

**30.5 Notification Outside Time Limit**

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

**30.6 No Personal Claim**

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

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

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

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

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

**30.8 Unclaimed Benefits**

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

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

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

**30.10 Limitation on Benefit Payments**

Notwithstanding any other provision of these Governing Rules the Trustee must not pay any Benefits to Members, Dependents or Beneficiaries where such payment would cause the Fund to breach the Relevant Law.

**31 TRANSFER IN SPECIE****31.1 Transfer of Investments**

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

- (a) to whom a Benefit is payable; or

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

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

### **31.2 Transfer of Policy**

Where:

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

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

- (c) the value of such Policy as at the date of assignment must be debited to the relevant Member's Accumulation Account or Pension Account; and
- (d) the Trustee will not be liable to pay any premiums which may become due and payable under the Policy to the extent that they relate to the period after the date of the assignment.

### **31.3 No Beneficial Interest**

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

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

Where a Member:

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

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

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

## **33 INCAPACITY**

### **33.1 Permanent Incapacity**

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

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

### **33.2 Temporary Incapacity**

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

and comply with the requirements of the Relevant Law.

## **34 DEATH**

### **34.1 Binding Death Benefit Nomination**

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

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

The manner or form specified in the Binding Death Benefit Nomination may, without limitation, include requirements that a portion of the Benefits be paid as one or more

lump sums, including by transfer of nominated assets in-specie to one or more specified Beneficiaries, or as one or more Pensions, including requirements as to the terms and conditions of such Pensions.

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

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

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

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

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

To be valid, a Binding Death Benefit Nomination must:

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

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

- (e) be Provided to the Trustee:
  - (i) during the lifetime of the Member; or
  - (ii) as soon as practicable following the death of the Member,

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

### **34.3 Death Benefit Rule**

A Member or Beneficiary may request the Trustee by written notice Provided to the Trustee that the Trustee establish a Death Benefit Rule requiring the Trustee to pay Benefits arising on the death of the Member to a person or persons specified in the notice, being the Legal Personal Representative and/or one or more of the

Dependants of the Member, and in such manner or form specified in the notice. The manner or form specified in the notice may, without limitation, include requirements that the Benefits be paid as a lump sum or as a Pension and requirements as to the terms and conditions of such Pension. The Trustee may in its absolute discretion determine whether or not to establish a Death Benefit Rule as so requested by a Member. If the Trustee determines to establish a Death Benefit Rule as requested by a Member, it may do so in any manner allowed for the variation of these Governing Rules under rule 42.1, and such Death Benefit Rule will thereupon be taken to form part of these Governing Rules and the Trustee will be bound, subject to the Relevant Law, to act in accordance with that Death Benefit Rule.

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

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

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

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

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

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

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

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

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

**34.8 Benefits and Anti-Detriment Payments**

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

- (a) the date of death of the Member was prior to 1 July 2017 and the Benefit payment will be made prior to 1 July 2019;
- (b) it will be entitled to a tax deduction in respect of such Anti-Detriment Payment;
- (c) sufficient funds are available to make such Anti-Detriment Payment; and
- (d) such payment would not disadvantage any other Member or Beneficiary of the Fund.

**34.9 Interim Benefit Payment**

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

**34.10 Payments to Dependants, Legal Personal Representatives or Other Persons**

On the death of a Member the Trustee must:

- (a) if required by a Reversionary Pension Nomination in respect of one or more Pensions payable to the Member, Provided by the Member to the Trustee at or about the commencement of the Pension or Pensions or during the course of the Pension or Pensions, or a Binding Death Benefit Nomination Provided by the Member to the Trustee, or pursuant to a Death Benefit Rule, pay or apply the Benefit in accordance with that Reversionary Pension Nomination, Binding Death Benefit Nomination or Death Benefit Rule; and
- (b) if the Member had not Provided a Reversionary Pension Nomination or a Binding Death Benefit Nomination to the Trustee, or there is no relevant Death Benefit Rule in place, or to the extent that a Reversionary Pension Nomination or a Binding Death Benefit Nomination Provided by the Member to the Trustee is not in effect or cannot be given effect under the Relevant Law, or to the extent that a relevant Death Benefit Rule established by the Trustee cannot be given effect under the Relevant Law, pay or apply the Benefit to or for the benefit of one or more of the Member's Dependants and Legal Personal Representative in such proportions, form, manner and at such times as the Trustee, in its discretion, and taking into account the provisions of any Non-Binding Death Benefit Nomination Provided by the Member to the Trustee, determines from time to time; and
- (c) if, when ascertaining the Member's Dependants, the potential Dependants include one or more Spouses, the Trustee may apply the tests set down in section 4AA of the Relevant Family Law, in its absolute discretion, to determine whether the deceased Member had been living with any of those potential Spouses as a couple on a genuine domestic basis; and
- (d) if there are no Dependants and there is no Legal Personal Representative:
  - (i) pay or apply the Benefit for the benefit of such Relatives of the Member or other persons as the Trustee determines, in such

proportions, form, manner and at such times as the Trustee determines; or

- (ii) if there are no such Relatives or other persons, deal with the Benefit as though it were a forfeited benefit in accordance with rules 22.3 and 22.4, or as otherwise required under the Relevant Law.

#### **34.11 Settlement of Superannuation Proceeds Trust**

On the death of a Member the Trustee must, if required by a Binding Death Benefit Nomination Provided by the Member to the Trustee or pursuant to a Death Benefit Rule or, if the Member had not Provided a Binding Death Benefit Nomination to the Trustee, or if there is no relevant Death Benefit Rule in place, at the discretion of the Trustee to pay Benefits in respect of some or all of the Dependants of a deceased Member by way of settlement on the trustee or trustees of one or more Superannuation Proceeds Trusts, either in existence or to be established by the Trustee for the purposes of receiving and holding those Benefits.

#### **34.12 Discharge of Trustee**

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

#### **34.13 Disclaimer of Benefit**

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

### **35 TERMINAL MEDICAL CONDITION**

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

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

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

#### **36.1 Member Benefit Payments**

Where:

- (a) the Trustee is satisfied that a Member is in severe financial hardship for the purposes of SIS; or
- (b) the Regulator has determined that an amount of a Member's Benefit Entitlement may be released on compassionate grounds; or
- (c) the Trustee has received a Release Authority in respect of a First Home Super Saver Scheme payment; or

- (d) the Trustee is satisfied that the Member has met some other Condition of Release for the purposes of SIS or that the payment of a Benefit is otherwise permitted under Relevant Law or has been approved by the Regulator,

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

A Benefit paid under rule 36.1(d), may be paid as a lump sum or Income Stream (or combination) as provided in rule 29.1.

### **36.2 Other Payments**

The Trustee may pay from the Accumulation Account or Pension Account of a Member such amount as is required to be paid in accordance with a notice or direction provided by the Regulator, by a court order or by any other body as required under the Relevant Law, including:

- (a) a Release Authority directing payments other than to the Member; or  
 (b) some form of compulsory payment directive,

to the person, persons or entity as directed by the notice or direction provided the Trustee is satisfied such payments are permitted under the Relevant Law.

## **37 GUARDIAN AND MEMBER BENEFIT GUARDIAN**

### **37.1 Appointment of Guardian**

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

### **37.2 Additional Guardians**

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

### **37.3 Vacation of Office**

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

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

### **37.4 Resignation**

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



**37.5 Successors**

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

**37.6 Consent to Act**

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

**37.7 Members to be Notified**

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

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

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

**37.9 Appointments to be Annexed**

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

**37.10 Removal and Replacement of Trustee**

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

**37.11 Reserve Powers – Guardian Consent**

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

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

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

**37.12 More than one Guardian**

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

**37.13 Dispute Resolution**

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

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

**37.14 Appointment of Member Benefit Guardian**

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

**37.15 Trustee to Obtain Consent of Member Benefit Guardian**

Where a Member has a Member Benefit Guardian:

- (a) if the Member has ceased to have legal capacity (and a member will be taken for these purposes to have ceased to have legal capacity if they would be so taken under rule 2.9(c)), the Trustee must not pay or apply any part of the Benefit of the Member without the prior consent in writing of the Member Benefit Guardian unless the Legal Personal Representative of the Member is a Trustee or a Director of a Constitutional Corporation which is the Trustee of the Fund;
- (b) the Trustee must not pay or apply the Benefit arising on the death of the Member, under rules 34.10(b) or 34.10(c), without the prior consent in writing of such Member Benefit Guardian unless:
  - (i) the Trustee is required under these Governing Rules to pay or apply a Benefit in accordance with a Binding Death Benefit Nomination or a Death Benefit Rule; or
  - (ii) where Benefits are being paid to the Member at the time of death of the Member in the form of a Pension, to the extent that the Trustee is required to pay such Pension to a Reversionary Beneficiary of the Member who is a Dependant of the Member at the time of death of the

Member, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law.

**37.16 More than one Member Benefit Guardian**

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

**37.17 Transfers and Roll-Overs**

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

**37.18 Guardian and Member Benefit Guardian**

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

**37.19 Relevant Law**

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

**38 INCOME STREAMS - PENSIONS AND ANNUITIES**

**38.1 Determination to Pay Pension or Annuity**

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

(a) **Pension**

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

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

(b) **Annuity**

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

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

provided that the payment, purchase or acquisition of the Pension, Pensions, Annuity or Annuities will not cause the Retirement Phase interests of the Member or Beneficiary to exceed their Personal Transfer Balance Cap.

### **38.2 Choice of Pension**

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

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

### **38.3 Reversionary Pension Nomination**

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

The Trustee, following acceptance of a Reversionary Pension Nomination, will be bound to act in accordance with the directions contained in the Reversionary Pension Nomination provided that the person or persons nominated are one or more of the Dependants of the Pensioner at the death of the Pensioner and are eligible to be paid a Benefit in the form of a Pension under the Relevant Law.

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

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

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

- (a) Where the Trustee determines to pay all or any part of the Benefit to the Member or the Beneficiary as a Pension or Pensions the Trustee must establish one or more Pension Accounts in respect of the Member or the

Beneficiary to which accounts the Trustee must transfer amounts determined in accordance with these Governing Rules which the Trustee believes are necessary in order to provide the Benefits as a Pension.

- (b) The Trustee must not permit a Pension Account to be added to by way of Contribution or by way of credit of a Roll-Over Superannuation Benefit or in any other manner prohibited under the Relevant Law after payment of a Pension has commenced from that Pension Account.
- (c) For the purposes of financing a Pension to be paid from the Fund under rule 38.2, the Trustee may purchase or acquire an Annuity in respect of the Member payable to the Trustee.

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

- (a) The following amounts must be credited to a Pension Account of a Pensioner prior to commencement of the Pension:
  - (i) any amount transferred under rule 38.1;
  - (ii) any amount paid into the Fund in respect of a Pensioner as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to credit;
  - (iii) the proceeds of any Policy or Annuity effected or maintained by the Trustee in respect of a Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
  - (iv) such earnings of the Fund ascertained in accordance with rules 4.5(e) and 15.4 as the Trustee may determine to be equitable;
  - (v) any credit arising out of any adjustments made in accordance with rule 15.6;
  - (vi) any Shortfall Component paid in respect of the Pensioner;
  - (vii) any amount of Financial Assistance which the Trustee considers it appropriate to credit;
  - (viii) such other Contributions made in respect of the Pensioner which are permitted by these Governing Rules and the Relevant Law;
  - (ix) any amounts transferred to the Pension Account from a Reserve Account; and
  - (x) such other amounts as the Trustee determines from time to time.
- (b) The following amounts are to be debited to a Pension Account of a Pensioner:
  - (i) any amount paid out of the Fund in respect of a Pensioner as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to debit;
  - (ii) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary under these Governing Rules;
  - (iii) the costs of any Policy or Annuity effected or maintained by the Trustee in respect of the Pensioner which are not debited to an Accumulation Account in accordance with rule 15.3;
  - (iv) such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the Pension Account of a Pensioner or arising as a result of a Roll-Over Superannuation Benefit as the Trustee may determine;

- (v) such of the costs, charges and expenses incurred under rule 8 or an appropriate portion thereof as the Trustee may determine;
- (vi) the amount of any lien exercised under rule 7 or an appropriate portion thereof as the Trustee may determine;
- (vii) any amount forfeited under rule 22 or dealt with as though forfeited under rule 34.10(d)(ii);
- (viii) a proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee may determine;
- (ix) such negative earnings as may be determined by the Trustee in accordance with rules 4.5(e), 15.4 and 15.6 ;
- (x) any amount paid in respect of the Trustee indemnity under rule 7 or an appropriate portion thereof as the Trustee may determine;
- (xi) any amount transferred to the Accumulation Account of the Pensioner, including an amount transferred in accordance with an Excess Transfer Balance Determination;
- (xii) the amount of any Levy determined by the Trustee to be appropriate to debit;
- (xiii) the amount of any Taxation attributable to the Pensioner;
- (xiv) the amount of any Excess Transfer Balance Tax;
- (xv) such amount as is referred to in a Release Authority given by a Pensioner or the Commissioner to the Trustee and which is paid by the Trustee to the Pensioner or to the Commissioner in accordance with such Release Authority; and
- (xvi) such other amounts as the Trustee may determine from time to time.

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

Subject to the Relevant Law and in relation to one or more Pensions payable to a Pensioner or Pensioners, the Trustee:

- (a) may segregate or set apart the assets which represent the Pension Account or Accounts of one or more Pensioners for the sole purpose of enabling the discharge of the whole or part of the current liabilities in relation to the payment of Superannuation Income Stream Benefits as those liabilities fall due for payment and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current pension liabilities as the Trustee considers appropriate for the purposes of the Tax Act or as the Relevant Law may require; and
- (b) where the Trustee segregates assets for the purposes of rule 38.6(a), the Trustee must annually, and at such other times as the Trustee determines, review:
  - (i) the Total Superannuation Balance of each Member for the purposes of determining the Fund's entitlement to applicable Taxation exemptions for income derived from segregated assets under the Tax Act; and
  - (ii) the value of the assets so segregated for the purposes of ensuring the value of the assets is sufficient to discharge the Fund's current liabilities in relation to the payment of Superannuation Income Stream Benefits.

Where the value of the segregated assets is not sufficient or is more than sufficient to discharge the Fund's current liabilities in relation to the payment of Superannuation Income Stream Benefits, the Trustee may take such action in relation to those assets as is permitted by the Relevant Law and must take such action as is required by the Relevant Law.

### **38.7 Actuarial Certification**

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

### **38.8 Conversion of Pensions**

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

### **38.9 Commutation of Pensions**

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

## **39 ACCOUNT-BASED PENSION**

### **39.1 Payment Conditions**

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

- (a) the Account-Based Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (b) the Account-Based Pension must be paid at least annually;
- (c) the amount of the Account-Based Pension in any year will be such amount as may be nominated by the Pensioner and notified to the Trustee, either verbally or in writing, or by Electronic Communication, from time to time, provided that the amount must not be greater than or lesser than the amounts calculated as the maximum (if any) and minimum (if any) limits specified by the Relevant Law for the payment of an Account-Based Pension;
- (d) if the Trustee does not receive a nomination from the Pensioner as to the amount of the Account-Based Pension to be paid in a particular year then the Trustee may pay such amount as it determines, provided that the amount must not be greater than or lesser than the amounts calculated as the maximum (if any) and minimum (if any) limits specified by the Relevant Law for the payment of an Account-Based Pension;
- (e) the Account-Based Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner, or on the death of a Reversionary Beneficiary, or on such other terms as are permitted by the Relevant Law;
- (f) the capital value of the Account-Based Pension and the income from it cannot be used as security for a borrowing; and

- (g) where the Relevant Law identifies matters that are immaterial for determining whether an Account-Based Pension meets the standards set by the Relevant Law, the Trustee will also treat such matters as immaterial.

### **39.2 Death**

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

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

### **39.3 Commutation**

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



- (iv) at the request of the Pensioner or otherwise in compliance with an Excess Transfer Balance Determination retain the proceeds of that commutation in the Fund and apply them to the credit of an Accumulation Account on behalf of the Pensioner.

#### 40 TRANSITION TO RETIREMENT INCOME STREAM

##### 40.1 Request to pay

Upon a Member attaining their Preservation Age, the Trustee may, at the request of a Member, pay from the Fund a Transition to Retirement Income Stream:

- (a) in the Accumulation Phase; or
- (b) if the Member has satisfied a Condition of Release with a Nil Cashing Restriction, in the Retirement Phase,

on the conditions set out in rules 40.2 and 40.3 and otherwise, subject to the Relevant Law, on such terms as the Trustee and Member may agree.

##### 40.2 Compliance with Relevant Law

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

##### 40.3 Method of Payment and Security

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

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

##### 40.4 Condition of Release

Where a Pensioner in receipt of payments under a Transition to Retirement Income Stream in the Accumulation Phase:

- (a) reaches age 65, the Transition to Retirement Income Stream will become a Retirement Phase Transition to Retirement Income Stream at that time; or

- (b) has satisfied a Condition of Release with a Nil Cashing Restriction, other than reaching age 65, and the Member notifies the Trustee of that fact and elects for the Transition to Retirement Income Stream to become a Retirement Phase Transition to Retirement Income Stream,

the additional conditions set out in rule 40.3 will cease to apply.

#### **40.5 Death**

- (a) If a Pensioner dies while in receipt of a Transition to Retirement Income Stream under these Governing Rules, the Trustee must continue to pay the Transition to Retirement Income Stream in the Retirement Phase to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law. However, if the Relevant Law does not permit the Trustee to pay a Transition to Retirement Income Stream in the Retirement Phase to a Reversionary Beneficiary by virtue only of the fact that the nominated Reversionary Beneficiary has not personally satisfied a Condition of Release with a Nil Cashing Restriction, then the Trustee must commence to pay an Account Based Pension to the nominated Reversionary Beneficiary. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.
- (b) In the event of the death of a Pensioner in respect of a Transition to Retirement Income Stream while there is an amount standing to the credit of the Pensioner's Pension Account, and where:
  - (i) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee; or
  - (ii) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law,

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

## **41 MARKET LINKED PENSION**

### **41.1 Method of Payment and Security**

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

- (a) the Market Linked Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (b) the Market Linked Pension must be paid at least annually to the Pensioner throughout a period permitted by the Relevant Law;
- (c) the amount of the Market Linked Pension in any year must be determined in accordance with the Relevant Law for the payment of a Market Linked Pension;
- (d) the Pensioner may nominate to the Trustee, either verbally or in writing, or by Electronic Communication, from time to time the amount of the Market Linked Pension to be paid in any year provided such amount falls within the maximum

(if any) and minimum (if any) limits specified by the Relevant Law for the payment of a Market Linked Pension;

- (e) if the Trustee does not receive a nomination from the Pensioner as to the amount of the Market Linked Pension to be paid in a particular year then the Trustee may pay such amount as it determines, provided that the amount must not be greater than or lesser than the amounts calculated as the maximum (if any) and minimum (if any) limits specified by the Relevant Law for the payment of a Market Linked Pension;
- (f) the Market Linked Pension does not and will not have a residual capital value;
- (g) if the Market Linked Pension reverts, it will not have a reversionary component greater than 100% of the Benefit payable before the reversion;
- (h) the Market Linked Pension cannot be transferred to any person other than on the death of the Pensioner to one of his or her Dependants or to the Legal Personal Representative of the Pensioner; and
- (i) the capital value of the Market Linked Pension and the income from it cannot be used as security for a borrowing.

#### **41.2 Death**

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

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

#### **41.3 Commutation**

- (a) The Trustee:
  - (i) may on its own initiative or on receipt of a written application from the Pensioner commute the whole or any part of a Market Linked Pension that is payable from the Fund to the Pensioner where the Relevant Law permits the commutation of that Market Linked Pension, on and subject to such terms and conditions as apply to the commutation under the Relevant Law; and
  - (ii) must commute the whole or any part of a Market Linked Pension that is payable from the Fund to the Pensioner where the Relevant Law so requires.

- (b) The Trustee must pay the proceeds of the commutation in respect of the Market Linked Pension being commuted in a manner permitted under the Relevant Law.
- (c) Following the commutation of a part of a Market Linked Pension, the Trustee may, in its absolute discretion, reduce the total amount of the instalments of any Market Linked Pension payable to the Pensioner. Any reduction is to be of such an amount as the Trustee considers appropriate.

## 42 VARIATION OF GOVERNING RULES

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

### 42.1 Resolution or Deed

The Variation must be:

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

### 42.2 Notice

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

### 42.3 Limitations on Variation

- (a) No Variation may have the effect of:
  - (i) reducing or adversely affecting the rights or claims of a Member to accrued entitlements from the Fund which have arisen prior to the Variation being effected; or
  - (ii) reducing the amount of an entitlement other than an entitlement referred to in rule 42.3(a)(i) that is or may become payable in relation to a period before the date of the Variation, unless:
    - (A) the reduction is required to enable the Fund to comply with the Relevant Law;
    - (B) the Member so affected consents in writing to the reduction; or
    - (C) the Regulator consents in writing to the reduction.
- (b) Rule 4.6 may not be Varied while a Specified Asset is held in the Fund exclusively for the benefit of a Specified Member or Specified Members, unless each Specified Member consents in writing to the Variation.
- (c) Rule 34 may not be Varied insofar as it deals with the giving, form, effect or operation of a Binding Death Benefit Nomination or with the giving of a notice in respect of the establishment of a Death Benefit Rule or the form, effect or operation of a Death Benefit Rule, or with the terms or effect of a Death Benefit Rule that has been established by the Trustee, while the Trustee holds any Binding Death Benefit Nomination or has made any Death Benefit Rule,

unless each Member who has Provided such Binding Death Benefit Nomination or has requested the establishment of a Death Benefit Rule consents in writing to the Variation.

- (d) Rules 37.1 to 37.13 inclusively and rule 37.18 may not be Varied while there is any person appointed as a Guardian unless the Guardian consents in writing to the Variation.
- (e) Rules 37.14 to 37.17 inclusively may not be Varied while there is any person appointed to act as a Member Benefit Guardian unless each Member who has appointed a Member Benefit Guardian, or if the relevant Member has died or does not have legal capacity, their Member Benefit Guardian, consents in writing to the Variation.
- (f) No Variation will have the effect of amending, altering, modifying, rescinding or varying an instrument in writing made by the Trustee under rule 11.2(f).

#### **42.4 Further limitation on Variation**

No Variation to these Governing Rules may:

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

### **43 WINDING UP OF FUND**

#### **43.1 Election to Terminate**

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

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

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

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

- (a) give written notice to each Member that the Fund is to terminate on the Termination Date;
- (b) value the assets of the Fund and determine the assets of the Fund available to pay Benefits to Members, former Members and Beneficiaries in accordance with rule 43.3, or to transfer Benefit Entitlements or to roll-over Benefits to an Approved Benefit Arrangement in respect of the relevant Member or former Member;
- (c) determine the amount standing to the credit of a Reserve Account and credit such amount to such account held for Members or Beneficiaries as the Trustee considers appropriate;

- (d) pay all Taxation payments, expenses or charges which are then outstanding or are incurred in connection with the winding up of the Fund;
- (e) arrange to pay or transfer Benefits or Benefit Entitlements to or in respect of Members, former Members and Beneficiaries in accordance with rules 19 or 43.3; and
- (f) attend to all such administrative and regulatory matters as arise in connection with the winding up of the Fund, including the lodgement of returns and notices with Regulators.

#### **43.3 Exhaustion of Fund**

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

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

### **44 INTERPRETATION - GENERAL**

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

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

#### **44.2 Including and Includes**

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

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

The headings and footnotes in these Governing Rules are for convenience only and should not affect the interpretation of these Governing Rules and "rule" means a rule of these Governing Rules.

#### **44.4 Defined Words**

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

#### **44.5 Statutory Enactments**

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

### **45 INTERPRETATION - DEFINITIONS**

In these Governing Rules, unless the context otherwise requires:

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

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

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

**Accumulation Phase** in respect of a Member means the portion of a Member's Benefit Entitlement that is not in the Retirement Phase;

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

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

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

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

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

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

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

**Approved Body:**

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

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

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

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

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

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

**Blockchain Protocols**, commonly known as cryptocurrency, means those virtual currency investments such as Bitcoin, Ethereum, Ripple and others which are listed on Cryptocurrency Market Capitalizations listings in any part of the world or in a cloud computing environment;

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

**Collectable and Personal Use Asset** means an asset of the type described in section 62A of the SIS Act or Regulation 13.18AA of the SIS Regulations;

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

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

**Condition of Release** means one or more of the 'Conditions of release of benefits' contained in Part 1 of Schedule 1 of the SIS Regulations and **Condition of Release with a Nil Cashing Restriction** means a Condition of Release with a 'Nil' Cashing restriction specified in Column 3 of that same Part 1;

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

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

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

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

**Contributions Cap** means the maximum amount of Contributions permitted to be made to superannuation by or on behalf of a Member within a period of time as specified in the Relevant Law;

**Crowdfunding** means the practice of funding individual projects or ventures by a number of individuals or entities, often known as 'contributors' or 'backers', often using internet platforms, known as 'Crowdfunding Sites' as the intermediary;

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

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

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

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

**Derivative:**

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

**Derivatives Contract:**

- (a) means an options contract or a futures contract relating to any right or liability; or



(b) has the meaning given to it, or to a corresponding term, in SIS;

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

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

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

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

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

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

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

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

**Excess Transfer Balance** means the amount by which a Member's Transfer Balance Account exceeds their Personal Transfer Balance Cap, **Excess Transfer Balance Earnings** means the notional earnings deemed to have been made on the Excess Transfer Balance, **Excess Transfer Balance Tax** means the tax paid or payable on the Excess Transfer Balance Earnings and **Excess Transfer Balance Determination** means a direction from the Commissioner to remove a specified amount from the Retirement Phase of the Member;

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

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

**First Home Super Saver Scheme** means the arrangement through which Contributions made to superannuation by or on behalf of a Member may be withdrawn and applied in the purchase by the Member of their first home;

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

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

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

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

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

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

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

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

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

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

**Guardian** means:

- (a) a person, persons or body appointed as a guardian in accordance with rule 37 of these Governing Rules; or
- (b) a guardian appointed in accordance with rule 37 of SMSF Governing Rules Version 12.01, 14.01, 15.01 or 16.02, whose appointment has not ceased under any of those versions of the rules,

and whose appointment has not ceased under rule 37 of these Governing Rules;

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

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

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

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

**Legal Personal Representative** means a person who is a legal personal representative for the purposes of the Relevant Law, but does not include a person appointed to manage the bankrupt estate of an insolvent Member;

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

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

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

**Membership** means membership of the Fund;

**Member Benefit Guardian** means:

- (a) a person, persons or body appointed as a member benefit guardian in accordance with rule 37 of these Governing Rules or rule 37 of SMSF Governing Rules Version 16.02; or
- (b) a death benefit guardian appointed in accordance with rule 37 of SMSF Governing Rules Version 12.01, 14.01 or 15.01, whose appointment has not ceased under any of those versions of the rules,

and whose appointment has not ceased under rule 37 of these Governing Rules;

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

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

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

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

**Payment Age** means the age, the attainment of which constitutes a Condition of Release with a Nil Cashing Restriction for the purposes of SIS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Relevant Law** means:

- (a) SIS, Corporations Act 2001, Corporations Regulations 2001, Relevant Family Law, Financial Sector (Collection of Data) Act 2001, Superannuation (Resolution of Complaints) Act 1993, Bankruptcy Act 1966, Social Security Act 1991, Veterans'

Entitlements Act 1986, Tax Act and any other present or future legislation which the Trustee must comply with in order for the Fund to:

- (i) qualify for concessional Taxation treatment as a Complying Superannuation Fund;
  - (ii) avoid any penalty, detriment or disadvantage which is or may become payable or imposed in connection with the Fund or anything done or to be done under these Governing Rules; or
  - (iii) meet any other requirements of the Regulator; and
- (b) in relation to the collection, holding, use and disclosure of personal information as defined in the Privacy Act 1988, the National Privacy Principles and any other provisions of that Act,

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

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

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

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

**Retirement Phase** in respect of a Member means the portion of a Member's Benefit Entitlement from which one or more Pensions are payable to a Pensioner who has satisfied a Condition of Release with a Nil Cashing Restriction and, if necessary, has elected for the Pension to be operated under the Retirement Phase;

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

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

**Reversionary Pension Nomination** means written notice Provided by a Pensioner to the Trustee nominating one or more Reversionary Beneficiaries to be paid a Benefit in the form of a Pension following the death of the Pensioner.

**Roll-Over Superannuation Benefit** has the meaning given to it in the Tax Act;

**Self Managed Superannuation Fund** has the meaning given to it in SIS;

**Shortfall Component** has the meaning given to it in the Guarantee Act;

**SIS** means the Superannuation Industry (Supervision) Act 1993 (**SIS Act**), the Superannuation Industry (Supervision) Regulations 1994 (**SIS Regulations**) and any other regulations or statutory instruments made under the SIS Act;

**Specified Asset** has the meaning given to it in rule 4.6;

**Specified Member** or **Specified Members** has the meaning given to it in rule 4.6;

**Spouse** has the meaning given to it in SIS, but subject to the Trustee discretion provided under rule 34.10(c);

**Superannuation Income Stream Benefit** has the meaning given to it in the Tax Act;

**Superannuation Lump Sum** has the meaning given to it in the Tax Act;

**Superannuation Proceeds Trust** means a trust, the purpose of which is to receive and hold superannuation death benefits for a Dependant or Dependents of a Member following the death of that Member, such trust being:

- (a) already in existence; or
- (b) established by the Trustee, the terms of which are to be determined by the Trustee prior to the payment of the Benefits.

**Tax Act** means the Income Tax Assessment Act 1997, the Income Tax Assessment Act 1936, the Income Tax (Transitional Provisions) Act 1997 or the Taxation Administration Act 1953, as appropriate;

**Tax File Number** has the meaning given to it in the Tax Act;

**Taxation** includes income tax, any surcharge, any excess contributions tax, Excess Transfer Balance Tax or other amount of whatever description levied on the Fund, the Trustee, any Member, former Member or Beneficiary under the Tax Act, the Superannuation Contributions Tax Imposition Act 1997, the Superannuation Contributions Tax (Assessment and Collection) Act 1997 and related legislation (including provisional or advance payments required under that legislation), capital gains tax, tax on Superannuation Lump Sum or Superannuation Income Stream Benefit payments, tax on Employment Termination Payments, payroll tax, land tax, stamp duty, goods and services tax and any other taxes or duties of whatever description paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member or Beneficiary;

**Terminal Medical Condition** has the meaning given to it in SIS;

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

**Total Superannuation Balance** has the meaning given to it in the Tax Act;

**Transfer Balance Account** means a running balance account of amounts which a Member has transferred to, or withdrawn from, their superannuation balance in Retirement Phase;

**Transfer Balance Cap** means a limit on the value of any of Retirement Phase Pensions of a Pensioner at 1 July 2017 and the value at commencement of any subsequent Retirement Phase Pensions which a Pensioner may hold, **General Transfer Balance Cap** means the total value of Retirement Phase Pensions which may be commenced by a Member which at 1 July 2017 was set at \$1.6 million, with future indexation linked to the consumer price index in increments of \$100,000 and **Personal Transfer Balance Cap** means the total amount of their Benefit Entitlement a Member or Beneficiary may transfer to Retirement Phase Pensions, with future indexation of the cap linked proportionately to increases in the General Transfer Balance Cap;

**Transition to Retirement Income Stream** means an Income Stream payable under rule 40 to a Member who has attained their Preservation Age;

**Trustee** means the trustee or trustees for the time being of the Fund whether original, additional or substituted;

**Unclaimed Benefits** means Benefits described as unclaimed money in the Relevant Law.

# PATAK PROVIDENT FUND

## REGISTER OF MEMBERS

Date Admitted	Member Name	Member Address	Date Ceased
14 April 2019	Paul Anthony Dwyer	15 Riverbank Road Bairnsdale VIC 3875	
14 April 2019	Amanda Jane Dwyer	15 Riverbank Road Bairnsdale VIC 3875	

# PATAK PROVIDENT FUND

## REGISTER OF TRUSTEES

Date Appointed	Trustee Name	Trustee Address	Date Ceased
14 April 2019	Paul Anthony Dwyer	15 Riverbank Road Bairnsdale VIC 3875	
14 April 2019	Amanda Jane Dwyer	15 Riverbank Road Bairnsdale VIC 3875	

**PATAK PROVIDENT FUND  
(FUND)**

**RESOLUTION OF TRUSTEES**

We, the undersigned:

Paul Anthony Dwyer  
Amanda Jane Dwyer

being all of the trustees for the Fund (**Trustees**) do hereby resolve as follows:

**STAMPING OF ESTABLISHMENT DEED & GOVERNING RULES:** That following the execution of the deed of establishment for the Fund, the Trustees arrange for the stamping of the deed of establishment and governing rules for the Fund (if applicable).

**INVESTMENT STRATEGY:** That the Trustees formulate and implement an investment strategy for the Fund in accordance with the requirements of the Superannuation Industry (Supervision) Act 1993 and Superannuation Industry (Supervision) Regulations 1994 and that the Trustees consider progress within 60 days, it being noted that the Trustees may offer members a choice of investment strategies under rule 4.5 of the governing rules.

**BANK ACCOUNT:** That a bank account be opened in the name of the Fund to facilitate the operations of the Fund.

**TAX FILE NUMBER:** That an application for a Tax File Number and Australian Business Number for the Fund be made.

**DATED** 14 April 2019

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**PAUL ANTHONY DWYER**

---

**AMANDA JANE DWYER**



**PATAK PROVIDENT FUND  
(FUND)**

**RESOLUTION OF TRUSTEES**

We, the undersigned:

Paul Anthony Dwyer  
Amanda Jane Dwyer

being all of the trustees for the Fund (**Trustees**) do hereby resolve as follows:

**ELECTION TO BE A  
REGULATED  
SUPERANNUATION  
FUND:**

That upon the Trustees being satisfied that the governing rules for the Fund contain all the necessary requirements to facilitate the operation of the Fund as a regulated superannuation fund, the Trustees make an irrevocable election in the approved form that the Fund is to be a regulated superannuation fund under the Superannuation Industry (Supervision) Act 1993 and also provide the Australian Taxation Office (**ATO**) with the information prescribed under regulation 11.04 of the Superannuation Industry (Supervision) Regulations 1994 in order to ensure that the Fund becomes entitled to concessional taxation treatment in accordance with the provisions of the Income Tax Assessment Act 1936.

**EXECUTION OF  
APPROVED FORM:**

That the Trustees execute the approved form tabled with this resolution and lodge it with the ATO within seven days of establishment of the Fund.

**DATED** 14 April 2019

---

**PAUL ANTHONY DWYER**

---

**AMANDA JANE DWYER**

**PATAK PROVIDENT FUND  
(FUND)**

**RESOLUTION OF TRUSTEES**

We, the undersigned:

Paul Anthony Dwyer  
Amanda Jane Dwyer

being all of the trustees for the Fund (**Trustees**) do hereby resolve as follows:

**SUPERANNUATION  
FUND MEMBERSHIP:** That the Trustees note that each of the undermentioned has completed and lodged with the Trustees an Application for Membership Form

**MEMBER NAME**

Paul Anthony Dwyer  
Amanda Jane Dwyer

and each such person is admitted to Membership of the Fund with effect from the date of this Resolution.

**NOTICE TO MEMBERS:** That each such member of the Fund be given a written statement in accordance with the requirements for product disclosure statements for complying superannuation funds.

It was further resolved that such written statement set out the details of the benefits and conditions relating to the Fund and the method of determination of member entitlements as set out in the governing rules for the Fund as well as all other information concerning the Fund which the Trustees may consider relevant or which the member may reasonably require.

**DATED** 14 April 2019

\_\_\_\_\_  
**PAUL ANTHONY DWYER**

\_\_\_\_\_  
**AMANDA JANE DWYER**

**PATAK PROVIDENT FUND  
(FUND)**

**CONSENT TO ACT AS TRUSTEE**

**under section 118 of the Superannuation Industry (Supervision) Act 1993**

I,

**Paul Anthony Dwyer**

of 15 Riverbank Road Bairnsdale VIC 3875

- a) hereby declare that I am not \*disqualified from acting as a trustee of a superannuation fund under the Superannuation Industry (Supervision) Act 1993;
- b) hereby consent to act as a trustee for the Fund constituted by deed executed on \_\_\_\_\_;
- c) hereby agree to administer the Fund in accordance with the terms and conditions set out in the governing rules;
- d) hereby undertake to notify any other trustee for the Fund and the Australian Taxation Office, in writing, if I am for any reason disqualified from continuing to act as a trustee; and
- e) I hereby state that I understand my obligations and responsibilities as a trustee of the Fund.

**DATED 14 April 2019**

\_\_\_\_\_  
**PAUL ANTHONY DWYER**

\* Note re: disqualification

The Superannuation Industry (Supervision) Act 1993 provides that the following persons are disqualified from acting as a Trustee:

1. Persons who have prior convictions involving dishonest conduct, wherever or whenever such conviction may have occurred.
2. Persons who are insolvent, bankrupt, or have entered into arrangements, assignments or compositions with creditors under Part X of the *Bankruptcy Act 1966* (Cth) or a similar foreign law.
3. Persons in relation to whom a civil penalty order has been made under the Superannuation Industry (Supervision) Act 1993.
4. Persons expressly declared not to be "fit and proper" persons under sections 126A(3) or 126H(5) of the Superannuation Industry (Supervision) Act 1993.

**PATAK PROVIDENT FUND  
(FUND)**

**CONSENT TO ACT AS TRUSTEE**

**under section 118 of the Superannuation Industry (Supervision) Act 1993**

I,

**Amanda Jane Dwyer**

of 15 Riverbank Road Bairnsdale VIC 3875

- a) hereby declare that I am not \*disqualified from acting as a trustee of a superannuation fund under the Superannuation Industry (Supervision) Act 1993;
- b) hereby consent to act as a trustee for the Fund constituted by deed executed on \_\_\_\_\_;
- c) hereby agree to administer the Fund in accordance with the terms and conditions set out in the governing rules;
- d) hereby undertake to notify any other trustee for the Fund and the Australian Taxation Office, in writing, if I am for any reason disqualified from continuing to act as a trustee; and
- e) I hereby state that I understand my obligations and responsibilities as a trustee of the Fund.

**DATED** 14 April 2019

\_\_\_\_\_  
**AMANDA JANE DWYER**

\* Note re: disqualification

The Superannuation Industry (Supervision) Act 1993 provides that the following persons are disqualified from acting as a Trustee:

- 1. Persons who have prior convictions involving dishonest conduct, wherever or whenever such conviction may have occurred.
- 2. Persons who are insolvent, bankrupt, or have entered into arrangements, assignments or compositions with creditors under Part X of the *Bankruptcy Act 1966* (Cth) or a similar foreign law.
- 3. Persons in relation to whom a civil penalty order has been made under the Superannuation Industry (Supervision) Act 1993.
- 4. Persons expressly declared not to be "fit and proper" persons under sections 126A(3) or 126H(5) of the Superannuation Industry (Supervision) Act 1993.

**PATAK PROVIDENT FUND  
(FUND)**

**APPLICATION FOR MEMBERSHIP**

TO: THE TRUSTEE OF THE FUND

<b>AGREEMENT AND UNDERTAKING</b>
----------------------------------

I, the undersigned person, being eligible for Membership, hereby apply for admission to Membership of the Fund. I agree and undertake that:

- (a) If I am an Employee of any other Member, I am also a Relative of the other Member(s);
- (b) I am not disqualified under the Relevant Law from holding the office of a Trustee or as a Director of the Trustee;
- (c) I will be bound by the governing rules for the Fund as they are or may be varied from time to time;
- (d) I will, on request, make full disclosure in writing of any information required by the Trustee in respect of my medical condition or my Membership of the Fund including any circumstance which may have the effect that:
  - (i) I may become an Employee of any other Member or Members where I will not also be a Relative of the other Member(s); or
  - (ii) I may become Disqualified under the Relevant Law from holding the office of a Trustee or as a Director of the Trustee;
- (e) I understand the terms and conditions of the governing rules including my obligations as a Trustee and I agree to sign and deliver to the Australian Taxation Office such form or declaration in connection with my accepting the office of a Trustee or as a Director of the Trustee as may be required under the Relevant Law within such period as the Relevant Law requires;
- (f) I understand the terms and conditions of the governing rules concerning Benefits payable;
- (g) I understand that I am not legally obliged to provide my Tax File Number (TFN) to the Trustee but if I do not provide my TFN, concessional contributions will be taxed at the highest marginal tax rate plus the Medicare levy and the Fund will not be able to accept non-concessional contributions;
- (h) My TFN is \_\_\_\_\_;
- (i) I agree to act as a Trustee for the Fund or to act as a Director of the Trustee.

<b>Name:</b>	Paul Anthony Dwyer
<b>Address:</b>	15 Riverbank Road Bairnsdale VIC 3875
<b>Date of Birth:</b>	16 October 1961

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date (Please ensure that you date this part of the form)

**PATAK PROVIDENT FUND  
(FUND)**

**NOTICE OF COMPLIANCE – EMPLOYER CONTRIBUTIONS**

This statement is to confirm that for the year of income of the Fund to date:

1. the Fund has been conducted as a complying self managed superannuation fund within the meaning of sections 17A and 42A of the *Superannuation Industry (Supervision) Act 1993* and *Superannuation Industry (Supervision) Regulations 1994* and that the trustee intends that the Fund continue to be maintained as a complying superannuation fund;
2. the Fund is not subject to a direction under section 63 of the *Superannuation Industry (Supervision) Act 1993*;
3. the Fund will accept rollovers and contributions and is empowered by the Fund's governing rules to do so; and
4. the Fund has received a request and consents to accepting contributions relating to the following member as set out below, in accordance with regulation 6.28(1)(b) of the *Superannuation Industry (Supervision) Regulations 1994*.

**Signed for and on behalf of the trustee of the Fund:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Member's Request re Contributions**

I, Paul Anthony Dwyer, by signing this form, consent and request that my superannuation contributions from my employment at \_\_\_\_\_ (employer name), be paid into the PATAK Provident Fund.

**Signature of Member:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**PATAK PROVIDENT FUND  
(FUND)**

**NOTICE OF COMPLIANCE – ROLLOVER REQUEST**

This statement is to confirm that for the year of income of the Fund to date:

1. the Fund has been conducted as a complying self managed superannuation fund within the meaning of sections 17A and 42A of the *Superannuation Industry (Supervision) Act 1993* and *Superannuation Industry (Supervision) Regulations 1994* and that the trustee intends that the Fund continue to be maintained as a complying superannuation fund;
2. the Fund is not subject to a direction under section 63 of the *Superannuation Industry (Supervision) Act 1993*;
3. the Fund will accept rollovers and contributions and is empowered by the Fund's governing rules to do so; and
4. the Fund has received a request and consents to accept the rollover relating to the following member as set out below, in accordance with regulation 6.28(1)(b) of the *Superannuation Industry (Supervision) Regulations 1994*.

**Signed for and on behalf of the trustee of the Fund:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Member's Consent to the rollover**

I, Paul Anthony Dwyer, by signing this form, consent to the rollover of my benefits into the PATAK Provident Fund.

**Signature of Member:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

<b>NON-BINDING DEATH BENEFIT NOMINATION</b>
---

Complete this form if you wish to nominate who should receive your superannuation benefits on your death, but you do not want that nomination to be binding on the trustee.

**Details of the Fund and Member**

**Fund Name:** \_\_\_\_\_  
**Member Name:** \_\_\_\_\_  
**Member Address:** \_\_\_\_\_

**Beneficiaries**

The person or persons nominated must be either a Dependant or Dependents (as defined under the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*) or your legal personal representative (LPR). If you wish to nominate your LPR, please write "LPR" in the first column, below.

**To the Trustee of the Fund:**

I request the trustee to pay, upon my death, benefits to the person or persons, and in the proportions, nominated below:

Full Name of Beneficiary	Full Address of Beneficiary (write LPR if the Beneficiary is your LPR)	Beneficiary's Relationship to the Member	% of Total Benefit
<b>Total must equal 100%</b>			<b>100%</b>



**Alternate Beneficiaries**

If any of the Beneficiaries nominated above predecease me, I request the trustee to pay, upon my death, the part of my death benefit that would otherwise have been payable to the deceased Beneficiary noted above, to the person or persons nominated below:

Name of the initial Beneficiary nominated	Name of the Alternate Beneficiary taking the place of the deceased Beneficiary	Alternate Beneficiary's Relationship to the Member	Proportion of the initial Beneficiary's Benefit to be payable to the Alternate Beneficiary

**Member to Sign Non-Binding Death Benefit Notice**

*You must sign this form below.*

\_\_\_\_\_  
Signature of Member

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date (Please ensure that you date this part of the form)

**PATAK PROVIDENT FUND  
(FUND)**

**APPLICATION FOR MEMBERSHIP**

TO: THE TRUSTEE OF THE FUND

**AGREEMENT AND UNDERTAKING**

I, the undersigned person, being eligible for Membership, hereby apply for admission to Membership of the Fund. I agree and undertake that:

- (a) If I am an Employee of any other Member, I am also a Relative of the other Member(s);
- (b) I am not disqualified under the Relevant Law from holding the office of a Trustee or as a Director of the Trustee;
- (c) I will be bound by the governing rules for the Fund as they are or may be varied from time to time;
- (d) I will, on request, make full disclosure in writing of any information required by the Trustee in respect of my medical condition or my Membership of the Fund including any circumstance which may have the effect that:
  - (i) I may become an Employee of any other Member or Members where I will not also be a Relative of the other Member(s); or
  - (ii) I may become Disqualified under the Relevant Law from holding the office of a Trustee or as a Director of the Trustee;
- (e) I understand the terms and conditions of the governing rules including my obligations as a Trustee and I agree to sign and deliver to the Australian Taxation Office such form or declaration in connection with my accepting the office of a Trustee or as a Director of the Trustee as may be required under the Relevant Law within such period as the Relevant Law requires;
- (f) I understand the terms and conditions of the governing rules concerning Benefits payable;
- (g) I understand that I am not legally obliged to provide my Tax File Number (TFN) to the Trustee but if I do not provide my TFN, concessional contributions will be taxed at the highest marginal tax rate plus the Medicare levy and the Fund will not be able to accept non-concessional contributions;
- (h) My TFN is \_\_\_\_\_;
- (i) I agree to act as a Trustee for the Fund or to act as a Director of the Trustee.

<b>Name:</b>	Amanda Jane Dwyer
<b>Address:</b>	15 Riverbank Road Bairnsdale VIC 3875
<b>Date of Birth:</b>	9 September 1968

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date (Please ensure that you date this part of the form)

**PATAK PROVIDENT FUND  
(FUND)**

**NOTICE OF COMPLIANCE – EMPLOYER CONTRIBUTIONS**

This statement is to confirm that for the year of income of the Fund to date:

1. the Fund has been conducted as a complying self managed superannuation fund within the meaning of sections 17A and 42A of the *Superannuation Industry (Supervision) Act 1993* and *Superannuation Industry (Supervision) Regulations 1994* and that the trustee intends that the Fund continue to be maintained as a complying superannuation fund;
2. the Fund is not subject to a direction under section 63 of the *Superannuation Industry (Supervision) Act 1993*;
3. the Fund will accept rollovers and contributions and is empowered by the Fund's governing rules to do so; and
4. the Fund has received a request and consents to accepting contributions relating to the following member as set out below, in accordance with regulation 6.28(1)(b) of the *Superannuation Industry (Supervision) Regulations 1994*.

**Signed for and on behalf of the trustee of the Fund:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Member's Request re Contributions**

I, Amanda Jane Dwyer, by signing this form, consent and request that my superannuation contributions from my employment at \_\_\_\_\_ (employer name), be paid into the PATAK Provident Fund.

**Signature of Member:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**PATAK PROVIDENT FUND  
(FUND)**

**NOTICE OF COMPLIANCE – ROLLOVER REQUEST**

This statement is to confirm that for the year of income of the Fund to date:

1. the Fund has been conducted as a complying self managed superannuation fund within the meaning of sections 17A and 42A of the *Superannuation Industry (Supervision) Act 1993* and *Superannuation Industry (Supervision) Regulations 1994* and that the trustee intends that the Fund continue to be maintained as a complying superannuation fund;
2. the Fund is not subject to a direction under section 63 of the *Superannuation Industry (Supervision) Act 1993*;
3. the Fund will accept rollovers and contributions and is empowered by the Fund's governing rules to do so; and
4. the Fund has received a request and consents to accept the rollover relating to the following member as set out below, in accordance with regulation 6.28(1)(b) of the *Superannuation Industry (Supervision) Regulations 1994*.

**Signed for and on behalf of the trustee of the Fund:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Member's Consent to the rollover**

I, Amanda Jane Dwyer, by signing this form, consent to the rollover of my benefits into the PATAK Provident Fund.

**Signature of Member:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**NON-BINDING DEATH BENEFIT NOMINATION**

Complete this form if you wish to nominate who should receive your superannuation benefits on your death, but you do not want that nomination to be binding on the trustee.

**Details of the Fund and Member**

Fund Name: \_\_\_\_\_  
 Member Name: \_\_\_\_\_  
 Member Address: \_\_\_\_\_

**Beneficiaries**

The person or persons nominated must be either a Dependant or Dependents (as defined under the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*) or your legal personal representative (LPR). If you wish to nominate your LPR, please write "LPR" in the first column, below.

**To the Trustee of the Fund:**

I request the trustee to pay, upon my death, benefits to the person or persons, and in the proportions, nominated below:

Full Name of Beneficiary	Full Address of Beneficiary (write LPR if the Beneficiary is your LPR)	Beneficiary's Relationship to the Member	% of Total Benefit
<b>Total must equal 100%</b>			<b>100%</b>

**Alternate Beneficiaries**

If any of the Beneficiaries nominated above predecease me, I request the trustee to pay, upon my death, the part of my death benefit that would otherwise have been payable to the deceased Beneficiary noted above, to the person or persons nominated below:

Name of the initial Beneficiary nominated	Name of the Alternate Beneficiary taking the place of the deceased Beneficiary	Alternate Beneficiary's Relationship to the Member	Proportion of the initial Beneficiary's Benefit to be payable to the Alternate Beneficiary

**Member to Sign Non-Binding Death Benefit Notice**

*You must sign this form below.*

\_\_\_\_\_  
Signature of Member

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Date (Please ensure that you date this part of the form)

## Australian Tax Office Publications

### **Application for ABN Registration for Superannuation Entities**

If you have not requested us to register the Fund for an Australian Business Number and Tax File Number, the Trustee/s of the Fund will need to organise this registration. The Trustee/s can register the Fund for an ABN and TFN via the Australian Taxation Office's website, at the following link:

<https://abr.gov.au/For-Business,-Super-funds---Charities/Applying-for-an-ABN/>

### **Running a self-managed super fund**

The Trustee/s of the Fund should be provided with a copy of the Australian Taxation Office's booklet 'Running a self-managed super fund' which outlines the Trustee/s roles and responsibilities in relation to the Fund. To download this booklet, please click on the link below

<https://www.ato.gov.au/uploadedFiles/Content/SPR/downloads/spr46427n11032.pdf>

### **Trustee Declaration Form**

Each Trustee / Director of the Corporate Trustee must sign an Australian Taxation Office 'Trustee Declaration' form within 21 days of the Fund being established. To download this form, please click on the link below

[https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration\\_SPR\\_n71089\\_19272.pdf](https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration_SPR_n71089_19272.pdf)

### **Self-managed super funds – key messages for trustees**

Each Trustee / Director of the Corporate Trustee should be provided with a copy of the Australian Taxation Office's 'Self-managed super funds – key messages for trustees' form. To download this form, please click on the link below

<https://www.ato.gov.au/uploadedFiles/Content/SPR/downloads/NAT71128-12%20QC%2019273.pdf>

### **Choice of Superannuation Fund**

To obtain a Choice of superannuation – Standard choice form from the ATO, please go to the link below:

[https://www.ato.gov.au/Forms/Superannuation-\(super\)-standard-choice-form/](https://www.ato.gov.au/Forms/Superannuation-(super)-standard-choice-form/)

## Stamping your Documents

The following information should be used as a guide only. As stamp duty requirements change over time, you should contact your local revenue office at the time of the establishment of your Trust to confirm your stamp duty obligations and the required documentation to be lodged, or seek advice from an appropriately qualified person in this area of law.

### **Australian Capital Territory, New South Wales, Queensland, Tasmania, Victoria and Western Australia Residents**

You are not required to stamp your Trust Deed.

### **Northern Territory Residents**

You are required to have your Trust Deed stamped. Please see instructions below on how to lodge your Trust Deed directly with the relevant state revenue office for stamping.

### **South Australia Residents**

Revenue SA states that there is no requirement for your Trust Deed to be stamped, but should you wish to stamp your Trust Deed, you may, and you will not be charged duty to do so. Information on how lodge your Trust Deed is outlined below.

### **Procedure to Stamp your Deed (NT and SA only)**

You can organise the stamping of your Trust Deed in two ways. If you would like to have the Trust Deed stamped in person, take an executed and dated original copy of the Trust Deed to your local state revenue office as listed below.

Alternatively you may wish to post an executed and dated original copy of the Trust Deed to your local state revenue office. If this is your preferred option, please attach the covering letter supplied in your Trust package, and a cheque for the amount of duty payable, to your executed and dated Trust Deed and post them to the address noted on the covering letter included in your Trust package.

Please note, in addition to the above, the Northern Territory and South Australia revenue offices require you to complete a stamp duty lodgment form. These forms are available for download at the following addresses:

#### **Northern Territory Stamp Duty lodgment form:**

<http://www.nt.gov.au/nt/revenue/pdf/F-SD-001.pdf>

#### **South Australia stamp duty lodgment form:**

[https://www.revenuesa.sa.gov.au/data/assets/file/0004/6790/SD\\_Opin\\_1014.pdf](https://www.revenuesa.sa.gov.au/data/assets/file/0004/6790/SD_Opin_1014.pdf)

Details of the Northern Territory and South Australia State Revenue Offices, as well as the applicable duty payable for the stamping of your Trust Deed, are as follows:

**Northern Territory:**  
Territory Revenue Office  
Level 4, Cavenagh House  
38 Cavenagh Street  
Darwin Northern Territory  
**Duty Payable - \$20.00**

**South Australia:**  
Revenue SA  
G Floor State Administration Centre  
200 Victoria Square  
Adelaide, South Australia  
**Duty Payable \$0.00**



## **DOCUMENTATION SUMMARY AND PROCEDURE INFORMATION FOR THE PATAK PROVIDENT FUND (FUND)**

### **1. ESTABLISHMENT OF FUND**

In order to establish the Fund, we enclose the following documents:

#### **1.1 (a) Application/s for Membership**

Each initial member must sign and date their Application for Membership form.

Trustees of superannuation funds are required to request a member, on joining the Fund, to provide details of his or her tax file number (TFN) within 30 days of the admission of the member.

Provision of the TFN is not mandatory; however, failure to provide the TFN could result in the member's benefit being taxed at the top marginal rate (currently 45%) plus the Medicare levy.

Further, trustees cannot accept personal contributions (from after-tax income) from members who have not provided their TFN.

In order to benefit from the concessional tax rates available to members of the Fund, each initial member should provide their TFN in the space provided in their Application for Membership.

#### **(b) Notice of Compliance – Employer Contributions**

Each initial member has a Notice of Compliance – Employer Contributions form. This form should be signed and dated by the trustee and the member and forwarded by the member to their employer (if they wish for their employer to make superannuation contributions on their behalf to the Fund).

#### **(c) Notice of Compliance – Rollover Request**

Each initial member has a Notice of Compliance – Rollover Request form. This form should be signed and dated by the trustee and the member and forwarded by the member to their existing Superannuation Fund(s) (if they wish for their existing Superannuation Fund to roll over their superannuation benefits to the Fund).

#### **(d) Non-Binding Death Benefit Nomination Form**

Each initial member has a Non-Binding Death Benefit Nomination form that enables the member to declare his or her preference as to how their death benefits will be paid. Where a Non-Binding Death Benefit Nomination is given to the trustee, the trustee still retains an ultimate discretion as to how the death benefits of the member will be paid. However, the trustee will make its decision in the light of the express wishes of the member. This non-binding nomination allows the member to declare his or her preference.

#### **1.2 Consent of Trustees to Act/Consent of Directors of Trustee Company**

Each trustee or director of a corporate trustee must consent in writing to their appointment. The consent includes a declaration that the trustee/director is not disqualified from so acting and also that they understand their obligations and responsibilities as a trustee/director of the trustee company. Each initial member must consent at the time of the execution of the original and duplicate trust deed and each later joining member must consent when making an application for membership.

The consent must be retained in the records of the Fund for a minimum period of 10 years.

**1.3 (a) Resolution of Trustee(s) in relation to Acceptance of Trusteeship and Other Procedural Matters**

This resolution records a number of procedural matters relating to the application for a Tax File Number and Australian Business Number (see section 1.4), establishment of a bank account in the name of the Fund, establishment of an investment strategy and (where the trustee is a company) records the trustee's acceptance of its position as trustee.

The resolution should be completed and executed by the relevant persons and held on the records of the Fund.

**(b) Resolution of Trustee(s) in relation to an Election to Become a Regulated Superannuation Fund**

The enclosed draft resolution should be executed to record the decision of the trustee to complete and lodge the notice of election form (see section 1.4) in order for the Fund to become a regulated superannuation fund. The Fund is established as a self managed superannuation fund supervised by the Australian Taxation Office (ATO).

**(c) Resolution of Trustee(s) - Notice to Members**

This resolution deals with the admission of the initial members of the Fund and the requirement to give the members the notices required under the SIS regulations (see section 1.6). The resolution should be completed by the relevant persons and held on the records of the Fund.

**1.4 Australian Tax Office Publications**

**Application for ABN Registration for Superannuation Entities**

The ATO has issued a combined form which is to be used to register the Fund for an ABN, GST and a tax file number and to elect under the *Superannuation Industry (Supervision) Act 1993 (SIS Act)* for the Fund to be regulated.

**Timing Issues**

Under the SIS Act, the election must be made within 60 days of the establishment of the Fund. The Fund will generally be taken to have been established on the date the Deed of Establishment for the Fund was executed or on the date the money or another asset is first put into the fund if this is later.

Under the SIS Act, a fund cannot generally receive tax concessions for a year of income unless it becomes a regulated superannuation fund within 60 days of establishment. This means that the election to become a regulated superannuation fund must generally be made at the time of establishment i.e. it must be executed and lodged within 60 days of the execution of the trust deed for the Fund. If this is not done, then the Fund will not be eligible to receive taxation concessions in its first year of income.

There is another requirement under regulations 11.03 and 11.04 of the Superannuation Industry (Supervision) Regulations 1994 (**SIS regulations**) that the trustee of a superannuation fund must, within seven days after the establishment of the Fund, provide the ATO with the contact details and other basic information in relation to the Fund and the trustee.

The Application for ABN Registration for Superannuation Entities form (**ABN Application Form**) enables the trustee to provide the information required by the SIS regulations. In order to minimise the administrative tasks in relation to the establishment of the Fund and to ensure that both sets of requirements are met, the trustee should complete the ABN Application Form within seven days of the establishment of the Fund.

The resolutions have been prepared on the basis that this will occur.

Further instructions regarding the completion and lodgement of this form are included in its accompanying notes and instructions.

A copy of the completed form should be retained on the Fund records.

#### **Trustee Declaration and Key Messages for Trustees**

The ATO has issued a standard declaration which all new trustees (and directors of corporate trustees) of a self managed superannuation fund must sign within 21 days of when the trust deed is executed. By signing the declaration, a new trustee (or director of a corporate trustee) states that they understand their duties as a trustee (or director of a corporate trustee). The ATO advises that its fact sheet, "Self managed super fund – Key messages for trustees (NAT 71128)" (**Fact Sheet**) should be read together with the declaration.

The declaration must be witnessed by a person over 18 years of age.

The declaration and Fact Sheet should not be sent to the ATO, but retained by the trustee for its records.

#### **Choice of Fund**

Choice of Fund allows employees to choose the superannuation fund or retirement savings account to which their employer will make future superannuation guarantee contributions. If a member elects to have their superannuation contributions paid into the Fund, they must provide the following documents to their employer:

- (i) The ATO "Choice of superannuation fund - Standard choice form".
- (ii) A Notice of Compliance – Employer Contributions form from the trustee
- (iii) A Statement from the Australian Taxation Office that the fund is a regulated superannuation fund. The trustee will automatically receive this notice from the Australian Taxation Office after lodgement of the Fund's first income tax return.

Should the trustee require a copy of the notice to enable the employee to choose the Fund before the income tax return is lodged, the notice can be obtained earlier by making a written request to the Australian Taxation Office at PO Box 277, World Trade Centre Vic 8005, or by faxing the "Australian Taxation Office Superannuation Business Line" on (02) 6058 7104. Lost or misplaced copies can be obtained in the same way.

### **1.5 Member and Trustee Register**

We have included a register of members and a register of trustees listing the initial members and trustees of the Fund. You will need to complete the details of the date members and trustees join the Fund, and the date they cease to be a member / trustee.

### **1.6 Product Disclosure Statement**

Part 7.9 of the Corporations Act 2001 (**Corporations Act**) requires certain information to be given to new members of regulated superannuation funds as a product disclosure statement. However, different requirements apply depending on whether the fund in question is a self managed superannuation fund and the types of members of the fund.

The Fund established upon execution of the Deed of Establishment has been structured to be a self managed superannuation fund.

Trustees of such funds are required to comply with a general requirement only in relation to a product disclosure statement i.e. **all information** that the trustee believes a member would reasonably need as a retail client in considering whether to become a member. The extent of the information to be given to new members of a self

managed superannuation fund is therefore a matter for the trustee for the Fund to determine.

However, while there will generally be no need to provide the product disclosure statement to members who are also trustees or directors of the trustee company, it may be necessary for a product disclosure statement to be given in relation to members who may not also be trustees or directors, i.e. child members or those members whose legal personal representative takes their place as a trustee or director.

The enclosed product disclosure statement, in our view, satisfies the requirements of Part 7.9 of the Corporations Act as they may apply to any of the potential types of member in a self managed superannuation fund. The statement should be completed and given to each initial member and any later joining member and copies should be kept with the records of the Fund.

#### **Timing**

Product disclosure statements are required to be given before or, where Part 7.9 of the Corporations Act permits, as soon as practicable and no later than three months after a person becomes a member of the Fund.

## **2 DEED OF ESTABLISHMENT**

### **(a) Execution**

The Deed of Establishment must be executed by the trustee/s where indicated and attached to a copy of the *SMSF Governing Rules Version 18.01*.

Schedule A of the Deed of Establishment must also be completed at the time of its execution.

Schedule B of the *SMSF Governing Rules Version 18.01* should not be completed, as this provides an indicative form of application for membership to be used for persons seeking to become members of the Fund, and Applications for Membership in respect of the initial members are provided for at Document 1.1(a).

### **(b) Duty**

Following the execution of the Deed of Establishment, it may be necessary to arrange for payment of stamp duty or for the Deed of Establishment and the *SMSF Governing Rules Version 18.01* to be denoted as not being dutiable.

The Deed of Establishment and Governing Rules may be required to be stamped in two or more States, depending on a number of factors such as the place of execution of the Deed of Establishment and the location of the place of administration and the assets of the Fund. You should confirm with each relevant State Revenue Office whether or not the Deed of Establishment and Governing Rules are dutiable, and whether or not it should be submitted so as to be denoted as not being dutiable, as the requirements of the Offices vary.

Once executed, Deed of Establishment and Governing Rules must retained in a safe place.

## **3. BINDING AND NON BINDING DEATH BENEFIT NOMINATION**

The governing rules for the Fund permit the members of the Fund to complete a Reversionary Pension Nomination (**RPN**), a Binding Death Benefit Nomination (**BDBN**), a Death Benefit Rule (**DBR**), a Non-Binding Death Benefit Nomination (**NBDBN**) and / or to appoint a Member Benefit Guardian (**MBG**) in relation to the distribution of their death benefits from the Fund.

We recommend that you speak to a suitably qualified legal practitioner in regards to completing a BDBN or DBR or to appoint a MBG.

Set out below is a summary of the operation of the governing rules with respect to the ability of a member to nominate the recipients of a death benefit.

#### **Operation of the Governing Rules**

Rule 34 of the governing rules deals generally with the payment of benefits on the death of a member.

Rule 34 provides that a member or beneficiary may give the trustee a BDBN (rule 34.1), DBR (rule 34.3) or a NBDBN (rule 34.5). In addition, rule 37 provides that a member may nominate a MBG in relation to the distribution of their death benefits from the Fund and rule 38.3 provides for RPNs.

#### **Reversionary Pension Nomination**

Where a RPN is given to the trustee, the trustee is bound to give effect to the RPN and continue to pay the pension or pensions to the nominated recipient or recipients (unless this cannot be done under the Relevant Law).

#### **Binding Death Benefit Nominations**

Where a BDBN is given to the trustee, the trustee is bound to give effect to the BDBN (unless this cannot be done under the Relevant Law). A RPN will take priority over a BDBN in the instance of conflicting directions provided in the respective nominations.

Members should note that neither a RPN nor a BDBN permits them to require the trustee to pay any part of their death benefit payment to a person who is not their dependant or (BDBN only) their legal personal representative. Additional limitations apply to dependants who are able to receive a death benefit in the form of a pension. Members should consult the trustee for further details with respect to taking up the option of a RPN or a BDBN.

RPNs and BDBNs do not need to be updated at any particular interval in order to remain binding on the trustee. Rule 34.6 makes it clear that a BDBN will not lapse by reason only of the passage of time. However, because members' circumstances change, we suggest that each Fund member be provided with an opportunity at least annually to confirm, revoke or amend the BDBN.

#### **Member Benefit Guardian**

Members have the option to appoint a Guardian, including a MBG, that prevents the trustee from exercising certain powers, rights, decisions, discretions, appointments and other authorisations without the prior consent in writing of the Guardian.

If appointed, a MBG's consent would be required by the trustee prior to making death benefit payments where a reversionary pension, valid BDBN or DBR are not in place. This can protect the deceased member's benefits.

In addition, the MBG's consent would be required by the trustee prior to the payment of any member benefits during a time where the Member is incapacitated.

#### **Non-Binding Death Benefit Nominations**

Where a NBDBN is given to the trustee, the trustee still retains an ultimate discretion as to how the death benefits of the member are to be paid. However, the trustee should make its decision in the light of the express wishes of the member. This non-binding nomination allows the member to declare his or her preference. If this form of nomination was desired, a member would complete a notice in the form of Schedule B of the governing rules for the Fund.

### **Timing Issues**

A nomination in either a binding or non-binding form need not be completed immediately or at all. It may be given by a member at any time, and either nomination can be changed at any time if circumstances change.

If a member dies without giving either nomination, the trustee can use its own discretion to distribute the death benefits between dependants and the legal personal representative.

## **4. OTHER RELEVANT ISSUES**

### **4.1 Preserved Benefits**

The preservation rules determine the age at which benefits may be accessed by a member from the Fund and what type of benefits may be accessed prior to that age.

#### **(a) Preservation Age**

The Government requires preservation of certain benefits until a member retires from the workforce after attaining the preservation age or in such earlier circumstances as are acceptable to the ATO i.e. the total and permanent disablement of the member, terminal illness or other approved early release.

The preservation age for a member of a superannuation fund is between 55 and 60 years, based on the member's date of birth.

For all people born before 1 July 1960, the preservation age is 55 but for someone born after 30 June 1964, the preservation age is age 60.

The phase-in schedule is set out below:

<b>Date of Birth</b>	<b>Preservation Age</b>
After 30/06/64	60
After 30/06/63 and before 01/07/64	59
After 30/06/62 and before 01/07/63	58
After 30/06/61 and before 01/07/62	57
After 30/06/60 and before 01/07/61	56
Before 01/07/60	55

#### **(b) Types of Benefits to be Preserved**

In general, all benefits in a superannuation fund are required to be preserved until the member's preservation age except:

- (i) the amount of the member's benefits in the Fund which were not required to be preserved as at 30 June 1999 (this amount is not subject to indexation); and
- (ii) a member's non-preserved benefits in another fund and which are transferred into the Fund.

The amounts in paragraphs 3.1(b)(i) and (ii) may be accessed by a member upon satisfaction of conditions relevant to those amounts.

(c) **Payment of Preserved Benefits**

The governing rules allows for the payment of preserved amounts in all of the circumstances allowed under the Relevant Law. The governing rules also permit the payment of benefits rendered non-preserved by operation of the Relevant Law to be withdrawn by a member.

**4.2 Trustee Structure**

As noted, the governing rules for the Fund are structured to meet the requirements for a self managed superannuation fund. These include that (subject to some exceptions) each member of the Fund must either be an individual trustee or a director of a company which is the trustee for the Fund.

When signing the application for membership, each member confirms that they consent to acting as a trustee or a director of the trustee.

**4.3 Qualification to Act as Trustee/Director of a Trustee Company**

Once the trustee has made an irrevocable election as described in section 1.4, the Fund becomes a regulated superannuation fund. A consequence of this is that a person may be liable for a penalty of a maximum of two years' imprisonment for acting as a trustee of a regulated superannuation fund while disqualified under the SIS Act. In a self managed superannuation fund, all members must be a trustee or a director of the trustee company. The disqualified person requirements are therefore central to the continuing operation of the Fund as a self managed superannuation fund.

Generally, the SIS Act provides that the following persons are disqualified from acting as a trustee:

- (a) persons who have prior convictions involving dishonest conduct, wherever or whenever such conviction may have occurred;
- (b) persons who are insolvent and who have entered into arrangements with their creditors, or who are bankrupt;
- (c) persons in respect of whom a civil penalty order under the SIS Act has been made;
- (d) persons expressly declared not to be a 'fit and proper' person under section 120A(3) of the SIS Act;
- (e) a company of which a director, secretary or executive officer is disqualified under paragraphs 3.3(a), (b), (c) or (d);
- (f) a company in receivership, official management or liquidation.

**4.4 Income Streams**

Any member of the Fund or beneficiary who is entitled to a lump sum benefit may apply to the trustee to receive the whole or part of their benefit by way of a superannuation income stream.

The superannuation income stream can be provided by payment of an account-based pension or by the trustee's purchase of an annuity outside the fund for the member. Provision is also included for a transition to retirement income stream to be paid, where the member so requests and has reached their preservation age.

The governing rules for the Fund include provisions for other types of pensions to be paid if allowed by the Regulator and by the Relevant Law, to allow flexibility should other pension types become allowed in due course.

Detailed rules apply to the provision of benefits as pensions. Such rules should be discussed with the trustee prior to a member or beneficiary exercising this option.

## Opening a Bank Account

It is the responsibility of the trustee/s of the Superannuation Fund to open a suitable bank account for the Fund, in the name of the trustee/s.

The name of the account should identify the name of the trustee/s, as well as the name of the Superannuation Fund. For example, if the trustee/s established a Superannuation Fund named the 'Smith Family Superannuation Fund' and the trustee company was 'Jim Jones Pty Ltd', the bank account should be in the name of:

JIM JONES PTY LTD AS TRUSTEE FOR THE SMITH FAMILY SUPERANNUATION FUND

All transactions relating to the administration of the Superannuation Fund should be processed from the Superannuation Fund's bank account, including all investments and payments made on behalf of the Fund, and all monies being transferred into the Fund.

As a general rule, the following documentation is required to open a bank account for the Superannuation Fund:

- √ A signed and dated copy of the Deed of Establishment and Governing Rules;
- √ Proof of Identification\* for each Individual trustee that will be a signatory on the account or;
- √ Proof of Identification\* for each director of the corporate trustee that will be a signatory on the account.
- √ Certificate of incorporation of the company (if a corporate trustee).

\*Proof of Identification generally consists of a 100 point Identification Check. To determine the documents required to meet 100 points of Identification, or to see if your chosen Institution requires additional information to open an account, you should contact the Institution you will be opening the account with.

Determining the Institution, and account type, for the Superannuation Fund's bank account is a decision best made in conjunction with your accountant or licensed financial advisor.