

**THE DAY FAMILY  
SUPERANNUATION FUND**

**TRUST DEED  
GOVERNING RULES**

Please retain for your records

*Putting the Pieces of Your Financial Puzzle Together*



The MBA Partnership Pty Ltd

# Self Managed Superannuation Fund Establishment Deed

## The Day Family Superannuation Fund

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Level 9, 65 York Street,  
SYDNEY NSW 2000  
[www.townsendslaw.com.au](http://www.townsendslaw.com.au)

Version 8  
Ref: MAH  
Date: October 2008

**THIS TRUST DEED** is made at level 3, Pivotal Point ..... on  
50 marine Parade  
Southport QLD 4215  
30 April ..... 2010

**BY Day Superannuation Company Pty Ltd ACN 143400551 of  
11 Dunnes Avenue, HOPE ISLAND, QLD, 4212 ("Trustee")**

## RECITALS

- A. The Trustee wishes to establish a superannuation fund to be known as "The Day Family Superannuation Fund" ("Superannuation Fund") for the sole purpose of providing superannuation benefits for or in respect of the Members of the Superannuation Fund.
- B. The Trustee intends that the Superannuation Fund will be a self managed superannuation fund and will be taxed as a complying superannuation fund.
- C. The Directors of the Trustee have consented to the Trustee acting as trustee of the Superannuation Fund and for this purpose have confirmed in writing their consents by signing Part 1 of the Annexure to this Deed.
- D. The Trustee has settled \$5 as the initial contribution to the trust fund of the Superannuation Fund for the benefit of the first member of the Superannuation Fund.

## OPERATIVE PART

### 1. Establishment of Superannuation Fund

#### *Establishment*

- (a) The Trustee declares that it holds the trust fund of the Superannuation Fund pursuant to the trusts, powers and discretions of the Trust Deed for the benefit of the Members and their Dependants.

#### *Indefinitely continuing*

- (b) The Superannuation Fund will be an indefinitely continuing fund which will provide individual personal benefits, pensions or retiring allowances for the Members and their Dependants.

#### *Name*

- (c) The Superannuation Fund will be known as "The Day Family Superannuation Fund" or by such other name as the Trustee determines.

### *Initial Members*

- (d) Each of the persons ("Initial Members") identified in Part 2 of the Annexure ("Schedule of Initial Members") is admitted as a Member of the Superannuation Fund on establishment of the Superannuation Fund.
- (e) Each of the Initial Members authorises the Trustee to use their tax file numbers in accordance with the authorisations set out in Part 3 of the Annexure ("Tax File Number Authorisations").

## **2. Amendment Powers**

### *Donees & scope of amendment powers*

- (a) The Trustee may by deed amend, alter, delete or replace any or all of the provisions of the Trust Deed or of the SuperCentral Governing Rules.
- (b) Super Governing Rules Pty Limited ACN 117 737 381 ("SGR") may by deed amend, alter, delete or replace any or all of the provisions of the SuperCentral Governing Rules.
- (c) Any amendment, alteration, deletion or replacement may:
  - (i) be retrospective and apply from a date preceding the date on which the amendment is made;
  - (ii) be prospective and apply from a date following the date on which the amendment is made; and
  - (iii) operate by way of complete replacement of all of the current provisions with new provisions.

### *Limitation to the scope of amendments*

- (d) The amendment powers:
  - (i) at any time when the Trustee consists of one or more natural persons – cannot be used to change the primary purpose of the Superannuation Fund from the provision of old-age pensions;
  - (ii) at any time when the primary purpose of the Superannuation Fund is not the provision of old-age pensions – cannot be used to remove the requirement that the Trustee of the Superannuation Fund be a constitutional corporation;
  - (iii) cannot be used to reduce the amount standing to the credit of the benefit accounts of a Member unless that Member has consented to the reduction or the reduction is permitted by Superannuation Law, by the Regulator or by Court Order;
  - (iv) in the case of the power conferred on the Trustee – cannot be exercised until the amendment power conferred on SGR has been terminated in accordance with either clause 2(j) or 2(k); and
  - (v) cannot be used to amend this clause 2(d).

*Trustee and Members bound by amendments to SuperCentral Governing Rules*

- (e) The Trustee and each Member of the Superannuation Fund is bound by any amendment made pursuant to this clause in the same manner as if the amendment had been made immediately before the Member joined the Superannuation Fund.

*Trustee may request amendment made by SGR not to apply*

- (f) The Trustee may by notice to SGR request that an amendment ("current amendment") made by SGR to the SuperCentral Governing Rules not apply to the Superannuation Fund.
- (g) For the request to be effective, the notice must be in writing and be given to SGR within 14 days of the Trustee being notified of the current amendment.
- (h) Where the Trustee makes an effective request for the current amendment not to apply to the Superannuation Fund, then SGR will by deed revoke the current amendment so far as it applies to the Superannuation Fund and the current amendment will be taken never to have applied to the Superannuation Fund.

*Repatriation of amendment power*

- (j) Where SGR at the request of the Trustee has revoked an amendment made to the SuperCentral Governing Rules then the following provisions apply:
  - (i) the amendment power conferred on SGR terminates; and
  - (ii) amendments previously made by SGR to the SuperCentral Governing Rules continue to apply to the Superannuation Fund despite the fact that the amendment power conferred on SGR has terminated.

*Release of amendment power*

- (k) SGR may by deed or written notice to the Trustee release the power conferred by clause 2(b) in which event:
  - (i) the amendment power conferred on SGR terminates; and
  - (ii) amendments previously made by SGR to the SuperCentral Governing Rules continue to apply to the Superannuation Fund despite the fact that the amendment power conferred on SGR has terminated.

### 3. Trust Deed, Annexure & SuperCentral Governing Rules

*Deed includes annexure, rules and schedules*

- (a) This Trust Deed includes the Annexure to this Deed and the SuperCentral Governing Rules.

*Incorporation of SuperCentral Governing Rules*

- (b) For the purposes of Clause 3(a), the SuperCentral Governing Rules are expressly incorporated into this Trust Deed as if they had been set out at length in this Trust Deed.

*Identification of SuperCentral Governing Rules*

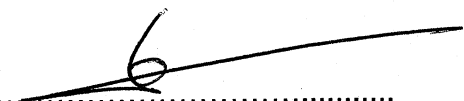
- (c) The SuperCentral Governing Rules are the Governing Rules made by SGR which apply as at the date of this Deed as those Rules are subsequently amended from time to time by SGR pursuant to clause 2(b).

*Inconsistency between parts of deed*

- (d) Where any provision of the SuperCentral Governing Rules or the Annexure is inconsistent with the Deed then, to the extent of the inconsistency, the provision of the Deed shall take precedence.

### Executed as a Deed

**EXECUTED BY Day Superannuation Company Pty Ltd ACN 143400551 in accordance with s127 of the Corporations Act 2001**

  
.....  
(Signature of Murray Robert Day - Director)

  
.....  
(Signature of Helen Maree Day - Director)

# Annexure

## Part 1 Directors – Consent and Declaration

We each understand that it is proposed to establish a superannuation fund which will be both a regulated superannuation fund and also a self managed superannuation fund.

We each individually hereby consent to the Company acting as Trustee of the fund.

To this end each of us confirms that, as at the date of this declaration:

- (a) I have attained the age of 18 years;
- (b) no notice of disqualification has been made against me pursuant to s120A of the *Superannuation Industry (Supervision) Act, 1993*;
- (c) I am not an insolvent under administration;
- (d) no civil penalty order under the *Superannuation Industry (Supervision) Act, 1993* has been made against me; and
- (e) I have not been convicted (whether in Australia or elsewhere) of any offence involving dishonest conduct.

Each of us understands that, should any of the matters listed in paragraphs (b) to (e) subsequently apply to me, I will cease to be eligible to act as a director of a company which acts as trustee of a superannuation fund regulated under the *Superannuation Industry (Supervision) Act 1993* and that I will immediately advise our fellow directors and that I will, as and when required by my fellow directors, resign as a director.

Sign here.....  
Murray Robert Day of 11 Dunnes Avenue, HOPE ISLAND, QLD, 4212

Sign here.....  
Helen Maree Day of 11 Dunnes Avenue, HOPE ISLAND, QLD, 4212

## Part 2 Schedule of Initial Members

Murray Robert Day of 11 Dunnes Avenue, HOPE ISLAND, QLD, 4212

Helen Maree Day of 11 Dunnes Avenue, HOPE ISLAND, QLD, 4212

Each of us, by signing below, confirms the following:

- (a) I have (and know that I have) access to a Product Disclosure Statement in respect of superannuation interests in the Superannuation Fund;
- (b) I understand that as a member of the Superannuation Fund I will be bound by the provisions of the Trust Deed (including the provisions of the SuperCentral Governing Rules) which apply to the Fund, as those provisions are amended from time to time.

Sign here.....  
Murray Robert Day of 11 Dunnes Avenue, HOPE ISLAND, QLD, 4212

Sign here.....  
Helen Maree Day of 11 Dunnes Avenue, HOPE ISLAND, QLD, 4212



### Part 3 Tax File Number Authorisations

Each of the Initial Members understands that there is no legal obligation to provide to the Trustee their Tax File Number ("TFN") but is aware of the adverse consequences of not providing their TFN.

Each of the Initial Members individually authorises the Trustee to use their TFNs in the manner set out below.

#### *Statutory Basis for requesting your TFN*

The Trustee is authorised under the *Superannuation Industry (Supervision) Act, 1993* to request and collect TFNs of members and prospective members of the Fund.

#### *Uses to which TFNs will be put*

If a member or prospective member provides their TFN, the Trustee is only permitted to use the TFN for lawful purposes including:

- (a) identifying the members/prospective members superannuation benefits where other information is not sufficient;
- (b) calculating tax due on any ETP payable to the member/prospective member;
- (c) providing the TFN to the Commissioner of Taxation for the purpose of assessing any tax on any ETP payable to the member/prospective member and for assessing any surcharge payable on superannuation contributions and other amounts made by or for the member/prospective member; and
- (d) providing the TFN to the Commissioner of Taxation for the purpose of determining an entitlement of members to a Government Co-Contribution under the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003*.

The lawful purposes to which TFNs are used may, because of legislative changes, alter in the future.

#### *No obligation to provide TFN*

A member/prospective member is under no legal obligation to provide their TFN. Consequently, by not providing their TFN, a member/prospective member will have committed no offence.

#### *Consequences of not providing TFN*

If a member/prospective member does not provide their TFN then the following may happen:

- (a) more tax than is otherwise due may be withheld from benefits paid to you from the Fund;
- (b) superannuation surcharge or a greater amount of surcharge may be payable in respect of surchargeable contributions of members than would otherwise be the case;

- (c) it may be more difficult to locate, identify and consolidate superannuation benefits in other funds; and
- (d) an entitlement to a Government Co-Contribution may not be payable.

The consequences of not providing TFNs may, because of legislative changes, alter in the future.

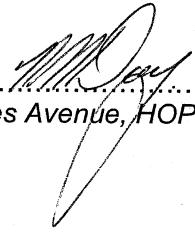
*Providing TFN to other Superannuation bodies*

The Trustee may provide your TFN to the trustee of another superannuation fund or to a Retirement Savings Account provider where that trustee or provider is to receive from the Fund any of the transferred/rolled over benefits of a member or prospective member. However, a TFN will not be provided to another superannuation body if the member/prospective member instructs the Trustee not to provide their TFN.

The Trustee may provide your TFN to the Commissioner of Taxation.

Sign here.....

*Murray Robert Day of 11 Dunnes Avenue, HOPE ISLAND, QLD, 4212*

Sign here.....

*Helen Maree Day of 11 Dunnes Avenue, HOPE ISLAND, QLD, 4212*

## SUPERCentral Governing Rules

### Version 12/09

#### **Current Version**

Version 12/09 applies from 12 December 2009

#### **Previous Versions**

- Version 04/09 applies from 22 April 2009 to 11 December 2009
- Version 12/08 applies from 11 December 2008 to 21 April 2009
- Version 08/08 applies from 1 August 2008 to 10 December 2008
- Version 07/08 applies from 10 July 2008 to 31 July 2008
- Version 12/07 applies from 8 December 2007 to 9 July 2008
- Version 07/07 applies from 1 July 2007 to 7 December 2007
- Version 11/06 applies from 7 November 2006 to 30 June 2007
- Version 02/06 applies from 7 February 2006 to 6 November 2006

**Made by Super Governing Rules Pty Ltd (ACN 117 737 381)  
by an Amendment Deed  
dated 27 November 2009**

16.	Benefit Access: Conditions and Amounts <i>This rule specifies when benefits can and must be paid and how the benefits are calculated.</i>	46
17.	Transfers and Rollovers <i>This rule deals with moving benefits between superannuation funds.</i>	50
18.	Confidentiality <i>This rule requires the trustee to keep member information confidential.</i>	50
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20.	Notices <i>This rule deals with when information will be considered to be given or received.</i>	52
21.	Proper Law <i>This rule deals with which legal system is to apply to the fund.</i>	52
22.	SIS Compliance Rule <i>This rule incorporates new SIS requirements into the Rules and deals with amendments to existing SIS requirements.</i>	52
23.	Grandfathered SIS Provisions <i>This rule applies to funds which have been converted to the SuperCentral System and preserves any special SIS transitional requirements which applied to those funds.</i>	54
24.	Grandfathered Pension Terms <i>This rule applies to funds which have been converted to the SuperCentral System and preserves any special SIS transitional requirements which applied to those funds.</i>	54
25.	Grandfathered Death Benefit Nominations <i>This rule applies to funds which have been converted to the SuperCentral System and preserves any Death Benefit Nominations which were made prior to the conversion according to the tenor of the nomination.</i>	55
26.	Simplified Superannuation Transitional Provisions <i>This rule provides the Trustee with various powers to deal with the Simplified Superannuation changes.</i>	55
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>	57
28.	Minimum Pension Limit Relief for 2008/09 and 2009/10 <i>This rule deals with the minimum pension for the relevant years.</i>	57

## SUPERCentral Governing Rules

These Rules have been made by Super Governing Rules Pty Ltd ACN 117 737 381 by an Amendment Deed dated 27 November 2009 and apply on and from 12 December 2009.

### 1. Interpretation and Dictionary

#### 1.1 Interpretative provisions

##### **Persons**

- (a) 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.

##### **Statutory references**

- (b) 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.

##### **Headings**

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

##### **Multiple parties**

- (d) 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.

##### **Grammatical forms**

- (e) 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.

## ***Simultaneous or near simultaneous death of individual trustees***

- (n) 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.

## 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.

*"Application Date"* applies where the Superannuation Fund was established prior to its conversion to the SuperCentral System and means the date on and from which the SuperCentral Governing Rules first applied to the Superannuation Fund.

*"Approved Auditor"* means an auditor who is either a registered company auditor or an auditor who is a member or fellow of one of the professional accounting organisations listed in Schedule 1AAA of the SIS Regulations other than an auditor who is disqualified from acting as an auditor of superannuation entities under s130D of the SIS Act or a person in respect of whom a disqualification order is in force under s131 of the SIS Act.

*"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;

*"Child"*, in relation to a Beneficiary, includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the Beneficiary;
- (b) a 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;

*"Complying pension"* means a pension or annuity which is specified in the table to regulation 53J (as in force immediately before 1 July 2007) of the *Income Tax Regulations, 1936*;

*"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;

*“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).

*“First Home Saver Account”* means an account, life policy or a beneficial interest in a trust which is eligible to receive Australian Government contributions under the *First Home Saver Account Act, 2008*.

*“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;

*“Foreign Superannuation Fund”* is a superannuation fund which is not an Australian Superannuation Fund for the purposes of the *Income Tax Assessment Act, 1997*;

*“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 FHSA contribution”* means any payment made under Part 4 of the *First Home Saver Accounts Act, 2008*;

*“Initial Trustee”* means, where the Superannuation Fund was established before the Fund’s adoption of the SuperCentral Governing Rules, the Trustee of the Superannuation Fund as at the date on which the Superannuation Fund most recently adopted the SuperCentral Governing Rules and in all other cases means the Trustee of the Superannuation Fund as at the establishment of the Superannuation Fund;

*“Initial Member”* means, where the Superannuation Fund was established before the Fund’s adoption of the SuperCentral Governing Rules, a Member of the Superannuation Fund as at the date on which the Superannuation Fund most recently adopted the SuperCentral Governing Rules and in all other cases 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 effected by the Trustee on the life of that Member;

“*Release Condition*” means an even which is set out in Column 2 of 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 Release Condition*” means the Release Condition constituted by retirement;

“*Regulator*” means the Commissioner of Taxation;

“*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;

“*SIS Act*” means the *Superannuation Industry (Supervision) Act 1993* 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 determine 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”;



*“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 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 12 months of the date of the certification.

*“Transitional Release Authority”* means an authority issued by or on behalf of the Commissioner of Taxation which allows a superannuation trustee to return to a contributor all or part of a contribution made before 1 July 2007.

*“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.

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

## **2. Nature & Purpose of Fund**

### **Sole Purpose**

- 2.1 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 individual personal superannuation benefits to the Member on their retirement, cessation of gainful employment due to disablement or attainment of age 65 (or such other age as may be specified for the purposes of the “sole purpose” test set out in section 62 of the SIS Act);
  - (b) the provision of individual personal superannuation benefits to a Member on their cessation of 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;
  - (c) the provision of individual personal benefits to the dependants of the Member or to the estate of the Member (or both) in the event of the death of the Member

- (d) issuing, drawing, accepting, endorsing or discounting or otherwise dealing with any promissory note, bill of exchange, cheque or other negotiable or transferable instrument; and
- (e) buying or selling assets on such terms as the Trustee considers appropriate including buying or selling on terms or instalment basis.

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

- (a) shares, debentures, promissory notes and other securities issued by any body corporate – whether or not that body corporate is listed on a stock exchange and whether or not those securities are quoted on that stock exchange;
- (b) investment life insurance policies;
- (c) pooled superannuation trusts;
- (d) units in any unit trust – whether listed or unlisted;
- (e) interests in any managed investment scheme (whether the scheme is a registered scheme or not);
- (f) Financial Instruments;
- (g) Derivatives;
- (h) real estate (or other forms of real property);
- (i) personal property (whether tangible or intangible and whether movable or immovable);
- (j) loans (whether secured or unsecured);
- (k) water allocation rights – whether tradeable or not and irrespective of the term;
- (l) Qualifying Instalment Arrangements; and
- (m) any business venture including underwriting or sub-underwriting and securities lending transactions.

### **Investment Portfolios and Strategies & Asset Segregation**

3.5 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; or
  - (vi) for such other purposes as the Trustee considers appropriate;

## **SIS Purpose of investment powers**

- 3.12 The Trustee when exercising its investment powers must have due regard to the SIS investment requirements (as those investment requirements apply to self managed superannuation funds) and to the covenants set out in Rule 5.6; 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;
  - (f) the requirement to invest on an arms' length basis.
- 3.13 For the purposes of Rule 3.12, having due regard does not prevent the Trustee from falling within any exception from a SIS investment requirement (eg the Trustee is not prevented from acquiring assets from a Member (or other related party) where the asset is business real property or listed securities) or borrowing where the borrowing is within an exception to the SIS investment requirement.

## **Title to property**

- 3.14 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.

## **Certain Assets to be held exclusively for the benefit of Nominated Members**

- 3.17 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 benefits of the Member or Members nominated 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 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.

- (c) the individual must have consented in writing to the proposed appointment.

## **Ceasing to be Trustee**

4.6 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 Trustees;
- (b) where the Trustee is a company, it becomes an externally-administered body corporate for the purposes of the *Corporations Act, 2001*;
- (c) the Trustee is removed by the Regulator;
- (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 is an individual - the Trustee dies or ceases, by reason of physical or mental illness, 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); and
- (k) where the Trustee has been appointed by virtue of Rule 4.19(f) or (g) – upon ceasing to be a legal personal representative of the sole surviving trustee or upon the retirement as a trustee.

## **Retirement of Trustee**

4.7 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.

- 4.13 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.

## **Remuneration of Trustees**

- 4.17 A person acting as Trustee is not entitled to receive from the Superannuation Fund (or from any other person) any remuneration for acting as Trustee. To remove doubt, this prohibition does not preclude a Trustee from being reimbursed for trust expenses properly incurred, does not prevent the person from being indemnified from the Trust Fund for any trust liabilities and does not prevent a Trustee from receiving reasonable remuneration for services the Trustee provides (other than services as a Trustee) in a professional or other capacity (eg as a lawyer or actuary).

## **Transfer of Property, Records etc**

- 4.18 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 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.

## 5. Trustee's Powers, Discretions and Duties

### Powers Generally

5.1 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) has, in addition to the powers conferred by these Rules, 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.

### Particular Powers

5.2 Without limiting anything in Rule 5.1 but subject to Superannuation Law, the Trustee has the following powers:

- (a) to appoint and remunerate service providers including administrators, auditors, actuaries, taxation agents, legal and other advisers and agents;
- (b) to insure the property of the Superannuation Fund;
- (c) to insure the lives of Members and Dependants of Members of the Superannuation Fund;
- (d) to compromise claims against the Superannuation Fund;
- (e) to engage nominees and custodians;
- (f) to borrow and to lend and to grant security for any borrowing;
- (g) 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;
- (h) to acquire and hold investments or property of the Fund (whether legal or equitable) for the time being in the circumstances contemplated by s67(4A) of the SIS Act 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;
- (i) 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 s67(4A) of the SIS Act;
- (j) to lease, hire or grant rights to use or exploit any property;
- (k) to surrender any lease, hiring, usage or exploitation arrangement;
- (l) to grant or take call or put options in respect of any property;
- (m) to maintain, repair or improve any property;
- (n) to develop any property;
- (o) to grant guarantees to or on behalf of any person the Trustee sees fit;
- (p) to grant indemnities to or on behalf of any person the Trustee sees fit;

- (c) ensure that the Trustee's duties and powers are performed and exercised 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 the trustee 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 the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's 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; and
  - (iv) the ability of the Superannuation Fund to discharge its existing and prospective liabilities;
- (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
- (h) to allow a beneficiary access to any information or any documents which are prescribed for the purposes of s52(2)(h) of the SIS Act, as that provision applies to self managed superannuation funds.

5.7 Where the Trustee consists of individuals, the covenants set out in Rule 5.6 apply to each individual Trustee.

5.8 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 5.6.

## **Indemnity from Trust Fund**

- 6.6 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 incurred by the Trustee in connection with execution, attempted execution, or non-execution of the Trustee's powers and discretions under this Deed.

## **Payment and reimbursement**

- 6.7 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.

## **Application of preceding provisions to Individuals acting as Trustee and Directors of Corporate Trustees**

- 6.8 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.

## **7. Benefit Splitting on Marriage Breakdown**

### **Interest subject to payment split**

- 7.1 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 superannuation interest;
  - (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 superannuation interest; or
  - (c) take such other action (such as waiving rights under a Payment Split) as the Trustee considers necessary or desirable.

### **When Trustee required to take action**

- 7.2 Where a Payment Split interest has not been satisfied within 6 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



## 9. Records, audit and information

### Record keeping and Information Disclosure

- 9.1 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

### Number of Members is 4

- 10.1 The maximum number of Members of the Superannuation Fund is four. 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.

### Who are Members?

- 10.2 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 Fund whether these persons are admitted as Members,
    - (i) by invitation of the Trustee; or
    - (ii) by nomination of the Trustee,
- and who, in either case, have not ceased to be Members in accordance with Rule 10.7.

### By invitation

- 10.3 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.

## **Where number of members exceeds four**

10.8 Where acceptance of an application for membership or a nomination for membership would result in the number of Members being 5 or more, 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.

## **Information provided by Member**

10.9 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.

## **Trustee deemed to be attorney of member**

10.10 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.

## **Membership may be restricted to certain persons and their relatives**

10.11 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.

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

### **Beneficiaries bound by Rules**

11.1 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.

### **No proprietary interest in trust property**

11.2 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.

## **Auditor**

12.4 The Trustee must ensure that in respect of each financial year an Approved 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.

## **Removal and Replacement of Auditor**

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

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

## **Accounts -Generally**

12.7 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.

## **Crediting and Debiting to Accounts**

12.8 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.

## **Benefits Accounts to be Maintained**

12.9 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) an Expense Account - to record any amounts set aside to pay fund expenses or taxation liabilities;
  - (ii) a Contribution Reserve Account - to record any contributions 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 Foregone 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 reduction of a death benefit by reason of the imposition of tax on contributions);

## **Debiting of Fund Expenses**

12.11 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 the investment earnings of the Fund with such amount (if any) of current or future Fund Expenses as the Trustee determines;
- (c) debit each or any of the Member Accounts as the Trustee considers appropriate on account of current or future Fund Expenses, and transfer the amounts so debited to the Fund Expense Account from which the Trustee may pay the Fund Expense; or
- (d) 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 or Fund Expense Account).

## **Allocation of Investment Earnings**

12.12 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 Contributions Reserve 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.

## **Where Fund has two or more Investment Strategies**

12.13 Where the Fund has two or more investment strategies or has one or more segregated current pension 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.

## **Allocation of Amounts from Expense Account**

12.14 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.

## **Trustee's discretion as to Accounts to be kept**

12.15 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,

- (e) Forgone Benefits Account, Anti-Detriment Benefit Account or the Fund Expense Account to the Insurance Reserve Account; and
- (f) Insurance Reserve Account to the Investment Reserve Account or the Fund Expense Account.

### **Allocation from the Contributions Reserve Account**

12.19 The Trustee must allocate any contribution credited to the Contributions Reserve Account to the appropriate Member Account of the relevant Member within 28 days of the end of the month in which the contribution was received or such longer period as Superannuation Law allows.

### **Allocation from the Fund Accounts to Member Accounts**

12.20 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.

## **13. Surplus /Deficiency**

### **Surplus/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, it is appropriate to allocate to benefit accounts and to reserve accounts.

### **Apportionment and allocation of Surplus/Deficiency**

13.2 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.

### **Determination of Surplus /Deficiency**

13.3 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

- (l) payments which are covered by section 292-95 of the 1997 Act (personal injury payments under structured settlements or court orders);
- (m) payments which are made from Foreign Superannuation Funds;
- (n) payments from First Home Saver Accounts; and
- (o) Government FHSA contributions.

### **SIS Limitation upon acceptance of payments**

- 14.3 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.

### **Form of contribution**

- 14.4 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) a mixture of both.

- 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.

### **Invalid contributions**

- 14.6 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.

### **Information as to Contributions**

- 14.8 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

- (d) entered into a debt agreement under Part IX of the *Bankruptcy Act, 1966* 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 Foregone Benefits Account.

### **Payment of Benefit by transfer of trust property**

- 15.5 The Trustee may pay part or all of a benefit to a Beneficiary by the transfer of trust property.

### **Form of Benefits**

- 15.6 The Trustee may determine that the benefit to be paid to the Beneficiary will be paid as:
- (a) a lump sum; or
  - (b) as one or more separate pensions (whether of the same kind or not); or
  - (c) in part as a lump sum and in part as one or more separate pensions (whether of the same kind or not).

### **Pension Terms**

- 15.7 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 neither an account-based pension, allocated pension, transition to retirement pension nor a market linked pension (in either case, whether commutable or non-commutable) - 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.

### **New Market-Linked Pensions not to be commenced after 19 September 2007**

- 15.8 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

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.

## **Payments to Parents, Guardians etc**

- 15.15 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.

## **Payments to or as a trust fund**

- 15.17 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.

## **Death Benefit – Binding Nomination**

- 15.18 Where a Member or the Enduring Attorney of the Member has provided to the Trustee a nomination in respect of all or part of the benefits payable from the Superannuation Fund by reason of the death of the Member and the written nomination:
- (a) is completed to the 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 by the Member or by the Enduring Attorney or superseded by a more recent binding nomination made by the Member or the Enduring Attorney; and
  - (g) has been signed by the Member (if made by the Member) or signed by the Enduring Attorney (if made by the Enduring Attorney of the Member); and
  - (h) is dated,
- then subject to next sub-rule, the nomination is binding on the Trustee and the Trustee must allocate the death benefit of the Member in the manner indicated in the nomination.



- 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.

## **Death Benefit Nominations – Further Provisions**

- 15.24 To remove doubt, a death benefit nomination (whether binding or non-binding and whether made by the Member or their Enduring Attorney – in either case – “the maker of the nomination”):
- (a) may specify the form in which a benefit or a portion of a benefit may 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 estate contains certain provisions specified by the maker of the nomination;  
or
  - (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.
- 15.25 To remove doubt, a nomination (whether binding or non-binding and whether made by the Member or the Enduring Attorney of the Member – in either case the “maker of the nomination”) is not invalid merely because:
- (a) the nomination has provided that the benefit 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; or
  - (d) the nomination relates to only a part or portion of the benefits payable in respect of the Member.

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;

- (k) if the Trustee had in place disablement insurance cover for the Member at the time the Member became disabled the premiums for which cover were debited to the Benefit Account of the Member - the Insured Amount of that Member (unless that Insured Amount has already been credited to the Member Accounts of that Member); and
- (l) if the payment is by reason of the attainment by the Member of the preservation age - the payment must be in the form of a transition to retirement income stream or a non-commutable market-linked pension.

### **Member may defer payment of benefit**

16.2 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.

### **When Deferred Benefit must be paid**

16.3 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.

### **Temporary Incapacity**

16.4 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.

## Manner of Payment of Benefits - Generally

- 16.9 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 Account-Based Pension 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 or as an Account-Based 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* 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 as a Transition to Retirement 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 or as a lump sum as the Trustee determines.

## 19. Termination of the Fund

### General

- 19.1 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.

### Termination by trustee

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

### Application of Trust Fund

- 19.3 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.

### Consequential matters

- 19.4 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).

### Beneficiaries to stand in place of deceased member

- 19.5 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

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

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

## **Amendment of existing SIS Requirements**

22.2 Where:

- (a) the Trust Deed sets out a particular SIS 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 Requirement subsequently is either amended, ceases to be a pre-requisite or is deleted,

then,

- (c) if the SIS Requirement is amended and remains a pre-requisite, then the SIS 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 Requirement in its amended form and the SIS 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 requirement in its amended form;
- (d) if the SIS 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 Requirement; and
- (e) if the SIS Requirement is deleted from the SIS Act, then the Trustee may determine that it is no longer bound by the SIS 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.

## **Continuation of Pension terms**

- 24.2 The terms which apply to a pension which commenced before the Application Date continue to apply despite the application of the SuperCentral Governing Rules to the Superannuation Fund or any subsequent amendment of the SuperCentral Rules, unless either:
- (a) 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; or
  - (b) the Member who is the pensioner expressly requests the Trustee to rollover the pension into a new pension.

## **25. Grandfathered Death Benefit Nominations**

### **Purpose of Rule**

- 25.1 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.

### **Continued validity of pre Application Date nominations**

- 25.2 A death benefit nomination (whether binding or non-binding) which was made before the Application Date continues to be valid after the Application Date as a binding or non-binding nomination (as the case may be) and, where the nomination was binding, 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 at the time the nomination was first made.

### **Member not precluded from making new post Application Date nominations**

- 25.3 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. Simplified Superannuation Transitional Provisions**

### **Trustee empowered to undertake actions to accommodate introduction of Simplified Superannuation**

- 26.1 The Trustee is expressly empowered to undertake any actions or perform any conduct which the Trustee considers necessary, desirable or convenient in order for the Superannuation Fund to continue to operate as a concessional tax superannuation fund on and after 1 July 2007 under the legislative changes introduced by the *Tax Laws*

- (b) by substituting for the lower limit which currently applies to pension payments in respect of each year, a lower limit calculated in accordance with Schedule 7 of the SIS Regulations;
- (c) by altering the pension from a reversionary to a non-reversionary basis;
- (d) by changing the reversionary beneficiary to another person;
- (e) by introducing a pension term that requires the commutation of the reversionary pension where the reversionary beneficiary is not a death benefit dependant (within the meaning of s302-195 of the *Income Tax Assessment Act 1997*) of the member;
- (f) such other aspect being an aspect consistent with Superannuation Law as it applies from 1 July 2007.

26.7 Any agreement between the Trustee and the Member may operate retrospectively from a date not before 1 July 2007.

## **27. Membership Restriction/Property held for Specified Members continue despite Amendments**

### **Purpose of Rule**

27.1 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.

### **Continued effect of Determinations**

27.2 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 for 2008/09 and 2009/10**

### **Purpose of Rule**

28.1 The purpose of this Rule is to empower the Trustee to reduce the minimum pension limit applicable to allocated pensions, non-commutable allocated pensions, market linked pensions, non-commutable market linked pensions, account-based pensions and transition to retirement pensions in respect of the financial year commencing on 1 July 2008 as permitted by *Superannuation Industry (Supervision) Amendment Regulations 2009 (No 2)* and in respect of the financial year commencing on 1 July 2009 as permitted by *Superannuation Industry (Supervision) Amendment Regulations 2009 (No 4)*.

28.2 The Trustee and the relevant pensioner may in respect of pension payments made on or after 17 March 2008 vary or reduce the pension payments made in respect of

## 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, 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 (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.



- 3.3 The minimum pension amount is determined by the formula:

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

Where “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 On the death of the pensioner the pension account balance (if any) will, subject to Rule 4.2:
- (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) – 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 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*; or

## 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 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 commencement of the pension, determine that the duration of the pension shall be for another period.

- 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.

“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*; or
  - (g) any other individual to whom the pension can be transferred without breaching the SIS Act or Regulations.

## Schedule C Transition to Retirement Pension Rules

### Rules applicable to the payment of a Transition to Retirement Pension (non-commutable 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, 2.7 and 2.8 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

### 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 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*;
    - (iv) for the purpose of paying an amount to give effect to a Release Authority under s292-415 of the *Income Tax Assessment Act 1997* in respect of the pensioner; or
    - (v) for the purpose of paying an amount to give effect to a Transitional Release Authority under s292-80C of the *Income Tax (Transitional Provisions) Act 1997*.
  - (c) 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,

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:

- (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*; 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*, 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.

- 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:

- (i) in respect of the financial year commencing 1 July 2008 - not less than 45% and not more than 110% of the amount specified by the formula in paragraph (a) as rounded in accordance with Rule 3.2; and
- (ii) in respect of any other financial year - 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.

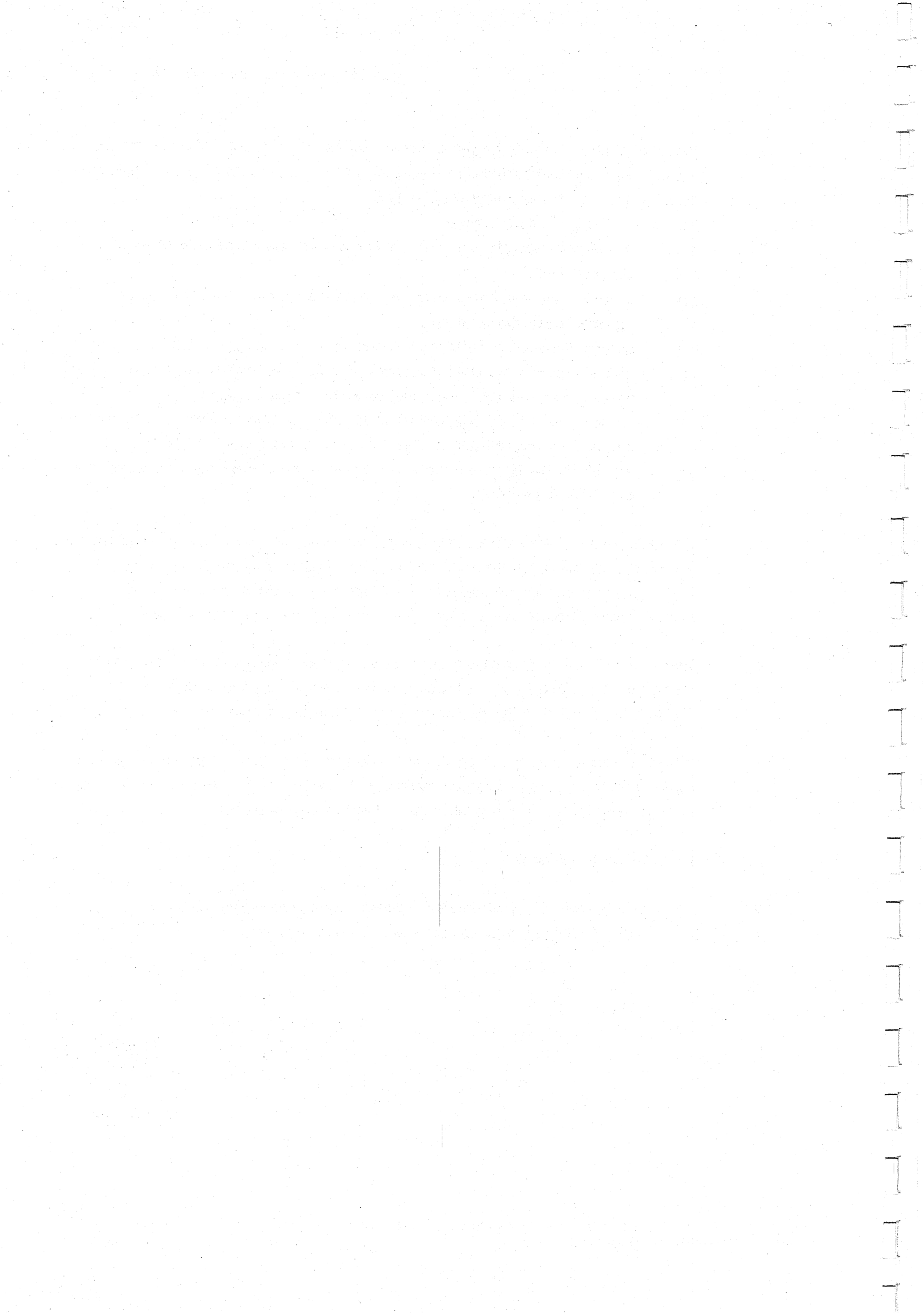
“Payment Factor” is the factor specified by Schedule 6 of the SIS Regulations which is applicable to the remaining term of the pension (expressed in whole years by rounding up (if the pension commenced on or after 1 January) and rounding down (if the pension commenced on or before 31 December)).



- (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*;
- (g) for the purpose of paying an amount to give effect to a Release Authority under s292-415 of the *Income Tax Assessment Act 1997* in respect of the pensioner; or
- (h) for the purpose of paying an amount to give effect to a Transitional Release Authority under s292-80C of the *Income Tax (Transitional Provisions) Act 1997*.

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).

- 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*; 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*, 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.



- 6.2 The commutations permitted in the circumstances of Rules 6.1(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 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.

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:

## 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.

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

Where "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 On the death of the pensioner the pension account balance (if any) will, subject to Rule 4.2:
- (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) – 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;
  - (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;

- (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.
- 2.8 In respect of the financial year commencing 1 July 2008, the minimum pension limit calculated in accordance with Schedule 1A, Schedule 1AAB and Schedule 7 of the SIS Regulations is half the amount which, but for this sub-rule, otherwise apply under those Schedules.



- 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*, 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.

- (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*;
- (g) for the purpose of paying an amount to give effect to a Release Authority under s292-415 of the *Income Tax Assessment Act 1997* in respect of the pensioner; or
- (h) for the purpose of paying an amount to give effect to a Transitional Release Authority under s292-80C of the *Income Tax (Transitional Provisions) Act 1997*.

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;

**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:

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

(b) be an amount which is:

- (i) in respect of the financial year commencing on 1 July 2008 - not less than 45% and not more than 110% of the amount specified by the formula in paragraph (a) as rounded in accordance with Rule 3.2; and
- (ii) in respect of any other financial year – 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.

- (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*, 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.

- 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 In respect of the financial year commencing 1 July 2008, the minimum pension limit calculated in accordance with Schedule 1A, Schedule 1AAB and Schedule 7 of the SIS Regulations is half the amount which would, but for this sub-rule, otherwise apply under those Schedules.

### **3. Commutation**

- 3.1 The pension may be commuted 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 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*,
  - (c) where 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,
- 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.

2008/09 or the 2009/10 financial year so that the total pension payments made in that year are not less than the 50% of the minimum pension amount which would, but for the amendment regulations referred to in Rule 28.1, otherwise apply to that financial year.

*Amendment (Simplified Superannuation) Act 2007 and the Superannuation Legislation Amendment (Simplification) Act 2007 and the related changes to Superannuation Law.*

## **Crystallisation of ETP Components**

- 26.2 Without limiting Rule 26.1, the Trustee is expressly empowered to calculate and crystallise the dollar amounts (as at 1 July 2007) based upon membership and service periods completed to 1 July 2007 of the ETP components of each superannuation interest in the Superannuation Fund and will allocate the calculated dollar amounts of the various ETP components to the exempt and taxable components of the superannuation interest.
- 26.3 The Trustee may, in respect of each superannuation interest, crystallise the ETP components at any time in the period from 1 July 2007 to 30 June 2008 (or such other date as Superannuation Law allows or the Commissioner of Taxation permits) for each superannuation interest but need not undertake the crystallisation process for each superannuation interest at the same time.
- 26.4 Despite Rule 26.2 the Trustee will not crystallise the ETP components of a pension which commenced before 30 June 2007 and in respect of which no trigger event has occurred before 1 July 2007 unless and until a trigger event occurs on or after 1 July 2007 in which case the Trustee must crystallise that pension as at the time of the occurrence of the trigger event.

## **Commutation of Certain pensions – Release Authorities & Transitional Release Authorities**

- 26.5 In respect of market-linked pensions, non-commutable allocated pensions and non-commutable market linked pensions which commenced before 1 July 2007, then despite the terms of the pensions, the Trustee may with the consent of the pensioner, commute those pensions:
- (a) for the purpose of paying an amount to give effect to a Release Authority under s292-415 of the *Income Tax Assessment Act 1997* in respect of the pensioner; or
  - (b) for the purpose of paying an amount to give effect to a Transitional Release Authority under s292-80C of the *Income Tax (Transitional Provisions) Act 1997*.

## **Variation of Current Pensions to new terms**

- 26.6 In respect of allocated and non-commutable allocated pensions the Trustee with the agreement of the pensioner may vary the terms of the allocated pension in one or more of the following aspects:
- (a) by removing the upper limit which currently applies to pension payments in respect of each year;

## 23. Grandfathered SIS Provisions

### Purpose of Rule

23.1 As various transitional arrangements apply to certain SIS requirements by which funds established before the introduction of a particular SIS requirement were allowed exceptions to the application of that particular SIS 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.

### Approved ancillary purposes

23.2 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.

### Lending to Members/Relatives of Members

23.3 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 Requirement not to lend money to members, the Trustee may lend money to Members (despite the SIS Requirement against lending money to members) to the extent that the Trustee could have lent monies to members immediately before 16 December 1985.

### In House Assets – Transitional Provisions

23.4 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

### Purpose of Rule

24.1 The purpose of this Rule is to provide for continuation of the terms which applied to pensions which commenced before the Application Date.



provisions will be allocated amongst the Beneficiaries of the deceased Member in accordance with Rule 15.

## 20. Notices

### Form

20.1 Any notice given under the Deed must be in writing.

### Receipt

20.2 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

### Proper Law

21.1 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.

### Where South Australia is the Proper Law of the Superannuation Fund

21.2 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

### Incorporation of new SIS Requirements

22.1 Where:

- (a) compliance with a SIS 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 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:

## **Manner of Payment of Benefits – grandfathered pensions**

- 16.10 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).

## **17. Transfers/Rollovers**

### **Transfers/Rollovers to the Superannuation Fund**

- 17.1 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.

### **Transfers/Rollovers from the Superannuation Fund**

- 17.2 The Trustee may, subject to Superannuation Law, transfer the whole or part of any amount held in the Fund in respect of a Member to another Complying Superannuation Entity or to a Foreign Superannuation Fund.

## **18. Confidentiality**

### **Non-disclosure**

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

### **Exceptions**

- 18.2 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; or
  - (c) where non-disclosure of the material may cause adverse tax consequences to the Superannuation Fund.

## **Restrictions which apply to the Temporary Disablement Benefit**

- 16.5 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 contributions 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.

## **Payment under Release Authorities**

- 16.6 Where a Release Authority or a Transitional 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.

## **Payment of all or part of a Benefit in other circumstances**

- 16.7 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.

## **Payment of Benefit in other circumstances permitted or required by Superannuation Law**

- 16.8 Where Superannuation Law either:
- (a) permits the payment of a benefit to or in respect of a Member and the Member (or by an Enduring Attorney 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. Benefits: Access Conditions and Amounts

### Benefit Entitlement – Retirement, Age 65, death, permanent incapacity

16.1 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
- (g) (*preservation age*) - the attainment of the Member's preservation age, the Trustee may and must, if requested by the Member (or by an Enduring Attorney 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:
  - (h) the Superannuation Balance of that Member; and
  - (i) if the payment is by reason of the death or disablement 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 premiums for which cover were debited to the Benefit Account of the Member the Insured Amount of that Member (unless that Insured Amount has already been credited to the Member Accounts of that Member);
  - (j) 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

- 15.19 To the extent an otherwise binding nomination nominates a person who at the time of death of the Member:
- (a) has predeceased the Member;
  - (b) is an undischarged bankrupt;
  - (c) is a person whose financial affairs are subject to a debt agreement under Part IX of the *Bankruptcy Act, 1966* which has not been completely performed;
  - (d) is a person whose financial affairs are subject to a deed of assignment, deed of composition or deed of arrangement under Part X of the *Bankruptcy Act, 1966* which has not been completely performed;
  - (e) is a person whose financial affairs are subject to a personal insolvency agreement under Part X of the *Bankruptcy Act, 1966* which has not been completely performed; or
  - (f) has ceased (whether by court order, permanent separation or otherwise) to be the Spouse of the Member,
- the nomination is not binding; and
- (g) to the extent an otherwise binding nomination nominates the Estate of the Member and that Estate is an insolvent estate or is likely to be an insolvent estate, the nomination is not binding.

### **Death Benefits – No Binding Nomination**

- 15.20 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.

### **Death Benefit – Member has no Dependants and No Personal Legal Representative**

- 15.21 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.

commutations) originally commenced before 20 September 2007 whether in the Superannuation Fund, another superannuation fund or as a complying annuity

## **Restrictions on Commencing New Pensions & Transfers of Pensions on or after 1 July 2007**

- 15.9 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*; 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*, the Trustee is not required to terminate the pension.

### **Augmentation of Benefit**

- 15.12 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.

### **Minimum Benefit**

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

### **Adjustment of Benefit where risk claim denied**

- 15.14 Where all or part of the benefits payable to or in respect 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

appropriate, hold the contribution in suspense until the information is provided or the Trustee decides to accept the contribution.

## **Return of Contributions made under a mistake**

- 14.9 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.

## **15. Benefit Entitlements Generally**

### **Entitlement to Benefits**

- 15.1 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.

### **Proof & Evidence of Entitlement**

- 15.2 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.

### **Payment upon conditions or by instalments**

- 15.3 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; and
  - (b) pay a lump sum benefit or a part of lump sum benefit by instalments.

### **Prior bankruptcy and attempted assignments**

- 15.4 Where immediately before an entitlement to a lump sum benefit arises a putative Beneficiary of that benefit:
- (a) is an undischarged bankrupt;
  - (b) has entered into an arrangement, assignment or composition with his or her creditors under Part X of the *Bankruptcy Act, 1966* which has not been completely performed;
  - (c) entered into a personal insolvency agreement under Part X of the *Bankruptcy Act, 1966* which has not been completely performed;

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.

## **Allocation of benefit of any Subdivision 295-J**

- 13.4 Where the Trustee is eligible to claim a tax offset under Subdivision 295-J of the *Income Tax Assessment Act 1997*, 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**

### **Generally**

- 14.1 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.

### **Specific Contributions**

- 14.2 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;
  - (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 the Superannuation (*Government Co-contribution for Low Income Earners*) Act, 2003;
  - (j) payments which are contribution-splitting superannuation benefits in respect of a Member;
  - (k) payments which are covered by section 292-100 of the 1997 Act (CGT small business concession contributions);



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.

### **Trustee may consolidate or divide Accounts**

12.16 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.

### **Adjustment of Accounts**

12.17 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) any contributions-splitting superannuation benefit made at the request of 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 a member under a Release Authority;
- (k) any amount paid to the Australian Taxation Office under a Release Authority;
- (l) any amount paid to a Member under a Transitional Release Authority;
- (m) to reflect the imposition of tax in respect of no-TFN contributions income in respect of that Member;
- (n) to reflect 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) to reflect the imposition of any tax on non-arm's length income in respect of a particular member.

### **Transfers between Fund Accounts**

12.18 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;

- (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; and
- (b) in respect of each Member the following Member Accounts:
  - (i) a Member Contributions Account for each Member - to record the contributions made by a Member for their own benefit;
  - (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 Co-Contribution Account - to record any Government Co-Contributions received in respect of the Member;
  - (iv) a Member Miscellaneous Contributions Account - to record any contributions (eg spouse contributions, transfers from First Home Saver Accounts or Government FHSA contributions) made for the benefit of the Member which are not recorded in any other account;
  - (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) which are not recorded in the Employer SGC/Award Contributions Account; and
- (c) in respect of each allocated pension (whether commutable or non-commutable) payable to or in respect of a Member - to record the payment of that pension to or in respect of the Member;
- (d) in respect of each market-linked pension (whether commutable or non-commutable) payable to or in respect of a Member - to record the payment of that pension to or in respect of the Member;
- (e) in respect of each account-based pension payable to or in respect of a Member – to record the initial pension account balance and the payment of that pension to or in respect of the pension; and
- (f) in respect of each transition to retirement pension payable to or in respect of a Member – to record the initial pension account balance and the payment of that pension to or in respect of the Member

**Where same amount may be credited to two or more accounts**

- 12.10 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.

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

- 11.3 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.

## **Liability of a Member/Beneficiary**

- 11.4 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**

### **Financial Accounts and Records**

- 12.1 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.

### **Auditing of accounts**

- 12.2 The Trustee must ensure that the financial accounts and statements required by Rule 9 to be prepared in respect of financial year are, within such period as Superannuation Law requires, audited by an Approved Auditor.

### **Audit Report and certificate**

- 12.3 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 and an audit certificate in relation to the financial accounts and statements in the form required by Superannuation Law.

## **By nomination**

10.4 Where an individual has been nominated for membership, that individual will become a Member on the Trustee recording the nomination.

## **No invitation or nomination without providing PDS**

10.5 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.

## **Consideration of Application**

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

## **Termination of Membership**

10.7 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 their 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; or
- (f) the Trustee resolves to terminate the membership of the individual and has duly notified the individual of the termination of membership.

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

### Member may request contribution split

8.1 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.

### Trustee may implement Contribution Split

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

### Trustee not to implement contribution split if request invalid

8.3 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 split exceeds the maximum splittable amount of the splittable contributions of the Member.

### Payment /crediting of contributions-splits

8.4 The Trustee may implement a Contributions Split request by:

- (a) creating a membership interest for the beneficiary of the contributions-split and crediting the amount of the contributions-split to that interest; or
- (b) 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
- (c) transferring the amount of the contributions-split to another superannuation fund for the benefit of the beneficiary of the Contributions Split.

### Trustee may implement Contribution Split to extent permitted by Law

8.5 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 Contribution Split as a request relating to the amount not exceeding the maximum splittable amount.

## **6. Trustee's Rights and Protections**

### **Limitation of Personal Liability**

- 6.1 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.

### **Exception for Dishonesty, Wilful or Reckless Neglect**

- 6.2 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.

### **Reliance on Information, Opinions**

- 6.3 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.

### **Reliance on directions & actions of Enduring Attorney of Member**

- 6.4 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 Enduring Attorney 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 the Attorney of a Member if the Trustee actually knows that the appointment of the Attorney has ceased. 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 the Enduring Attorney of the Member.

### **Action despite interests**

- 6.5 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.

- (q) 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; and
- (r) 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;
- (s) to draw, issue, accept, endorse or otherwise deal in any bill of exchange, promissory note or other negotiable instrument;
- (t) to enter into agreements to transfer taxable contributions for the purpose of s295-260 of the *Income Tax Assessment Act, 1997*; and
- (u) to do anything incidental to the exercise of any of the preceding powers.

### **Power to Comply with Act and retain SMSF Status**

5.3 Without limiting anything in Rules 5.1 or 5.2 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; and
- (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.

### **Discretions**

5.4 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.

### **Proofs and Evidence**

5.5 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.

### **SIS Statutory Covenants**

5.6 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;

## **Where Trustees are Individuals**

4.19 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) 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;
  - (iii) the appointment of the legal personal representative as Trustee is conditional upon the legal personal representative having consented in writing to the appointment.

## **Where Trustee is a representative of a Member**

4.20 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.



## **Appointment of replacement Trustee in circumstances other than retirement**

- 4.8 Where a person ceases to be a Trustee (other than by retirement or death) and the Regulator has not appointed a replacement Trustee, then the Member or Members may by an instrument in writing appoint a replacement Trustee or Trustees.

## **Change of Trustee Structure**

- 4.9 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 signed by the current trustee or trustees and by the replacement trustee or trustees.

## **Change of Membership Structure**

- 4.10 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.

## **Enduring Attorney acting as Representative Trustee for Member**

- 4.11 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 of 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.

- 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 nominated in the instrument referred to in Rule 3.17.

## 4. The Trustee

### Generally

- 4.1 The Trustee of the Superannuation Fund will be the Initial Trustee and such other persons who have been duly appointed pursuant to this Rule in addition to or to replace the Initial Trustee.

### Number

- 4.2 The number of trustees shall be:
- (a) where a company is acting as Trustee - one;
  - (b) where individuals are acting as Trustee and there is only one Member - two; and
  - (c) where individuals are acting as Trustee and there are two, three or four Members - then the number of Trustees must equal the number of Members, unless Superannuation Law or the Regulator permits otherwise.

### Eligibility for Appointment – company

- 4.3 For a company to act 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 meet the SMSF Trustee Standard; and
  - (c) the company must have consented in writing to the proposed appointment.

### Eligibility for Appointment - director of company acting as Trustee

- 4.4 For an individual to be appointed 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 meet the SMSF Trustee Standard; and
  - (d) the individual must have consented in writing to the proposed appointment.

### Eligibility for Appointment of Individual - as Trustee

- 4.5 For an individual to be appointed 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

- (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.

## **Investment Returns**

- 3.9 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;
  - (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.

## **Single superannuation entity**

- 3.10 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.

- or such circumstances as are specified by or authorised under section 62 of the SIS Act;
- (d) the provision of non-commutable pensions to Members who have attained their preservation age; or
  - (e) 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).

### **Primary purpose**

- 2.2 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.

### **Constitutional corporation**

- 2.3 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**

### **Composition**

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

### **Investment of Trust Fund**

- 3.2 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 location of the investment) the Trustee considers appropriate and may at any time vary any investment.
- 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);

“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 prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- (c) any other person who is a spouse for the purposes of the SIS Act;

“Superannuation Balance” of a Member means the aggregate of the balances of the Member Accounts of that Member other than 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 Law” means the SIS Act and those provisions of the *Income Tax Assessment Act, 1936*, *Income Tax Assessment Act, 1997*, *Corporations Act, 2001*, and the *Family Law Act, 1975* 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 stamp, financial institutions, registration and any other duties, bank accounts debits 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*, *Income Tax Assessment Act, 1997*, *Taxation Administration Act, 1953*, *Income Tax (Transitional Provisions) Act, 1997* and any regulations or other statutory instruments made pursuant to those any of those Acts.

“Temporary Incapacity” in relation to a Member means suffering ill-health (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 does not constitute Permanent Incapacity.

“*Liabilities*” means all liabilities whatsoever of the Superannuation Fund, and includes any provision the Trustee makes in connection with such liabilities;

“*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;

“*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*;

“*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 - means 56 years;
- (c) for a person born during the year 1 July 1961 to 30 June 1962 - means 57 years;
- (d) for a person born during the year 1 July 1962 to 30 June 1963 - means 58 years;
- (e) for a person born during the year 1 July 1963 to 30 June 1964 - means 59 years;
- (f) for a person born after 30 June 1964 - means 60 years;

“*Preservation Age Release Condition*” means the Release Condition constituted by the attainment of Preservation Age;

“*Qualifying Instalment Arrangement*” means an instalment arrangement which satisfies the requirements of s67(4A) of the SIS Act;

“*Release Authority*” means an authority issued by or on behalf of the Commissioner of Taxation which allows a superannuation trustee to pay to the member or to the Commissioner an amount from a superannuation fund to reimburse a member or to discharge an excess contributions tax liability of that member;

“*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, transfer or allotment to a Spouse of the Member of all or a portion of the Superannuation Balance of the Member;

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

“*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 product traded or transaction undertaken on financial markets (whether on an exchange or not) from time to time;
- (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 is by reason of s120 or s120A of the SIS Act not permitted to participate in the management of a regulated superannuation fund.

## **Covenants**

- (f) 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.

## **Examples not limiting**

- (g) 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.

## **Severance**

- (h) 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.

## **Time obligations**

- (i) 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.

## **Defined Words**

- (j) 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.

## **Powers and Discretions**

- (k) 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.

## **Individuals as Trustee**

- (l) Where two or more individuals have been appointed trustees, the references to the "Trustee" are to be read as references to those individuals acting as a group.

## **References to Part X arrangements being completely performed**

- (m) For the purposes of these Rules, a debt agreement, a deed of assignment, a deed of composition, a deed of arrangement or a personal insolvency agreement under Part X of the *Bankruptcy Act, 1966* (collectively "a Part X transaction") will be taken as being completely performed if the person who is the subject of the Part X transaction is legally entitled to claim a certificate signed by the trustee of the Part X transaction confirming that the person has satisfied all of the obligations imposed on the person by the Part X transaction.



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