirement Pensions, rollovers, Spouse benefits etc

- 5.13 If a Member requests payment of a benefit, the Trustee must pay the benefit to the extent that the payment complies with Government Requirements.

### Financial incapacity

- 5.14 If the Trustee believes a person entitled to a benefit cannot manage the person's financial affairs, the Trustee may pay the benefit to another person to be used for the first person's advantage. The Trustee is not responsible for the application of the benefit by the payee. However, the payment must comply with Government Requirements.

### Hardship and compassionate grounds

- 5.15 The Trustee may at any time pay to a Member a benefit up to the Member's Account Balance if the payment complies with Government Requirements in relation to financial hardship or compassionate grounds.

### Excessive benefits

- 5.16 If the Trustee believes that:
- (a) a Member's benefit will be excessive for the purposes of the Income Tax Assessment Act; or
  - (b) payment of a benefit will result in the Trustee or an employer contravening a law relating to corporations
- the Trustee may, if Government Requirements permit:
- (i) reduce the contributions payable for the Member; or
  - (ii) reduce the benefit to the extent necessary to avoid (a) or (b) and transfer the amount of the reduction to the Fund's reserves; or
  - (iii) apply a combination of (i) and (ii) as it considers appropriate. However, the Trustee need not investigate whether (a) or (b) applies to a benefit.

### No assignments

- 5.17 The Trustee must not recognise any assignment or charge of a benefit (or any other interest in the Fund) that is contrary to Government Requirements.

### Interest on benefits

- 5.18 The Trustee may credit or debit interest to a benefit paid after the date it becomes payable.

### Deductions for Tax

- 5.19 The Trustee must comply with Government Requirements regarding deductions of Tax from benefits and other payments from the Fund.

### **Trustee's discharge**

- 5.20 The Trustee's only obligation in respect of a benefit is to pay it in good faith to or on behalf of a person the Trustee believes is entitled to the benefit. Otherwise, the Trustee is completely discharged by that payment.

### **Forfeited benefits**

- 5.21 A Member forfeits the part of a benefit not attributable to Member contributions if:
- (a) the Member purports to assign, alienate or charge; or
  - (b) any other event occurs that results in another person becoming entitled to all or part of the benefit. However, this rule has no effect to the extent that it is inconsistent with Government Requirements or the Bankruptcy Act.

- 5.22 The Trustee must, if Government Requirements permit, apply a forfeited benefit for the Member and the Member's Dependants in proportions that the Trustee decides.

### **Splitting of benefits**

- 5.23 The Trustee must reduce a Member's Account Balance or the amount of any pension payment to the Member if:
- (a) Government Requirements require the Trustee to do so; or
  - (b) Government Requirements permit the Trustee to do so and the Trustee elects to do so.
- 5.24 If the Trustee makes a reduction under rule 5.23, the Trustee must apply the amount of the reduction (in the manner required or permitted by, and adjusted as required by, Government Requirements) for the benefit of the relevant Non-Member Spouse.
- 5.25 To the extent that Government Requirements allow the Trustee any discretion in any of the matters mentioned in rule 5.23 or 5.24, the Trustee may exercise that discretion as it sees fit without regard to the interests of the Non-Member Spouse.

- 5.26 The Trustee may charge fees in respect of those matters to the extent permitted under Government Requirements.

## **6 BENEFITS - PAYMENT**

Rule 5 sets out the circumstances in which a benefit becomes payable from the Fund. Rule 6 deals with when and how the benefit is actually paid. A pension is not payable to anyone (including a reversionary beneficiary) until the person is a Member. The deed or resolution implementing this version of the Rules has preserved the application of previous versions insofar as they deal with the payment of pensions that commenced before this version.

- 6.1 If the Trustee is not a Constitutional Corporation, then the Fund's primary purpose is to provide old-age pensions and the Trustee must pay benefits due to a Member as pensions except to the extent that the Member requests otherwise.

### **Account based pensions**

- 6.2 The Trustee must pay all or part of a benefit as an account based pension if the Member requests.
- 6.3 The Trustee must pay the pension from a Member Account of the Member on terms that the Trustee and Member agree as to the level and frequency of payment. However, the level of the pension must be within the minimum and maximum levels (if any) prescribed by Government Requirements for such a pension and the Trustee must pay the pension at least annually.
- 6.4 The pension entitlement must not be transferred or used as security for a borrowing unless Government Requirements permit.

### **Commutation and Transition to Retirement**

- 6.5 The Member may elect to commute all or part of the pension by notifying the Trustee in writing. However, if the Trustee and Member agree that the pension is a "non-commutable allocated pension" or a "transition to retirement



income stream" then the Trustee must not pay any part of the benefit unless the Trustee is satisfied that the payment is consistent with Government Requirements in relation to such a pension.

- 6.6 The Trustee must comply with the Member's election if it approves the election and the election complies with Government Requirements (including Government Requirements in relation to the minimum level of pension for the financial year when the commutation takes place).
- 6.7 If the Member dies while entitled to the pension, the Trustee may either pay a benefit under rules 5.4 to 5.10 or continue the pension under rule 6.12.
- 6.8 The pension commences when the Trustee and Member agree (but no later than required by Government Requirements) and ends when the balance of the relevant Member Account is nil.
- 6.9 If the pension reverts or is commuted, the reversionary component or commuted amount must not be greater than the benefit that was payable before the reversion or commutation or the amount permitted under Government Requirements.
- 6.10 The pension must not be used as security for a borrowing or transferred except to a reversionary beneficiary on the death of the Member or of another reversionary beneficiary.
- 6.11 The Trustee must continue to keep the relevant Member Account and must debit pension payments and commutations to those Member Accounts.

#### **Reversionary pension**

- 6.12 Unless inconsistent with Government Requirements or the terms of the relevant pension, a Member who requests a pension may nominate one or more of the Member's Dependants as reversionary beneficiaries (either successive or concurrent) in relation to the pension. If reversionary beneficiaries are nominated

as concurrent, the request must nominate the respective portions of the pension that revert to them. If no reversionary beneficiary is nominated then on the Member's death, the Trustee may nevertheless continue paying the relevant pension to any or all of the Member's Dependants and legal personal representative (unless inconsistent with Government Requirements) in proportions the Trustee decides after considering any relevant Benefit Nomination.

#### **Lump sum**

- 6.13 If a person entitled to a benefit requests, the Trustee may pay the benefit as a lump sum.

#### **Rollover or annuity**

- 6.14 A person entitled to a benefit may direct the Trustee to:
- (a) pay all or part of the benefit to another fund; or
  - (b) apply all or part of the benefit to purchase an annuity in the name of the person or, if the person is a Member, in the name of the Member or one or more of the Member's Dependants.

- 6.15 The Trustee must comply with the direction if the payment complies with Government Requirements.

#### **Compulsory rollover**

- 6.16 The Trustee may, if Government Requirements permit, pay all or part of a benefit to another fund without the consent of the person entitled to the benefit.

#### **Benefits in specie**

- 6.17 If a person entitled to a benefit requests, the Trustee may pay all or part of the benefit by transferring assets to the person or the person's nominee. The transfer must comply with Government Requirements.

### **Deferral, preservation and flagging**

- 6.18 If a person entitled to a benefit requests, the Trustee may defer payment of all or part of the benefit. The deferral must comply with Government Requirements. If the Trustee believes that the payment of any part of a Member's benefit will contravene the Family Law Act, the Trustee must not pay that part.
- 6.19 If Government Requirements require part of a benefit to be preserved, the Trustee must:
- (a) keep that part in the Fund until Government Requirements permit it to be paid; or
  - (b) with the Member's written consent (if required by Government Requirements) pay that part to another fund that the Trustee believes will comply with Government Requirements regarding preservation of benefits.
- 6.20 If part of a benefit is kept in the Fund and the Member dies before it is paid, the Trustee must pay it under rules 5.4 to 5.10.

### **Unclaimed benefits**

- 6.21 The Trustee must comply with Government Requirements as to unclaimed benefits and the transfer of benefits to other funds.

### **Types of benefit**

- 6.22 If a Member requests, the Trustee may pay a benefit as one or more pensions or lump sums under rule 6. However, the manner of payment must be consistent with Government Requirements and the Trustee must establish one or more separate Member Accounts as the source of each type of benefit in respect of the Member.

## **7 TRUSTEE**

### **Nature and number**

- 7.1 The Trustee must be either a sole Constitutional Corporation or (if Government Requirements permit) one or more individuals.

### **Retirement**

- 7.2 The Trustee may retire if the Trustee gives prior written notice to the Members (or their legal personal representatives).
- 7.3 The Trustee must retire when the Members or Government Requirements so require.
- 7.4 The retiring Trustee must vest all the Fund's property in the new Trustee or its custodian.

### **Appointment**

- 7.5 The Members (or their legal personal representatives) may make a written appointment of an additional or replacement Trustee. The appointment may be prospective or retrospective but must comply with Government Requirements.

### **Vacancy on Trustee's board**

- 7.6 The Trustee must ensure that any vacancy on its board of directors is filled as and when required by Government Requirements.

### **Powers**

- 7.7 The Trustee may do anything it considers appropriate to administer the Fund and to comply with Government Requirements. However, the Trustee must administer the Fund in a manner consistent with Government Requirements.
- 7.8 In dealing with Members, the Trustee may treat any communication as given by a Member if it purports to have been given by or on behalf of the Member.

### **Delegation**

- 7.9 The Trustee may delegate any of its powers, duties and discretions to anyone if the delegation complies with Government Requirements.

### **Administrators and investment managers**

- 7.10 In particular, the Trustee may appoint anyone to administer the Fund or to manage the Fund's investments or to perform both functions. However, the appointment must be written and must comply with Government Requirements.

### **Discretions**

- 7.11 The Trustee is completely unrestricted in the exercise of its powers and discretions.
- 7.12 The Trustee and any of its directors, employees, delegates or agents may be involved in the exercise of the Trustee's powers and discretions even if they have a conflict of interest or duty.

### **Remuneration**

- 7.13 The Members may agree a rate of remuneration that the Trustee may receive from the Fund if that would be consistent with Government Requirements.

### **Liability**

- 7.14 The Trustee's liability is limited to its own dishonest acts or omissions and its own intentional or reckless failures to exercise the degree of care and diligence that it is required to exercise.

### **Indemnity**

- 7.15 The Trustee, former Trustees, and any of their directors or employees are indemnified in respect of any Tax, loss or expenditure that they incur in relation to the Fund or the administration of the Trustee or a former Trustee unless it results from the person's dishonesty or intentional or reckless failure to exercise the degree of care and diligence which the person was required to exercise.

- 7.16 Rule 7.15 does not apply to the extent that its application is inconsistent with Government Requirements.

- 7.17 A Member must indemnify the Trustee for any loss or liability incurred because (or partly because) the Trustee relies on information which the Member gives to the Trustee.

## **8 ADMINISTRATION**

### **Information to Trustee**

- 8.1 Every Member and any other person who claims a benefit must give the Trustee any information or documents it reasonably requires to administer the Fund.
- 8.2 The Trustee may require a Member to be examined by a registered medical practitioner approved by the Trustee.
- 8.3 The Trustee must treat any information it acquires in relation to Members and their Dependants as confidential and may use that information only in the administration of the Fund.

### **Information to Members and others**

- 8.4 The Trustee must give information and documents to others as and when required by Government Requirements. For this purpose, the Trustee may determine that a particular group of Members comprise a sub-plan.

### **Notices**

- 8.5 Any written communication by or on behalf of the Trustee relating to the Fund is taken to be given to a person if it is:
- (a) handed to the person; or
  - (b) delivered to the person's address last known to the Trustee; or
  - (c) posted by ordinary post from within Australia to the person's address last known to the Trustee.
- In the case of posting, the communication is taken to have been received on the second business day after the day it is posted.

## Records

- 8.6 The Trustee must keep records for the Fund as and when required by Government Requirements.

## Member Accounts

- 8.7 The Trustee must keep one or more Member Accounts for each Member to record:
- (a) contributions and other amounts received for the Member (including, subject to rules 8.18 and 8.22, proceeds of insurance policies);
  - (b) earnings or losses in respect of those amounts and amounts paid in respect of the Member; and
  - (c) a fair proportion of the Fund's Tax and expenses (including insurance premiums) and provisions for Tax and expenses.

## Asset portfolios

- 8.8 The Trustee may maintain separate asset portfolios to keep particular assets of the Fund.
- 8.9 To establish an asset portfolio, the Trustee must name it and specify the assets to be kept in it.
- 8.10 A Member may:
- (a) elect the asset portfolios to which (and the proportions in which) the Trustee allocates Member Account balances and future contributions for the Member; and
  - (b) elect to switch asset portfolios, or proportions, or both.
- 8.11 The Trustee must comply with the Member's election if:
- (a) the Trustee approves the election; and
  - (b) the allocation or switch complies with Government Requirements.

## Fund expenses

- 8.12 The Trustee must pay from the Fund all Tax and expenses relating to the Fund unless another person pays them. If

another person pays Fund Tax or expenses, the Trustee must, if the person requires, reimburse the person from the Fund unless Government Requirements do not permit reimbursement.

## Investment return

- 8.13 After each 30 June, the Trustee must determine the return on the investments for each asset portfolio (or if there are none, for the Fund) and must ensure that the return is credited or debited from time to time to Member Accounts and reserves in a way that is fair and reasonable as between:
- (a) all Members; and
  - (b) the various kinds of benefits of each Member.
- 8.14 Whenever it considers appropriate, the Trustee may determine the investment return to be applied to a Member's Member Accounts, as at the date when a benefit or transfer becomes payable from them, for the period since the Fund's establishment or since the last 30 June (if later).
- 8.15 The Trustee may apply investment return to Member Accounts on the basis of daily, monthly or average balances or on any other basis the Trustee determines to be fair and reasonable.
- 8.16 When determining investment return the Trustee must take into account:
- (a) the realised and unrealised earnings or losses of asset portfolios (or if there are none, the Fund), including realised and unrealised capital gains or losses; expenses and Tax not debited to Member Accounts;
  - (b) the level of the Fund's reserve accounts; and
  - (c) the appropriateness of averaging earnings, losses and expenses over several years.

- 8.17 The Trustee must not distribute investment return in a way that takes any of the Fund's reserve accounts into debit.

## Reserves

- 8.18 The Trustee may set up one or more reserve accounts to record earnings or losses of the Fund that are not recorded in Member Accounts, amounts no longer required to pay benefits for Members and any insurance proceeds that the Trustee decides not to credit to a Member Account.

- 8.19 The Trustee may use amounts held in the Fund's reserve accounts for any purposes including:

- (a) averaging earnings, losses and expenses over several years;
- (b) replacing contributions otherwise payable to the Fund; and
- (c) providing additional benefits.

However, the Trustee may apply those amounts only as and when the Members approve and Government Requirements permit.

## Audit

- 8.20 The Trustee must appoint an auditor (who meets Government Requirements) to audit the Fund's accounts and records and to give the Trustee a written report each year when Government Requirements so require.

## Inquiries and complaints

- 8.21 If Government Requirements so require, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into or complain about, the operation or management of the Fund in relation to that person; and
  - (b) the inquiry or complaint will be considered and properly dealt with within 90 days after it is made.

## Insurance proceeds

- 8.22 Despite rule 8.7 the Trustee may credit proceeds of insurance policies to the Fund's reserves.

## 9 INVESTMENT AND BORROWING Powers

- 9.1 The Trustee may invest the Fund assets in any manner, as if it were investing its own property and may borrow to acquire or replace assets.

### Custodian

- 9.2 The Trustee may appoint a person to perform custodial functions in relation to any of the Fund's assets on terms the Trustee considers appropriate, if the appointment complies with Government Requirements.

### Restrictions

- 9.3 The Trustee must comply with Government Requirements when investing the Fund's assets or borrowing.
- 9.4 The Trustee must comply with Government Requirements in relation to:
- (a) making loans; and
  - (b) borrowing.
- 9.5 The Trustee may charge the Fund's assets only if Government Requirements permit.

## 10 AMENDMENT

### Power

- 10.1 The Trustee may by deed or written resolution amend, delete or replace the Deed or Rules including rule 10. An amendment may be retrospective.

### Restrictions

- 10.2 An amendment may not alter a beneficiary's right or claim to an accrued benefit adversely to the beneficiary or reduce the amount of that benefit unless Government Requirements permit.
- 10.3 An amendment may not permit an individual to be appointed Trustee unless Government Requirements permit.

**Notice**

- 10.4 If Government Requirements so require, the Trustee must notify Members of an amendment. However, the amendment is effective even if the Trustee fails to notify Members.

**11 WINDING UP**

- 11.1 The Trustee may wind up the Fund.
- 11.2 The Trustee must wind up the Fund if the Members direct it to do so.

**Notice**

- 11.3 If the Fund is to be wound up, the Trustee must as soon as practicable notify each Member in writing. However, if the Trustee fails to notify any Member, the winding up is still effective.
- 11.4 As from the date of the Trustee's notice to Members, the Trustee must take reasonable steps to recover contributions then due, but must stop accepting other contributions.

**Winding up procedure**

- 11.5 The Trustee must determine investment return for each asset portfolio (or if there are none, for the Fund) to be applied to Member Accounts as at the date of the notice to Members. The Trustee must then apply the Fund assets towards:
- (a) satisfying actual and contingent liabilities (except benefits); then
  - (b) providing pro rata for each Member in respect of the benefits then payable for the Member or, if a benefit is not then payable, a benefit equal to the Member's Account Balance; then
  - (c) increasing those benefits with the consent of the Members.
- 11.6 The Trustee must comply with rules 5.4 to 5.10 and 6 regarding benefits payable for Members on winding up.

**12 GUARDIAN**

- 12.1 The Members may appoint a Guardian of the Fund. The appointment terminates only if the Guardian dies, resigns or becomes incapable of managing financial affairs. The Guardian may appoint a successor Guardian to take office in any of those events.
- 12.2 An appointment of a Guardian must be in writing.
- 12.3 If there is a Guardian then despite anything else in the Deed or Rules:
- (a) in acting as trustee of the Fund, the Trustee must comply with any direction of the Guardian;
  - (b) rules 7.3, 7.5 and 11.2 have no effect; and
  - (c) the Guardian may replace the Trustee if the replacement Trustee meets Government Requirements and the Members may not dismiss the Trustee.