

THE GOVERNING RULES OF

The Graham Huxley Family Fund
ABN 63 679 596 766

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Governing Rules

1.	Interpretation and Dictionary	5
	<i>This Rule sets out definitions of terms used in the trust deed. It also sets general Rules as to how the other Rules should be interpreted.</i>	
2.	Nature and Purpose of Fund	18
	<i>This Rule describes the purposes of the fund.</i>	
3.	The Trust Fund	19
	<i>This Rule sets out how the trust fund can be invested.</i>	
4.	The Trustee	24
	<i>This Rule sets out who can act as trustee, when they cannot act and how trustees are added or removed.</i>	
5.	Trustee's Powers, Discretions and Duties	30
	<i>This Rule sets out the trustee's powers and duties.</i>	
6.	Trustee's Rights and Protections	37
	<i>This Rule deals with the liability of the trustee, what protections the trustee has and when the trustee can be indemnified from the fund.</i>	
7.	Benefit Splitting on Marriage Breakdown	39
	<i>This Rule deals with the impact of divorce on benefits.</i>	
8.	Contributions Splitting	40
	<i>This Rule authorises the Trustee to implement spouse contribution splitting.</i>	
9.	Records, audit and information	41
	<i>This Rule deals with the records of the fund and auditing.</i>	
10.	Membership	42
	<i>This Rule deals with who can be admitted as a Member, how they are admitted and when they cease to be a Member.</i>	
11.	Member's and Beneficiary's interests and liabilities	45
	<i>This Rule deals with the consequences of being a Member or Beneficiary.</i>	
12.	Fund and Member Accounts	46
	<i>This Rule specifies what accounts must be kept and how accounts are operated and audited.</i>	

13.	Surplus or Deficiency	52
	<i>This Rule deals with the allocation of investment earnings.</i>	
14.	Contributions	53
	<i>This Rule specifies what amounts can be accepted as contributions.</i>	
15.	Benefit Entitlements Generally	56
	<i>This Rule specifies the general Rules affecting benefits and how they can be paid.</i>	
16.	Benefits: Access Conditions and Amounts	65
	<i>This Rule specifies when benefits can and must be paid and how the benefits are calculated.</i>	
17.	Transfers / Rollovers	70
	<i>This Rule deals with moving benefits between superannuation funds.</i>	
18.	Confidentiality	70
	<i>This Rule requires the Trustee to keep Member information confidential.</i>	
19.	Termination of the Fund	71
	<i>This Rule deals with when the fund terminates and what happens on termination.</i>	
20.	Notices	72
	<i>This Rule deals with when information will be considered to be given or received.</i>	
21.	Proper Law	72
	<i>This Rule deals with which legal system is to apply to the fund.</i>	
22.	SIS Act Compliance Rule	72
	<i>This Rule incorporates new SIS Act requirements into the Rules and deals with amendments to existing SIS Act requirements.</i>	
23.	Grandfathered SIS Provisions	74
	<i>This Rule applies to funds which were established with provisions other than the Governing Rules and preserves any special SIS Act transitional requirements which applied to those funds.</i>	
24.	Grandfathered Pension Terms	74
	<i>This Rule applies to funds which were established with provisions other than the Governing Rules and preserves any special SIS transitional requirements which applied to those funds.</i>	
25.	Grandfathered Death Benefit Nominations	75
	<i>This Rule applies to funds which were established with provisions other than the Governing Rules and preserves any Death Benefit Nominations which were made prior to the conversion according to the tenor of the nomination.</i>	

26.	Fair and sustainable superannuation – implementation provisions <i>This Rule provides the Trustee with various powers to deal with the Fair and Sustainable Superannuation changes.</i>	76
27.	Membership Restriction / Property held for Specified Members continue despite Amendments <i>This Rule provides that determinations made by the Trustee to close or restrict membership of the Fund and to hold specified property solely to support the super benefits for specified Members continue despite subsequent amendments.</i>	77
28.	Minimum Pension Limit Relief <i>This Rule deals with the minimum pension for the relevant years.</i>	77
29.	UK Pension Transfers <i>This Rule deals with the ability of the fund to qualify for UK pension transfers.</i>	77
30.	Fund Mergers <i>This Rule confers power on the Trustee to enter into fund merger arrangements.</i>	79

Schedules

Schedule A	Rules applicable to an Account-Based Pension <i>(including allocated pensions)</i>	80
Schedule B	Rules applicable to a market linked pension <i>(including allocated pensions)</i>	85
Schedule C	Rules applicable to a Transition to Retirement pension <i>(also known as a “workforce pension”)</i>	91
Schedule D	Rules applicable to a non-commutable market linked pension	96
Schedule E	Rules applicable to Annuity Pensions	102

Governing Rules

1. Interpretation and dictionary

1.1 Interpretative provisions

(a) Persons

In these Rules a reference to a “person” includes any company, partnership, joint venture, association, corporation or other body corporate and any government authority but the expression “natural person” has its normal meaning.

(b) Statutory references

In these Rules a reference to a statute or to a provision of a statute:

- (i) is a reference to a statute of the Commonwealth Parliament unless otherwise stated;
- (ii) includes a reference to regulations, by-laws, proclamations, ordinances, orders and other instruments made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, proclamation, ordinance, order or other instrument for the time being in force; and
- (iii) includes a reference to any amendment to, replacement of or re-enactment of that statute or provision and any other provision of or regulation, by-law, proclamation, ordinance, order or other instrument under the statute or provision required to give meaning, force or effect to the statute or provision.

(c) Headings

In these Rules headings are for convenience of reference or search and do not affect the interpretation of this Deed.

(d) Multiple parties

In these Rules if a party comprises two or more persons, the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them.

(e) Grammatical forms

In these Rules:

- (i) the singular includes the plural;
- (ii) the plural includes the singular; and
- (iii) references to a gender includes each other gender.

(f) Covenants

In these Rules an obligation by a party not to do or omit to do any act or thing includes:

- (i) a covenant not to suffer that act or thing to be done or omitted by any agent or employee of the party; and
- (ii) a covenant to do everything necessary to ensure that the act or thing is not done or omitted to be done.

- (g) **Examples not limiting**
In these Rules, all matters which are stated as being included in the ambit of an expression are without limitation to the breadth and generality of that expression.
- (h) **Severance**
If necessary, in order to avoid any provision of these Rules being made invalid by a law, the provision may be read down to preserve the validity of the provision.
- (i) **Time obligations**
When the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next Business Day.
- (j) **Defined words**
In these Rules, subject to any contrary intention, where a term is not defined in Rule 1.2 but is defined in either the SIS Act or in a Tax Act, then that term will have the meaning ascribed to that term in the SIS Act or in the applicable Tax Act, as the case requires.
- (k) **Powers and discretions**
Where a provision confers on the Trustee a power or discretion then, unless the context otherwise requires, the provision conferring the power or discretion shall be construed so that the Trustee is able to exercise that power or discretion from time to time and at any time.
- (l) **Individuals as trustee**
Where two or more individuals have been appointed as the trustees of the Superannuation Fund, references to the "Trustee" are, unless the context otherwise requires, to be read as references to those individuals acting as a group.
- (m) **References to a debt agreement or a personal insolvency agreement being completely performed**
For the purposes of these Rules, a debt agreement under Part IX of the *Bankruptcy Act 1966* or a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* will be taken as being completely performed if the person who is the subject of the respective agreement is legally entitled to claim or has been issued with a certificate signed by the Official Receiver under s185N or signed by the trustee of the respective agreement under s232 confirming that the person has satisfied all of the obligations imposed on the person by that agreement.
- (n) **Simultaneous or near simultaneous death of individual trustees**
Where two or more individual Trustees die in circumstances that it is not reasonably possible to determine which Trustee was the first to die, then they will, for the purposes of these Rules, be treated as having died in order of their age with the older or eldest having died first.
- (o) **Actions by Authorised Agents of Members**
An Enduring Attorney of a Member may exercise any right or power which the Member has under any Rule whether or not the Rule expressly refers to the right or power conferred on the Member as being exercisable by the Enduring Attorney, unless the Enduring Attorney has been expressly precluded from exercising that right or power by the terms upon which the Attorney was appointed.

An Authorised Agent, being a Financial Manager of a Member, may only exercise any right or power which a Member has under any Rule if that Rule expressly refers to the right or power conferred on the Member as being exercisable by an Authorised Agent.

(p) Prima facie evidence of Infirmity

For the purposes of Rule 4.6(f), two medical certificates provided by legally qualified medical practitioners who have independently certified that the individual is unable by reason of physical or mental illness or infirmity to manage his or her own financial affairs, will constitute prima facie evidence that the individual is by reason of physical or mental illness or by reason of infirmity, unable to act as trustee.

1.2 Dictionary

In these rules:

"Account-Based Pension" includes an allocated pension.

"Age 65 Release Condition" means the Release Condition constituted by the attainment of age 65.

"Annuity Pension" means a pension payable to a beneficiary by the Trustee which satisfies the requirements of Schedule E.

"Application Date" means the date on and from which the Governing Rules applies to the Superannuation Fund.

"Approved SMSF Auditor" means a person who is registered under s128B of the SIS Act but does not include:

- (a) a person for whom an order disqualifying a person from being an approved SMSF auditor, or suspending a person's registration as an approved SMSF auditor, is in force under s130F of the SIS Act; or
- (b) a person disqualified or suspended as an approved SMSF auditor under s130D or s130F of the SIS Act.

"Approved Clearing House" means a body specified Reg 7AE of the *Superannuation Guarantee (Administration) Regulations 1993* (Cth) for the purposes of s79A(3) of the *Superannuation Guarantee (Administration) Act 1992* (Cth).

"Approved Exchange" means any body listed in Schedule 4 to the SIS Regulations.

"Authorised Agent" of a Member means their Enduring Attorney or their Financial Manager.

"Beneficiary" includes Members and any person entitled at the relevant time to receive a payment from the Superannuation Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the SIS Act.

"Beneficiary Pension" means a pension (whether account-based, allocated, market linked, lifetime or life expectancy pension and includes an Annuity Pension) which arose by reason of the death of another individual and which has transferred to or been issued to the Member or which has been rolled over from another superannuation fund for the Member.

“*CGS Depository Interest*” means a depository interest, as defined in the *Commonwealth Inscribed Stock Act 1911*, that can be transferred through a clearing and settlement facility the operation of which is authorised by an Australian CS facility licence issued under the *Corporations Act 2001*.

“*CSF Offer*” means an offer of securities made by an eligible CSF company (within the meaning of s738H and whether a public company or a proprietary company) to which Part 6D.3A of the *Corporations Act* applies.

“*Child*”, in relation to a Beneficiary, includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the Beneficiary;
- (b) child of the Beneficiary’s Spouse;
- (c) an individual who is a child of the Beneficiary within the meaning of the *Family Law Act 1975*; and
- (d) any other person who is a child for the purposes of the SIS Act.

“*Collectables and Personal Use Assets*” means any asset listed in s62A of the SIS Act.

“*Commutation Authority*” means an authority issued by the Commissioner of Taxation under s136-55 of Division 136 set out in Schedule 1 of the *Taxation Administration Act 1953*, being an authority to commute a superannuation income stream to deal with an excess transfer balance.

“*Complying Pension*” means either a pension which satisfies the standards of SIS Reg 1.06(2), (7) or (8) or a pension which satisfies the standards of Reg 1.07(3A) of the *Retirement Savings Account Regulations 1997* or an annuity which satisfies the standards set out in SIS Regs 1.05(2), (9) or (10).

“*Complying Superannuation Entity*” means any of the following: a complying superannuation fund; a complying approved deposit fund; a retirement savings account; and an annuity issued by a life insurance company or registered organisation which qualifies as an annuity for the purposes of Regulation 1.05 of the SIS Regulations.

“*Constitutional Corporation*” has the meaning given by the SIS Act.

“*Contributions Split*” in respect of a Member in relation to a financial year means the rollover or transfer to another superannuation entity for the benefit of the Spouse of the Member or the allotment to a Spouse of the Member of all or a portion of the Superannuation Balance of the Member.

“*Corporate Bond*” means any bond issued by a body corporate and includes tradeable interests in such a bond.

“*Deed*” means the Deed by virtue of which the Governing Rules apply to a particular superannuation fund and includes the Annexure to that Deed as well as the Governing Rules as amended from time to time.

“*Digital currency*” means digital units of value that:

- (a) are designed to be fungible;
- (b) can be provided as consideration for a supply;

- (c) are generally available to members of the public without any substantial restrictions on their use as consideration;
- (d) are not denominated in any country's currency;
- (e) do not have a value that depends on, or is derived from, the value of anything else; and
- (f) do not give an entitlement to receive, or to direct the supply of, a particular thing or things (unless the entitlement is incidental to either (i) holding the digital units of value or (ii) using the digital units of value as consideration,

but does not include:

- (g) money; or
- (h) a thing that, if supplied, would be a financial supply for a reason other than being a supply of one or more digital units of value to which paragraphs (a) to (f) apply.

"Deferred Annuity Pension" means an Annuity Pension which qualifies as a deferred superannuation income stream as defined in the SIS Regulations.

"Dependant", in relation to a Beneficiary, includes:

- (a) the Beneficiary's Spouse or Child;
- (b) any other person who, in the Trustee's opinion, is or was at the relevant time dependent on the Beneficiary;
- (c) any other person who, in the opinion of the Trustee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date;
- (d) any person who was in an interdependency relationship with the Beneficiary at the relevant time; and
- (e) any person who is a dependant within the meaning of the SIS Act.

"Derivative" means any arrangement which qualifies as a derivative for the purposes of s761D of the *Corporations Act 2001* and includes:

- (a) interest rate swap, currency swap, currency option, interest rate option, swaption, smart forward, money market transaction, foreign exchange transaction, forward exchange rate contract, forward interest rate contract, forwards contract, futures transaction, forward rate agreement, forward rate bill transaction, synthetic forward exchange transaction, deposit transaction, currency transaction, interest rate transaction, bond option, commodity (including precious metals, electricity, energy, water or carbon) option or other transaction, credit derivative, equity derivative, capital market transaction, securities buy-back transaction or sell-back transaction;
- (b) contracts for differences and warrants (including instalment warrants);
- (c) other products traded or transactions undertaken on financial markets (whether on an exchange or not) from time to time; and
- (d) any options over or any combination of any of the derivatives mentioned in paragraphs (a), (b) or (c) of this definition.

"Derivatives Transaction" means any transaction (whether for hedging, trading or profit making purposes) in relation to a Derivative (whether as a single contract or under a master contract arrangement).

"Disqualified Person" means a person who, by reason of s120 or s126A of the SIS Act, is not permitted to participate in the management of a regulated superannuation fund.

“*Downsizer contribution*” means a non-concessional contribution made by a Member or made in respect of a Member by their spouse which satisfies the requirements of s292-102 of the 1997 Tax Act.

“*Eligible Emission Unit*” means either an Australian carbon credit unit (as defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011*, an eligible international emissions unit (as defined in the *Australian National Registry of Emissions Units Act 2011* or any other type of emission unit which can be held on and traded through the Australian National Registry of Emissions Units.

“*Enduring Attorney*” of a Member means the grantee of a power of attorney in respect of the Member being a power of attorney which is expressed to be given with the intention that the power of attorney will continue to be effective even if the Member subsequently lacks capacity through loss of mental capacity and includes an enduring power of attorney. Where the Member has appointed two or more such attorneys, then Enduring Attorney means each such attorney (if appointed severally) or all attorneys acting unanimously (if appointed jointly). If the scope of the power of attorney has been expressly limited by the Member to exclude the attorney from making or revoking binding death benefit nominations in respect of the Member, then the attorney is not an Enduring Attorney for the purposes of Rule 15 of the Governing Rules.

“*ESI Company*” means a company which qualifies as an early stage innovation company for the purposes of Division 360 of the 1997 Tax Act.

“*Exchange-traded Australian Government Bond*” means any bond or debt instrument issued by or on behalf of the Australian Government and includes Exchange-traded Treasury Bonds and Exchange-traded Treasury Indexed Bonds.

“*Externally-administered body corporate*” means a body corporate:

- (a) in relation to which a receiver or receiver and manager has been appointed in respect of property beneficially owned by the body;
- (b) in relation to which an administrator has been appointed in respect of the body;
- (c) in relation to which a liquidator has been appointed in respect of the body; or
- (d) which has begun to be wound up.

“*Family member*” in relation to a Member means the spouse of the Member and any individual who is the parent or grandparent of the Member, a sibling of the Member, an uncle or aunt of the Member or a child or grandchild of the Member (and any spouse of that individual).

“*FHSS eligible contribution*” means either a concessional or non-concessional contribution which is eligible to be released under s138-35 of Division 138 of Schedule 1 to the *Taxation Administration Act 1953*;

“*Financial Instruments*” includes debt securities, promissory notes, floating rate notes and collateralised debt obligations or a right or option in respect of any such contract or any similar financial instrument.

“*Financial Manager*” means a person or persons who has or have been appointed by a Government Tribunal having jurisdiction in relation to guardianship as financial manager or managers of a Member.

"Foreign Superannuation Fund" is a superannuation or pension fund which is not an Australian Superannuation Fund for the purposes of the *Income Tax Assessment Act 1997* (Cth) and includes a UK Registered Pension Scheme.

"Fund Account" means any account established by the Trustee for the purposes of the Superannuation Fund other than a Member Account.

"Gainful Employment" means employment or self-employment for gain or reward in any business, trade, profession, vocation, calling or occupation.

"Government Contribution" means any payment made under either Part 2 or Part 2A of the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003* (Cth).

"HRM&C" means Her Majesty's Revenue and Customs being the taxation and revenue authority for the United Kingdom.

"Immediate Annuity Pension" means an Annuity Pension which has no deferral period.

"Initial Trustee" means the Trustee of the Superannuation Fund as at the establishment of the Superannuation Fund.

"Initial Member" means a Member of the Superannuation Fund as at the establishment of the Superannuation Fund.

"Insured Amount" means the amount (if any) of insurance cover payable on the death or Total and Permanent Disablement (as the case may be) of a Member under any risk insurance cover, including TMC Cover, effected by the Trustee on the life of that Member for the purpose of increasing the benefit otherwise payable to or in respect of that Member.

"Legacy Pension" means any pension which satisfies either:

- (a) the standards set out in SIS Reg 1.06(2) (commonly referred to as a "lifetime pension");
- (b) the standards set out in SIS Reg 1.06(7) (commonly referred to as a "life expectancy pension");
- (c) the standards set out in SIS Reg 1.06 (8) (referred to as a "market linked pension"); or
- (d) the standards set out in SIS Reg 1.06(4) and which cannot be commuted before the member satisfies an unrestricted release condition except in circumstances specified in or by SIS Reg 6.01AB(1)(b) (referred to as a "non-commutable allocated pension")

"Legal Personal Representative" means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

"Liabilities" means all liabilities whatsoever of the Superannuation Fund, and includes any provision the Trustee makes in connection with such liabilities.

"LRB Exception" means the Limited Recourse Borrowing Exception.

"Limited Recourse Borrowing Exception" means the exception provided by the SIS Act to the general prohibition on trustees of regulated superannuation funds from borrowing for the purpose of acquiring an asset or refinancing a borrowing which was used for such a purpose whether such exception is set out in s67A, s67B, s67(4A) or elsewhere in the SIS Act.

"Mandatory Allocation Date" in respect of an unallocated contribution means the date which is 28 days after the end of the calendar month in which the Trustee received the unallocated contribution.

"Member" means a person who has been admitted as a member of the Superannuation Fund and who has not ceased to be a Member.

"Member Account" means any account established by the Trustee in the name of a Member to record the benefits payable to or in respect of the Member and includes any pension account established in respect of a pension payable to or in respect of a Member.

"Non-commutable Pension" means either a non-commutable allocated pension or a non-commutable market-linked pension.

"Notified Foreign Passport Fund" has the same meaning as in s1213C of the *Corporations Act 2001*.

"Old Age Pension" has the meaning given by the SIS Act.

"Payment Split" has the same meaning as in Part VIII B of the *Family Law Act 1975* (Cth).

"Payment Split Interest" means the interest which a non-member spouse has in relation to the superannuation interest of a member spouse which is the subject of the Payment Split.

"Permanent Incapacity" in relation to a Member means ill-health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

"Preservation Age" means:

- (a) for a person born before 1 July 1960 – 55 years;
- (b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years;
- (c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years;
- (d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years;
- (e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years;
- (f) for a person born after 30 June 1964 – 60 years.

"Preservation Age Release Condition" means the Release Condition constituted by the attainment of Preservation Age.

"Primary production land" means any land that is used in one or more primary production businesses and includes land that is exempt from land tax on the basis that the land is used for primary production.

“Qualifying Instalment Arrangement” means an instalment arrangement which satisfies the requirements of the Limited Recourse Borrowing Exception.

“Regulator” means the Commissioner of Taxation.

“Release Authority” means an authority or determination issued by or on behalf of the Commissioner of Taxation which permits the Trustee to pay to the Commissioner or to the Member (as the case may be) an amount from the Fund in respect of the Member whether or not relating to the attribution of excess concessional contributions to the Member, the return of excess non-concessional contributions to the Member or a taxation liability of the Member arising from taxed contributions of the Member under Division 293 of the Tax Act, and includes the authorities issued under:

- (a) s292-405 of the Tax Act;
- (b) s292-80A of the *Income Tax (Transitional Provisions) Act 1997*;
- (c) either s96-10 or s96-12 of Division 96 in Schedule 1 to the *Taxation Administration Act 1953*;
- (d) (on and from 1 July 2018) s131-15 of Division 131 in Schedule 1 to the *Taxation Administration Act, 1953*; or
- (e) s135-10 of Division 135 in Schedule 1 to the *Taxation Administration Act 1953*;

“Release Condition” means an event which is listed in Column 2 of Part 1 of the table set out in Schedule 1 to the SIS Regulations.

“Representative Trustee” means, where individuals are acting as the trustee, a trustee whose appointment satisfies the requirements of s17A(3) of the SIS Act.

“Retirement” in respect of a Member means retirement from any business, trade, vocation, calling, occupation or employment in which the Member was engaged whether the retirement occurred before or occurred after the Member was admitted to the Superannuation Fund.

“Retirement Release Condition” means the Release Condition constituted by Retirement.

“Retirement Pension” means a pension (whether account-based, allocated, market linked, lifetime or life expectancy pension or an Annuity Pension) which is payable to the Member (or would, in the case of a Deferred Annuity Pension, be payable to the Member but for a deferral period) and which is not a Beneficiary Pension in respect of the Member.

“Retirement Phase” in respect of a beneficiary means that the beneficiary has satisfied any of the “retirement”, “attained age 65”, “permanent incapacity” or “terminal medical condition” conditions of release set out as items 101, 106, 103 or 102A of the table in Schedule 1 of the SIS Regulations.

“Returned FHSS release amount” means a non-concessional contribution made by a Member on or after 1 July 2018 to which Division 313-D of the Tax Act applies.

“Roll Back” in relation to a pension means to commute the pension and to retain the commutation lump sum within the Superannuation Fund as an accumulation benefit for the pensioner.

“Roll Over” in relation to a pension means to commute the pension and to pay the commutation lump sum to either the trustee of another superannuation fund for the purpose of commencing a new pension or to an annuity issuer for the purpose of commencing an annuity.

“Rule” means, where the reference occurs in the Governing Rules, a Rule of the Governing Rules and, where the reference occurs in a Schedule, means a Rule of that Schedule.

“Schedule” means a Schedule to the Rules.

“Simple Corporate Bond” means any debenture which satisfies the requirements of s713A of the *Corporations Act 2001*.

“SIS Act” means the *Superannuation Industry (Supervision) Act 1993* (Cth) and includes any regulations, declarations or orders made under that Act or any other law, or any requirement of a Regulator:

- (a) which a superannuation fund must satisfy to qualify as a complying superannuation fund; or
- (b) which the Trustee or the Superannuation Fund must comply with to avoid any penalty or disadvantage which might be incurred in connection with the operation of the Superannuation Fund.

“SIS Regulations” means the regulations made pursuant to the SIS Act.

“SMSF Trustee Standard” means the standards set out in the SIS Act which determines whether a particular individual or body corporate can act as trustee of a regulated superannuation fund consistently with that superannuation fund satisfying the definition of being a “self managed superannuation fund” as set out in s17A of the SIS Act.

“Spouse”, in relation to a person, includes:

- (a) another person who, whether or not legally married to the person, lives with them on a genuine domestic basis in a relationship as a couple;
- (b) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory which has been prescribed for the purposes of s2E of the *Acts Interpretation Act 1901*; and/or
- (c) any other person who is a spouse for the purposes of the SIS Act.

“Superannuation Annuity” means an annuity which satisfies the requirements of SIS Regulation 1.05.

“Superannuation Balance” of a Member means the aggregate of the balances of the Member Accounts of that Member other than the UK Transferred Benefits Account (refer Rule 12.9(b)(vii)) and the pension accounts of that Member.

“Superannuation Entity” means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions including a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Reserve.

“Superannuation Fund” means the superannuation fund established by or referred to in the Deed.

“*Superannuation income stream*” has the same meaning as defined in reg 995-1.01 of the *Income Tax Assessment Regulations 1997*.

“*Superannuation Law*” means the SIS Act and those provisions of the *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth), *Corporations Act 2001* (Cth), and the *Family Law Act 1975* (Cth) and the regulations made pursuant to those Acts which apply to the operation of or interests in self managed superannuation funds and such other acts which affect the operation of self managed superannuation funds.

“*Tax*” includes:

- (a) all actual or anticipated income tax, capital gains tax, transfer duty tax and other taxes, levies, imposts, deductions, surcharges and charges whatsoever;
- (b) any goods and services tax, value added tax or similar tax imposition or charge; and
- (c) any interest, fines, penalties, charges, fees or other amounts payable in respect of the items mentioned in paragraphs (a) or (b).

“*Tax Act*” means any of the following Acts: *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth), *Taxation Administration Act 1953* (Cth), *Income Tax (Transitional Provisions) Act 1997* (Cth) and any regulations or other statutory instruments made pursuant to any of those Acts.

“*Temporary Incapacity*” in relation to a Member means suffering ill-health or injury (whether physical or mental) that has caused the Member to either cease gainful employment or to reduce the number of hours normally worked by the Member where the ill-health or injury does not constitute Permanent Incapacity.

“*Temporary Incapacity Pension*” means a pension which:

- (a) cannot be commuted;
- (b) is paid at least monthly;
- (c) does not have a residual capital value; and
- (d) is either fixed in amount or annually indexed (subject to a 5% cap on the indexation) based on the annual increase in the Consumer Price Index (All Capital Cities) published by the Australian Statistician for the most recently published quarterly index before the anniversary of the pension's commencement compared to the index for the same quarter in the immediately preceding year.

“*Terminal Medical Condition*” in relation to a member means an illness suffered by or an injury incurred by the Member in relation to which two medical practitioners (at least one of whom must be a specialist practicing in an area related to the illness or injury) have certified (either separately or jointly) that the illness or injury is likely to result in the death of the Member within 24 months of the date of the certification.

“*TMC*” means Terminal Medical Condition.

“*TMC Cover*” means insurance cover against the event of a Terminal Medical Condition.

“*Trustee*” means the trustee for the time being of the Superannuation Fund and where there is more than one trustee it refers to each trustee for the time being of the Superannuation Fund and includes a Representative Trustee.

“UK Transferred Benefit” means a superannuation or pension benefit transferred from a UK Registered Pension Scheme on or after 6 April 2015.

“UK Registered Pension Scheme” is a pension scheme which is registered with HMRC under Chapter 2 of the *Finance Act 2004* (UK).

“Unrestricted Release Condition” means an event which is listed in Column 2 of Part 1 of the table set out in Schedule 1 of the SIS Regulations where the “cashing restrictions” set out in Column 3 of that table which corresponds to the event are expressed to be “Nil”.

2. Nature and purpose of fund

2.1 Sole purpose

The Trustee will maintain the Superannuation Fund solely to provide one or more of the following benefits for or in respect of each Member:

- (a) the provision of superannuation benefits to the Member on or after their Retirement;
- (b) the provision of superannuation benefits to the Member on or after their attainment of age 65;
- (c) the provision of superannuation benefits to the Member on or after their attainment of age 65 or their Retirement (whichever first occurs);
- (d) the provision of superannuation benefits in respect of the Member on their death before Retirement if the benefits are provided to the legal personal representative of the estate of the deceased Member or to any or all of the dependants of the deceased Member or to both; and/or
- (e) the provision of superannuation benefits in respect of the Member on their death before age 65 if the benefits are provided to the legal personal representative of the estate of the deceased Member or to any or all of the dependants of the deceased Member or to both.

2.2 The Trustee, in addition to maintaining the Superannuation Fund for one or more of the purposes set out in Rule 2.1, may provide one or more of the following benefits to or in respect of a Member:

- (a) the provision of superannuation benefits to a Member on their ceasing employment with any employer (or an associate of an employer) who at any time made contributions to the Superannuation Fund for the benefit of the Member;
- (b) the provision of superannuation benefits to a Member on their ceasing to be gainfully employed due to ill-health (whether physical or mental);
- (c) the provision of superannuation benefits in respect of the Member on their death on or after Retirement if the benefits are provided to the legal personal representative of the estate of the deceased Member or to any or all of the dependants of the deceased Member or to both;
- (d) the provision of superannuation benefits in respect of the Member on their death on or after age 65 if the benefits are provided to the legal personal representative of the estate of the deceased Member or to any or all of the dependants of the deceased Member or to both;
- (e) the provision of non-commutable pensions or transition to retirement income streams to Members who have attained their preservation age;

- (f) the provision of such other benefits as regulated superannuation funds may provide in respect of Members or their dependants (including benefits permitted to be paid in accordance with Part 6 of the SIS Regulations); and/or
- (g) the provision of such other benefits as the Commissioner of Taxation may approve either in respect of the Superannuation Fund or in respect of a class of superannuation funds in relation to which the Superannuation Fund falls within.

2.3 Trustee need not maintain fund to provide each kind of benefit for each Member

The Trustee is not required to maintain the Superannuation Fund to provide each kind of benefit specified in Rule 2.1 or Rule 2.2 for each Member.

2.4 Primary purpose

At any time when the Trustee of the Superannuation Fund is not a constitutional corporation then the primary purpose of the Superannuation Fund will be the provision of old-age pensions for the Members. However, this will not prevent the Superannuation Fund paying benefits in the form of lump sums.

2.5 Constitutional corporation

At any time when the primary purpose of the Superannuation Fund is not the provision of old-age pensions, then the Trustee must be a constitutional corporation.

3. The Trust Fund

3.1 Composition

The Trust Fund of the Superannuation Fund comprises all contributions made to and accepted by the Trustee and all loan capital arising from borrowings made by the Trustee for the purposes of the Superannuation Fund and includes any property arising from such contributions or borrowings whether acquired by way of purchase or reinvestment or by way of earnings.

3.2 Investment of Trust Fund

The Trustee must invest the Trust Fund whether to produce income or capital appreciation or a mixture of both in any form of investment (irrespective of the geographic location of the investment) the Trustee considers appropriate and may at any time sell or dispose of any investment and reinvest the proceeds arising from the sale or disposal.

3.3 The Trustee may, subject to Superannuation Law, deal with, sell and reinvest the Trust Fund in such manner as the Trustee considers suitable including:

- (a) investing in common ownership with one or more Members or with one or more third parties;
- (b) entering into Derivatives Transactions (whether as a single transaction or under master agreement);
- (c) entering into any transaction (eg sale, leasing, lending, or granting of an option) in relation to the Trust Fund with a view to obtaining some form of economic return or benefit (whether income, capital appreciation or a mixture of both);
- (d) issuing, drawing, accepting, endorsing or discounting or otherwise dealing with any promissory note, bill of exchange, cheque or other negotiable or transferable instrument;
- (e) buying or selling assets on such terms as the Trustee considers appropriate including buying or selling on terms or instalment basis;

- (f) acquiring, holding, trading or selling digital currencies or exchanging one digital currency for another or for a national currency.

3.4 Without limiting the generality of Rules 3.2 and 3.3, the Trustee may invest the Trust Fund in any of the following:

- (a) Shares (including shares issued pursuant to a CSF Offer and shares in an ESI Company), debentures, corporate bonds (including Simple Corporate Bonds), promissory notes and other securities issued by a body corporate – whether or not that body corporate is listed on an Approved Exchange (whether the exchange is a physical or electronic exchange) and whether or not those securities are quoted on that stock exchange or such other stock exchange the Trustee considers appropriate;
- (aa) Government bonds (including bonds issued by the Australian Government or any Australian State or Territory Government or any borrowing entity of such a Government) including Exchange-traded Australian Government Bonds;
- (b) depository interests including CGS Depository Interests;
- (c) investment life insurance policies and annuities (whether immediate or deferred);
- (d) units in any unit trust (including pooled superannuation trusts) – whether listed or unlisted;
- (e) interests in any managed investment scheme (whether the scheme is a registered scheme or not) or any collective investment vehicle including interests in Notified Foreign Passport Funds;
- (f) Financial Instruments;
- (g) Derivatives;
- (h) real estate (or other forms of real property and interests in real property including leasehold interests);
- (i) personal property (whether tangible or intangible and whether movable or immovable and including Collectables and Personal Use Assets);
- (j) loans (whether secured or unsecured);
- (k) water allocation rights – whether tradeable or not and irrespective of the term;
- (ka) any type of Eligible Emission Unit;
- (l) Qualifying Instalment Arrangements;
- (m) any business venture including underwriting or sub-underwriting and securities lending transactions;
- (n) interests in any exchange traded fund (whether the fund is structured as a managed investment scheme or not);
- (o) any limited liability partnerships as a limited partner; and

each of the above paragraphs is to be interpreted without reference to or implicitly limited by another of those paragraphs.

3.5 Investment portfolios and strategies and asset segregation

The Trustee may:

- (a) separate the Trust Fund into two or more discrete portfolios of assets by allocating any asset of the Trust Fund to a particular portfolio of assets for any one or more of the following purposes:
 - (i) the establishment of an investment fluctuation reserve;
 - (ii) the establishment of a reserve from which taxation liabilities are to be met;
 - (iii) the establishment of a reserve from which expenses are to be met;
 - (iv) the establishment of a portfolio to finance the payment of the benefits (including pension benefits) of a particular Member or a particular class of Members;

- (v) the establishment of separate investment portfolios to allow investment strategy choice to one or more Members; and/or
 - (vi) for such other purposes as the Trustee considers appropriate;
 - (b) where the Trust Fund has been separated into two or more discrete portfolios then the Trustee will designate the portfolio in such manner as the Trustee considers appropriate; and
 - (c) designate one or more discrete portfolios as being invested solely to enable the Fund to discharge all or part of the Fund's liabilities in respect of pension benefits or a particular pension benefit which are or is payable by the Fund.
- 3.6 Where the Trustee offers Members investment strategy choice, then the Trustee must determine the terms on which investment strategy choice will be offered to the Members including the extent to which Members may switch between investment strategies.
- 3.7 The Trustee may:
- (a) create new portfolios of assets from allocating the assets of an existing portfolio amongst two or more other portfolios or may merge two or more existing portfolios of assets;
 - (b) change the investment parameters of an investment portfolio (eg asset class benchmarks, asset ranges); or
 - (c) transfer assets between the various portfolios as the Trustee considers appropriate.
- 3.8 Where the Trustee has divided an existing portfolio of assets or merged existing portfolios of assets, then the Trustee will determine how the interests of Members will be attributed between the portfolios to reflect those changes.
- 3.9 Investment returns
- Where the Trustee has created two or more portfolios of assets then the Trustee must ensure:
- (a) assets and liabilities associated with each portfolio can be separately identified; and
 - (b) the returns allocated to Beneficiaries reasonably reflect the financial returns generated by the assets allocated to the portfolio, movements in market values of those assets and tax attributes of those assets.
- 3.10 Single superannuation entity
- Nothing in these Rules is to be taken as establishing a separate superannuation entity in respect of any portfolio of assets.
- 3.11 Neither the admission of a Member nor the payment of a pension benefit to a Member or to a Beneficiary is taken as establishing a separate superannuation entity in respect of that Member or that Beneficiary.
- 3.12 SIS purpose of investment powers
- The Trustee when exercising its investment powers must have due regard to the SIS Act investment requirements (as those investment requirements apply to and have been modified in respect of self managed superannuation funds) and to the covenants set out in Rule 5.7 including:
- (a) the requirement to formulate and give effect to an appropriate investment strategy for each portfolio of assets;
 - (b) the requirement not to lend or provide financial assistance to Members or relatives of Members;

- (c) the requirement not to acquire assets from Members and other related parties;
- (d) the requirement not to borrow for the Trust Fund;
- (e) the requirement not to have an excessive level of in house assets; and
- (f) the requirement to invest on an arm's-length basis.

3.13 For the avoidance of doubt and for the purposes of Rule 3.12, the Trustee's obligation to have due regard to the SIS Act investment requirements does not prevent the Trustee from falling within any exception to a SIS Act investment requirement such as, for example:

- (a) acquiring an asset from a Member (or other related party) where the asset is business real property or listed securities;
- (b) acquiring or retaining an asset acquired from a regulated superannuation fund which is a related trust where the acquisition of the asset occurs because of reasons directly connected with the breakdown of a marriage or domestic relationship and in the circumstances permitted by s66(2B) and s71EA of the SIS Act; or
- (c) borrowing where the borrowing is within an exception to the SIS Act investment requirement (such as in the circumstances permitted by s67A of the SIS Act).

3.14 Title to property

Where the Trustee is not a corporate trustee, then title to the property constituting the Trust Fund may, if the Trustees so decide, be held in the name of one or more of the Trustees but need not be held in the names of all the Trustees.

3.15 Where the Trustee has entered into a Qualifying Instalment Arrangement then title to the property which is the subject of the arrangement may be held in the name of a company or one or more individuals for the duration of the arrangement.

3.16 Where the Trustee has engaged a custodian or nominee then title to the property held by the custodian or nominee may be recorded in the name of the custodian or nominee.

3.17 Certain assets to be held exclusively for the benefit of specified Members

The Trustee may, by an irrevocable written instrument, determine that an asset ("the specified asset") which is specified in the instrument is to be held exclusively to provide the superannuation or retirement benefits of the Member or Members specified in the instrument and for no other Members.

3.18 The specified asset referred to in Rule 3.17 must be held by the Trustee or by a custodian on behalf of the Trustee, separately from and cannot be pooled with other assets of the Superannuation Fund and the specified asset will constitute for the purposes of these Rules a discrete portfolio separate from the other assets of the Superannuation Fund and any earnings and proceeds from the specified asset must be retained as part of the discrete portfolio.

3.19 The specified asset referred to in Rule 3.17 must only be applied for the purpose of providing retirement benefits of the Member or Members specified in the instrument referred to in Rule 3.17.

3.20 Collectables and Personal Use Assets

The Trustee must comply with the SIS Regulations made for the purposes of s62A of the SIS Act relating to acquisition, holding and realisation of investments which are directly held by the Trustee being investments which are Collectables and Personal Use Assets.

4. The Trustee

4.1 Generally

The Trustee of the Superannuation Fund will be the Initial Trustee and such other persons who have been duly appointed pursuant to the Governing Rules of the Superannuation Fund (applying at the time of the appointment) in addition to or to replace the Initial Trustee or appointed pursuant to a Court Order.

4.2 Number

Where:

- (a) there is a corporate trustee then:
 - (i) If there is one member – there can be a single director or two directors; and
 - (ii) If there is two or more members – the number of directors must equal the number of members,
- (b) there are individual trustees then:
 - (i) If there is one member – there must be two individual trustees; and
 - (ii) If there are two or more members – the number of individual trustees must equal the number of members.

The preceding paragraphs are subject to the following exceptions:

- (c) where the members have each appointed the same individual as their Enduring Attorney – then that individual may act as the sole trustee of the Superannuation Fund;
- (d) such other exceptions as are permitted by Superannuation Law;
- (e) where the exception is permitted by the Regulator; or
- (f) where the trustee is appointed pursuant to a Court Order.

4.3 Eligibility for appointment – company

For a company to be eligible to be appointed pursuant to this Rule 4 as the Trustee of the Superannuation Fund:

- (a) the company must not be disqualified from acting as a trustee of a regulated superannuation fund;
- (b) the company, if appointed, must not cause the Superannuation Fund to cease to satisfy the SMSF Trustee Standard; and
- (c) the company must have consented in writing to the proposed appointment.

4.4 Eligibility for appointment - director of company acting as Trustee

For an individual to be eligible to be appointed pursuant to this Rule 4 as a director of a company acting as Trustee of the Superannuation Fund:

- (a) the individual must not be a Disqualified Person;
- (b) the individual must not be disqualified from acting as a director of a company;
- (c) the individual, if appointed, must not cause the Superannuation Fund to cease to satisfy the SMSF Trustee Standard; and
- (d) the individual must have consented in writing to the proposed appointment.

4.5 Eligibility for appointment of individual - as Trustee

For an individual to be eligible to be appointed pursuant to this Rule 4 as a Trustee of the Superannuation Fund:

- (a) the individual must not be a Disqualified Person;
- (b) the individual, if appointed, must not cause the Superannuation Fund to cease to meet the SMSF Trustee Standard; and
- (c) the individual must have consented in writing to the proposed appointment.

4.6 Ceasing to be trustee

A Trustee will cease to be Trustee if any of the following occurs:

- (a) where the Trustee is an individual – on resigning or retiring as Trustee by an instrument in writing given to the other Trustee or Trustees;
- (b) where the Trustee is a company - it becomes an externally-administered body corporate;
- (c) the Trustee is removed by the Regulator or by Court Order;
- (d) where the Trustee is an individual – the Trustee ceases to satisfy the SMSF Trustee Standard;
- (e) where the Trustee is a company – the Trustee ceases to satisfy the SMSF Standard and has not, within 6 months after ceasing to satisfy the standard, been restructured to satisfy that standard;
- (f) where the Trustee or Representative Trustee is an individual – the Trustee dies or ceases, by reason of physical or mental illness or by reason of infirmity, to be able to act as trustee;
- (g) where the Trustee is an individual and is not a Representative Trustee – the Trustee ceases to be a member and has not resigned as a Trustee within 6 months of ceasing to be a Member;
- (h) where the Trustee is an individual and is a Representative Trustee – the Trustee is removed in accordance with Rule 4.15 or Rule 4.16;
- (i) where the Trustee is an individual and is a Representative Trustee – the Member in respect of whom the Trustee is a Representative Trustee has ceased to be a Member;
- (j) where the Trustee has been appointed by virtue of Rule 4.19(e) – upon ceasing to be a legal personal representative of the deceased Member or upon the benefits in respect of the deceased Member commencing to be payable (whichever is the first to occur);
- (k) where the Trustee has been appointed by virtue of Rule 4.19(f) or Rule 4.19(g) – upon ceasing to be a legal personal representative of the sole surviving Trustee or upon the retirement as a trustee;
- (l) where the Superannuation Fund is a single Member fund – the single Member or their Enduring Attorney removes the company which is Trustee or one or more of the individuals who are current Trustees by an instrument in writing given to the relevant Trustee; and
- (m) where the Superannuation Fund has two or more Members – the Members may by unanimous written resolution or by a written resolution of Members whose member balances (at the most recently occurring balance date) constitute 75% or more of all member balances (as at that balance date) may remove the sole Trustee or one or more of the current Trustees by giving a copy of the relevant resolution to the Trustee or Trustees to be removed.

4.7 Retirement of Trustee

A Trustee will be treated as retiring where:

- (a) the Trustee has arranged with another person for the other person to act as the Replacement Trustee; and
- (b) the arrangement is evidenced in writing signed by both the retiring Trustee and the Replacement Trustee,

in which case, the retirement and appointment will be effective on the date specified by the instrument or, if no date is specified, then on the date of signing that instrument.

4.8 Appointment of replacement Trustee in circumstances other than retirement

Where the sole Trustee or one or more Trustees cease (other than by retirement) to be Trustee:

- (a) by reason of Rule 4.6(l) or Rule 4.6(m) – then the sole Member or Members whose member balances (at the most recently occurring balance date) constitute 75% or more of all member balances (as at that balance date) may whether by the same instrument or written resolution or by a separate instrument or written resolution appoint one or more replacement Trustees; or
- (b) where paragraph (a) does not apply - the remaining Trustees or Trustee (as the case may be) may by an instrument in writing appoint a replacement Trustee or Trustees and where the last surviving Trustee ceases to be a Trustee (other than by retirement) then the legal personal representative of the last surviving Trustee may by an instrument in writing appoint one or more persons (including themselves) as a replacement Trustee or Trustees.

4.9 Change of Trustee structure

Subject to the preceding provisions of this Rule, the current trustee structure may change:

- (a) from individual trustees to a company as sole trustee;
- (b) from a company as sole trustee to a group of individuals; or
- (c) from a company as sole trustee to another company as sole trustee,

by the current Trustee or Trustees (as the case may be) appointing a replacement Trustee or Trustees (as appropriate). The appointment must be by a written instrument or deed signed by the current Trustee or Trustees and by the replacement Trustee or Trustees and, if the appointment is effected or confirmed by Deed, the Deed need not be registered.

4.10 Change of membership structure

Subject to preceding provisions of this Rule, where an individual is admitted as a Member then the Trustees must, if the individual is otherwise able to act as a trustee, appoint that individual as a Trustee and if that individual is not able to act as a trustee by reason of age or because of a legal disability (but not because of the individual being a Disqualified Person) then another individual (“the representative”) being an individual who satisfies the SMSF Trustee Standard in respect of the relevant Member must be appointed by the Trustees as a Trustee.

4.11 Enduring attorney acting as Representative Trustee for Member

Where individuals are Trustees and a Member has appointed an Enduring Attorney then:

- (a) where the Member has ceased to be a Trustee by reason of mental or physical inability to act as a trustee the Enduring Attorney is, by reason of this sub-rule, the Representative Trustee for the Member;
- (b) where the Member has resigned as Trustee (but is not a Disqualified Person) then the Enduring Attorney is, by reason of this sub-rule, the Representative Trustee for the Member; and

- (c) where the Member has appointed joint Enduring Attorneys and those Attorneys have selected one of them to be the Representative Trustee then the selected Enduring Attorney is, by reason of this sub-rule, the Representative Trustee.
- 4.12 The appointment of an Enduring Attorney as a Representative Trustee by reason of Rule 4.11 or by reason of Rule 4.15 is subject to:
- (a) the Enduring Attorney not themselves being a Disqualified Person; and
 - (b) the Enduring Attorney consenting in writing to acting as a Trustee of the Superannuation Fund.
- 4.13 Where the Enduring Attorney is a joint attorney so that two or more individuals only by acting together can bind the Member – then the conditions of Rule 4.12 apply to each of them and the appointment will only be effective if and when both conditions are satisfied in respect of each individual.
- 4.14 Where the Member has appointed two or more individuals as Enduring Attorneys but the appointments are several (ie each Attorney is able to act individually and bind the Member) then the Enduring Attorney will, in the absence of an agreement between the Attorneys who satisfy the requirements of Rule 4.12, be whichever of the Attorneys is the elder or eldest of those Attorneys.
- 4.15 Where a Representative Trustee is acting for a Member by reason of Rule 4.11(b), the Member, not then being a Disqualified Person, may by written notice signed by the Member and given to the Representative Trustee (or to each Representative Trustee in the case of joint Enduring Attorneys) and each other Trustee remove the Representative Trustee as Trustee and appoint another Enduring Attorney (who satisfies the requirements of Rule 4.12) as the Representative Trustee of the Member.
- 4.16 A Member in respect of whom a Representative Trustee has been appointed by Rule 4.11(b) or by Rule 4.15 and who is not a Disqualified Person may by a written notice signed by the Member and given to the Representative Trustee and each other Trustee terminate the appointment of the Representative Trustee and the Member by, reason of this sub-rule, will thereupon become a Trustee of the Superannuation Fund.
- 4.16A Appointment of Legal Personal Representative as Trustee pending allocation of death benefit of member
A Member by written notice provided to the Trustee (whether by way of separate notice or as part of a binding death benefit nomination) may appoint their Legal Personal Representative (or, if they have more than one Legal Personal Representative, may appoint one of their Legal Personal Representatives) as a Trustee subject to the following terms and conditions:
- (a) the appointment shall, subject to the following provisions, take effect on and from the date of death of the Member and continue until the death benefit payable in respect of the Member has been cashed (within the meaning of SIS Reg 6.21) at which time they shall cease to be a trustee;
 - (b) the appointed Legal Personal Representative must not be a Disqualified Person;
 - (c) the appointed Legal Personal Representative must consent in writing to their appointment as a trustee; and
 - (d) if the appointment is set out in the Will of the Member, the Will has been admitted to probate within six months of the death of the Member.
- 4.17 Remuneration of Trustees and director of a corporate trustee
An individual or company acting as Trustee is not entitled to receive from the Superannuation Fund (or from any other person) any remuneration for any services provided by or duties performed by the Trustee as

trustee in relation to the Superannuation Fund. Also an individual acting as a director of a corporate trustee is not entitled to receive from the Superannuation Fund (or from any other person) any remuneration for any services provided by or duties performed by the director in relation to the Superannuation Fund.

To remove doubt, this prohibition does not preclude a Trustee (or a director of a company acting as Trustee) from:

- (a) being reimbursed for trust expenses properly incurred;
- (b) being indemnified from the Trust Fund for any trust liabilities; and
- (c) receiving reasonable remuneration for the provision of services by and the performance of duties by the individual or company (other than services as a Trustee of the Superannuation Fund or as a director of a corporate trustee in relation to the Superannuation Fund) where:
 - (i) the person is appropriately qualified and holds all the necessary licences to perform the duties or services;
 - (ii) the person performs the duties or services in the ordinary course of a business, carried on by the person performing similar duties or services for the public; and
 - (iii) the remuneration is no more favourable to the person than that which it is reasonable to expect would apply if the person were dealing with the relevant other party at arm's length in the same circumstances.

4.18 Transfer of property, records etc.

A person ceasing to be a Trustee must:

- (a) provide to the replacement or continuing Trustee all records, documents, information and other property relating to the Superannuation Fund which is in their possession, custody or control; and
- (b) do all such acts, matters and things (including signing instruments relating to the transfer of title) as may be necessary or convenient to perfect the appointment of the replacement Trustee.

4.19 Where Trustees are individuals

Where two or more individuals act as Trustees then:

- (a) the Trustees may act by majority;
- (b) the Trustees may meet as and when they consider necessary, in such manner, and using such technology, as they consider appropriate;
- (c) the Trustees may determine any issue by use of circulating resolutions rather than convening a meeting;
- (d) subject to Rule 4.21 the Trustees in relation to all matters to be determined by the Trustees, will have one vote each but where any Trustee requires the matter to be resolved by a formal vote, then each Trustee will have a voting power in proportion to the dollar value (to nearest \$10) of that Trustee's Superannuation Balance;
- (e) subject to paragraph (h) where a Member dies the legal personal representative of the deceased Member is, by virtue of this provision, deemed to be appointed a Trustee of the Fund;
- (f) subject to paragraph (h) where the sole surviving Trustee dies and there is no Member of the Fund the legal personal representative of the sole surviving Trustee is by virtue of this provision deemed to be appointed as the Trustee of the Fund;
- (g) subject to paragraph (h) where the sole surviving Trustee dies and there is a Member who is capable of exercising the power conferred on the Member by Rule 4.8 the legal personal representative of the sole surviving Trustee, is by virtue of this provision, deemed to be appointed

as the Trustee of the Fund unless such Member within one month of the death of the sole surviving Trustee exercises the power conferred by Rule 4.8 on that Member; and

- (h) notwithstanding paragraphs (e), (f) and (g):
- (i) the legal personal representative is not appointed as Trustee if the legal personal representative is a Disqualified Person;
 - (ii) where there are two or more legal personal representatives then the elder or eldest such representative who is not a Disqualified Person is appointed as the Trustee; and
 - (iii) the appointment of the legal personal representative as Trustee is conditional upon the legal personal representative having consented in writing to the appointment.

4.20 Where Trustee is a representative of a Member

Where a Trustee is a Representative Trustee then Rule 4.19(d) will apply as if the reference to the Trustee's Superannuation Balance was a reference to the Superannuation Balance of the Member in respect of whom the Representative Trustee has been appointed.

4.21 Trustees may determine that weighted voting is not to apply

The Trustees may by unanimous written resolution determine that Rule 4.19(d) is not to apply in which case (unless the Trustees subsequently determined by unanimous written resolution that Rule 4.19(d) will again apply) each Trustee (including each Representative Trustee) will have one vote in relation to all issues and matters to be determined by the Trustees whether at a formal trustee meeting or by written resolutions.

5. Trustee's powers, discretions and duties

5.1 Powers generally

Subject to Superannuation Law, the Trustee:

- (a) is empowered to do anything necessary or desirable for the purpose of maintenance, operation, management, development, promotion or winding up of the Superannuation Fund; and
- (b) in addition to the powers conferred by these Rules, has all the powers conferred on a trustee by statute or general law including the Trustee Act applicable to the proper law of the Superannuation Fund.

5.2 Particular powers

Without limiting anything in Rule 5.1 but subject to Superannuation Law, the Trustee has the following powers (which powers are not limited to or read down by reason only of the inclusion of the other powers):

- (a) to appoint and remunerate service providers including administrators, auditors, actuaries, taxation agents, legal and other advisers and agents;
- (ab) to engage or authorise service providers to provide an electronic messaging service for the purpose of receiving or making electronic messages and payments (whether contributions, transfers or rollovers) consistently with the Data and Payment Standards and Regulations made for the purposes of Part 3B of the SIS Act as those standards apply to the Fund;
- (b) to effect insurance in respect of the property or liabilities of the Superannuation Fund;
- (c) to effect insurance in respect of any Member for the purpose of providing an Insured Benefit for that or another Member being insurance which is consistent with the conditions of release being death, TMC, permanent incapacity or temporary incapacity or being insurance of a type which the Trustee is, by reason of the SIS Regulations permitted to maintain in respect of that Member;

- (ca) to effect insurance in respect of the life or lives of any Member or any contingency relating to the Fund or the Members for the purpose of providing liquidity for the Fund;
- (d) to effect TMC Cover in respect of Members;
- (e) to compromise claims against the Superannuation Fund;
- (f) to engage nominees and custodians;
- (g) to borrow and to lend and to grant any security for any borrowing including borrowing within the Limited Recourse Borrowing Exception and granting any security permitted by that exception;
- (h) to borrow for the purpose of acquiring an asset which is to be held in a Qualifying Instalment Arrangement trust and to grant (to support the borrowing) security interests in respect of the asset held in such a trust and to enter into instalment purchase contracts in respect of an asset held in a Qualifying Instalment Arrangements;
- (i) to acquire and hold investments or property of the Fund (whether legal or equitable) for the time being in the circumstances contemplated by the Limited Recourse Borrowing Exception in the name of one or more individuals or in the name of a corporation having power in that regard as nominee, custodian or trustee for and on behalf of the Trustee;
- (j) to engage a company or one or more individuals to hold title to assets which are the subject of a Qualifying Instalment Arrangement in a manner consistent with the Limited Recourse Borrowing Exception;
- (k) to lease, hire or grant rights to use or exploit any property including, if permitted by law, where the term of the lease, hire or grant of rights exceeds the maximum period for a lease, hire or grant of rights specified by any law relating to trusts in the jurisdiction which is the Proper Law of the Fund or the jurisdiction of the place where the property is located;
- (l) to surrender any lease, hiring, usage or exploitation arrangement;
- (m) to grant or take call or put options in respect of any property;
- (n) to maintain, repair or improve any property;
- (o) to develop (by building, constructing, demolishing, repairing, renovating, replacing, altering, extending, decorating or furnishing) any property;
- (p) to grant guarantees to or on behalf of any person the Trustee sees fit;
- (q) to grant indemnities to or on behalf of any person the Trustee sees fit;
- (r) to open and operate accounts (including current and deposit accounts) with any financial institution (including authorised deposit taking institutions, building societies or credit unions) and to draw, make, accept or endorse any cheque or other negotiable or transferable instrument on those accounts;
- (s) to delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and to execute any powers of attorney or other instruments to effectuate such delegation;
- (t) to draw, issue, accept, endorse or otherwise deal in any bill of exchange, promissory note or other negotiable instrument;
- (u) to enter into agreements to transfer taxable contributions for the purpose of s295-260 of the *Income Tax Assessment Act 1997* (Cth);
- (v) to pay or reimburse costs of establishing the Superannuation Fund (such as legal and documentation expenses and stamp duty) or amending the Rules of the Superannuation Fund and such other costs or expenses relating to the establishment, maintenance or operation of the Superannuation Fund (such as ASIC company registration fees, annual review fees and filing fees) which the Trustee considers appropriate but the Trustee is not authorised to pay remuneration to any Trustee of the Superannuation Fund for their services as a Trustee or to pay remuneration to any director of a company which acts as Trustee for that director's services as a director of that company;

- (w) to enter into arrangements for the transfer of tax losses (including prior year and current year and including net capital gain and revenue losses) in accordance with Division 310 of the *Income Tax Assessment Act 1997* (Cth) with other superannuation funds, pooled superannuation trusts or life insurance companies;
- (x) to enter into arrangements for the transfer of assets in accordance with Subdivision 126G of the *Income Tax Assessment Act 1997* (Cth) with other superannuation funds;
- (y) to establish or acquire any business and to carry on that business;
- (z) to sell or close down any business being carried on by the Trustee;
- (aa) to transfer or rollover any business being carried on by the Trustee to another entity;
- (bb) to otherwise deal with any business being carried on by the Trustee in any manner as the Trustee considers desirable or necessary;
- (cc) to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this paragraph, to develop any premises and hold or sell, transfer, convey, surrender, lease or licence such premises and to dispose of any real property by way of sale, partition, subdivision, consolidation, transfer, conveyance, assignment, surrender, leasing or the granting of options or rights in relation to the property;
- (dd) to provide information about members or beneficiaries and their balances, FHSS eligible contributions, LRBA amounts or benefits to the Australian Taxation Office and, unless the relevant member or beneficiary notifies the Trustee otherwise, to any Government body (such as Centrelink) for the purposes of the social security laws;
- (ee) to pay fund liabilities or expenses in either national or digital currencies; and
- (ff) to do anything incidental to the exercise of any of the preceding powers.

5.3 Powers relating to limited recourse borrowing

Without limiting anything in Rule 5.1 or Rule 5.2 but subject to Superannuation Law, the Trustee has in relation to limited recourse geared investments the following powers provided that at all times such powers are exercised in relation to arrangements which satisfy the LRB Exception:

- (a) to enter into a borrowing arrangement for the purpose of acquiring an asset in the circumstances permitted by the LRB Exception including borrowing to pay incidental acquisition costs (such as conveyance fees, stamp duty, transaction fees, structural and environmental assessment fees) which are permitted by the LRB Exception;
- (b) to enter into a borrowing arrangement for the purpose of acquiring an asset in the circumstances permitted by the LRB Exception including borrowing to pay incidental acquisition costs (such as conveyance fees, stamp duty, transaction fees, structural and environmental assessment fees), and borrowing to pay for repairs and maintenance of the acquired asset which are permitted by the LRB Exception;
- (c) to borrow money pursuant to multiple loans (whether from the same or different lenders) for the purpose of acquiring an asset in the circumstances permitted by the LRB Exception or for the purpose of effecting repairs or providing for the maintenance (or both) of an asset which has been acquired in the circumstances permitted by the LRB Exception;
- (d) to borrow money pursuant to multiple loans (whether from the same or different lenders) for the purpose of acquiring an asset in the circumstance permitted by the LRB Exception where one or more borrowings is for the purpose of providing all or part of the deposit for the acquisition and the

- other or other borrowings is for the purpose of providing all or part of the settlement monies and acquisition costs of the acquisition;
- (e) to borrow money pursuant to a loan where no interest is payable or where interest is payable at a rate which is less than would apply to the then standard variable owner occupier housing loan;
 - (f) to acquire property under a contract the completion of which is dependent upon registration of a new certificate of title for the property and commonly referred to as an "off the plan purchase";
 - (g) to acquire property pursuant to "house and land" packages;
 - (h) to refinance in whole or in part an existing borrowing;
 - (i) to acquire a property as replacement for or in substitution for any property;
 - (j) to grant security over any asset which has been acquired in the circumstances permitted by the LRB Exception;
 - (k) to engage nominees or custodians for the purposes of holding legal title to assets acquired pursuant to arrangements which satisfies the requirements of the LRB Exception;
 - (l) to permit title to fund assets to be recorded in the name of nominees or custodians where the asset has been acquired pursuant to arrangements which satisfy the requirements of the LRB Exception;
 - (m) to grant, in relation to arrangements which satisfy the LRB Exception, guarantees to or on behalf of any person the Trustee sees fit;
 - (n) to grant, in relation to arrangements which satisfy the LRB Exception, indemnities to or on behalf of any person the Trustee sees fit;
 - (o) to draw, issue, accept, endorse or otherwise deal in any bill of exchange, promissory note or other negotiable instrument in relation to any borrowing which satisfies the LRB Exception;
 - (p) to grant such leases, tenancies or licences to use any property which is or has been acquired pursuant to arrangements which satisfy the requirements of the LRB Exception including, if permitted by law, where the term of the lease, tenancy or license exceeds the maximum period for a lease, tenancy or license specified by any law relating to trusts in the jurisdiction which is the Proper Law of the Fund or the jurisdiction of the place where the property is located;
 - (q) to authorise and permit any nominee or custodian which is holding property pursuant to an arrangement which satisfies the requirements of the LRB Exception to deal with that property by way of granting leases, licences or tenancies in respect of that property on behalf of and as agent for the Trustee;
 - (r) to insure, maintain, repair, improve and develop any property acquired (or any property replacing or substituting for any property which was originally acquired pursuant to an arrangement which satisfied the requirements of the LRB Exception);
 - (s) to draw, issue, accept, endorse or otherwise deal in any bill of exchange, promissory note or other negotiable instrument;
 - (sa) to retain the asset acquired under an arrangement which satisfied the requirements of the LRB Exception in the holding trust after the debt has been repaid for so long as the interest of the Trustee is excluded from constituting an "in house asset" or otherwise not required to acquire title to the asset;
 - (t) to do all such things as the Trustee considers convenient or reasonably incidental to arrangements which satisfy the requirements of the LRB Exception; and
 - (u) to open any account or accounts with any financial institution and to operate such account or accounts and to draw, make, accept, endorse, discount, issue, or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument.

5.4 Power to comply with the SIS Act, retain SMSF status and undertake rectification directions

Without limiting anything in Rules 5.1, 5.2 or 5.3 the Trustee may:

- (a) do anything that the Trustee considers necessary or desirable in order to comply with the SIS Act or to retain the status of a self managed superannuation fund;
- (b) refrain from actions that the Trustee might otherwise be empowered or obliged to do if the Trustee considers it necessary or desirable in order to comply with the SIS Act or to retain the status of a self managed superannuation fund;
- (c) do or refrain from doing any act in order to comply with a rectification undertaking given to the Regulator and which the Regulator has accepted under s262A of the SIS Act; and
- (d) do or refrain from doing any act in order to comply with any rectification direction which the Regulator has issued to the Trustee and with which the Trustee is required by law to comply.

5.5 Discretions

The Trustee:

- (a) has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under these Rules;
- (b) may exercise any of the Trustee's powers at any time;
- (c) may refrain from exercising any of the Trustee's powers from time to time or at all; and
- (d) may exercise a power even if the Trustee or any of the Trustee's associates have an interest that may be affected by the exercise of that power.

5.6 Proofs and evidence

The Trustee may inform itself in such ways as the Trustee considers reasonable and in forming its opinions is not bound by the law of evidence.

5.7 SIS Act statutory covenants

The Trustee must:

- (a) act honestly in all matters concerning the Superannuation Fund;
- (b) exercise, in relation to all matters affecting the Superannuation 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) perform their duties and exercise their powers in the best interests of the beneficiaries;
- (d) keep the money and other assets of the Superannuation Fund separate from any money and assets, respectively:
 - (i) that are held by them personally; or
 - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor of the Superannuation Fund;
- (e) not enter into any contract, or do anything else, that would prevent them from, or hinder them in, properly performing or exercising their functions and powers;
- (f) formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Superannuation Fund including, but not limited to, the following:
 - (i) the risk involved in making, holding and realising, and the likely return from, the Superannuation Fund's investments having regard to its objectives and its expected cash flow requirements;

- (ii) the composition of the Superannuation Fund's investments as a whole including the extent to which the investments are diverse or involve the Superannuation Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Superannuation Fund's investments having regard to its expected cash flow requirements;
 - (iv) the ability of the Superannuation Fund to discharge its existing and prospective liabilities; and
 - (v) whether they should hold a contract of insurance that provides insurance cover for one or more Members,
- and must review regularly that investment strategy;
- (g) if there are any reserves of the Superannuation Fund – to formulate and give effect to a strategy for their prudential management consistent with the Superannuation Fund's investment strategy and its capacity to discharge Liabilities (whether actual or contingent) as and when they fall due and regularly review that prudential management strategy; and
 - (h) to allow a Beneficiary of the Superannuation Fund access to information and documents which are prescribed for the purposes of s52B(2)(h) of the SIS Act.

5.8 The covenant set out in Rule 5.7(e) does not prevent the Trustee from engaging or authorising persons to do acts or things on behalf of the Trustee.

5.9 Where the Trustee consists of individuals, the covenants set out in Rule 5.7 apply to each individual Trustee.

5.10 Where the Trustee is a company, then each director of the Trustee covenants as if they were parties to the Governing Rules that they will exercise a reasonable degree of care and diligence for the purpose of ensuring that the Trustee carries out the covenants set out in Rule 5.7.

5.11 Delegation of powers

The Trustee may in writing delegate the exercise of all or any of the powers, discretions or authorities conferred on the Trustee (whether by the Rules or otherwise) and may execute any power of attorney or other instruments necessary to effectuate such purpose.

6. Trustee's rights and protections

6.1 Limitation of personal liability

Subject to Rule 6.2, the Trustee will not be personally liable for any loss or detriment incurred by any person in connection with the Superannuation Fund for whatever reason.

6.2 Exception for dishonesty, wilful or reckless neglect

Rule 6.1 does not apply to the extent that the loss or detriment is due to the Trustee's own dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee was required to exercise.

6.3 Reliance on information and opinions

The Trustee may rely on and is not liable for acting on information, opinion or advice obtained from the Regulator or from a service provider (including an auditor, accountant, barrister, solicitor, superannuation adviser or financial planner) whom the Trustee considered to be capable of properly providing such information, opinion or advice.

6.4 Reliance on directions and actions of Authorised Agent of member

The Trustee may rely on and is not liable for acting on requests, directions or instructions (collectively "instructions") including without limitation instructions relating to the payment of lump sum or pension benefits, the transfer or rollover of benefits, the variation of pension terms, the commutation of pensions and the making, variation or revocation of binding and non-binding death benefit instructions made by an Authorised Agent of a Member being instructions the Member could make in respect of their own superannuation interest in the Superannuation Fund. However, the Trustee may not rely on the instructions of an Authorised Agent of a Member if the Trustee actually knows that the appointment of the agent has ceased or is beyond the scope of the agent's authority. For the avoidance of doubt, a Member ceasing to have full mental capacity will not be treated as causing the cessation of the appointment of an Authorised Agent of the Member.

6.5 Action despite interests

The Trustee is not prevented from exercising (or participating in exercising) a power or discretion by reason that the Trustee has an interest as a Member or Beneficiary that may be affected by the exercise of that power or discretion and the Trustee may exercise that power or discretion even when the interests of the Member or Beneficiary may, in comparison to other Members or Beneficiaries, be preferred or advantaged by the exercise.

6.6 Indemnity from Trust Fund

Subject to Rule 6.7 a Trustee is entitled, to the maximum extent permitted by the SIS Act, and by law, to be indemnified from the Trust Fund against all Liabilities properly incurred by the Trustee in connection with execution, attempted execution, or non-execution of the Trustee's powers and discretions under this Deed.

6.7 Payment and reimbursement

Subject to the SIS Act, the Trustee may recover from the Trust Fund amounts necessary:

- (a) to meet the indemnity referred to in Rule 6.6; and
- (b) to meet all Liabilities in connection with the Superannuation Fund and the exercise of their powers and duties under or in connection with this Deed,

and, to the maximum extent permitted by the SIS Act, the Trustee may exercise a lien over the Trust Fund but the Trustee is not entitled to be reimbursed by or subsidised from the Trust Fund in respect of costs associated with any educational course the Trustee is required by law to undertake at the direction of the Regulator.

6.8 Application of preceding provisions to individuals acting as trustee and directors of corporate trustees

The preceding provisions of this Rule apply to individuals acting as a Trustee or as a Director of a company acting as the Trustee of the Superannuation Fund as follows:

- (a) the preceding provisions apply to each individual acting as a Trustee; and

- (b) the preceding provisions apply to each Director of a company acting as the Trustee as if a reference to “the Trustee” was a reference to “a Director of a company acting as the Trustee” or “the Director” as the context requires.

6.9 Exercise of powers despite conflicts

The Trustee may generally exercise or concur in exercising the powers and discretions contained in these Rules or otherwise conferred by law on the Trustee despite the fact that any person being a Trustee (or any person being a director or shareholder of the company which acts as Trustee or any person being a relative of a Trustee, or any person being a relative of a director or shareholder of the company which acts as trustee) has or may have a direct or personal interest whether as trustee of any other settlement or in their personal capacity or as shareholder or director of any company, or as a relative of the Trustee, or relative of a director or shareholder of the Trustee or member of or partner of any company or partnership or as Beneficiary or object of any trust or in any other capacity in the mode or in the result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of such power or discretion and despite the fact that the Trustee for the time being is the sole Trustee.

6.10 Administrative penalties – no reimbursement

An administrative penalty imposed under the SIS Act on a trustee of the Fund or director of the corporate trustee of the Fund in connection with their actions or inactions in relation to the Fund must not be paid from or reimbursed by the Trust Fund.

7. Benefit splitting on marriage breakdown

7.1 Interest subject to payment split

Where a Member’s superannuation interest in the Superannuation Fund is subject to a Payment Split, then the Trustee may:

- (a) where Superannuation Law permits, pay to the Spouse of that Member an amount equal to the transferable benefits of the Spouse in relation to that Payment Split;
- (b) transfer to another Superannuation Entity for the benefit of the Spouse of the Member an amount equal to the transferable benefits of the Spouse in relation to that Payment Split;
- (c) take such other action (including, without limitation waiving rights under a Payment Split, paying an amount to or for the non-member spouse or converting the interest arising under a Payment Split into a non-member spouse interest under either Part 7A of the SIS Regulations or under Regulation 14G of the *Family Law (Superannuation) Regulations 2001*) as the Trustee considers necessary or desirable; or
- (d) take such other action (including, without limitation waiving rights under a Payment Split, paying an amount to or for the non-member spouse or converting the interest arising under a Payment Split into a new superannuation interest) that the requirements of Division 2.2 of Part 2 of the *Family Law (Superannuation) Regulations 2001* are satisfied in respect of the Payment Split.

7.2 When Trustee required to take action

Where a Payment Split has not been satisfied within six months of the operative time of the Payment Split, then the Trustee must satisfy the Payment Split interest by transferring, for the benefit of the Spouse of the Member whose interest is subject to the Payment Split, an amount equal to the transferable benefits of the Spouse under that Payment Split to a Superannuation Entity selected by the Trustee.

8. Contributions splitting

8.1 Member may request Contributions Split

A Member may request (in such form as the Trustee approves or accepts for the purposes of this Rule) the Trustee to implement, for the benefit of a Spouse of that Member, a Contributions Split in respect of the splittable contributions of the Member.

8.2 Trustee may implement Contributions Split

The Trustee may, as and when requested by a Member, implement a Contributions Split in respect of the Member.

8.3 Trustee not to implement Contributions Split if request invalid

The Trustee must not implement a Contributions Split request by the Member if the request does not satisfy the relevant SIS requirements for valid Contributions Split applications or if the amount sought to be applied for the benefit of the Spouse of the Member exceeds the maximum splittable amount of the splittable contributions of the Member.

8.4 Payment/crediting of Contributions Splits

The Trustee may implement a Contributions Split request by:

- (a) crediting the member account of the beneficiary of the Contributions Split with the amount of the Contributions Split; or
- (b) creating a membership interest for the beneficiary of the Contributions Split and crediting the amount of the Contributions Split to that interest; or
- (c) where the beneficiary of the Contributions Splitting has satisfied an Unrestricted Release Condition – by paying the amount of the Contributions Split to the Beneficiary of the Contribution Split; or
- (d) transferring or rolling over the amount of the Contributions Split to another superannuation fund for the benefit of the beneficiary of the Contributions Split.

8.5 Trustee may implement Contributions Split to extent permitted by law

Where a Contributions Split cannot be implemented because the request specifies an amount which exceeds the maximum splittable amount of the Contributions Split then the Trustee may treat the Contributions Split as a request relating to the amount not exceeding the maximum splittable amount.

9. Records, audit and information

9.1 Record keeping and information disclosure

Each Trustee or the Trustee (as the case may be) must ensure that:

- (a) accounting records that correctly record and explain the transactions and financial position of the Fund are kept;
- (b) the accounting records of the Fund are kept in a way that enables the following to be prepared:
 - (i) a statement of financial position;
 - (ii) an operating statement;
 - (iii) such other statements (either in addition to or in substitution for the statements of financial position or operating statement) as the SIS Regulations prescribe as applying to the Fund;and

- (iv) the annual fund returns required to be provided to the Commissioner of Taxation; and
- (c) when preparing the accounts and statements required by Rule 9.1(b), an asset must be valued at its market value.

9.2 Each Trustee or the Trustee (as the case may be) must ensure that:

- (a) the records required by Rule 9.1 to be kept are retained for a period of at least 5 years after the end of the financial year to which the transactions relate;
- (b) the records are kept in Australia; and
- (c) the records are kept in writing in English or in a form in which they are readily accessible and readily convertible into writing in English.

9.3 The Trustee must, in accordance with the Superannuation Law:

- (a) keep records and accounts for the Superannuation Fund;
- (b) prepare financial and other statements and/or returns in respect of the Superannuation Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Superannuation Fund;
- (d) arrange for the retention of records and other information in respect of the Superannuation Fund; and
- (e) provide information to prospective Members, Members, Beneficiaries, the Regulator and such other persons as the Superannuation Law requires in connection with the Superannuation Fund.

10. Membership

10.1 Number of Members not to exceed statutory maximum

The number of members of the Superannuation Fund must not, at any time, exceed four, or, if a greater number is specified for the purposes of s17A(1)(a) of the SIS Act, that greater number.

The Superannuation Fund must not have, at any time, more members than the maximum number of members a superannuation fund may have and still qualify as a "self managed superannuation fund" for the purposes of the SIS Act.

A person will be a Member either by admission or by being presently entitled to receive a current pension benefit. For the avoidance of doubt, an individual will not be a Member merely by reason of receiving or having an entitlement to receive a lump sum superannuation benefit, or by being a reversionary pensioner of a currently payable pension or by being a beneficiary of a binding death benefit nomination which is not yet in force.

10.2 Who are Members?

The Members of the Superannuation Fund will consist of:

- (a) the Initial Members; and
- (b) such other persons who are admitted as Members after the establishment of the Superannuation Fund whether these persons are admitted as Members,
 - (i) by invitation of the Trustee;
 - (ii) by nomination of the Trustee;
 - (iii) by reason of receiving a pension as a reversionary beneficiary being a pension which was previously payable to a deceased Member; or

(iv) by reason of being a beneficiary of a binding death benefit nomination of a deceased Member where the binding death benefit nomination requires the benefit of the deceased Member to be paid as a pension,
and who have not ceased to be Members in accordance with Rule 10.7.

10.3 By invitation

Where an individual has been invited by the Trustee to become a Member then:

- (a) the individual must complete and submit to the Trustee an application for membership in such form as the Trustee approves or accepts; and
- (b) the individual will become a Member on the Trustee's notification to the individual that the application has been accepted by the Trustee.

10.4 By nomination

Where an individual has been nominated for membership pursuant to Rule 10.2(b)(ii), that individual will become a Member on the Trustee recording the nomination. Where an individual is a reversionary beneficiary of a reversionary pension or beneficiary of a binding death benefit nomination, then subject to Rule 10.8, the individual will become a Member on the transfer to, or the commencement of, the pension.

10.5 No invitation or nomination without providing PDS

The Trustee must not invite a person to become or nominate a person as a Member unless the Trustee has:

- (a) issued or caused to be issued to the prospective Member a product disclosure statement;
- (b) issued or caused to be issued to the prospective Member an offer document in relation to the prospective Member's superannuation interest complying with the Corporations Act requirements relating to product disclosure statements for such interests; or
- (c) formed the opinion that a product disclosure statement is not required by the Corporations Act to be issued to the prospective Member by the Trustee.

10.6 Consideration of application

Where an application for membership has been made to the Trustee, the Trustee must determine to accept or reject the application.

10.7 Termination of membership

An individual who is a Member ceases to be a Member on whichever of the following events first occurs in respect of the individual:

- (a) the individual was nominated for membership and within one month of becoming aware of their membership the individual irrevocably renounces their interest in the Superannuation Fund by a signed instrument delivered to the Trustee;
- (b) the individual dies;
- (c) the individual gives an instruction to the Trustee to transfer or rollover their entire account balance to another Superannuation Entity;
- (d) an Unrestricted Release Condition has occurred in respect of the individual and the individual has given a written instruction to the Trustee to pay the entire account balance to them;
- (e) the Member ceases to be eligible to act as a trustee of a regulated superannuation fund or their continued membership of the Member would adversely affect the status of the fund as a self managed superannuation fund;

- (f) the Member ceases to have any interest in the Fund as a result of the satisfaction of a non-member spouse's entitlement under the payment split provisions of the SIS Regulations or under the provisions of the Governing Rules; or
- (g) the Trustee resolves to terminate the membership of the individual and has duly notified the individual of the termination of membership.

10.8 Where number of Members exceeds the statutory maximum

Where:

- (a) acceptance of an application for membership or a nomination for membership would result in the number of Members exceeding the maximum permitted by Rule 10.1 then acceptance of the application and nomination will be treated as being of no effect and the relevant individual will be deemed never to have been a Member of the Superannuation Fund; and
- (b) an individual would (but for this paragraph) become a Member by reason of Rule 10.2(b)(iii) or (iv) and if as a result of that individual becoming a Member, the number of Members would exceed the maximum permitted by Rule 10.1, then notwithstanding Rule 10.2(b)(iii) or (iv), the individual will not become a Member.

10.9 Information provided by Member

An individual accepted or nominated as a Member must do such things (eg submit to a medical examination) and provide such information (eg personal health statement) as the Trustee reasonably requires for the purposes of the Superannuation Fund where such information is relevant to the Trustee obtaining risk cover in respect of the Member.

10.10 Trustee deemed to be attorney of Member

Where:

- (a) a company is the Trustee – then each Member irrevocably appoints the Trustee as the Member's attorney;
 - (b) individuals constitute the Trustee – then each Member irrevocably jointly appoints the Trustees (other than him or herself) as his or her attorney,
- to sign and complete any deeds or other documents and to do anything the attorney reasonably considers appropriate for the purposes of administering the Superannuation Fund.

10.11 Membership may be restricted to certain persons and their relatives

The Trustee may, by a written instrument, irrevocably determine that the only persons (if any) to be admitted as members of the Superannuation Fund are those relatives of the current members which are specified by name or by relationship in the written instrument.

10.12 Only individuals can be Members

For the avoidance of doubt only natural legal persons can be Members of the Superannuation Fund.

10.13 Corporations cannot be Members of the Superannuation Fund and cannot (except as provided in Rule 10.15) be Beneficiaries of the Superannuation Fund.

10.14 Corporations or individuals in representative capacities cannot be Members and cannot (except as provided in Rule 10.15) be Beneficiaries of the Superannuation Fund.

10.15 A corporation or individual may be a Beneficiary of the Superannuation Fund by reason of being the legal personal representative of the estate of a deceased Member. A corporation or individual may receive a benefit as trustee or guardian for a member or Beneficiary (for example if the Member or Beneficiary is under age or not able to give a receipt for a benefit payment).

11. Member's and Beneficiary's interests and liabilities

11.1 Beneficiaries bound by rules

Each individual who:

- (a) is a Member (whether by acceptance of an application or by nomination); or
- (b) is a Beneficiary or contingent Beneficiary of the Superannuation Fund (including an individual in the capacity of a legal personal representative),

is deemed to have been approved of and to be bound by the provisions of the Rules.

11.2 No proprietary interest in trust property

No individual who is a Member or a Beneficiary has any legal or equitable proprietary interest in any particular property or income of the Trust Fund. However, the Trustee may hold an asset exclusively to pay the benefits of a particular Member or a particular class of Members.

11.3 Trustee may resolve to hold identifiable trust property for the benefit of particular members or beneficiaries

The Trustee may determine to hold identifiable trust property or an identifiable portfolio of trust property for the benefit of a particular Member or Members or a particular Beneficiary or Beneficiaries in which case:

- (a) the Trustee will hold the identified trust property or portfolio for the particular Member or Beneficiary to the exclusion of the other Members or Beneficiaries;
- (b) the Trustee will still retain a lien over that identifiable trust property or portfolio; and
- (c) the identifiable trust property and portfolio will continue to remain a part of the Trust Fund.

11.4 Liability of a Member / Beneficiary

The liability of a Member or a Beneficiary in connection with the Superannuation Fund is limited as described below:

- (a) the Trustee's right of indemnity and the right of recourse of any creditor is limited to the Trust Fund; and
- (b) no Member or Beneficiary is liable by reason only of being a Member or Beneficiary:
 - (i) to indemnify the Trustee in respect of any deficiency in the Trust Fund; or
 - (ii) in connection with claims by any of the Trustee's creditors relating to the Superannuation Fund.

12. Fund and Member accounts

12.1 Financial accounts and records

The Trustee must in respect of each financial year, ensure that the accounts and statements required by Superannuation Law to be prepared are approved by the Trustee.

12.2 Auditing of accounts

The Trustee must ensure that:

- (a) the financial accounts and statements required by Rule 9 to be prepared in respect of each financial year are, within such period as Superannuation Law requires, audited by an Approved SMSF Auditor; and
- (b) the Auditor is provided within 14 days of receiving a written request by the Auditor with such documents as the Auditor requires being documents which are relevant to the preparation of the Auditor's report.

12.3 Audit report and certificate

The Trustee must ensure that the Auditor provides to the Trustee, within such time and in such form as Superannuation Law requires, a report in relation to the operations of the Superannuation Fund (including a statement by the auditor as to the extent of the auditor's compliance with the auditor independence requirements prescribed for the purposes of s128F(d) of the SIS Act) and an audit certificate in relation to the financial accounts and statements in the form required by Superannuation Law.

12.4 Auditor

The Trustee must ensure that in respect of each financial year an Approved SMSF Auditor has, within the period required by Superannuation Law, been appointed to audit the records and financial accounts of the Superannuation Fund and to provide reports and certificates as required by Superannuation Law.

12.5 Removal and replacement of auditor

The Auditor may be removed by the Trustee and, if so, the Trustee must appoint another Approved SMSF Auditor to act as Auditor.

12.6 Each appointment of an Auditor will be on such terms as are determined by the Trustee.

12.7 Accounts – generally

The Trustee may establish and maintain any accounts it considers necessary or desirable for the proper administration and management of the Superannuation Fund including accounts which relate generally to the Fund as well as accounts which relate to particular Members or a class of Members in order to record and calculate the benefits of the particular Member or class of Members or to permit the payment of the benefits to the particular Member or class of Members.

12.8 Crediting and debiting to accounts

The Trustee may credit and debit those accounts with any portion of any Trust Fund assets or any fund expense as the Trustee considers appropriate.

12.9 Accounts to be maintained

Without limiting Rules 12.7 and 12.8 the Trustee may establish and maintain one or more of the accounts set out below; namely:

- (a) in respect of the Superannuation Fund – the following Fund Accounts:
 - (i) a Fund Expense Account – to record any amounts set aside to pay fund expenses (including the costs of insurance cover to the extent the cover is for liquidity purposes) or taxation Liabilities and to record any insurance proceeds from insurance cover on a Member to the extent the purpose of taking out the cover was to provide for fund liquidity;

- (ii) a Contribution Reserve Account – to record any contributions received or deemed to have been received by the Trustee pending the allocation of the contribution to the appropriate Member Account of the relevant Member;
 - (iii) an Investment Reserve Account – to record any investment earnings not allocated to another Account;
 - (iv) a Forgone Benefits Account – to record any portion of a Benefit Account of a Member which has not been paid to the Member upon their ceasing to be a Member; and
 - (v) an Anti-Detriment Benefit Account – to record any amount set aside to finance (whether by direct payment from the Account or by way of purchase of risk cover) anti-detriment payments to or in respect of Members (such as payments to offset the whole or part of the reduction of a death benefit by reason of the imposition of tax on contributions);
 - (vi) an Insurance Reserve Account – to record any amounts set aside to provide directly or indirectly benefits in respect of a Member's disablement or death or impending death;
 - (vii) an Unallocated Contributions Account – to record any contributions received by the Trustee for one or more particular Members pending the allocation of the contribution to the appropriate Member Account of the relevant Member;
 - (viii) an Operational Risk Account – to record any amounts set aside to meet any liabilities arising from the operational risks of the Superannuation Fund; and
- (b) in respect of each Member the following Member Accounts:
- (i) a Member Contributions Account for each Member – to record any contributions made by a Member for their own benefit and any insurance proceeds from any insurance whether on the life of that Member or another Member to the extent that the purpose of the cover was to provide an Insured Amount for that Member;
 - (ii) a Member Transferred/Rollover Benefits Account – to record any transfers or rollovers of benefits in respect of the Member received from other Superannuation Entities and any Contributions Splitting superannuation benefits made in respect of the Member;
 - (iii) a Member Government Contribution Account – to record any Government Contributions received in respect of the Member;
 - (iv) a Member Miscellaneous Contributions Account – to record any contributions (eg spouse contributions) made for the benefit of the Member which are not recorded in any other account and any benefits allotted to the Member pursuant to a contributions split implemented pursuant to Rule 8;
 - (v) an Employer SGC/Award Contributions Account – to record any contribution made by an employer (or an associate of an employer) of the Member for the benefit of the Member to the extent that the contributions reduce the employer's SGC liability in respect of the Member;
 - (vi) an Employer Additional Contributions Account – to record any contributions made by an employer (or an associate of an employer) of the Member for the benefit of the Member which are not recorded in the Employer SGC/Award Contributions Account;
 - (vii) a UK Transferred Benefits Account – to record any payments from a UK Registered Pension Scheme in respect of the Member which qualify as recognised transfers for the purposes of s169(1)(b) of the *Finance Act 2004* (UK) (as amended);
- (c) in respect of each Retirement Pension (whether commutable or non-commutable) payable to a Member – to record the payment of that pension to the Member; and

- (d) in respect of each Beneficiary Pension (whether commutable or non-commutable) payable to a Member – to record the payment of that pension to the Member.

12.10 Where the same amount may be credited to two or more accounts

Where Rule 12.9 provides that the same amount may be credited to two or more accounts, the Trustee must determine to which account the amount is to be credited.

12.11 Debiting of fund expenses

The Trustee may where the Trustee considers it appropriate:

- (a) debit each of the accounts directly with any current or future fund expense or any portion of a fund expense;
- (b) debit each of the accounts directly with an amount on account of operational risks relating to the Superannuation Fund;
- (c) debit the investment earnings of the Trust Fund with such amount (if any) of current or future fund expenses as the Trustee determines;
- (d) debit the investment earnings of the Trust Fund with such amount (if any) on account of operational risks relating to the Superannuation Fund as the Trustee determines;
- (e) debit each or any of the Member Accounts as the Trustee considers appropriate on account of current or future fund expenses;
- (f) debit each or any of the Member Accounts as the Trustee considers appropriate on account of operational risks relating to the Superannuation Fund, and transfer the amounts so debited to the Fund Expense Account or the Operational Risk Account (as the case may be) from which the Trustee may pay the fund expense or the liability arising from an operational risk; or
- (g) debit each or any of the Member Accounts as the Trustee considers appropriate with such amounts as the Trustee considers necessary or appropriate for the purpose of establishing or augmenting any Fund Account (eg Investment Reserve Account, Insurance Reserve Account, Anti-Detriment Benefit Account, Fund Expense Account or Operational Risk Account).

12.12 Allocation of investment earnings

The Trustee may where the Trustee considers it appropriate:

- (a) credit to each of the Member Accounts such portion of the investment earnings of the Superannuation Fund as the Trustee determines;
- (b) credit to any Fund Account (other than the Contribution Reserve Account or the Unallocated Contributions Account) such portion of the investment earnings of the Superannuation Fund as the Trustee determines; and
- (c) augment the investment earnings of the Superannuation Fund with such amount from the Investment Reserve Account as the Trustee determines.

12.13 Where fund has two or more investment strategies

Where the Fund has two or more investment strategies or has one or more segregated assets, when allocating the investment earnings to the various Member Accounts, the Trustee must have regard to relevant earnings of those strategies and segregated assets and to whether members selected those investment strategies and whether those segregated assets are held in respect of particular pensions which are payable from the Superannuation Fund.

12.14 Allocation of amounts from expense account

In allocating amounts from the expense account to the Member Accounts, the Trustee may increase the amount otherwise to be credited to or in respect of any Member having regard to value of any tax attributes (such as deductions offsets, tax credits) due to the Trustee in such manner as the Trustee considers appropriate.

12.15 Trustee's discretion as to accounts to be kept

The Trustee need not keep all of the accounts listed in Rule 12.9 and may establish and maintain such other accounts either instead of or in addition to those listed in Rule 12.9, in which case the Trustee will determine the purposes for which those accounts will be used and what amounts are to be credited and debited to those accounts.

12.16 Trustee may consolidate or divide accounts

The Trustee may consolidate two or more accounts and may divide an account into two or more sub-accounts as the Trustee considers appropriate in which case the Trustee will determine what amounts are to be credited to or debited against the consolidated or divided accounts.

12.17 Adjustment of accounts

The Trustee may adjust any accounts which relate to the Superannuation Balance of a Member in order to correctly reflect:

- (a) any contributions which have not been made by or in respect of that Member;
- (b) any fund expenses which properly relate to that Member;
- (c) the satisfaction of any Payment Split interest which relates to that Member;
- (d) the effect of any Contributions Splitting superannuation benefit made in relation to the Member;
- (e) any benefit paid to or in respect of that Member including any commutation payment made in respect of a pension;
- (f) any non-payment, or reduced or deferred payment by an insurer which relates to any risk cover held by the Trustee in respect of that Member;
- (g) any correction to or additional information in respect of the Member which relates to the amount or entitlement to benefits of that Member;
- (h) any amount owing to the Trustee by a Member in their capacity as a Member;
- (i) any amount paid to a contributor as a return of a contribution;
- (j) any amount paid to the Member under a Release Authority;
- (k) any amount paid to the Australian Taxation Office under a Release Authority;
- (l) the commutation in whole or in part of a pension pursuant to a Commutation Authority;
- (m) the imposition of tax in respect of no-TFN contributions income in respect of that Member;
- (n) the benefit of any entitlement of a tax offset under Subdivision 295-J (tax offset for no-TFN contributions income – TFN quoted within 4 years); and
- (o) the imposition of any tax on non-arm's length income in respect of a particular member.

12.18 Transfers between Fund Accounts

The Trustee may make such transfers between the various Fund Accounts as the Trustee considers appropriate and in particular may transfer an amount from the:

- (a) Fund Expense Account to the Anti-Detriment Benefit Account;
- (b) Forgone Benefits Account to the Anti-Detriment Benefit Account;
- (c) Investment Reserve Account to the Anti-Detriment Benefit Account;
- (d) Anti-Detriment Benefit Account to either the Fund Expense Account or to the Investment Reserve Account;
- (e) Operational Risk Account to the Fund Expense Account or the Investment Reserve Account;
- (f) Forgone Benefits Account, Anti-Detriment Benefit Account or the Fund Expense Account to the Insurance Reserve Account; and
- (g) Insurance Reserve Account to the Investment Reserve Account or the Fund Expense Account.

12.19 Allocations to and from the unallocated contributions account

In respect of any contribution received by the Trustee, the Trustee:

- (a) may allocate all or such part of the contribution as the Trustee determines to the Unallocated Contributions Account;
- (b) may allocate all or such part of a contribution allocated to the Unallocated Contributions Account to the appropriate Member Account of the relevant Member on or before the Mandatory Allocation Date in respect of that contribution; and
- (c) such contributions will be deemed (by virtue of this provision) to have been allocated to the appropriate Member Account of the relevant Member immediately before the Mandatory Allocation Date in respect of that contribution or any contribution made in respect of that Member which has not previously been allocated to that Member.

12.20 Allocation from the Fund Accounts to Member Accounts

The Trustee may allocate from any Fund Account such amount as the Trustee considers appropriate to one or more Member Accounts of a particular Member, class of Members or to all Members.

12.21 Restrictions on debits to UK Transferred Benefits Account

In relation to the UK Transferred Benefits Account, the Trustee must not debit the account with any expense or otherwise reduce the value of the Account if the debiting or reduction would be inconsistent with the Fund's status as a qualifying recognised overseas pension scheme.

12.22 Winding up the Anti-Detriment Account

The Trustee must, as soon as practicable after 1 July 2017, wind up the Anti-Detriment Account when the Trustee considers that no part of the balance or any insurance monies payable to the account could be applied in respect of a death of a Member being a death which occurred on or before 30 June 2017 by allocating the balance of the account to either or both of the Fund Expense Account or the Investment Reserve Account in such proportion as the Trustee determines.

13. Surplus or deficiency

13.1 In respect of each accounting period of the Superannuation Fund, the Trustee must:

- (a) cause the Trust Fund (other than any risk insurance policy) to be valued; and
- (b) subject to Rules 13.2 and 13.3, determine the amount of the surplus or deficiency in the Trust Fund which, in the opinion of the Trustee, is appropriate to allocate to benefit accounts and to reserve accounts.

13.2 Apportionment and allocation of surplus or deficiency

The amount of any surplus or deficiency determined under Rule 13.1 must be apportioned between and allocated to each account in the manner and on the basis determined by the Trustee, either generally or in any particular case.

13.3 Determination of surplus or deficiency

In determining the surplus or deficiency in respect of any accounting period, the Trustee must have regard to:

- (a) the income of the Superannuation Fund;
- (b) the appreciation or depreciation in the value of the assets (including unrealised assets) of the Superannuation Fund;
- (c) the Liabilities (including unrealised liabilities) of the Superannuation Fund and the fund expenses; and
- (d) any other matters the Trustee may consider appropriate,

and subject to the Superannuation Law, the Trustee may generally adopt whatever assumptions, methodology and procedures the Trustee considers appropriate or expedient, either generally or in any particular case, including: methodology and procedures concerning the method and basis of valuing particular assets, the intervals at which valuations must be carried out and the reserving or averaging of income.

13.4 Without limiting the scope of Rule 13.3 the Trustee may determine the surplus or deficiency and to allocate the surplus or deficiency whether on a unitised basis, crediting rate basis or such other basis (or on a combination of bases) as the Trustee from time to time considers appropriate.

13.5 Allocation of benefit of any subdivision 295-J

Where the Trustee is eligible to claim a tax offset under Subdivision 295-J of the *Income Tax Assessment Act 1997* (Cth), the Trustee must allocate the economic benefit of that tax offset to the benefit account of the Member whose contributions were subject to additional contributions tax by reason of the non-quotation of the Tax File Number.

14. Contributions

14.1 Generally

The Trustee may accept as a contribution to the Trust Fund any payment (including a payment from complying Superannuation Entities by way of benefit transfers or rollovers) made to the Trustee for the purpose of providing superannuation benefits for Members and their Dependants whether those contributions are made by Members for themselves, employers of Members for their benefit or by third parties.

14.2 Specific contributions

Without limiting the generality of Rule 14.1, the Trustee may accept the following as contributions to the Trust Fund:

- (a) payments by a Member to provide superannuation benefits for themselves or their Dependants (including, for the avoidance of doubt, any concessional contributions made by the Member which are in excess of the Member's concessional contributions cap or which are in excess of the Member's unused concessional contributions cap);
- (b) payments by an employer (or an associate of an employer) of a Member to provide superannuation benefits for the Member or the Member's Dependants;
- (c) payments which qualify as spouse contributions in respect of a Member;
- (d) payments which qualify as child contributions in respect of a Member;
- (e) payments in respect of a Member where the Member is entitled to a first child tax offset under Sub-Division 61-1 of the *Tax Act 1997* and where the payment is made within 1 year of the notification to the Member of entitlement to the offset;
- (f) payments in respect of a Member which are in satisfaction of an entitlement under a Payment Split in favour of that Member;
- (g) payments in respect of a Member from the superannuation holding accounts reserve;
- (h) payments in respect of the Member which are shortfall components;
- (i) payments in respect of the Member which are made under either Part 2 or Part 2A of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth);
- (j) payments which are contribution-splitting superannuation benefits in respect of a Member;
- (k) payments in respect of a Member which are covered by s292-100 of the 1997 Act (CGT small business concession contributions) including, without limitation, payments which are or which represent look-through earn-out rights (even if those payments are made at a time when the member was not gainfully employed or was aged 75 or more);
- (l) payments in respect of a Member which are covered by s292-95 of the 1997 Act (personal injury payments under structured settlements or court orders);
- (m) payments in respect of a Member which are made from Foreign Superannuation Funds;
- (n) (This provision has been deleted);
- (o) (This provision has been deleted);
- (p) payments in respect of a Member made from an Approved Clearing House;
- (q) Downsizer contributions in respect of the Member;
- (r) voluntary superannuation contributions which qualify in whole or in part as FHSS eligible contributions in respect of the Member; and
- (s) payments which are Returned FHSS release amounts in respect of the Member.

14.3 SIS Act limitation upon acceptance of payments

Even where a payment is permitted to be accepted by the Trustee as a contribution to the Trust Fund, the Trustee must not accept the payment if the Trustee considers acceptance of the payment would be contrary to Superannuation Law.

14.4 Form of contribution

The Trustee may accept a contribution which is in the form of:

- (a) cash or the equivalent to cash (for example, by cheque or electronic funds transfer);
- (b) a transfer of property (other than cash or its equivalent); or
- (c) digital currency or national currency; or
- (d) a mixture of any of the above.

14.5 Where the Trustee accepts a transfer of property as a contribution to the Trust Fund, the Trustee will ascribe a monetary value to the property transferred having regard to matters the Trustee considers relevant including the likely sale/realisation costs of converting that asset into cash.

14.6 Invalid contributions

If the Trustee finds, after accepting a payment as a contribution, that acceptance of the contribution or a portion of a contribution was contrary to Superannuation Law or if the Regulator advises the Trustee that a particular contribution or portion of a contribution cannot be retained in the Superannuation Fund, the Trustee will, if Superannuation Law permits, repay the contribution or portion of the contribution (as the case may be) to the person making the contribution. The amount repaid must be calculated on a fair and reasonable basis but may be reduced having regard to any fee or expense (including any taxation or surcharge liability) the Trustee has or may incur by reason of initial acceptance of the contribution.

14.7 If an amount is initially recorded as having been contributed or transferred to the Superannuation Fund but that amount is not actually received (eg where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made.

14.8 Information as to contributions

The Trustee may request such information from a Member or contributor in relation to a contribution as the Trustee considers necessary or desirable for the proper administration of the Superannuation Fund and may, if the Trustee considers it appropriate, hold the contribution in suspense until the information is provided or the Trustee decides to accept the contribution.

14.9 Return of contributions made under a mistake

The Trustee may, subject to Superannuation Law, return (in whole or in part) a contribution made to the Superannuation Fund where the Trustee considers that the contribution was made under a mistake after first making from the contribution such reduction as the Trustee considers reasonable having regard to any costs or Liabilities the Trustee has or may incur by reason of either the acceptance of the contribution or by reason of the return of the contribution.

14.10 The Trustee may require as a precondition for the return of any contribution that the contributor provide such undertakings and indemnities as the Trustee considers reasonable.

14.11 Allocation of non-member specific and deemed contributions

Where a contribution is made in respect of members generally or where the Trustee is treated as having received a contribution in respect of members generally (in either case a "general contribution") then the Trustee may allocate the general contribution to or amongst the Members in such proportions as the Trustee determines and may determine the portion of the contribution which is to be treated as a concessional or as a non-concessional contribution and may determine the date on which the contribution is to be allocated.

15. Benefit entitlements generally

15.1 Entitlement to benefits

Subject to the following provisions of this Rule, the Trustee will pay to or in respect of the Member the benefits set out in Rule 16.

15.2 Proof or evidence of entitlement

The Trustee may decline to pay any benefit until the Trustee is satisfied that the benefit is properly payable and that any person claiming the benefit is properly entitled to the benefit or their share of the benefit.

15.3 Payment upon conditions or by instalments or in manner directed by recipient

The Trustee may:

- (a) impose such conditions (including signing a discharge or receipt or signing an indemnity) on the payment of the benefit as the Trustee considers reasonable;
- (b) pay a lump sum benefit or a part of lump sum benefit by instalments;
- (c) if the recipient of the benefit has requested that the benefit be applied by the Trustee in the purchase of a Superannuation Annuity (whether a deferred or an immediate annuity) apply the benefit as the payment of the purchase price of the annuity being an annuity in the name of the recipient.

15.4 Prior bankruptcy and attempted assignments

Where immediately before an entitlement to a lump sum benefit arises a putative Beneficiary of that benefit:

- (a) is an undischarged bankrupt;
- (b) (This provision has been deleted);
- (c) entered into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* (Cth) which has not been completely performed;
- (d) entered into a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth) which has not been completely performed; or
- (e) assigned or attempted to assign their interest in the Superannuation Fund,

the Trustee must only pay that portion of the lump sum benefit to the putative Beneficiary where the Trustee considers the putative Beneficiary would be able to retain for their own enjoyment and the balance of the benefit will be forfeited to the Superannuation Fund and transferred to the Forgone Benefits Account.

15.5 Manner of payment of benefits

The Trustee may pay part or all of a benefit (whether a pension or lump sum benefit) to a Beneficiary or where the benefit is payable to the Estate of a deceased Member then to the Legal Personal Representative of the Estate by way of:

- (a) cash;
- (b) electronic funds transfer;
- (c) cheque;
- (d) promissory note;
- (e) (in the case of lump sum benefits) – the transfer of trust property;
- (f) digital currency or national currency; or
- (g) in such other manner as the Trustee considers appropriate including payment or transfer at the direction of a Member.

15.5A Transfer of Primary Production Land

- (a) Where the conditions set out in paragraph (b) are satisfied, and the Member referred to in that paragraph has directed the Trustee (including a direction in the form of a binding death benefit nomination) to effect payment of the entitlement by the transfer of primary production land to the Member or a family member of the Member then the Trustee must effect the directed transfer.
- (b) The conditions referred to in paragraph (a) are that primary production land is an asset of the Trust Fund, there is an entitlement to a lump sum benefit from the Fund which is payable to or in respect of a Member and the value of that entitlement equals or exceeds the value of that primary production land.

15.6 Form of benefits

The Trustee may determine that the benefit to be paid to the Beneficiary will be paid as:

- (a) a lump sum;
- (b) as one or more separate pensions (whether of the same kind or not);
- (c) in part as a lump sum and in part as one or more separate pensions (whether of the same kind or not).

15.7 Pension terms

Where all or part of a benefit is to be paid as a pension, the terms of the pension may be set out in a pension agreement between the Trustee and the Member such that if the pension:

- (a) is an Account-Based Pension or allocated pension – the terms of the agreement must be consistent with Schedule A;
- (b) is a market-linked pension (term allocated pension) – the terms of the agreement must be consistent with Schedule B;
- (c) is a Transition to Retirement pension or a non-commutable allocated pension – the terms of the agreement must be consistent with Schedule C;
- (d) is a non-commutable market-linked pension (non-commutable term allocated pension) – the terms of the agreement must be consistent with Schedule D;
- (e) is an Annuity Pension – the terms of the agreement must be consistent with Schedule E;
- (f) if the pension is neither an Account-Based Pension, allocated pension, Transition to Retirement pension nor a market linked pension – the pension must constitute a pension for the purposes of

the SIS Act and be wholly determined by reference to policies of life assurance purchased or obtained by the Trustee solely for the purpose of providing benefits to the Beneficiary,

and the terms of the pension (other than pensions referred to in paragraphs (e) and (f)) may be amended from time to time by agreement between the Trustee and the Member (for example by making the pension reversionary, or non-reversionary or changing the identity of the reversionary Beneficiary) in any manner not inconsistent with the requirements of SIS Regulations 1.06 or 1.06A which apply to the particular type of pension.

15.7A Automatic restart of pension where pension ceases for taxation purposes due to breach of SIS pension rules

Where a pension is treated for taxation purposes as having ceased in respect of a financial year due to the failure to comply with the standards of SIS Reg 1.06 which are applicable to the pension then, unless the recipient of the pension determines otherwise, the pension shall, for taxation purposes, be taken by force of this provision to have recommenced immediately upon the start of the following financial year on the terms which applied immediately before the cessation of the pension.

15.8 New market-linked pensions not to be commenced after 19 September 2007

The Trustee may only commence a market-linked pension (including a non-commutable version of a market-linked pension) after 19 September 2007 if the purchase price of the pension consists entirely of a commutation amount which arose from the commutation of a complying pension/annuity which directly or indirectly (by one or more intermediate commutations) originally commenced before 20 September 2007 whether in the Superannuation Fund, another superannuation fund or as a complying annuity.

15.9 Restrictions on commencing new pensions or transfers of pensions on or after 1 July 2007

The Trustee must not, on or after 1 July 2007, pay a death benefit of a Member as a pension unless the Beneficiary is:

- (a) the Spouse of the Member;
- (b) an individual (other than a Child of the Member) who is a financial dependant of the Member;
- (c) an individual (other than a Child of the Member) who is in an interdependency relationship with the Member;
- (d) an individual who is a Child of the Member and who is aged less than 18 years;
- (e) an individual who is a Child of the Member who is aged 18 years or more but less than 25 years and who is a financial Dependent of the Member;
- (f) an individual who is a Child of the Member who is aged 18 years or more and has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth); or
- (g) any other individual to whom a pension can be paid without breaching the SIS Act or Regulations.

15.10 Where the pension is payable to a Beneficiary who is the Child of the Member and the pension has not previously been commuted or terminated, the Trustee must cease paying the pension on the Beneficiary attaining age 25 and must pay the pension account balance as a superannuation lump sum to the Beneficiary.

15.11 Despite Rule 15.10, if the Beneficiary is a Child of the Member and the Child, at the time the Child attains age 25, has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth), the Trustee is not required to terminate the pension.

15.12 Augmentation of benefit

The Trustee may increase the benefits payable to or in respect of any Member so long as the increased benefits will not exceed the value of the Trust Fund notionally allocated to the Member and without limiting the generality of this power the Trustee may increase the amount of any lump sum benefits otherwise payable in respect of a deceased Member to offset in whole or in part the reduction in the value of the superannuation interest of the deceased Member by reason of the imposition of Tax on contributions made by or in respect of the deceased Member.

15.13 Minimum benefit

The benefit payable to or in respect of a Member must not be less than the minimum benefit of the Member.

15.14 Adjustment of benefit where risk claim denied

Where all or part of the benefits payable to or in respect of a Member arise from the Trustee's entitlement to insurance proceeds under a risk insurance cover, where the premiums for such cover were debited against the benefit account of the Member and the insurer either does not pay the claim, pays the claim by instalments or only partially pays the claim, irrespective of the reason for the insurer's action, the Trustee may reduce the benefits otherwise payable to or in respect of the Member to reflect the non-payment, the delayed payment or the reduced payment.

15.15 Payments to parents, guardians etc.

Where a Beneficiary is under a legal disability due to age or medical condition, the Trustee may pay the benefit to the parent or guardian of the Beneficiary and such payment will constitute a good discharge to the Trustee.

15.16 The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full. The Trustee has no obligation to see how the payment is applied.

15.17 Payments to or as a trust fund

Where the Trustee considers it appropriate, the Trustee may pay all or part of a benefit otherwise payable to a Beneficiary to or as a trust fund for the benefit of the Beneficiary on such terms as the Trustee considers appropriate.

15.18 Death benefit – binding nomination

Where a Member or the Authorised Agent of the Member has provided to the Trustee a nomination in respect of one or more of the superannuation interests of the Member in the Superannuation Fund and the written nomination:

- (a) is completed (subject to Rule 15.19) to the reasonable satisfaction of the Trustee;
- (b) nominates the Member's estate or one or more of the Dependants of the Member or both the estate and one or more Dependants to receive the benefit or benefits;
- (c) (where the nomination nominates two or more recipients) – specifies (whether by percentages or dollar amounts or by some other means) the amount allocated to each recipient;
- (d) is unambiguous as to the recipients of the benefits;
- (e) is expressed to be binding;

- (f) has not been withdrawn or revoked by the Member or by the Authorised Agent or superseded by a more recent binding nomination made by the Member or the Authorised Agent;
- (g) has been signed by the Member (if made by the Member) or signed by the Authorised Agent (if made by the Authorised Agent of the Member); and
- (h) is dated,

then subject to next sub-rule, the nomination is both binding on the Trustee and non-lapsing and the Trustee must, unless the nomination has been revoked, allocate the relevant superannuation interest or interests of the Member in the manner indicated in the nomination.

For the avoidance of doubt, a nomination which satisfies the requirements for a nomination to be binding on the Trustee, which are applicable as at the date on which the nomination was made, does not cease to be binding on the Trustee merely because those requirements are subsequently changed and the nomination does not satisfy those changed requirements.

15.19 To the extent an otherwise binding nomination:

- (a) nominates a person who at the time of death of the Member:
 - (i) has predeceased the Member;
 - (ii) is an undischarged bankrupt;
 - (iii) is a person whose financial affairs are subject to a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth) which has not been completely performed;
 - (iv) (This provision has been deleted);
 - (v) is a person whose financial affairs are subject to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* (Cth) which has not been completely performed; or
 - (vi) (unless the maker of the Binding Nomination has expressly stated that the nomination is to remain valid and binding even though the Spouse and the Member have separated) has ceased (whether by court order, permanent separation or otherwise) to be the Spouse of the Member, the nomination is not binding; and
- (b) nominates the estate of the Member and that estate is an insolvent estate or is, in the opinion of the Trustee, likely to be an insolvent estate, the nomination is not binding;
- (c) identifies a particular asset (other than cash) to be allocated to a specified recipient and the asset, at the time of death of the Member, is no longer an asset of the Superannuation Fund or the asset has changed form (eg by being sold), the nomination is not binding;
- (d) only allocates a portion of the superannuation interest or interests of the Member – the nomination is not invalid merely because of the failure to allocate the entire superannuation interest or interests with the portion unallocated being subject to Rule 15.20);
- (e) nominates “My Estate” or “My Legal Personal Representative” or “My Executor” or “The Trustee of my Estate” or “The Trustee of my Deceased Estate” or similar expressions the nomination will be taken as nominating the legal personal representative of the estate of the member;
- (f) provides that the form of the benefit is “lump sum”, “pension” or “as agreed” without specifying any further conditions, terms or requirements then the nomination will be taken as permitting the

Trustee and the nominated recipient to agree to pay the benefit in such form and on such terms and conditions as the Trustee and the nominated person agree within a reasonable period after the death of the relevant member or, alternatively in such form and on such terms as the Trustee determines in the absence of an agreement within a reasonable time; and

- (g) despite paragraph (f) if the nomination (whether expressly or by clear implication) specifies that the benefits must be paid in a particular manner (for example by specifying particular terms on which a pension is to be paid to the nominated recipient or conditions upon which a lump sum is to be paid) or the nomination (whether expressly or by clear implication) is to the effect that the Trustee and the nominated recipient cannot vary the particular manner in which the benefits must be paid, then the Trustee and the nominated recipient cannot vary the particular manner in which the benefits are to be paid and the Trustee must pay those benefits in the particular manner.

15.20 Death benefits – no binding nomination

Where in respect of a Member's superannuation interest either:

- (a) no nomination in relation to the benefits payable by reason of a Member's death has been made; or
- (b) such a nomination has been made which is not expressed to be binding;
- (c) a binding nomination has been made which is not binding in relation to one or more nominees (eg by reason of nominee pre-deceasing the Member); or
- (d) a binding nomination has been made which does not apply to the entire benefits payable by reason of the death of the Member,

the Trustee will allocate the death benefit (or such part of the death benefit which is not subject to a binding nomination) to either:

- (e) the estate of the Member; or
- (f) one or more Dependants of the Member; or
- (g) to both the estate of the Member or one or more Dependants of the Member,

in such proportions as the Trustee determines and the Trustee may specify that the allocation is only to be paid on condition that:

- (h) the Dependant pays or agrees to pay a specified or determinable portion of the death benefit to one or more other Dependants of the Member; and/or
- (i) the Dependant transfers or agrees to transfer an asset or property of the Dependant to one or more other Dependants of the Member.

15.21 Death benefit – member has no dependants and no personal legal representative

Where after reasonable enquiries the Trustee has not identified in respect of a deceased Member any Dependant of a Member and has not identified any Executor or Administrator of the estate of the Member, the Trustee must pay the death benefit of the deceased Member as a single superannuation lump sum to an individual selected by the Trustee or in such other manner as the SIS Act permits.

15.22 In making an allocation under Rule 15.20, the Trustee may have regard to any expression of the Member's intentions as to the allocation of their death benefit including the Will of the Member and any death benefit nomination by the Member.

15.23 To remove doubt, in exercising any discretion they may have in relation to benefits payable on or after the death of the Member, the Trustee may have regard to any nomination which purports, but fails, to satisfy one or more of the requirements of Rule 15.18.

15.24 Death benefit nominations – further provisions

To remove doubt, a death benefit nomination (whether binding or non-binding and whether made by the Member or their Authorised Agent – in either case – “the maker of the nomination”) is revocable and may be revoked at any time before the death of the Member and

- (a) may specify the form in which a superannuation interest or a portion of a superannuation interest must be paid (eg as a lump sum or as a pension and if a pension the provisions which will apply to that pension);
- (b) may specify alternate nominations (eg to “A” and if “A” does not survive me then to “B”);
- (c) may specify that the recipient must survive the Member by a minimum period (but not exceeding 180 days);
- (d) may specify that an amount is to be paid to the Member’s estate only if the testamentary documents applying to the estate contain certain provisions specified by the maker of the nomination;
- (e) may specify that an amount is to be paid to the Member’s estate only if the amount would be allocated in a particular manner specified by the maker of the nomination;
- (f) may specify that some or all of the assets which have been identified (whether by segregation, being held in a particular investment portfolio or otherwise) as supporting the superannuation interest of the member are to be allocated to a particular recipient and paid as an in specie distribution to that recipient;
- (g) may specify that an amount is to be paid to a Dependant of the Member on condition that:
 - (i) the Dependant pays or agrees to pay a specified or determinable portion of the death benefit to one or more other Dependents of the Member; and/or
 - (ii) the Dependant transfers or agrees to transfer an asset or property of the Dependant to one or more other Dependents of the Member.

15.25 To remove doubt, a nomination (whether binding or non-binding and whether made by the Member or the Authorised Agent of the Member – in either case the “maker of the nomination”) is not invalid solely because:

- (a) the nomination has provided that the superannuation interest is to be paid as a pension and the recipient of the benefit is not permitted by Superannuation Law to receive the benefit as a pension;
- (b) the nomination is in the alternative;
- (c) the nomination is conditional upon the recipient surviving the Member for a period under 180 days;
- (d) the nomination relates to only one superannuation interest of the Member or to only a part or portion of the superannuation interest or interests of the Member;
- (e) the nomination has conditions annexed to the nomination;
- (f) an original signed nomination is not provided but a photocopy or a digital copy of an original signed nomination is provided to the Trustee;
- (g) where the nomination consists of two or more appointments and one or more (but not all) of the appointments is ineffective; or
- (h) where the nomination consists of a sequence of appointments (eg “to A but if A does not survive then to B”) and an earlier appointment in the sequence is ineffective by reason that the appointed individual is not a dependant of the Member.

15.26 Death benefit nominations – interaction with reversionary beneficiary pensions

To remove doubt:

- (a) the transfer of a pension to a reversionary Beneficiary or beneficiaries by reason of the death of the Member (to whom the pension was payable) has effect despite any inconsistent death benefit nomination (whether binding or non-binding and whether made by the Member or their Authorised Attorney);
- (b) a transfer of a pension to a reversionary Beneficiary is effective even if the nominated reversionary Beneficiary can only, by reason of Superannuation Law, receive the benefit as a lump sum (eg the nominated reversionary Beneficiary is an independent adult child); and
- (c) the transfer of a pension is effective whether or not the reversionary Beneficiary was nominated as reversionary Beneficiary at the time the pension commenced or was nominated subsequently by means of an amendment of the terms of the pension.

15.27 Unclaimed Benefits / Lost Members

To remove doubt, the Trustee is permitted to pay any unclaimed money (as that term is defined in sections 12 and 14 of the *Superannuation Industry (Unclaimed Money and Lost Members) Act 1999*) to the Commissioner of Taxation (or, if permitted by section 18 of that Act, to a State or Territory Authority) in the circumstances authorised by that Act.

15.28 Forfeiture Orders

To remove doubt, the Trustee is permitted to comply with any forfeiture order in respect of the benefits of any Member where the order is pursuant to or under any law mentioned in SIS Reg 5.08(1A).

15.29 Appointment of Trustee under Rule 4.16A

Where the Trustee has been provided with notice (whether before or after the death of the Member) that the Member has exercised the right to appoint a Trustee in the period between their death and the cashing of the death benefit payable in respect of the Member then the Trustee must not exercise any discretion as to the allocation of the death benefit or the implementation of any binding nomination in respect of the death benefit in the period:

- (a) commencing on and from the date of death of the Member; and
- (b) ending whichever is the earlier of the following:
 - (i) six months after the death of the Member;
 - (ii) at the time when the conditions set out in Rule 4.16A for the appointment of the Legal Personal Representative have been satisfied.

This sub-rule 15.29 does not apply to and does not prevent the transfer of a pension to the nominated reversionary beneficiary where the transfer occurs automatically and by reason of the terms applying to that pension.

15.30 Disclaimed benefits

Where a beneficiary has pursuant to and in accordance with Rule 16.11 disclaimed their benefit, the Trustee must treat the disclaimed benefit in accordance with Rule 15.20 as if the disclaimed benefit was a death benefit which was not subject to a binding death benefit nomination.

16. Benefits: access conditions and amounts

16.1 Benefit entitlement – retirement, age 65, death, permanent incapacity

This Rule 16 specifies when the superannuation benefits (other than the UK Transferred Benefits) of a Member can be accessed. Rule 29 specifies when the UK Transferred Benefits of a Member can be accessed.

When the first of any of the following occur in respect of a Member:

- (a) (*retirement on or after age 60*) where the Member has reached age 60 – an arrangement under which the member was gainfully employed has terminated and either:
 - (i) the Member attained age 60 on or before the termination of the gainful employment; or
 - (ii) the Trustee is reasonably satisfied that the Member intends never to again become gainfully employed, either on a full time or part time basis;
- (b) (*retirement before age 60*) where the Member who has reached their preservation age but not reached age 60 – both of the following:
 - (i) an arrangement under which the Member was gainfully employed has terminated (whether or not the termination occurred before or after preservation age); and
 - (ii) the Trustee is reasonably satisfied that the Member never intends to again become gainfully employed whether on a part time or full time basis;
- (c) (*age 65*) the attainment of age 65;
- (d) (*termination of gainful employment by permanent incapacity*) the termination of gainful employment by reason of the permanent incapacity of the Member;
- (e) (*permanent incapacity after ceasing gainful employment*) the Member previously being gainfully employed and the Member subsequently becomes permanently incapacitated;
- (f) (*death*) the death of the Member;
- (g) (*terminal medical condition*) a Terminal Medical Condition occurring in relation to the Member; or
- (h) (*preservation age*) the attainment of the Member's preservation age without being retired,

the Trustee may and must, if requested by the Member (or by an Authorised Agent of the Member) or if the reason for the payment of the benefit is the death of the Member, pay to or in respect of the Member:

- (i) the Superannuation Balance of that Member; and
- (j) if the payment is by reason of the death of the Member and the Trustee had in place risk insurance cover in respect of the Member at the time the Member died and the purpose of the cover was to provide an Insured Amount for that Member – the Insured Amount (unless that Insured Amount has already been credited to the Member Accounts of that Member); and
- (k) if the payment is by reason of the death of the Member and where and to the extent that the balance of the Anti-Detriment Benefit Account permits – that portion of the Anti-Detriment Benefit Account which the Trustee has resolved to pay in respect of the death of the Member in order to offset (to the extent permitted under Superannuation Law) the reduction in the death benefit of the Member attributable to the imposition of income tax on the taxable contributions made to or in respect of the Member; and
- (l) if the Trustee had in place disablement insurance cover for the Member at the time the Member became disabled and the purpose of that cover was to provide an Insured Amount for that Member – the Insured Amount of that Member (unless that Insured Amount has already been credited to the Member Accounts of that Member); and

- (m) if the payment is by reason of the attainment by the Member of their preservation age without being retired – the payment must be in the form of a Transition to Retirement income stream or a non-commutable market-linked pension.

16.2 Member may defer payment of benefit

Where a benefit is payable to a Member under Rule 16.1, the Member may request the Trustee to defer payment of part or all of the benefit, in which case:

- (a) the Trustee may accede to the request and defer payment of part or all of the benefit;
- (b) if part or all of the benefit is to be deferred, the benefit will continue to accrue earnings and bear fund expenses for the period of the deferral; and
- (c) the Member may at any subsequent time request the Trustee to pay all or a portion of the deferred benefit to the Member.

16.3 When deferred benefit must be paid

Where:

- (a) the Member has died before the deferred benefit has been paid, or
 - (b) Superannuation Law requires that the deferred portion of the benefit be paid,
- the Trustee must pay the amount of the remaining deferred benefit to or in respect of the Member.

16.4 Temporary Incapacity

Where the Member suffers from Temporary Incapacity, then the Trustee may pay to the Member a benefit in the form of a Temporary Incapacity Pension until the first of the following occurs:

- (a) the Member is able to fully engage in gainful employment of the kind engaged in immediately before the incapacity; or
- (b) the Member becomes entitled to a benefit by reason of Rule 16.1 and the Member applies for payment of the benefit.

16.5 Restrictions which apply to the temporary disablement benefit

The following restrictions apply to the payment of a Temporary Incapacity Pension:

- (a) pension payments can only be sourced from amounts which are either non-mandated employer financed benefits or which are payments under a risk insurance policy in respect of the Member; and
- (b) the amount of a pension payment for a particular period must be such that the pension payment for the period, when added to other payments the Member has or is entitled to receive for that period (being payments which are earned from the Member's gainful employment or which are substitutes for such payments (eg sick leave payments)), does not exceed the payments the Member would have earned in respect of the period from the Member's pre-incapacity gainful employment.

16.6 Payment under release authorities

Where a Release Authority has been provided to the Trustee then the Trustee shall pay the amount specified in the Authority according to the terms of the Authority.

16.7 Payment of all or part of a benefit in other circumstances

Where Superannuation Law allows a Member to access all or part of their Superannuation Balance in circumstances other than those described in the preceding sub-rules (eg severe financial hardship, on compassionate grounds, or former temporary resident making a request under SIS Reg 6.20A), then the

Trustee must, to the extent permitted by Superannuation Law, pay the Member the amount or portion which the Member has requested to be paid in the manner permitted by Superannuation Law.

16.8 Payment of benefit in other circumstances permitted or required by Superannuation Law

Where Superannuation Law either:

- (a) permits the payment of a benefit to or in respect of a Member and the Member (or by an Authorised Agent of the Member) has requested the Trustee to pay the benefit; or
- (b) requires the Trustee pay a benefit to the Member (eg a request by the *Commissioner of Taxation under the Superannuation (Unclaimed Money and Lost Members) Act 1999* pursuant to SIS Reg 6.20C),

then the Trustee must pay the benefit in such manner and form as Superannuation Law requires or allows.

16.9 Manner of payment of benefits – generally

Subject to Rule 16.10, the benefit payable to or in respect of a Member may be paid as a lump sum or as an income stream as agreed between the Trustee and the Beneficiary so long as:

- (a) where the entitlement arises by reason of paragraphs 16.1(a), (b), (c), (d), (e) or (g) – the benefit may be paid either as a lump sum, an Account-Based Pension or an Annuity Pension or as a combination of either as Trustee and the Beneficiary agree;
- (b) where the entitlement arises by reason of paragraph 16.1(f) and the benefit is to be paid to the estate of the Member – the benefit must be paid as a lump sum;
- (c) where the entitlement arises by reason of paragraph 16.1(f) and the benefit is to be paid to a dependant of the Member (other than a Child of the Member) – the benefit can be paid either as a lump sum or as an Account-Based Pension or both;
- (d) where the entitlement arises by reason of paragraph 16.1(f) and the benefit is to be paid to a Child of the Member:
 - (i) if, at the time of death of the Member, the Child is under age 18 – then the benefit may, as the Trustee determines, be paid either as a lump sum or as an Account-Based Pension or a combination of both;
 - (ii) if, at the time of death of death of the Member, the Child is aged 18 or more but less than age 25 and is financially dependent on the Member – then the benefit may, as the Trustee and the beneficiary agree, be paid either as a lump sum or as an Account-Based Pension or a combination of both;
 - (iii) if, at the time of death of the Member, the Child is aged 18 or more and has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth) then the benefit may, as the Trustee determines, be paid either as a lump sum or as an Account-Based Pension or a combination of both; and
 - (iv) if, at the time of death of the Member, neither sub-paragraphs (i), (ii) or (iii) of this paragraph 16.9(d) applies to the Child – then the benefit must be paid as a lump sum,
- (e) where the entitlement arises by reason of paragraph 16.1(h) – the benefit must be paid either as a Transition to Retirement pension or as a Deferred Annuity Pension;
- (f) where the entitlement arises by reason of Rule 16.4 – the benefit must be paid as a Temporary Incapacity Pension; and
- (g) where the entitlement arises by reason of Rules 16.7 or 16.8 – the benefit must be paid in such form (if any) as specified in the SIS Regulations and if no form is specified – then the benefit will be

paid as either an Account-Based Pension, an Annuity Pension or as a lump sum as the Trustee determines.

16.10 Manner of payment of benefits – grandfathered pensions

Where a benefit or a portion of a benefit has arisen from the commutation of a complying pension payable from the Superannuation Fund or has been rolled over or transferred from a Complying Superannuation Entity as a commutation amount arising from a complying pension the Trustee must pay that benefit as a market linked pension (or as a non-commutable market linked pension if the original pension was a non-commutable market linked pension).

16.11 Disclaimer of benefits

A beneficiary may by an instrument in writing disclaim all and any entitlement to or interest in a benefit (for example the benefit arising pursuant to a reversionary pension, binding death benefit nomination or the exercise of an allocation discretion in relation to a death benefit) arising on the death of a Member where:

- (a) the disclaimer is made as soon as reasonably possible after the beneficiary becomes aware of their entitlement;
- (b) the beneficiary has repaid any payment received by the beneficiary in relation to the benefit before the beneficiary became aware of their entitlement to the benefit; and
- (c) the disclaimer relates to the entirety of their entitlement to the benefit.

17. Transfers/rollovers

17.1 Transfers/rollovers to the Superannuation Fund

Subject to Superannuation Law, the Trustee may accept as a contribution to the Trust Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Complying Superannuation Entity or from a Foreign Superannuation Fund.

17.2 Transfers/rollovers from the Superannuation Fund

The Trustee may, subject to Superannuation Law, transfer the whole or part of any entitlement that a Member has in the Fund to another Complying Superannuation Entity or to a Foreign Superannuation Fund and such entitlement may be transferred in any manner permitted by Rule 15.5.

17.3 Information standards – benefit transfers/rollovers

The Trustee may request from a Member or prospective Member any information which is relevant to a transfer or rollover or proposed transfer or rollover of benefits to the Superannuation Fund being benefits for or in respect of the Member or prospective member.

17.4 The Trustee may request from a Member any information which is relevant to the transfer or rollover of the benefits of the Member to another superannuation entity.

17.5 The Trustee may use any electronic service provided by the Australian Taxation Office to verify the ABN and name of any superannuation entity from which or to which benefits are being transferred or rolled over in respect of a Member or prospective member of the Superannuation Fund and may use that service to validate whether the member requesting the transfer or rollover is a member of the superannuation entity which is to receive the transfer or rollover.

18. Confidentiality

18.1 Non-disclosure

The Trustee must not disclose any confidential or personal information about any Beneficiary, acquired in the course of acting as Trustee, to other parties unless such disclosure is required for the proper administration of the Superannuation Fund.

18.2 Exceptions

This Rule does not apply:

- (a) where the Trustee may be legally compelled to, or penalised for failure to, disclose such information; or
- (b) to disclosures made to agents, advisers or delegates of the Trustee in connection with the operation of the Superannuation Fund;
- (c) where non-disclosure of the material may cause adverse tax consequences to the Superannuation Fund; or
- (d) to disclosures which are required to or reasonably necessary to effect benefit transfers and rollovers to and from the Superannuation Fund.

19. Termination of the fund

19.1 General

The Superannuation Fund will be terminated when the first of the following occurs:

- (a) if the Trustee resolves to terminate the Superannuation Fund in accordance with Rule 19.2; or
- (b) if the rules against perpetuities apply to the Superannuation Fund, on expiry of the maximum period allowed under that rule for the duration of the trusts and powers established under this Deed.

19.2 Termination by Trustee

The Trustee may, at any time, resolve to terminate the Superannuation Fund. Where the Trustee has resolved to terminate the Superannuation Fund, the following apply:

- (a) the Members must be notified in accordance with the Superannuation Law; and
- (b) the Trustee must determine a closure date ("Closure Date").

19.3 Application of Trust Fund

The Trust Fund will be applied in the following order on termination:

- (a) in payment of Liabilities relating to the Superannuation Fund, except for those relating to benefits;
- (b) in the establishment of a reserve of such amount as the Trustee considers prudent, from which to pay contingent or future Liabilities of the Superannuation Fund (other than benefit Liabilities); and
- (c) the balance of the Trust Fund shall be divided among the Members in proportion to their Superannuation Balances including, to remove doubt, those Members who are being paid a pension.

19.4 Consequential matters

Where the purpose for which the reserve established pursuant to Rule 19.3(b) has been achieved and a balance remains, the Trustee will apply that balance in the manner required by Rule 19.3(c).

19.5 Beneficiaries to stand in place of deceased Member

Where one or more Beneficiaries are receiving or are entitled to receive a payment or pension from the Superannuation Fund in respect of a deceased Member who died before the Closure Date then the amount which would have been paid to the Member (had the Member survived) under Rule 19.3(c) or Rule 19.4 shall be paid among those Beneficiaries in accordance with Rule 15.

19.6 Where a Member dies on or after the Closure Date but before an amount has been allocated under either Rule 19.3(c) or Rule 19.4, then the amount which would have been allocated to the deceased Member (if the Member had survived) under those provisions will be allocated amongst the Beneficiaries of the deceased Member in accordance with Rule 15.

20. Notices

20.1 Form

Any notice given under the Deed must be in writing.

20.2 Receipt

Notices will be deemed to have been given to the recipient if:

- (a) they are handed to them personally; or
- (b) they are sent by pre-paid post addressed to:
 - (i) in the case of Beneficiary, the person's last known address or place of employment; or
 - (ii) in the case of a Trustee or an employer which is a corporation, its registered office or place of business; or
 - (iii) in the case of a Trustee or an employer which is not a corporation, its place of business or other last known address.

21. Proper law

21.1 Proper law

Unless and until the Trustee determines otherwise, the law applicable to the Superannuation Fund is the law of the State or Territory of the Commonwealth of Australia in which the Trustee resides at the execution of the Deed.

21.2 Where South Australia is the proper law of the superannuation fund

Where the law of South Australia is the proper law of the Superannuation Fund, then it is expressly declared that s35B of the *Trustee Act 1936*, of South Australia does not apply to the Superannuation Fund.

22. SIS compliance rule

22.1 Incorporation of new SIS Act requirements

Where:

- (a) compliance with a SIS Act requirement is a pre-requisite for the Superannuation Fund as a self managed superannuation fund to qualify as a complying Superannuation Fund; and
- (b) that SIS Act requirement has either not been set out or has not been fully set out in the Deed, then subject to Rules 22.3 and 22.4;

- (c) that SIS Act requirement will be deemed to have been included in the Deed;
- (d) the Trustee is expressly empowered to comply with that SIS Act requirement; and
- (e) the SIS Act requirement will take precedence over any other provision of the Deed to the extent the other provision is inconsistent with that SIS Act requirement,

for so long as that SIS Act requirement is a pre-requisite for the Superannuation Fund as a self managed superannuation fund to qualify as a complying Superannuation Fund.

22.2 Amendment of existing SIS Act requirements

Where:

- (a) the Trust Deed sets out a particular SIS Act requirement which, at the time of establishment of the Superannuation Fund, was a pre-requisite for the Superannuation Fund as a self managed Superannuation Fund to qualify as a complying Superannuation Fund; and
- (b) that SIS Act requirement is subsequently either amended, ceases to apply to self managed superannuation funds, ceases to be a pre-requisite for complying fund status or is deleted, then,
 - (c) if the SIS Act requirement is amended and remains a pre-requisite, then the SIS Act requirement in its amended form will be deemed to be expressly included in the Deed, the Trustee is expressly empowered to comply with the amended SIS Act requirement in its amended form and the SIS Act requirement will, in its amended form, take precedence over any other provisions of the Deed to the extent that those other provisions are inconsistent with the SIS Act requirement in its amended form;
 - (d) if the SIS Act requirement ceases to be a pre-requisite for the Superannuation Fund to qualify as a complying Superannuation Fund, then the Trustee may determine that it is no longer bound by the SIS Act requirement; and
 - (e) if the SIS Act requirement is deleted from the SIS Act, then the Trustee may determine that it is no longer bound by the SIS Act requirement.

22.3 Where a Grandfathered SIS provision applies to the Fund, then Rules 22.1 and 22.2 will not apply so as to override the Grandfathered SIS provision referred to in Rule 23 unless an amendment to the SIS Act expressly removes or modifies the Grandfathered SIS Provision.

22.4 For the avoidance of doubt this Rule does not incorporate the requirements of SIS Regulation 6.17A.

23. Grandfathered SIS provisions

23.1 Purpose of rule

As various transitional arrangements apply to certain SIS Act requirements by which funds established before the introduction of a particular SIS Act requirement were allowed exceptions to the application of that particular SIS Act requirement, it is the purpose of this Rule to ensure that such exceptions continue to apply to the Superannuation Fund and do not cease to apply merely because the governing rules of the Superannuation Fund have been amended.

23.2 Approved ancillary purposes

Where the Regulator has approved, pursuant to section 62(1)(b)(v) of the SIS Act, that the Fund may provide one or more benefits then the Superannuation Fund may continue to provide those benefits in accordance with the terms (if any) which apply to the Regulator's approval.

23.3 Lending to Members/relatives of Members

Where the Superannuation Fund was established before 16 December 1985 and either:

- (a) the governing rules of the Superannuation Fund expressly permitted the Trustee to lend money to Members; or
- (b) the governing rules of the Superannuation Fund did not expressly prohibit the lending of money to Members and the Trustee did lend money to Members,

and, in either case, those governing rules of the Superannuation Fund have not been subsequently amended to remove that power or to impose the SIS Act requirement not to lend money to members, the Trustee may lend money to Members (despite the SIS Act requirement against lending money to Members) to the extent that the Trustee could have lent monies to members immediately before 16 December 1985.

23.4 In house assets – transitional provisions

Where the Superannuation Fund was established before 11 August 1999 and the Superannuation Fund is entitled to the benefit of one or more of the transitional provisions in relation to in house assets as set out in Subdivision D of Division 1 of Part 8 of the SIS Act, then despite the application of these Rules to the Superannuation Fund, those transitional provisions will continue to apply to the Superannuation Fund in accordance with their respective terms.

24. Grandfathered pension terms

24.1 Purpose of rule

The purpose of this Rule is to provide for continuation of the terms which applied to pensions which commenced before the Application Date or which were complying pensions which commenced before 20 September 2007.

24.2 Continuation of pension terms

The terms which apply to a pension to which this Rule applies continue to apply despite the application of the Governing Rules to the Superannuation Fund or any subsequent amendment of the Governing Rules, unless either:

- (a) a request has been received by the Trustee for the commutation of the pension to give effect to a Commutation Authority or a Release Authority in which case the Trustee is permitted to commute the pension (but not to a greater extent than that permitted by the Release Authority) and deal with the superannuation lump sum arising from the commutation in a manner consistent with the terms of the Release Authority;
- (b) an amendment to either the SIS Act or the Tax Act has been made which modifies a term of the pension – in which case the relevant term of the pension is accordingly modified;
- (c) the Member who is the pensioner or the Member's Authorised Agent expressly requests the Trustee to rollover the pension into a new pension; or

- (d) the Member who is the pensioner or the Member's Authorised Agent expressly requests the Trustee to restructure the pension by commuting the pension and applying the commutation value to the issue of a market linked pension for the Member.

25. Grandfathered death benefit nominations

25.1 Purpose of rule

The purpose of this rule is to continue the validity of any death benefit nominations made by Members before the Application Date so that they will continue to be valid after the Application Date and effective according to the tenor of the nomination.

25.2 Continued validity of pre Application Date nominations

A death benefit nomination (whether binding, non-lapsing or non-binding) which was made before the Application Date continues to be valid after the Application Date as a binding, non-lapsing or non-binding nomination (as the case may be) and, where the nomination was either binding or non-lapsing, the nomination will on and after the Application Date continue to be subject to such conditions (eg any time limitation, manner of execution) which applied to the nomination immediately before the Application Date.

25.3 Member not precluded from making new post Application Date nominations

A Member who gave a death benefit nomination before the Application Date is not precluded from revoking that nomination and making a new nomination which has effect under the terms of the Governing Rules as they apply on and after the Application Date.

26. Fair and sustainable superannuation – implementation provisions

26.1 Purpose of rule

The purpose of this Rule is to confer various powers on the Trustee in order for the Trustee to deal with various legislative changes which arise from the implementation of the "Fair and Sustainable Superannuation" reforms enacted by the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* (and cognate other legislative measures).

26.2 Commutation of pensions – at Member's request

The Trustee, if requested by the Member (or their Authorised Agent), may commute (whether in part or in whole) any account-based pension or allocated pension payable to the Member and will (unless the Member or Authorised Agent has advised otherwise) apply the commutation lump sum to create a new accumulation interest for the member or to augment an existing accumulation interest of the Member in the Superannuation Fund.

26.3 Commutation of pensions – pursuant to a commutation authority

The Trustee must, to the extent necessary and within the required time period, commute any pension payable from the Fund (other than a non-commutable pension) if the Trustee has been served with a Commutation Authority in respect of that pension and will (unless the Member or Authorised Agent has advised otherwise) apply the lump sum to create a new accumulation interest for the member or to augment an existing accumulation interest of the Member in the Superannuation Fund.

26.4 Superannuation member benefits and former section 307-5(3)

For the avoidance of doubt if a Beneficiary Pension payable from the Superannuation Fund or another complying superannuation fund has been commuted in circumstances where the lump sum arising from the commutation qualifies as a member superannuation benefit then any pension which is attributable to that lump sum will be treated as a Retirement Pension.

26.5 Anti-detriment payments

The Trustee must not make any anti-detriment payment in respect of a death of a member which occurs on or after 1 July 2017 and must not make any anti-detriment payment on or after 1 July 2019 in respect of a death of a member who died before 1 July 2017.

26.6 Commutation of legacy pensions

The Trustee, if requested by the Member (or their Authorised Agent), may commute (whether in part or in whole) any legacy pension payable to the Member to the extent permitted by the SIS Regulations) and will (unless the Member or Authorised Agent has advised otherwise) apply the commutation lump sum to create a new accumulation interest for the member or to augment an existing accumulation interest of the Member in the Superannuation Fund.

27. Membership restriction/property held for specified Members continue despite amendments

27.1 Purpose of rule

The purpose of this Rule is to continue the effect of any determinations made by the Trustee under Rule 3.17 and Rule 10.11 are preserved and continue to apply despite any subsequent amendments made to the Governing Rules.

27.2 Continued effect of determinations

Any determination made by the Trustee pursuant to Rule 3.17 or Rule 10.11 continues to apply to the Superannuation Fund despite any subsequent amendment of the Governing Rules.

28. Minimum pension limit relief

This Rule has been deleted.

29. UK pension transfers

29.1 Purpose of rule

The purpose of this Rule is to permit, if the Trustee so determines, the Fund to apply for qualification as a qualifying recognised overseas pension scheme for the purposes of s169(2) of the *Finance Act 2004 as amended* ('the UK Act') in order to accept UK Transferred Benefits and for such benefits to be treated for the purposes of the UK Act as "recognised transfers" under s169(1) of the UK Act.

29.2 Power to apply as Qualifying Recognised Overseas Pension Scheme

The Trustee is expressly authorised to apply for qualification from HRM&C as a qualifying recognised overseas pension scheme for the purposes of s169 of the UK Act and is authorised to give such information, to enter into such agreements and to give such undertakings to HRM&C as the Trustee considers necessary or convenient for the purposes of the Fund receiving recognised transfers from UK pension schemes registered under the UK Act including any information required to be provided under the QROPS Information Regulations made for the purposes of the UK Act or any subsequent amendment.

29.2A No UK Transferred Benefits to be accepted before age 55

The Trustee may only accept UK Transferred Benefits in respect of a Member if that Member has attained age 55.

29.3 Dealing with UK Transferred Benefits

The Trustee must allocate any UK Transferred Benefits of a Member to the UK Transferred Benefits Account of that Member (refer Rule 12.9(b)(vii)) and retain the transferred benefits in that account without debiting or otherwise reducing the value of the account in a manner inconsistent with the status of the Fund as a qualifying overseas recognised pension scheme (refer Rule 12.21) until a permitted access condition (refer Rule 29.4) occurs in respect of the Member in which case all or part of the balance of the UK Transferred Benefits Account may be paid to or applied for or on behalf of the Member in one or more mandatory payment methods (refer Rule 29.5) or, in the absence of any mandatory payment methods, as agreed between the Trustee and the Member and otherwise permitted by these Rules.

29.4 Permitted Access Condition

- (a) The Permitted Access Condition will be taken to occur in respect of the Member where the Member satisfies both Condition A and Condition B.
- (b) Condition A will be satisfied in respect of the Member if any of the following is satisfied:
 - (i) the death of the Member;
 - (ii) the Member being both permanently incapacitated and also satisfying the “ill-health condition” as defined in paragraph 1 of Schedule 28 of the UK Act; namely that the Trustee has received evidence from a legally qualified medical practitioner that the Member is (and will continue to be) incapable of carrying on the member’s occupation because of physical or mental impairment and that the Member has in fact ceased to carry on the Member’s occupation; and
 - (iii) such other (if any) access conditions specified for the purposes of the UK Statutory Instrument – *The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations* being Statutory Instrument No 206 of 2006 (as amended), and
- (c) Condition B will be satisfied in respect of the Member if the Member satisfies either an Unrestricted Release Condition or a Restricted Release Condition.

29.5 Mandatory Payment Methods

The mandatory payment methods are:

- (a) where the payment occurs within 5 years of the transfer of the UK Transfer Benefits or the payment occurs within 10 years (or 5 years if the transfer occurred before 6 April 2017) of the Member last being a UK resident - as a flexi-access drawdown fund (as defined for the purposes of the UK Act) or any other method which would trigger a liability to an unauthorised payments charge under the UK Act; and
- (b) where paragraph (a) does not apply – as a pension or as a lump sum (or both) as agreed between the Member and the Trustee.

29.6 Recognised transfers – information and reporting requirements

Where the Trustee has determined that the Fund is to apply for qualification as a qualifying recognised overseas pension scheme, then in respect of any Member in relation to whom a recognised transfer under s169 of the UK Act has been or will be made from a pension scheme (which is a registered pension scheme

for the purposes of the UK Act), the Trustee is empowered to provide such information and to enter into such agreements and to give such undertakings to HRMC as the Trustee considers necessary or convenient for the purposes of the Fund receiving recognised transfers from UK pension schemes registered under the UK Act including any information required to be provided under the QROPS /RNUKS Regulations made for the purposes of the UK Act or any subsequent amendment.

29.7 For the purposes of this Rule 29 the QROPS / RNUKS Regulations means the following UK Statutory Instruments: SI 2006 No 206, SI 2006 No 207; SI 2006 No 208, SI 2006 No 570 as subsequently amended and such other UK Statutory Instruments which apply to qualifying recognised overseas pension schemes and relevant non-UK pensions schemes (“RNUKS”).

29.8 Fund to be regulated fund and SMSF

For the avoidance of doubt, nothing in this Rule is intended to authorise or to require:

- (a) the Trustee to take any action which would be contrary to the provisions of the *Superannuation Industry (Supervision) Act 1993* (Cth) or Regulations made under that Act; or
- (b) the Superannuation Fund to cease to be a regulated superannuation fund under the SIS Act or cease to qualify as a self managed superannuation fund for the purposes of that Act.

30. Fund mergers

30.1 The Trustee may on such terms as the Trustee considers appropriate merge the Superannuation Fund with one or more regulated superannuation funds by entering into an agreement (“the merger agreement”) with the trustees of the other superannuation funds relating to the transfer of assets, admission of members and the benefits to be conferred on the transferring members and the indemnities to be provided in respect of the transferring members.

30.2 For the avoidance of doubt a superannuation fund merger may occur:

- (a) by the Trustee accepting members of another regulated superannuation fund as Members and receiving assets transferred from that other regulated superannuation fund as transfers to the Superannuation Fund;
- (b) by the Trustee transferring fund Members and fund assets to other regulated superannuation funds;
- (c) by the Trustee entering into a merger agreement with a trustee of another superannuation fund to transfer members and assets of each fund to a third regulated superannuation fund; or
- (d) by transferring only some but not all of the Members and Fund Assets to another superannuation fund.

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Schedule A: Account-based / allocated pension rules

Rules applicable to the payment of an account-based / allocated pension

1. Payment frequency of pension

- 1.1 Subject to Rule 1.3, the Trustee must pay the pension by annual instalments or more frequently as the Trustee and the recipient of the pension agree from time to time.
- 1.2 Each instalment of the pension will be paid in arrears unless the Trustee and the recipient of the pension otherwise agree.
- 1.3 Where the pension commences on or after 1 June in any financial year, no pension payment is required in respect of the period from the date of commencement to the next 30 June, unless the recipient otherwise requires.

2. Annual amount of the pension

- 2.1 Subject to Rules 2.2, 2.3 and 2.6 the amount of the pension in respect of any financial year will be the amount specified in the pension agreement but in any event must not be:
 - (a) less than the minimum pension limit for that financial year; nor
 - (b) greater than the maximum pension limit (if applicable) for that financial year.

For the purposes of this Rule, commutation payments are not counted when determining whether the pension limits for a financial year have been met but payments made under a payment split are counted.

The minimum pension limit and maximum pension limit (if applicable) for a financial year shall be determined in accordance with:

- (c) if the pension commenced on or before 31 December 2005 - Schedule 1A of the SIS Regulations;
 - (d) if the pension commenced on or after 1 January 2006 and before 1 July 2007 – Schedule 1AAB of the SIS Regulations in respect of payments made on or after 1 July 2006 and in respect of payments made during the period 1 January 2006 to 30 June 2006 – either Schedule 1A or Schedule 1AAB as the Trustee selects; and
 - (e) if the pension commenced on or after 1 July 2007 – the minimum pension limit will be determined in accordance with Schedule 7 of the SIS Regulations.
- 2.2 Where the pension commences on or after 1 June in a financial year, there is no minimum pension limit for that financial year.
 - 2.3 In respect of the financial year in which the pension ceases by reason of exhaustion of the account balance, there are no minimum or maximum pension limits in respect of that financial year.
 - 2.4 The amount of the annual instalment of the pension can only be altered in the following circumstances:

- (a) where the pension has been commuted;
- (b) where the pension has been subject to a Payment Split; or
- (c) such other circumstances as the Regulator or Superannuation Law permits or requires.

2.5 The Trustee may adjust the annual amount of the pension to take into account any of the following commutations of the pension:

- (a) commutations in order to pay a superannuation contributions surcharge;
- (b) commutations to allow an amount to be paid under a Payment Split and any reasonable fees charged by the Trustee in respect of that payment split.

2.6 Where there has been a shortfall in the pension payments of a financial year so that the minimum pension limit for that year has not been satisfied, the Trustee may pay the shortfall as an additional pension amount in a subsequent financial year even though the payment of the shortfall may cause the pension payments for that subsequent year to exceed the maximum pension limit for that year.

3. Commutation

3.1 The pension may be commuted (in whole or in part) in such circumstances (if any) as are specified in the Pension Agreement and in the absence of any relevant term in the Pension Agreement at any time by the recipient of the pension.

3.2 Where the pension is payable by reason of the death of a Member to a Child of that Member and the pension has not previously ceased by commutation or the exhaustion of the account balance, then:

- (a) if that Child has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth) on the day that Child attains age 25 the pension may continue to be paid; and
- (b) if paragraph (a) does not apply the pension must be commuted and the amount arising from the commutation must be paid as a superannuation lump sum to that Child.

3.3 Except in the following circumstances:

- (a) where the commutation results from the death of the pensioner or reversionary pensioner: or
- (b) where the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge;
 - (ii) to give effect to an entitlement of a non-member spouse under a Payment Split; or
 - (iii) to give effect to the right of the pensioner to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001* (Cth),
- (c) where the commutation is a partial commutation and the amount arising from the partial commutation counts towards satisfying the minimum pension amount requirement;
- (d) where the commutation is a commutation (not within (a) or (b)) and the account balance of the pension, immediately after the partial commutation, would be equal to or would exceed the minimum pension amount, as reduced by the amount of income payments already made in the financial year in which the partial commutation occurs,

a commutation is not permitted unless the minimum pension amount in respect of the pension has been paid or will be paid on or by the date of the commutation.

3.4 The minimum pension amount is determined by the formula:

$$\text{Min Pension Amount} = \text{APA} \times \frac{\text{Payment Days}}{\text{Financial Year Days}}$$

“APA” is the annual amount of the pension in relation to the financial year in which the commutation occurs;

“Payment Days” is the number of days in the financial year in which the commutation occurs from the start of the financial year (or the commencement date of the pension if the pension commenced in the financial year) to the date of the commutation; and

“Financial Year Days” is the number of days in the financial year in which the commutation occurs.

4. Death of pensioner and transfer of pension

4.1 Subject to Rule 4.2, on the death of the pensioner the pension account balance (if any):

- (a) if the pension agreement contains terms dealing with the application of the pension account balance in the event of the death of the pensioner (eg containing a reversionary beneficiary term) - will be applied by the Trustee in accordance with those terms of the pension agreement; and
- (b) where Rule 4.1(a) does not apply – will be applied by the Trustee in accordance with any Binding Death Benefit Nomination made by the pensioner and if there is no such nomination, then the pension account balance will be applied by the Trustee as if it were a death benefit of the pensioner.

4.2 Where on or after 1 July 2007 a pension reverts by reason of the death of the pensioner, the Trustee must only pay a pension to a reversionary Beneficiary if, at the time the pension reverts, the nominated reversionary Beneficiary is either:

- (a) the Spouse of the pensioner;
- (b) an individual (other than a Child of the pensioner) who is a financial Dependant of the pensioner;
- (c) an individual (other than a Child of the pensioner) who is in an interdependency relationship with the pensioner;
- (d) an individual who is a Child of the pensioner and who is aged less than 18 years;
- (e) an individual who is a Child of the pensioner who is aged 18 years or more but less than 25 years and who is a financial Dependent of the pensioner;
- (f) an individual who is a Child of the pensioner who is aged 18 years or more and has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth); or
- (g) any other individual to whom the pension can be transferred without breaching the SIS Act or Regulations.

4.3 Where the pension is payable to a reversionary Beneficiary who is the Child of the pensioner and the pension has not previously been commuted or terminated, the Trustee must cease paying the pension on the reversionary Beneficiary attaining age 25 and must pay the pension account balance as a superannuation lump sum to that reversionary Beneficiary.

4.4 Despite Rule 4.3, if the reversionary Beneficiary is a Child of the pensioner and the Child, at the time the Child attains age 25, has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth), the Trustee is not required to terminate the pension.

4.5 Where the pension reverts to the estate of a reversionary Beneficiary or cannot be paid to a reversionary Beneficiary as a pension by reason of Rule 4.2, the Trustee must pay the value of the pension as a lump sum to the estate or reversionary Beneficiary.

5. Use of pension rights

5.1 The rights of the recipient of the pension to periodic pension payments and the right to commute the pension cannot be used as a security for a borrowing.

6. No augmentation of pension account once pension commenced

6.1 The pension account supporting the pension must not be increased by way of contribution or rollover once the pension has commenced.

7. Actions by duly authorised agent of pensioner Member

7.1 The Authorised Agent of a recipient of a pension is entitled to do or omit to do anything that the recipient can do or omit to do in relation to the pension.

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Schedule B: Market linked pension / term allocated pension

Rules applicable to the payment of a market linked pension

1. Duration of pension

- 1.1 The pension must be payable for a period expressed as a whole number of years.
- 1.2 If the pension is to be a single life pension (ie a pension which does not revert to another person on the death of the pensioner) the duration must be either one of the following:
- (a) a number equal to the life expectancy of the pensioner; or
 - (b) a number equal to whichever is the greater of:
 - (i) the notional life expectancy of the pensioner; or
 - (ii) the difference between 100 and the attained age of the pensioner, or
 - (c) a number which is any whole number between the duration specified in (a) and the duration specified in (b).
- 1.3 If the pension is to be a reversionary Pension (ie a pension which will on the death of the pensioner become payable to the Spouse of the pensioner) the duration must be either one of the following:
- (a) a number equal to the life expectancy of the pensioner or of the Spouse (whichever is the greater); or
 - (b) a number equal to whichever is the greater of:
 - (i) the notional life expectancy of the pensioner or of the Spouse (whichever is the greater); or
 - (ii) the difference between 100 and whichever is the lesser of the attained ages of the pensioner and of the Spouse; or
 - (c) a number which is any whole number between the duration specified in (a) and the duration specified in (b).
- 1.4 For the purposes of Rules 1.2 and 1.3 the following apply:
- (a) life expectancy, notional life expectancy and attained age are the life expectancies and attained age which apply immediately prior to commencement of the pension;
 - (b) life expectancy and the notional life expectancy if not whole numbers must be rounded up to the next whole number;
 - (c) the notional life expectancy of a person is the life expectancy of that person assuming the person was five years younger; and
 - (d) the attained age of a person is their age measured in whole number of years.
- 1.5 Where the Regulator permits or Superannuation Law allows, the Trustee and the pensioner may, before commencement of the pension, determine that the duration of the pension shall be for another period.

2. Payment frequency of pension

- 2.1 The Trustee must pay the pension by annual instalments or more frequently as the Trustee and the recipient of the pension agree from time to time.

2.2 Each instalment of the pension will be paid in arrears unless the Trustee and the recipient of the pension otherwise agree.

3. Annual amount of the pension

3.1 Subject to Rules 3.2, 3.3, 3.4 and 3.5 the annual amount of the pension to be paid in any financial year must either:

(a) be equal to:

$$\frac{\textit{Account Balance}}{\textit{Payment Factor}} \quad \text{or}$$

(b) be an amount which is not less than 90% and not more than 110% of the amount specified by the formula in paragraph (a) as rounded in accordance with Rule 3.2,

as the pensioner selects in respect of the financial year.

Where:

“Account Balance” is the account balance of the pension at the start of the financial year; and

“Payment Factor” is the factor specified by Schedule 6 of the SIS Regulations which is applicable to the remaining term of the pension expressed in whole years by rounding up (if the pension commenced on or after 1 January) and rounding down (if the pension commenced on or before 31 December).

3.2 The dollar amount determined in accordance with Rule 3.1(a) is to be rounded up to the nearest 10 whole dollars or such greater amount as permitted by the SIS Regulations.

3.3 Where the pension commences during a financial year then:

(a) the payment in the first financial year will be proportionately reduced to reflect the portion of the financial year in which the pension was paid compared to a complete financial year;

(b) “Account Balance” will be the account balance of the pension at the commencement date of the pension;

(c) “Payment Factor” will be the factor specified by Schedule 6 of the SIS Regulations which is applicable to the term of the pension expressed in whole years by rounding up (if the pension commenced on or after 1 January) and rounding down (if the pension commenced on or before 31 December); and

(d) where the pension commences on or after 1 June in a financial year, then, despite Rule 3.1, no pension payment in respect of that financial year is required unless the recipient otherwise requires.

3.4 If, in respect of a financial year, the account balance of the pensioner is insufficient to pay the amount required to be paid in respect of that financial year under these Rules, it will be sufficient for compliance with these Rules if the account balance is paid.

3.5 Where there has been a shortfall in the pension payments of a financial year so that the minimum pension payment for that year has not been satisfied, the Trustee may pay the shortfall as an additional pension amount in a subsequent financial year even though the payment of the shortfall may cause the pension payments for that subsequent year to exceed the maximum pension payment for that year.

4. Unused account balance on expiration of pension term

4.1 Where at the end of the term of the pension there is a residual balance in the pension account, the residual balance must be paid within 28 days of the end of the term of the pension or within such longer period as either the SIS Regulations or the Regulator permits.

5. Residual capital value

5.1 The pension must not have a residual capital value.

6. Commutation

6.1 The pension can only be commuted in the following circumstances:

- (a) within the first six months of the commencement of the pension so long as:
 - (i) the pension has not been funded by the commutation and rollover of a complying income stream; and
 - (ii) the minimum pension amount in respect of that pension for the financial year in which the commutation occurs has been paid at or before commutation.
- (b) on the death of the pensioner or reversionary pensioner by payment of:
 - (i) a lump sum or a new pension to one or more Dependants of either the pensioner or the reversionary pensioner;
 - (ii) a lump sum to the legal personal representative of either the pensioner or the reversionary pensioner; or
 - (iii) if, after making reasonable enquiries, the Trustee is unable to find a person who is a Dependant or legal personal representative of either the pensioner or the reversionary pensioner – then a lump sum to another individual,
but where the pension was for a period based upon the life expectancy of the Spouse, then no commutation can be paid until both the pensioner and the Spouse have died;
- (c) where the commutation is made in order for the resulting eligible termination payment to be rolled over as the purchase price of a complying income stream so long as the minimum pension amount in respect of the financial year in which the commutation is effected has been paid at or before commutation;
- (d) in order to pay a superannuation contributions surcharge;
- (e) to give effect to an entitlement of a non-member Spouse under a payment split; or
- (f) to satisfy the rights of a pensioner to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001* (Cth);
- (g) for the purpose of paying an amount to give effect to a Release Authority or a Commutation Authority in respect of the primary beneficiary of the pension (but not a Release Authority in respect of a reversionary beneficiary of the pension); or

- (h) in such other circumstances as are permitted by the SIS Regulations and to extent permitted by those regulations.

For the purposes of this Rule “complying income stream” means any annuity or pension which meets the pension and annuity standards of SIS Regulations 1.05(2), (9) or (10) or SIS Regulations 1.06(2), (7) or (8).

- 6.2 The commutations permitted in the circumstances of Rules 6.1(a), (b) and (c) must be full commutations and the commutation amount cannot exceed the account balance immediately before the commutation.
- 6.3 For the purposes of Rule 6.1(a) and 6.1(c), the minimum pension amount is determined by the formula:

$$\text{Annual Pension Amount} \times \frac{\text{Payment Period Days}}{\text{Financial Year Days}}$$

Where:

“Annual Pension Amount” is the annual instalment amount of the pension in relation to the financial year in which the commutation occurs;

“Payment Period Days” is the number of days in the financial year in which the commutation occurs from the start of the financial year (or the commencement date of the pension if the pension commenced in the financial year) to the date of the commutation; and

“Financial Year Days” is the number of days in the financial year in which the commutation occurs.

7. Reversionary percentage

- 7.1 Where the pension is a reversionary pension, the pension must not have a reversionary component greater than 100% of the account balance immediately before the reversion.

8. Transfer of pension

- 8.1 Where the pension is a single life pension, the pension can only be transferred to:
- (a) either one or more of the Dependants of the pensioner; or
 - (b) the legal personal representative of the pensioner.
- 8.2 Where the pension is a reversionary pension, the pension can only be transferred in the following circumstances:
- (a) on the death of a pensioner who is survived by a reversionary pensioner – to the next nominated reversionary pensioner; and
 - (b) on the death of a reversionary pensioner who is not survived by another reversionary pensioner - to either:
 - (i) one or more of the Dependants of the last reversionary pensioner; or
 - (ii) the legal personal representative of that reversionary pensioner.

- 8.3 Where on or after 1 July 2007 a pension reverts by reason of the death of the pensioner, the Trustee must only pay a pension to a reversionary Beneficiary if, at the time pension reverts, the nominated reversionary Beneficiary is either:
- (a) the Spouse of the pensioner;
 - (b) an individual (other than a Child of the pensioner) who is a financial dependant of the pensioner;
 - (c) an individual (other than a Child of the pensioner) who is in an interdependency relationship with the pensioner;
 - (d) an individual who is a Child of the pensioner and who is aged less than 18 years;
 - (e) an individual who is a Child of the pensioner who is aged 18 years or more but less than 25 years and who is a financial dependent of the pensioner;
 - (f) an individual who is a Child of the pensioner who is aged 18 years or more and has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth); or
 - (g) any other individual to whom the pension can be transferred without breaching the SIS Act or Regulations.
- 8.4 Where the pension is payable to a reversionary Beneficiary who is the Child of the pensioner and the pension has not previously been commuted or terminated, the Trustee must cease paying the pension on the reversionary Beneficiary attaining age 25 and must pay the pension account balance as a superannuation lump sum to that reversionary Beneficiary.
- 8.5 Despite Rule 8.4, if the reversionary Beneficiary is a Child of the pensioner and the Child, at the time the Child attains age 25, has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth), the Trustee is not required to terminate the pension.
- 8.6 Where the pension reverts to the estate of a reversionary Beneficiary or cannot be paid to a reversionary Beneficiary as a pension by reason of Rule 8.3, the Trustee must pay the value of the pension as a lump sum to the estate or reversionary Beneficiary.

9. Use of pension rights

- 9.1 The rights of the recipient of the pension to periodic pension payments and the right to commute the pension cannot be used as a security for a borrowing.

10. Actions by duly authorised agent of pensioner Member

- 10.1 The Authorised Agent of a recipient of a pension is entitled to do or omit to do anything that the recipient can do or omit to do in relation to the pension.

Schedule C: Transition to retirement pension rules

Rules applicable to the payment of a transition to retirement pension (non-commutable account based or allocated pension)

1. Payment frequency of pension

- 1.1 Subject to Rule 1.3, the Trustee must pay the pension by annual instalments or more frequently as the Trustee and the recipient of the pension agree from time to time.
- 1.2 Each instalment of the pension will be paid in arrears unless the Trustee and the recipient of the pension otherwise agree.
- 1.3 Where the pension commences on or after 1 June in any financial year, no pension payment is required in respect of the period from the date of commencement to the next 30 June unless the recipient otherwise requires.

2. Annual amount of the pension

- 2.1 Subject to Rules 2.2, 2.3, 2.6 and 2.7 the amount of the pension in respect of any financial year will be the amount specified in the pension agreement but in any event must not be:
 - (a) less than the minimum pension limit for that financial year; nor
 - (b) greater than the maximum pension limit for that financial year.

For the purposes of this Rule, commutation payments are not counted when determining whether the pension limits for a financial year have been met but payments made under a payment split are counted.

The minimum pension limit and maximum pension limit (if applicable) for a financial year shall be determined as follows:

- (c) if the pension commenced on or before 31 December 2005 – Schedule 1A of the SIS Regulations;
 - (d) if the pension commenced on or after 1 January 2006 and before 1 July 2007 – Schedule 1AAB of the SIS Regulations in respect of payments made on or after 1 July 2006 and in respect of payments made during the period 1 January 2006 to 30 June 2006 – either Schedule 1A or Schedule 1AAB as the Trustee selects; and
 - (e) if the pension commenced on or after 1 July 2007 – the minimum pension limit will be determined in accordance with Schedule 7 of the SIS Regulations; and
 - (f) If the pension commenced on or after 1 July 2007 - the maximum pension limit will be 10% of the pension account balance (as at 1 July in the financial year in which the payment is made) or (if the pension commenced during that financial year – 10% of the pension account balance as at the commencement date of the pension).
- 2.2 Where the pension commences on or after 1 June in a financial year there is no minimum limit amount for that financial year.
 - 2.3 In respect of the financial year in which the pension ceases by reason of exhaustion of the account balance, there are no minimum or maximum pension limits in respect of that financial year.

- 2.4 The amount of the annual instalment of the pension can only be altered in the following circumstances:
- (a) where the pension has been commuted;
 - (b) where the pension has been subject to a Payment Split; or
 - (c) such other circumstances as the Regulator or Superannuation Law permits or requires.
- 2.5 The Trustee may adjust the annual amount of the pension to take into account any of the following commutations of the pension:
- (a) commutations in order to pay a superannuation contributions surcharge;
 - (b) commutations to allow an amount to be paid under a Payment Split and any reasonable fees charged by the Trustee in respect of that Payment Split.
- 2.6 Where there has been a shortfall in the pension payments of a financial year so that the minimum pension limit for that year has not been satisfied, the Trustee may pay the shortfall as an additional pension amount in a subsequent financial year even though the payment of the shortfall may cause the pension payments for that subsequent year to exceed the maximum pension limit for that year.
- 2.7 Where in respect of a financial year, the member to whom the pension is paid satisfies an Unrestricted Release Condition then the 10% ceiling on the pension payments in that financial year and subsequent financial years will cease to apply.

3. Commutations, roll backs and roll overs

- 3.1 The pension can only be commuted in the following circumstances:
- (a) where an event has occurred in relation to the Member which is, in respect of that Member, an Unrestricted Release Condition;
 - (b) the purpose of the commutation is to pay as a lump sum to or in respect of the Member the unrestricted non-preserved portion of the Member's benefit;
 - (c) the purpose of the commutation is to pay a superannuation contributions surcharge;
 - (d) the purpose of the commutation is to give effect to an entitlement of a non-member spouse under a Payment Split;
 - (e) the purpose of the commutation is to roll back the pension; or
 - (f) the purpose of the commutation is to roll over the pension to another non-commutable pension.
- 3.2 Despite Rule 3.1, the pension agreement may further restrict the circumstances in which a pension may be commuted, rolled over or rolled back, or impose conditions in relation to any commutation, roll over or roll back of the pension.
- 3.3 Except in the following circumstances:
- (a) where the commutation results from the death of the pensioner or reversionary pensioner; or
 - (b) where the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge;
 - (ii) to give effect to an entitlement of a non-member spouse under a Payment Split; or
 - (iii) to give effect to the right of the pensioner to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001* (Cth);

- (c) for the purpose of paying an amount to give effect to a Release Authority or a Commutation Authority in respect of the primary beneficiary of the pension (but not a Release Authority in respect of a reversionary beneficiary of the pension);
- (d) the commutation is a partial commutation and the account balance of the pension, immediately after the partial commutation, would be equal to or would exceed the minimum limit applicable under Schedule 1A of the SIS Regulations, as reduced by the amount of income payments already made in the financial year in which the partial commutation occurs; or
- (e) in such other circumstances as are permitted by the SIS Regulations and to extent permitted by those regulations,

a commutation, roll back or roll over is not permitted unless the minimum pension amount in respect of the pension has been paid or will be paid on or by the date of the commutation, roll back or roll over.

3.4 The minimum pension amount is determined by the formula:

$$\text{Min Pension Amount} = \text{APA} \times \frac{\text{Payment Days}}{\text{Financial Year Days}}$$

“APA” is the annual amount of the pension in relation to the financial year in which the commutation occurs;

“Payment Days” is the number of days in the financial year in which the commutation occurs from the start of the financial year (or the commencement date of the pension if the pension commenced in the financial year) to the date of the commutation; and

“Financial Year Days” is the number of days in the financial year in which the commutation occurs.

4. Death of pensioner/transfer of pension

4.1 Subject to Rule 4.2, on the death of the pensioner the pension account balance (if any):

- (a) if the pension agreement contains terms dealing with the application of the pension account balance in the event of the death of the pensioner (eg containing a reversionary beneficiary term) – will be applied by the Trustee in accordance with those terms of the pension agreement; and
- (b) where Rule 4.1(a) does not apply – the pension account balance will be applied by the Trustee in accordance with any binding death benefit nomination made by the pensioner and if there is no such nomination, then the pension account balance will be applied by the Trustee as if it were a death benefit of the pensioner.

4.2 Where the pension is a reversionary pension, the pension can only be transferred in the following circumstances:

- (a) on the death of a pensioner who is survived by a reversionary pensioner – to the next nominated reversionary pensioner; or
- (b) on the death of a reversionary pensioner who is not survived by another reversionary pensioner - to the estate of the last reversionary pensioner.

- 4.3 Where on or after 1 July 2007 a pension reverts by reason of the death of the pensioner, the Trustee must only pay a pension to a reversionary Beneficiary if, at the time pension reverts, the nominated reversionary Beneficiary is either:
- (a) the Spouse of the pensioner;
 - (b) an individual (other than a Child of the pensioner) who is a financial dependant of the pensioner;
 - (c) an individual (other than a Child of the pensioner) who is in an interdependency relationship with the pensioner;
 - (d) an individual who is a Child of the pensioner and who is aged less than 18 years;
 - (e) an individual who is a Child of the pensioner who is aged 18 years or more but less than 25 years and who is a financial dependent of the pensioner;
 - (f) an individual who is a Child of the pensioner who is aged 18 years or more and has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth); or
 - (g) any other individual to whom the pension can be transferred without breaching the SIS Act or Regulations.
- 4.4 Where the pension is payable to a reversionary Beneficiary who is the Child of the pensioner and the pension has not previously been commuted or terminated, the Trustee must cease paying the pension on the reversionary Beneficiary attaining age 25 and must pay the pension account balance as a superannuation lump sum to that reversionary Beneficiary.
- 4.5 Despite Rule 4.4, if the reversionary Beneficiary is a Child of the pensioner and the Child, at the time the Child attains age 25, has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth), the Trustee is not required to terminate the pension.
- 4.6 Where the pension reverts to the estate of a reversionary Beneficiary or cannot be paid to a reversionary Beneficiary as a pension by reason of Rule 4.3, the Trustee must pay the value of the pension as a lump sum to the estate or reversionary Beneficiary.

5. Use of pension rights

- 5.1 The rights of the recipient of the pension to periodic pension payments and the right to commute the pension cannot be used as a security for a borrowing.

6. No augmentation of pension account once pension commenced

- 6.1 The pension account supporting the pension must not be increased by way of contribution or rollover once the pension has commenced.

7. Actions by duly authorised agent of pensioner Member

- 7.1 The Authorised Agent of a recipient of a pension is entitled to do or omit to do anything that the recipient can do or omit to do in relation to the pension.

Schedule D: Non-commutable market-linked pension / term allocated pension

Rules applicable to the payment of a non-commutable market-linked pension/term allocated pension.

1. Duration of pension

- 1.1 The pension must be payable for a period expressed as a whole number of years.
- 1.2 If the pension is to be a single life pension (ie a pension which does not revert to another person on the death of the pensioner) the duration must be one of the following:
- (a) a number equal to the life expectancy of the pensioner; or
 - (b) a number equal to whichever is the greater of:
 - (i) the notional life expectancy of the pensioner; or
 - (ii) the difference between 100 and the attained age of the pensioner; or
 - (c) a number which is any whole number between the duration specified in (a) and the duration specified in (b).
- 1.3 If the pension is to be a reversionary pension (ie a pension which will on the death of the pensioner become payable to the Spouse of the pensioner) the duration must be one of the following:
- (a) a number equal to the life expectancy of the pensioner or of the Spouse (whichever is the greater); or
 - (b) a number equal to whichever is the greater of:
 - (i) the notional life expectancy of the pensioner or of the Spouse (whichever is the greater); or
 - (ii) the difference between 100 and whichever is the lesser of the attained age of the pensioner or of the Spouse; or
 - (c) a number which is any whole number between the duration specified in (a) and the duration specified in (b).
- 1.4 For the purposes of Rules 1.2 and 1.3 the following apply:
- (a) life expectancy, notional life expectancy and attained age, are the life expectancies and attained age which apply immediately prior to the commencement of the pension;
 - (b) life expectancy and the notional life expectancy if not whole numbers must be rounded up to the next whole number;
 - (c) the notional life expectancy of a person is the life expectancy of that person assuming the person was 5 years younger; and
 - (d) the attained age of a person is their age measured in whole number of years.
- 1.5 Where the Regulator permits or Superannuation Law allows, the Trustee and the pensioner may before the commencement of the pension, determine that the duration of the pension shall be for another period.

2. Payment frequency of pension

- 2.1 The Trustee must pay the pension by annual instalments or more frequently as the Trustee and the recipient of the pension agree from time to time.

2.2 Each instalment of the pension will be paid in arrears unless the Trustee and the recipient of the pension otherwise agree.

3. Annual amount of the pension

3.1 Subject to Rules 3.2, 3.3, 3.4 and 3.5 the annual amount of the pension to be paid in any financial year must either:

(a) be equal to;

$$\frac{\textit{Account Balance}}{\textit{Payment Factor}} \text{ or}$$

(b) be an amount which is not less than 90% and not more than 110% of the amount specified by the formula in paragraph (a) as rounded in accordance with Rule 3.2,

as the pensioner selects in respect of the financial year.

Where:

“Account Balance” is the account balance of the pension at the start of the financial year.

“Payment Factor” is the factor specified by Schedule 6 of the SIS Regulations which is applicable to the remaining term of the pension (expressed in whole years by rounding up (if the pension commenced on or after 1 January) and rounding down (if the pension commenced on or before 31 December).

3.2 The dollar amount determined in accordance with Rule 3.1(a) is to be rounded up to the nearest 10 whole dollars or such greater amount as permitted by the SIS Regulations.

3.3 Where the pension commences during a financial year then:

(a) the payment in the first financial year will be proportionately reduced to reflect the portion of the financial year in which the pension was paid compared to a complete financial year;

(b) “Account Balance” will be the account balance of the pension at the commencement date of the pension;

(c) “Payment Factor” will be the factor specified by Schedule 6 of the SIS Regulations which is applicable to the term of the pension expressed in whole years by rounding up (if the pension commenced on or after 1 January) and rounding down (if the pension commenced on or before 31 December); and

(d) Where the pension commences on or after 1 June in a financial year, then, despite Rule 3.1, no pension payment in respect of that financial year is required unless the recipient otherwise requires.

3.4 If, in respect of a financial year, the account balance of the pensioner is insufficient to pay the amount required to be paid under these Rules, it will be sufficient for compliance with these Rules, if the account balance is paid.

- 3.5 Where there has been a shortfall in the pension payments of a financial year so that the minimum pension payment for that year has not been satisfied, the Trustee may pay the shortfall as an additional pension amount in a subsequent financial year even though the payment of the shortfall may cause the pension payments for that subsequent year to exceed the maximum pension payment for that year.

4. Unused account balance on expiration of pension term

- 4.1 Where at the end of the term of the pension, there is a residual balance in the pension account the residual balance must be paid within 28 days of the end of the term of the pension or within such longer period as either the SIS Regulations or the Regulator permits.

5. Residual capital value

- 5.1 The pension must not have a residual capital value.

6. Commutations and roll overs

- 6.1 The pension can only be commuted in the following circumstances:

- (a) within the first six months of the commencement of the pension, so long as:
- (i) the pension has not been funded by the commutation and rollover of a complying income stream; and
 - (ii) the minimum pension amount in respect of that pension for the financial year in which the commutation occurs has been paid at or before commutation,
- in which case:
- (iii) if either of the following apply:
 - (A) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or
 - (B) the commutation occurs after the occurrence in relation to the pensioner of an event which is an Unrestricted Release Condition,the lump sum arising from the commutation may be paid as a lump sum to the pensioner or may be applied otherwise for the benefit of the pensioner; and
 - (iv) where neither (A) nor (B) above apply – the lump sum must either be retained in the Superannuation Fund as an accumulation benefit for the pensioner or be rolled over to another superannuation fund for the benefit of the pensioner;
- (b) on the death of the pensioner or reversionary pensioner by payment of:
- (i) a lump sum or a new pension to one or more Dependants of either the pensioner or the reversionary pensioner;
 - (ii) a lump sum to the legal personal representative of either the pensioner or the reversionary pensioner; or
 - (iii) if, after making reasonable enquiries, the Trustee is unable to find a person who is a Dependant or legal personal representative of either the pensioner or the reversionary pensioner – a lump sum to another individual,
- but where the pension was for a period based upon the life expectancy of the Spouse, then no commutation can be paid until both the pensioner and the Spouse have died.

- (c) where the commutation is made in order for the resulting eligible termination payment to be rolled over as the purchase price of a complying income stream, so long as the minimum pension amount in respect of the financial year in which the commutation is effected has been paid at or before commutation;
- (d) in order to pay a superannuation contributions surcharge;
- (e) to give effect to an entitlement of a non-member Spouse under a Payment Split;
- (f) to satisfy the rights of a pensioner to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001* (Cth);
- (g) for the purpose of paying an amount to give effect to a Release Authority or a Commutation Authority in respect of the primary beneficiary of the pension (but not a Release Authority in respect of a reversionary beneficiary of the pension); or
- (h) in such other circumstances as are permitted by the SIS Regulations and to extent permitted by those regulations.

For the purposes of this Rule “complying income stream” means any annuity or pension which meets the pension and annuity standards of SIS Regulations 1.05(2), (9) or (10) or SIS Regulations 1.06(2), (7) or (8).

6.2 The commutations permitted in the circumstances of Rules 6.1(a), (b) and (c) must be full commutations and the commutation amount cannot exceed the account balance immediately before the commutation.

6.3 For the purposes of Rule 6.1(a) and 6.1(c), the minimum pension amount is determined by the formula:

$$\text{Where } \textit{Annual Pension Amount} \times \frac{\textit{Payment Period Days}}{\textit{Financial Year Days}}$$

“Annual Pension Amount” is the annual instalment amount of the pension in relation to the financial year in which the commutation occurs;

“Payment Period Days” is the number of days in the financial year in which the commutation occurs from the start of the financial year (or the commencement date of the pension if the pension commenced during in the financial year) to the date of the commutation; and

“Financial Year Days” is the number of days in the financial year in which the commutation occurs.

7. Reversionary percentage

7.1 Where the pension is a reversionary pension the pension must not have a reversionary component greater than 100% of the account balance immediately before the reversion.

8. Transfer of pension

8.1 Where the pension is a single life pension, the pension can only be transferred to:

- (a) either one or more of the Dependants of the pensioner; or
- (b) the legal personal representative of the pensioner.

8.2 Where the pension is a reversionary pension, the pension can only be transferred in the following circumstances:

- (a) on the death of a pensioner and the pensioner is survived by a reversionary pensioner – to the next nominated reversionary pensioner; and
- (b) on the death of a reversionary pensioner who is not survived by another reversionary pensioner – to either:
 - (i) one or more of the Dependants of the last reversionary pensioner; or
 - (ii) the legal personal representative of that reversionary pensioner.

8.3 Where on or after 1 July 2007 a pension reverts by reason of the death of the pensioner, the Trustee must only pay a pension to a reversionary Beneficiary if, at the time pension reverts, the nominated reversionary Beneficiary is either:

- (a) the Spouse of the pensioner;
- (b) an individual (other than a Child of the pensioner) who is a financial dependant of the pensioner;
- (c) an individual (other than a Child of the pensioner) who is in an interdependency relationship with the pensioner;
- (d) an individual who is a Child of the pensioner and who is aged less than 18 years;
- (e) an individual who is a Child of the pensioner who is aged 18 years or more but less than 25 years and who is a financial dependent of the pensioner;
- (f) an individual who is a Child of the pensioner who is aged 18 years or more and has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth); or
- (g) any other individual to whom the pension can be transferred without breaching the SIS Act or Regulations.

8.4 Where the pension is payable to a reversionary Beneficiary who is the Child of the pensioner and the pension has not previously been commuted or terminated, the Trustee must cease paying the pension on the reversionary Beneficiary attaining age 25 and must pay the pension account balance as a superannuation lump sum to that reversionary Beneficiary.

8.5 Despite Rule 8.4, if the reversionary Beneficiary is a Child of the pensioner and the Child, at the time the Child attains age 25, has a disability of the kind described in s8(1) of the *Disability Services Act 1986* (Cth), the Trustee is not required to terminate the pension.

8.6 Where the pension reverts to the estate of a reversionary Beneficiary or cannot be paid to a reversionary beneficiary as a pension by reason of Rule 8.3, the Trustee must pay the value of the pension as a lump sum to the estate or reversionary Beneficiary.

9. Use of pension rights

9.1 The rights of the recipient of the pension to periodic pension payments and the right to commute the pension cannot be used as a security for a borrowing.

10. Actions by duly authorised agent of pensioner Member

10.1 The Authorised Agent of a recipient of a pension is entitled to do or omit to do anything that the recipient can do or omit to do in relation to the pension.

Schedule E: Rules for Annuity Pensions

1. Annuity Pension must not be an Account-Based Pension

- 1.1 These rules governing annuity pensions do not and are intended not to meet the standards set out in SIS Reg 1.06(9A)(b)(i) or (ii).
- 1.2 An annuity pension is not an Account-based pension.

2. Issue and funding of Annuity Pensions

- 2.1 An annuity pension issued by the Trustee must be entirely funded by a single annuity contract (“the underlying annuity”) purchased by the Trustee as principal from an authorised issuer of annuities.
- 2.2 The underlying annuity must be in respect of the life of a member of the superannuation fund (“the primary beneficiary”).
- 2.3 The terms of the annuity pension must be consistent with and materially conform to the terms of the underlying annuity.
- 2.4 The underlying annuity must satisfy the terms of SIS Reg 1.06A(3) and must be either an immediate annuity or a deferred annuity which qualifies as a defined superannuation income stream.
- 2.5 In the case of an immediate annuity the primary beneficiary must at the commencement of the annuity pension be in retirement phase.
- 2.6 In the case of a deferred annuity the primary beneficiary need not be in retirement phase at the commencement of the annuity pension.
- 2.7 The purchase price of the underlying annuity must:
 - (a) where the underlying annuity is an immediate annuity – be a single payment; and
 - (b) where the underlying annuity is a deferred annuity – may be a single payment or may be paid one or more instalments.
- 2.8 If the purchase price of the underlying annuity is payable by two or more instalments the amount of each instalment and its due date for payment must be specified or determinable at the commencement of the underlying annuity.
- 2.9 No instalments of the pension price of the underlying deferred annuity can be made after the end of the deferral period of the annuity.

3. Key features of an Annuity Pension

- 3.1 In the case of an immediate annuity pension – the pension payments must be made at least annually and must be made for the life of the beneficiary (primary or reversionary).
- 3.2 In the case of a deferred annuity pension – no pension payments can be made before the primary beneficiary either dies or is in retirement phase and once pension payments commence they must be made at least annually and must be made for the life of the beneficiary (primary or reversionary).
- 3.3 In the case of a deferred annuity pension – the deferral period must be at least 12 months.
- 3.4 The underlying annuity may be a single life annuity or be a reversionary annuity.
- 3.5 If the underlying annuity is a reversionary annuity each reversionary beneficiary must be a dependant of the member (the “primary beneficiary”).

4. Commencement of pension payments

- 4.1 Annuity payments may be paid in advance or in arrears in respect of each payment period.
- 4.2 A payment period cannot be greater than 12 months.
- 4.3 No pension payment can be made in respect of the deferred pension unless and until the pension is in retirement phase.
- 4.4 The pension payments may be either:
 - (a) a fixed amount per period;
 - (b) a fixed amount per period which is increased by a fixed indexation rate;
 - (c) a fixed amount per period which is increased by reference to an index of price movements (such as the Consumer Price Index)
 - (d) a fixed amount per period which is increased by reference to an index of price movements (such as the Consumer Price Index) or by a fixed indexation rate (whichever is the lesser)
 - (e) determined by reference to the earnings of a pool of assets; or
 - (f) determined by another means which satisfies the requirements of SIS Reg 1.06A

5. Commutation of the annuity pension

- 5.1 In the case of an immediate annuity pension (whether the commutation is by reason of the death of a beneficiary or otherwise), the commutation amount cannot exceed the amount determined in accordance with Rule 5.4.
- 5.2 If the annuity pension is a deferred annuity pension and the commutation occurs (whether the commutation is by reason of the death of a beneficiary or otherwise) before the pension is in retirement

phase, the commutation amount is subject to Rule 5.4 and is subject to the preservation rules of the SIS Regulations.

5.3 If the annuity pension is a deferred annuity pension and the commutation occurs (whether the commutation is by reason of the death of a beneficiary or otherwise) on or after the pension is in retirement phase, the commutation amount cannot exceed the amount determined in accordance with Rule 5.4.

5.4 For the purposes of Rules 5.1 and 5.3, the amount for a commutation of annuity pension is:

- (a) if the annuity pension is commuted during the 14 day period starting on the retirement phase start day for the income stream—the access amount for the income stream at the time of the commutation; or
- (b) if the income stream is commuted on the death of the beneficiary within the first half of the life expectancy period for the income stream and paragraph (a) does not apply—the access amount for the income stream at the time of the death; or
- (c) otherwise:
 - (i) the amount worked out for the income stream under following formula; or
 - (ii) if the amount worked out for the income stream under following formula is less than or equal to zero—nil.

5.5 For the purposes of Rule 5.4, the amount for the income stream is worked out using the following formula:

$$\left(\frac{\text{Access amount for the income stream at the time of the commutation}}{\text{Life expectancy period for the income stream}} \times \frac{\text{Remaining life expectancy}}{\text{Life expectancy period for the income stream}} \right) - \text{Previously commuted amount}$$

where:

previously commuted amount means the sum of any amounts commuted from the income stream before the time of the commutation.

remaining life expectancy means the number of days remaining in the life expectancy period for the income stream after subtracting the number of days in the period:

- (a) starting on the retirement phase start day for the income stream; and
- (b) ending on the day of the commutation.

6. Transfer of annuity pension

6.1 The annuity pension can only transfer to another beneficiary on the death of a beneficiary (whether primary or reversionary).

6.2 On the death of a beneficiary (whether primary or reversionary) the annuity pension can only transfer to a reversionary beneficiary if:

- (a) the annuity pension was in retirement phase at the date of death of the beneficiary; or
- (b) the reversionary beneficiary survives the beneficiary and the annuity pension would be retirement phase in the hands of the beneficiary.

6.3 If on the death of a beneficiary (whether primary or reversionary) the reversionary beneficiary does not survive the beneficiary or the annuity pension is not permitted to transfer to the reversionary beneficiary the annuity pension must terminate and the commutation amount (if any) must be applied as a death benefit.

7. **Definitions for Schedule E**

For the purposes of this Schedule the following terms have their respective meanings as used in SIS Regulation 1.03; namely

access amount

first half of the life expectancy period

life expectancy period

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