

# Self Managed Superannuation Fund

## Amendment Deed

### S & B Superannuation Fund

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#### Deed

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- b. The Superannuation Fund continues as an indefinitely continuing fund which provides individual personal benefits, pensions or retiring allowances for the Members and their Dependants.

#### Name

- c. The Superannuation Fund will be known as the S & B Superannuation Fund or by such other name as the Trustees determine.

#### Current Members

- d. Each of the persons ("the Current Members") identified in Part 2 of the Annexure ("Schedule of Current Members") continue to be the Members of the Superannuation Fund.
- e. Each of the Current members authorise 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. Replacement of Current Provisions**

#### Replacement of Rules

- a) Pursuant to the amendment powers conferred on the Trustee (whether under the Current Deed or otherwise) the Current Deed is amended with effect on and from the date of this Trust Deed by completely replacing all the current provision of the Current Deed with the Provision of this Amendment Deed and of the SuperCentral Governing Rules.

#### Incorporation of SuperCentral Governing Rules

- b) For the purposes of Clause 2(a), the SuperCentral Governing Rule are expressly incorporated into this Trust Deed as if they has been set out at length in the Trust Deed.

#### Identification of SuperCentral Governing Rules

- c) The SuperCentral Governing Rule are the Rules set out as an attachment to the Deed dated 1 July 2007 made by Super Governing Rules Pty Limited ACN 117 737 381 ("SGR") as those Rules are subsequently amended from time to time by SGR pursuant to clause 3(b).

### **3. Amendment Powers**

#### Donees & scope of amendment powers

- a) The Trustees 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.

- h) Where the Trustees make 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

- i) Where SGR at the request of the Trustees 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 notwithstanding that the amendment power conferred on SGR has terminated.

#### Release of amendment power

- j) SGR may by deed or written notice to the Trustee release the power conferred by clause 3(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 terminated Superannuation Fund notwithstanding that the amendment power conferred on SGR has terminated.

#### **4. Amendment Deed, Annexure & SuperCentral Governing Rules**

Deed includes annexure, rules and schedules

- a) This Amendment Deed includes the Annexure to this deed and the SuperCentral Governing Rules.

#### Inconsistency between parts of deed

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

## Annexure

### Part 1: Directors – Consent and Declaration

We each understand that the Superannuation Fund is 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 we each wish to confirm, as at the date of this declaration, that in relation to ourselves:

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

We each individually understand that should any of the matters listed in paragraphs (b) to (e) subsequently apply to any of us, that we 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 we will immediately advise our fellow directors and that we will, as and when required by our fellow directors, resign as a director.

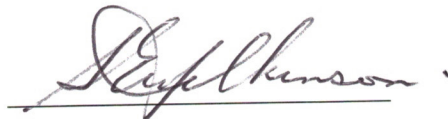
Director of corporate trustee 1:

Stephen Wilkinson

Address:

26 Huelin Circuit Flynn ACT 2615

Signature:



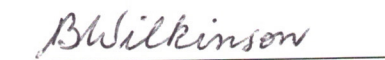
Director of corporate trustee 2:

Beryl Wilkinson

Address:

26 Huelin Circuit Flynn ACT 2615

Signature:



### **Part 3: Tax File Number Authorisations**

Each of the Current members understand that there is no legal obligation to provide to the Trustee their Tax File Number ("TFN") but are aware of the consequences of not providing their TFN.

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

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

The Trustees are authorised under the Superannuation industry (Supervision) Act, 1993 to request and collect TFNs of members and prospective member of the fund

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

If a member or prospective member provides their TFN, the Trustees are 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 members; 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 use may, because of the legislative changes, alter in the future.

#### **No obligation to provide TFN**

A member/prospective member is under no 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:

# SuperCentral Governing Rules

## Version 07/07

### Current Version

- Version 07/07 applies from 1 July 2007

### Previous Versions

- Version 11/06 applied from 7 November 2006
- Version 02/06 applied from 7 February 2006

Made by Super Governing Rules Pty Limited  
(ACN 117 737 381 by an Amendment Deed  
dated 15 June 2007

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# SuperCentral Governing Rules

These Rules have been made by Super Governing Rules Pty Limited ACN 117 737 381 by an Amendment Deed dated 15 June 2007

## 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 includes:
- (1) 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
  - (2) 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 any two or more of them.

#### *Grammatical forms*

- (e) In these Rules:
- (i) the singular includes the plural;
  - (ii) the plural includes the singular; and
  - (iii) reference to a gender includes each other gender.

#### *Covenants*

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



"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 step-child, an adopted child or an ex-nuptial child, or any other person who is a child for the purposes of the SIS Act;

"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 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; and
- (d) 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).

(f) for a person born after 30 June 1964 - means 60 years.

*"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.

*"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 a provision of these Rules;

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

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

*"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";

*"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 as their husband or wife; and
- (b) any other person who is a spouse for the purposes of the SIS Act;

*"Superannuation Balance"* of a Member means the aggregate of the balance of the Benefit Accounts of that Member;

*"Superannuation Entity"* means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions, for example, 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*,

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);

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

#### *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.

#### *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 the initial contribution and all other 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.

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

- (a) investing as tenants in common with one or more members or with one or more third parties; and
- (b) entering into Derivatives Transactions (whether as a single transaction or under master agreement).

3.4 Without limiting the width of Rule 3.3, the Trustee may invest any property of the Trust Fund in:

- (a) shares, debentures and other securities issued by any body corporate – whether listed or unlisted;

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.

*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; 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.

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

*Ceasing to be Trustee*

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

- (a) on resigning or retiring as Trustee;
- (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) in the case of an individual - the Trustee ceases to satisfy the SMSF Trustee Standard;
- (e) in the case of 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; or
- (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.

*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.

*Appointment of replacement Trustee in circumstances other than retirement*

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

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

### *Powers Generally*

5.1 Subject to the SIS Act, 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 the SIS Act, 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; and
- (e) to borrow and to lend and to grant security for any borrowing.

### *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.

- (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 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.

(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.

*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 members' 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;



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.

*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 keep financial accounts and records of the Superannuation Fund as required by Superannuation Law.

*Auditing of accounts*

12.2 The accounts and records prepared under this Rule must be audited by the Auditor annually and at any other intervals determined by the Trustee and the Auditor must certify to the Trustee the result of each audit in writing.

*Audit certificate*

12.3 The Trustee must obtain any certificate from an Auditor that is required by Superannuation Law.

- (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) 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; and
  - (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.

*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.

*Debiting of Fund Expenses*

12.11 The Trustee may where the Trustee considers it appropriate:

- (a) debit each of the accounts directly with any Fund Expense or any portion of a Fund Expense;
- (b) debit the investment earnings of the Fund with such amount (if any) of Fund Expenses as the Trustee determines; or
- (c) debit, in anticipation of any Fund Expense, each or any of the benefit accounts as the Trustee considers appropriate on account of a Fund Expense and transfer the amounts so debited to the Fund Expense Account from which the Trustee may pay the Fund Expense.

*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 the Investment Reserve Account or to the Anti-Detriment Benefit Account such portion of the Investment Earnings of the Superannuation Fund as the Trustee determines; and

- (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*

11.18 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; and
- (d) Anti-Detriment Benefit Account to either the Fund Expense Account or to the Investment Reserve Account.

## **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.

- (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 ETPs in respect of a Member;
- (k) payments which are covered by section 292-100 of the 1997 Act (CGT small business concession contributions);
- (l) payments which are covered by section 292-95 of the 1997 Act (personal injury payments under structured settlements or court orders); and
- (m) payments which are made from foreign superannuation funds.

*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).

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 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 payment to the person making the contribution. That amount must be calculated on a fair and reasonable basis but may be reduced having regard to any fee or expense (including

- (c) entered into a personal insolvency agreement under Part X of the *Bankruptcy Act, 1966* which has not been completely performed;
- (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 will be agreed between the Trustee and the beneficiary as long as where the pension:

- (a) is an allocated pension- the terms must be consistent with Schedule A;
- (b) is a market-linked pension (term allocated pension)- the terms must be consistent with Schedule B;
- (c) is a transition to retirement pension- the terms must be consistent with Schedule C;
- (d) is a non-commutable market-linked pension (non-commutable term allocated pension)- the terms must be consistent with Schedule D;
- (e) is neither an 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.

subject to next sub-rule, the nomination is binding on the Trustee and the Trustee will allocate the death benefit of the Member in the manner indicated in the nomination.

15.15 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 divorce proceedings or by separation) 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*

15.16 Where a Member either:

- (a) has made no nomination in relation to the benefits payable by reason of their death; or
- (b) has made a nomination which is not binding;
- (c) has made a binding nomination which is not binding in relation to one or more nominees; or
- (d) has made a valid binding nomination 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,

- (j) if the payment is by reason of the death of the Member and where the balance of the Anti-Detriment Benefit Account permits and to the extent the Anti-Detriment Benefit Account permits— that portion of the Anti-Detriment Benefit Account which the Trustee has resolved to pay in respect of the death of the Member in order to offset (to the extent permitted under Superannuation Law) the reduction in the death benefit of the Member attributable to the imposition of income tax on the taxable contributions made to or in respect of the Member.
- (k) if the Trustee had in place disablement insurance cover for the Member at the time the Member became disabled - 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 either a non-commutable allocated pension 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.

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.

## 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's office becomes vacant and no new Trustee is appointed within ninety (90) days;
- (b) if the Trustee resolves to terminate the Superannuation Fund in accordance with Rule 19.2; or
- (c) 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).



## 22. SIS Compliance Clause

### *Incorporation of new SIS Requirements*

22.1 Where:

- (a) compliance with a SIS Requirement is a pre-requisite for the 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 Rule 22(3):

- (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 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 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.

## 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.

### *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 Amendment (Simplified

- (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.

*Exclusion of Contributions from assessable income*

26.8 Where the Superannuation Fund was established before 6 September 2006, the Trustee may choose not to include an amount in assessable income where the amount is a contribution to provide superannuation benefits for someone other than the contributor (other than contributions which are roll-over superannuation benefits) in accordance with the terms of section 295-180 of the Income Tax Assessment Act 1997

- 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 instalment of the pension to take into account any of the following commutations of the pension:
- (a) commutations in order to pay a superannuation contributions surcharge;
  - (b) commutations to allow an amount to be paid under a payment split and any reasonable fees charged by the Trustee in respect of that payment split.
- 2.6 Where there has been a shortfall in the pension payments of a financial year so that the minimum pension limit for that year has not been satisfied, the Trustee may pay the shortfall as an additional pension amount in a subsequent financial year even though the payment of the shortfall may cause the pension payments for that subsequent year to exceed the maximum pension limit for that year.

### 3. Commutation

- 3.1 The pension can be commuted 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,

## 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;

- 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. Commutations**

- 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

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

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

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

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

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

## 7. Reversionary Percentage

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

## 8. Transfer of Pension

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

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

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

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

## 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.

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 instalment of the pension to take into account any of the following commutations of the pension:
- (a) commutations in order to pay a superannuation contributions surcharge;
  - (b) commutations to allow an amount to be paid under a payment split and any reasonable fees charged by the Trustee in respect of that payment split.
- 2.6 Where there has been a shortfall in the pension payments of a financial year so that the minimum pension limit for that year has not been satisfied, the Trustee may pay the shortfall as an additional pension amount in a subsequent financial year even though the payment of the shortfall may cause the pension payments for that subsequent year to exceed the maximum pension limit for that year.
- 2.7 Where in respect of a financial year, the member to whom the pension is paid satisfies an Unrestricted Release Condition then the 10% ceiling on the pension payments in that financial year and subsequent financial years will cease to apply.

### **3. Commutations, Roll Backs and Roll Overs**

- 3.1 The pension can only be commuted in the following circumstances:
- (a) where an event has occurred in relation to the Member which is, in respect of that Member, an Unrestricted Release Condition;
  - (b) the purpose of the commutation is to pay as a lump sum to or in respect of the Member the non-preserved portion of the Member's benefit;
  - (c) the purpose of the commutation is to pay a superannuation contributions surcharge;



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

**4. Transfer of Pension**

4.1 Where the pension is a single life pension, the pension can only be transferred to the estate of the pensioner on the death 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.

**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.

- (b) life expectancy and the notional life expectancy if not whole numbers must be rounded up to the next whole number;
- (c) the notional life expectancy of a person is the life expectancy of that person assuming the person was 5 years younger; and
- (d) the attained age of a person is their age measured in whole number of years.

1.5 Where the Regulator permits or Superannuation Law allows, the Trustee and the pensioner may before the commencement of the pension, determine that the duration of the pension shall be for another period.

## 2. Payment Frequency of Pension

- 2.1 The Trustee must pay the pension by annual instalments or more frequently as the Trustee and the recipient of the pension agree from time to time.
- 2.2 Each instalment of the pension will be paid in arrears unless the Trustee and the recipient of the pension otherwise agree.

## 3. Annual Instalment Amount of the Pension

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

- (a) be equal to;

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

- (b) be an amount which is either 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 each 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.

- (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*;

- (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.

**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.



- (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(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

- 3.3 Where the pension commences during a financial year then:
- (a) the payment in the first financial year will be proportionately reduced to reflect the portion of the financial year in which the pension was paid compared to a complete financial year;
  - (b) "Account Balance" will be the account balance of the pension at the commencement date of the pension;
  - (c) "Payment Factor" will be the factor specified by Schedule 6 of the SIS Regulations which is applicable to the term of the pension expressed in whole years by rounding up (if the pension commenced on or after 1 January) and rounding down (if the pension commenced on or before 31 December); and
  - (d) Where the pension commences on or after 1 June in a financial year, then, despite Rule 3.1, no pension payment in respect of that financial year is required unless the recipient otherwise requires.
- 3.4 If, in respect of a financial year, the account balance of the pensioner is insufficient to pay the amount required to be paid under these Rules, it will be sufficient for compliance with these Rules, if the account balance is paid.
- 3.5 Where there has been a shortfall in the pension payments of a financial year so that the minimum pension payment for that year has not been satisfied, the Trustee may pay the shortfall as an additional pension amount in a subsequent financial year even though the payment of the shortfall may cause the pension payments for that subsequent year to exceed the maximum pension payment for that year.

#### **4. Unused Account Balance on expiration of pension term**

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

#### **5. Residual Capital Value**

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

#### **6. Commutations and Roll Overs**

- 6.1 The pension can only be commuted in the following circumstances:
- (a) within the first six months of the commencement of the pension, so long as:
    - (i) the pension has not been funded by the commutation and rollover of a complying income stream; and

## **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;



- (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 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.

3.3 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

# Schedule C Transition to Retirement Pension Rules

Rules applicable to the payment of a Transition to Retirement Pension (non-commutable Allocated Pension)

## 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 Instalment Amount of the Pension

- 2.1 Subject to Rules 2.2, 2.3, 2.6 and 2.7, the amount of the annual instalment of the pension in respect of any financial year 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 for the minimum limit; and
- (f) If the pension commenced on or after 1 July 2007 - the maximum pension limit will be 10% of the pension account balance (as at 1 July in the financial year in which the payment is made) or (if the pension

- (ii) the minimum pension amount in respect of that pension for the financial year in which the commutation occurs has been paid at or before commutation.
- (b) on the death of the pensioner or reversionary pensioner by payment of:
- (i) a lump sum or a new pension to one or more Dependants of either the pensioner or the reversionary pensioner;
  - (ii) a lump sum to the legal personal representative of either the pensioner or the reversionary pensioner; or
  - (iii) if, after making reasonable enquiries, the Trustee is unable to find a person who is a Dependant or legal personal representative of either the pensioner or the reversionary pensioner – then a lump sum to another individual,

but where the pension was for a period based upon the life expectancy of the spouse, then no commutation can be paid until both the pensioner and the spouse have died.

- (c) where the commutation is made in order for the resulting eligible termination payment to be rolled over as the purchase price of a complying income stream so long as the minimum pension amount in respect of the financial year in which the commutation is effected has been paid at or before commutation;
- (d) in order to pay a superannuation contributions surcharge;
- (e) to give effect to an entitlement of a non-member spouse under a payment split; or
- (f) to satisfy the rights of a pensioner to return a financial product under Division 5 of Part 7.9 of the *Corporations Act, 2001*;
- (f) 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
- (g) 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.

- (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.

## **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 Instalment Amount of the Pension**

- 3.1 Subject to Rules 3.2, 3.3, 3.4 and 3.5 the amount of the annual instalment 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 either 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 each 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.

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

- 3.3 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. Transfer of Pension**

- 4.1 Where the pension is a single life pension, the pension can only be transferred to the estate of the pensioner on the death 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.

#### **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.

# Schedule A Allocated Pension Rules

Rules applicable to the payment of an 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, then 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 Instalment Amount of the Pension

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

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) and 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 allocated the calculated dollar amounts of the various ETP components to the exempt and taxable components of the superannuation interest.
- 26.3 The Trustee may 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 Where a superannuation interest is not required to be crystallised (eg an income stream which commenced before 1 July 2007 and in relation to which no trigger event has occurred since 1 July 2007) the Trustee will not undertake the crystallisation process.

*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 which commenced before 1 July 2007, 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;
  - (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 Superannuation Industry (Supervision) Regulations;
  - (c) by altering the pension from a reversionary to a non-reversionary basis;
  - (d) by changing the reversionary beneficiary to another person;

- 22.3 Where a Grandfathered SIS Provision applies to a Fund, then Rules 22(1) and (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.

## 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.



*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 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 this Trust 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 Trust 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 does not apply 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 Members to access all or part of their Superannuation Balance (eg severe financial hardship, on compassionate grounds, or temporary resident permanently departing), on request by the Member, the Trustee must, to the extent permitted by Superannuation Law, pay the Member the amount or portion which the Member has requested.

*Payment of Benefit when required by Superannuation Law*

16.8 Where Superannuation Law requires that the Trustee pay a Member's benefits the Trustee must pay the Superannuation Balance of the Member.

## **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 Superannuation Entity.

*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 Superannuation Entity.

## **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*

in such proportions as the Trustee determines.

- 15.17 In making an allocation under sub-rule 15.16, 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.
- 15.18 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 15.14.

## 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 - termination of gainful employment where the termination occurred on or after the Member attained age 60;
- (b) (*retirement before age 60*) where the Member who has reached their preservation age but not reached age 60- both of the following:
  - (1) an arrangement under which the Member was gainfully employed has been terminated (whether or not the termination occurred before or after preservation age); and
  - (2) 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 becoming permanently incapacitated;
- (f) (*death*) the death of the Member, or
- (g) (*preservation age*) - the attainment of the Member's preservation age,

the Trustee must 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 of the Member and the Trustee had in place life insurance cover in respect of the Member at the time the Member died- the Insured Amount of that Member (unless that Insured Amount has already been credited to the Member Accounts of that Member);

*Augmentation of Benefit*

- 15.8 The Trustee may increase the benefits payable to or in respect of any Member so long as the benefits as increased will not exceed the value of the Trust Fund notionally allocated to the Member.

*Minimum Benefit*

- 15.9 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*

- 15.10 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 and the insurer either does not pay the claim, pays the claim by instalments or only partially pays the claim, irrespective of the reason for the insurer's action, the Trustee may reduce the benefits otherwise payable to or in respect of the Member to reflect the non-payment, the delayed payment or the reduced payment.

*Payments to Parents, Guardians etc*

- 15.11 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.
- 15.12 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*

- 15.13 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*

- 15.14 Where a Member has provided to the Trustee a nomination in respect 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;
  - (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;
  - (e) is expressed to be binding;
  - (f) has not been withdrawn by the Member or superseded by a more recent binding nomination; and
  - (g) has been signed and dated by the Member,

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 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 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 her creditors under Part X of the *Bankruptcy Act, 1966* which has not been completely performed;

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

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

*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 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 Clause 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;

- (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, when allocating the Investment Earnings to the various Member Accounts, the Trustee must have regard to relevant earnings of those strategies and to whether members selected those investment strategies.

*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, in which case the Trustee will determine 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 ETPs made at the request of the Member;
- (e) any benefit paid to or in respect of that Member;
- (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;

*Auditor*

12.4 The Trustee must appoint an Auditor to audit the records and financial accounts of the Superannuation Fund and to provide reports 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 person to act as Auditor.

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

*Benefit Accounts -Generally*

12.7 The Trustee may establish and maintain any accounts it considers necessary or desirable including accounts to record and calculate the benefits of the Members or to permit the payment of the benefits to the Members.

*Crediting and Debiting to Benefit Accounts*

12.8. The Trustee must 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:
  - (i) an Expense Account - to record any amounts set aside to pay fund expenses or taxation liabilities;
  - (ii) an Investment Reserve Account - to record any investment earnings not allocated to another Account;
  - (iii) 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
  - (iv) an Anti-Detriment Benefit Account – to record any amount set aside to finance 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); and
- (b) in respect of each Member:
  - (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 ETPs made in respect of the Member;



- (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 an instruction 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.

*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.

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

*Beneficiaries bound by Rules*

11.1 Each individual who is a:

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

*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.

## **9. Records, audit and information**

*Record keeping*

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.

*Who are Members?*

10.2 The Members of the Superannuation Fund will consist of:

- (a) the Initial Members; and

*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.

## **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..

*Action despite interests*

6.4 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.

*Indemnity from Trust Fund*

6.5 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*

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

- (a) to meet the indemnity referred to in Rule 6.5; 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*

6.6 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:

#### *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.

#### *Remuneration of Trustees*

4.10 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*

4.11 A person ceasing to be a Trustee must:

- (a) provide to the replacement Trustee all records, documents, information and other property relating to the Superannuation Fund; 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.

#### *Where Trustees are Individuals*

4.12 Where two or more individuals act as Trustees then the Trustees:

- (a) may act by majority;
- (b) may meet as and when they consider necessary, in such manner, and using such technology, as they consider appropriate;
- (c) may determine any issue by use of circulating resolutions rather than convening a meeting; and
- (d) 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.

- 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).

*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.

## 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 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 disqualified from acting as a director of a company which acts as Trustee of a regulated superannuation fund;
  - (b) the individual, if appointed, must not cause the Superannuation Fund to cease to meet the SMSF Trustee Standard; and

- (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) water allocation rights – whether tradeable or not and irrespective of the term;
- (k) any business venture including underwriting or sub-underwriting and securities lending transactions.

*Investment Portfolios and Strategies*

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 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.
- (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.

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.

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);

"*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.

"*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 CPI indexed (subject to a 5% cap on the CPI indexation) based on annual increase in the All Capital Cities Consumer Price Index 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.

"*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;

"*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 individual admitted as a Member:

- (i) the provision of individual personal superannuation benefits to the Member on their retirement, cessation of gainful employment due to

*"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;

*"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;

*"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

*"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 VIIIB 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 who has ceased to be gainfully employed means ill-health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, to ever again 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; and



- (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*

- (j) 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*

- (k) 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*

- (l) 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*

- (m) 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*

- (n) 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.

## 1.2 Dictionary

In these Rules

"*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.

## Schedules

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- 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 members. However, a TFN will not be provided to another superannuation body if the member/prospective member instructs the Trustees not to provide their TFN.

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

Member 1: Stephen Wilkinson

Signature: \_\_\_\_\_

Member 2: Beryl Wilkinson

Signature: \_\_\_\_\_

## Part2: Schedule of Current Members

Member 1: Stephen Wilkinson  
Date of Birth: 5/1/1942  
Address: 26 Huelin Circuit Flynn ACT 2615

Member 2: Beryl Wilkinson  
Date of Birth: 18/12/1942  
Address: 26 Huelin Circuit Flynn ACT 2615

We each confirm that we each have (and know that we each have) access to a product Disclosure Statements in respect of superannuation interests in the Superannuation Fund.

We each confirm that we understand that as members of the Superannuation Fund we will be bound by the provisions of the Trust Deed (including the provisions of the SuperCentral Governing Rules) which apply to the Fund and those provisions are from time to time amended.

We understand that the current provisions of the Superannuation Fund will be completely replaced by the provisions of this Deed and by the provisions of the SuperCentral Governing Rules (as they are amended from time to time) and consent to this amendment.

Member 1: Stephen Wilkinson  
Address: 26 Huelin Circuit Flynn ACT 2615

Signature: \_\_\_\_\_

Member 2: Beryl Wilkinson  
Address: 26 Huelin Circuit Flynn ACT 2615

Signature: \_\_\_\_\_

**Executed as a Deed**

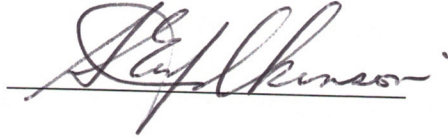
**Executed by: S & B Superannuation Pty Limited**

in accordance with s127 of the Corporations Act 2001 in the presence of:

Director of corporate trustee 1:

Stephen Wilkinson

Signature:



A handwritten signature in black ink, appearing to read 'Stephen Wilkinson', written over a horizontal line.

Full name of witness:

\_\_\_\_\_

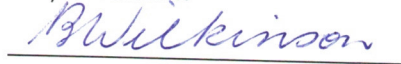
Witness signature:

\_\_\_\_\_

Director of corporate trustee 2:

Beryl Wilkinson

Signature:



A handwritten signature in blue ink, appearing to read 'Beryl Wilkinson', written over a horizontal line.

Full name of witness:

\_\_\_\_\_

Witness signature:

\_\_\_\_\_

- 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. whenever the Trustee consist 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. whenever 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 3(i) or 3(j);
  - v. cannot be used to amend this clause 3(d).

#### Trustees and Members bound by amendments to SuperCentral Governing Rules

- e) The Trustees and each Member of the Superannuation Fund are 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 amendments made by SGR not to apply

- f) The Trustees may by notice to SGR request that an amendment (“the 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 Trustees being notified of the current amendment.

**This amendment deed is made:**

At: 26 Huelin Circuit Flynn ACT 2615  
On: 18/08/07, 2007  
By: S & B Superannuation Pty Limited  
ABN/ACN: 106 089 016

**Recitals**

- A. The Trustee is the sole trustee of the S & B Superannuation Fund ("The Superannuation Fund") which has been established by a deed dated 4 September 2003.
- B. The Superannuation Fund is a self managed superannuation fund and is a regulated superannuation fund.
- C. The Trustee intends to amend the Current Deed by completely replacing all of the provisions of the Current Trust Deed with the provisions of this Amendment Deed (which provisions include the SuperCentral Governing Rules, as later defined in this deed).
- D. The Trustee is empowered under clause/rule 29 of the Current Deed to make the proposed amendment.
- E. The proposed amendment is not intended to and does not adversely affect a member's right or claim to benefits accrued immediately before the date of this Amendment Deed or to the amount of those accrued benefits.
- F. The current members of the Superannuation Fund are those persons identified in Part 2 of the Annexure and they consent to the proposed amendment as evidenced by their signing the declaration set out in Part 2 of the Annexure.

**Operative Part**

**1. Continuation of the Superannuation Fund**

Continuation of fund

- a. The Trustee hereby confirms that it holds the Trust Fund of the Superannuation Fund pursuant to the trusts, powers and discretions applying to the Superannuation Fund for the benefit of the Members and their Dependants.

Indefinitely Continuing