

name of the Fund arrange, effect, alter, amend and cancel such policy or policies of life insurance on the life of a Member for such amount and for such period and subject to such terms and conditions as the Trustee with the agreement of the relevant Member may determine.

17.5 Superannuation Surcharge

The Trustee may:-

- (a) provide information relating to Members to a Regulator;
- (b) reduce benefits by the amount of penalty and interest within the meaning of the Tax Act;
- (c) keep records in accordance with Section 39(1) of the Superannuation Contributions Surcharge (Assessment and Collection) Act 1997;
- (d) make provision for payment of such amount as the Trustee reasonably estimates may be required to pay any Taxation;
- (e) assume liability for the Superannuation Contributions Surcharge and the advance instalments on accepting moneys or assets paid or transferred to the Fund from any other Approved Fund.

17.6 Member Protection Standards

The Trustee may allocate the administration costs of the Fund in a fair and equitable manner within the meaning of Division 5.5 of the Regulations.

17.7 General Powers

The Trustee may generally do all acts and things as the Trustee may consider necessary or expedient for the due administration, maintenance and preservation of the Fund and in performance of its obligations under this Deed.

17.8 Custodian Trustee

- (a) To the extent permitted by the Relevant Law, the Trustee may appoint a nominee, custodian or other person to receive, hold and retain investments of the Fund on such terms and conditions and with such powers as determined by the Trustee from time to time.
- (b) The appointment referred to in Clause 17.8(a) must be in writing.

17.9 Fees and Expenses Relating to the Family Law Act

The Trustee may impose fees in relation to any:-

- (a) application for information relating to a superannuation interest;
- (b) payment split or payment flag; or
- (c) other matter,

relating to part VIII B of the Family Law Act 1975 in such manner as is permitted by that Act. subject to the Relevant Law, this includes (but is not limited to) deducting fees from a benefit which is payable or which may become payable in respect of the relevant Member of the Non-Member Spouse following a payment split under Part VIII B of the Family Law Act 1975, at such times and in such manner as the Trustee determines.

18. INSURANCE BENEFITS

18.1 Level of Benefits

The amount and nature of death or total and permanent disability or Totally but Temporarily Disabled Benefits (hereinafter called the **Insured Benefits**) shall be determined by the Trustee.

18.2 Commencement of Death and Disability Insurances

A Member will not be insured against death or a Total and Permanent Disability or a Total but Temporary Disability under any policy or policies of insurance arranged by the Trustee until:-

- (a) he or she is admitted as a Member; and
- (b) the Member has provided information required by the insurer.

18.3 Cessation of Insurance Cover

A Member's interest in the rights under any death or Total and Permanent Disability or Totally but Temporarily Disability policy or policies of insurance arranged by the Trustee cease:-

- (a) if the Member ceases to be within the class of persons covered by the policy or policies of insurance or otherwise ceases to be covered under the terms of the policy or policies of insurance; or
- (b) upon the insurer terminating the policy or policies of insurance or the Member's cover; or
- (c) on written request to the Trustee given by the Member; or
- (d) on the Trustee determining that it is not reasonably practicable to obtain or renew a policy of life insurance on terms acceptable to the Trustee; or
- (e) if the amount standing to the credit of a Member's Accumulation account is insufficient to pay for the Member's cover; or
- (f) on payment of the Member's Benefit or on transfer of the Benefit to another Complying Superannuation Fund.

18.4 Scope of Insurance Cover

Any Insured Benefit shall be subject to the terms of the insurance policy or policies of insurance taken out by the Trustee to provide the relevant Insured Benefit and no payment shall be required to be made in respect of a Member in satisfaction of any Insured Benefit that is greater than the amount received by the Trustee under the insurance policy in respect of that Member after deduction of all administration charges and expenses and taxes attributable to those amounts.

19. RECORDS, ACCOUNTS, AUDIT AND INSPECTION

- 19.1 The Trustee shall keep or cause to be kept on behalf of the Fund proper books of both record and account showing all appropriate Membership details and all receipts, disbursements, assets and liabilities of and in connection with the Fund and shall at least once in every calendar year prepare statements showing the financial position of the Fund.
- 19.2 The books statements accounts and balance sheets of the Fund shall be audited by an approved Auditor in accordance with the provisions of the Relevant Law and the Auditor so appointed shall after each such examination submit a certificate in the prescribed form to the Trustee no later than the date the return is required to be lodged with the Regulator.
- 19.3 Copies of all documents relating to the Fund including this Deed and the Auditor's reports, annual balance sheets, Members' Accounts and Membership records shall be held by the Trustee and shall on the submission of a written request be made available by the Trustee at least once in each year for inspection by a Member or a Participating Employer who may request the inspection.
- 19.4 The Trustee shall obtain such actuarial reports on the Fund or benefits payable as are required by the Relevant Law.
- 19.5 The Trustee must comply with all reasonable requests concerning production of and inspection of any books or records of the Fund by the Regulator.

20. PAYMENT OF TAXES

The Trustee shall be empowered to deduct such amounts of Taxation as may be required by the Relevant Law to be deducted from any lump sum payment or other benefit to be paid out of the Fund and to meet any Taxation liability which may arise from time to time and to debit any Member's Accumulation Account or any Reserve Account with the payment of the amount or proportionate amount of the Taxation to be paid and notwithstanding that any Member's credit in an account may have become vested within the meaning of SIS.

21. ALTERATION OF THE DEED

- 21.1 The provisions of this Deed may be amended, added to or varied from time to time by the Trustee and the Members provided the proposed amendment, addition or variation is in accordance with the provisions of the Relevant Law.
- 21.2 Any such amendment, addition or variation must be effected by a Deed executed by the Trustee and the Members with effect from a date (being a previous or future date) specified by the Trustee or if none is specified from the date the amendment is actually effected.
- 21.3 No amendment may alter adversely a Member's right or claim to accrued benefits or the amount of those accrued benefits unless:—
- (a) where required, the consent of the affected Member and/or the Regulator is obtained in accordance with the Relevant Law;
 - (b) the alteration is necessary to comply with or is of a kind expressly permitted by the Relevant Law; or
 - (c) the alteration is of a kind permitted by the Regulations.
- 21.4 The Trustee shall give to each Member such information or notice in respect of the amendment(s) as may be required by the Relevant Law.

22. MEMBERSHIP OF THE FUND

- 22.1 The Trustee may invite any Eligible Person to participate in the Fund.
- 22.2 Each Eligible Person invited to participate in the Fund shall apply in writing to the Trustee for admission to Membership of the Fund in a form prescribed by the Trustee.
- 22.3 The Trustee may accept or refuse any application for Membership in its absolute discretion and shall not be required to give any reason for any such refusal.
- 22.4 Subject to Clause 22.6, a person shall become a Member when the Trustee approves such application and Membership may be granted with effect from a date (being a previous or future date) specified by the Trustee or if none is specified from the date the application is actually approved. Before any contributions in respect of the newly approved Member are made, the Trustee shall provide a written statement advising of its acceptance of the Member's application.
- 22.5 Each Member by his application shall be deemed to have assented to and to have consented to be bound by the provisions of this Deed.
- 22.6 Upon being accepted as a Member of the Fund, the new Member shall be required to consent to:—
- (a) being appointed as a Trustee of the Fund where the Trustee is comprised of individuals; or
 - (b) being appointed as a Director of the Trustee of the Fund where the Trustee is a constitutional corporation.
- 22.7 A Member shall cease to be a Member in the event of the first of the following:—
- (a) the Trustee determines that the Member has been paid all of his or her Benefits from the Fund;

- (b) where the Member dies, the Trustee determines that the deceased Member's Benefits have been paid to the deceased Member's Dependents or legal personal representative;
- (c) the Trustee determines that the Member's continued Membership would cause the Fund to cease complying with the Relevant Law; or
- (d) the Trustee determines on reasonable grounds that the Member should cease to be a Member.

23. CONTRIBUTIONS

23.1 Persons permitted to make Contributions

With the consent of the Trustee and subject to any provision of this Deed to the contrary, any person including:-

- (a) a Member;
- (b) an Employer;
- (c) any State, Territory or Federal government (including under the Federal government's co-contribution scheme); or
- (d) any other person permitted to make Contributions in respect of a Member under the Relevant Law,

may make Contributions to the Fund from time to time in respect of the Member.

23.2 Acceptance of Contributions

The Trustee may, in its discretion, accept Contributions made by or in respect of a Member in circumstances permitted by the Relevant Law.

23.3 Refusal of Excess Contributions

The Trustee may, but is not required to, refuse to accept some or all Contributions that it reasonably believes would cause the Member to exceed his or her Concessional Contributions Cap or Non-Concessional Contributions Cap.

23.4 Allocation of Contributions

If the Trustee receives a contribution in a month, the Trustee must allocate the contribution to the relevant Member:-

- (a) within twenty-eight (28) days after the end of the month; or
- (b) if it is not reasonably practicable to allocate the contribution to the relevant Member within twenty-eight (28) days after the end of the month – within such longer period as is reasonable in the circumstances.

23.5 Spouse Contributions Splitting

- (a) This Clause 23.5 does not apply to so much of a Member's Benefit in the Fund that is subject to a payment split or on which a payment flag is operating under Part VIIIB of the *Family Law Act 1975*.
- (b) A Member may, in a financial year, apply to the Trustee to rollover, transfer or allot an amount of his or her Benefits for the benefit of the Member's Spouse that is equal to the amount of Splittable Contributions made to the Fund by, for or on behalf of the Member in either:-
 - (i) the last financial year that ended before the relevant application; or

- (ii) the financial year the relevant application is made in where the Member's entire Benefits are to be rolled over, transferred or cashed in that year.
- (c) An application made under this Clause 23.5 is invalid:-
 - (i) if in the financial year it is made:-
 - (A) the Member has already made an application in respect of the relevant financial year; and
 - (B) the Trustee is either considering the application or has given effect to that application; or
 - (ii) if the amount of the Benefits to which the application relates exceeds the Maximum Splittable Amount; or
 - (iii) subject to Clause 23.5(d), if at the time of the application:-
 - (A) the Member's Spouse is aged between Preservation Age and 65 years; and
 - (B) the Member's Spouse satisfies the condition of release specified in item 101 of Schedule 1 of the Regulations.
- (d) Despite Clause 23.5(c)(iii), an application is not invalid under that Clause if it includes a statement by the Member's Spouse to the effect that, at the time of the application, the Spouse:-
 - (i) is aged between Preservation Age and 65 years; and
 - (ii) does not satisfy the condition of release specified in item 101 of Schedule 1 of the Regulations.
- (e) The Member must specify in the application the amount of the Benefit the Member wishes to split for the benefit of the Member's Spouse, from the following:-
 - (i) the Member's Taxed Splittable Contributions;
 - (ii) the Member's Untaxed Splittable Contributions;
 - (iii) the Member's Untaxed Splittable Employer Contributions.
- (f) The Trustee may in its sole discretion accept an application made under Clause 23.5(b) if:-
 - (i) the application complies with Clauses 23.5(b) to (e); and
 - (ii) the Trustee has no reason to believe that the statement referred to in Clause 23.5(d) is untrue; and
 - (iii) the amount to which the application relates does not exceed the Maximum Splittable Amount for the relevant Financial Year.
- (g) Where the Trustee accepts an application under this Clause 23.5, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application roll over, transfer to an Approved Fund, or allot the amount of the Splittable Contribution that is the subject of the application for the benefit of the Member's Spouse.
- (h) Before the Trustee allots any amount under Clause 23.5(g) for the benefit of the Spouse:-

- (i) where the Fund is a Self Managed Superannuation Fund, the Trustee must ensure that the definition of Self Managed Superannuation Fund is satisfied by appointing him or her as a director of the Trustee company or as an individual Trustee; and
 - (ii) either, the Spouse must:-
 - (A) be a Member; or
 - (B) apply to become and be accepted as a Member.
- (i) If a Member requests a split of his or her Untaxed Splittable Contributions, Taxed Splittable Contributions or his or her Untaxed Splittable Employer Contributions the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the amount permitted by the Regulations.

23.6 Return of Contributions

- (a) If Contributions are:
- (i) accepted by the Trustee in breach of the Relevant Law or this Deed;
 - (ii) accepted by or made to the Trustee by mistake; or
 - (iii) required to be returned to the contributor or another party by the Regulator or by order of a court or tribunal,
- the Trustee must return such amount of the Contributions referred to above as determined by the Trustee or as required by the Regulator or order of a court or tribunal provided that the return of the Contributions and the amount of the Contributions determined by the Trustee to be returned are permitted by the Relevant Law.
- (b) For the avoidance of doubt, the Trustee is authorised to take into account any of the matters outlined in the Relevant Law, including Regulation 7.04(4)(b) of the Regulations where applicable, in determining the amount of the Contributions to be returned.

24. ACCOUNTS

24.1 Accumulation Accounts

An account shall be established and maintained for each Member or Beneficiary of the Fund (herein called the **Accumulation Account**).

(a) **Credits to Accumulation Accounts**

The following amounts may be credited to the appropriate Accumulation Account:-

- (i) the transfer of credit amounts held in the name of a Member previously held in an Approved Fund;
- (ii) a Directed Termination Payment made on the Member's behalf;
- (iii) any Contributions made pursuant to this Deed;
- (iv) the proceeds of any claim made on an insurance policy;
- (v) transfers from the Operating Account;
- (vi) transfers from any Reserve Account;
- (vii) transfers from a Member's Pension Account;
- (viii) transfers, rollovers or allotments from an account held by a Member's Spouse in the Fund or any other Complying Superannuation Fund as permitted under the Relevant Law dealing with spouse contributions-splitting;

- (ix) such other amounts as the Trustee shall determine from time to time and which shall not result in the Fund ceasing to be a Complying Superannuation Fund.

(b) Debits to Accumulation Accounts

The following amounts may be debited to the appropriate Accumulation Account:–

- (i) transfers to an Approved Fund made at the written request of a Member;
- (ii) transfers to the Operating Account;
- (iii) transfers to any Reserve Account;
- (iv) transfers to a Member's Pension Account;
- (v) transfers, rollovers or allotments to an account held by a Member's Spouse in the Fund or any other Complying Superannuation Fund as permitted under the Relevant Law dealing with spouse contributions-splitting;
- (vi) any costs or expenses incurred by the Trustee which are specific to a Member including but not limited to insurance premiums, any other costs related to the purchase or continuance of any insurance policy for the benefit of the Member or his Dependants;
- (vii) payment of a Benefit (other than payment from a Pension Account) to a Member or the Dependants or Beneficiaries of that Member;
- (viii) purchase of an Annuity in relation to a Member or Beneficiary;
- (ix) any Taxation, costs, charges and expenses and provisions in respect of any of them as the Trustee may determine;
- (x) such other amounts as the Trustee shall determine from time to time.

(c) Preservation and Cashing Restrictions

In keeping records for the Funds and its Members, the Trustee shall be required to maintain records to show in relation to a Members' Accumulation Account:–

- (i) the amount that is required to be preserved;
- (ii) the amount that is a restricted non-preserved benefit; and
- (iii) the amount is an unrestricted non-preserved benefit.

24.2 Operating Account

An account shall be established and maintained through which all operating transactions for the Fund shall be conducted (herein called the **Operating Account**).

(a) Credits to the Operating Account

The following amounts may be credited to the Operating Account:–

- (i) all income and profits derived from investments of the Fund as they arise (specifically excluding Benefits that have been rolled over or transferred into the Fund);
- (ii) any unrealised gain arising from a revaluation of the assets of the Fund;
- (iii) any adjustments necessarily or desirably made to a Member's Accumulation Account or a Member's Pension Account;
- (iv) any amount transferred from a Reserve Account;
- (v) the proceeds of any insurance policy which necessarily or desirably should not be transferred to a Member's Accumulation Account;
- (vi) such other amounts as the Trustee shall determine from time to time.

(b) Debits to the Operating Account

Subject to Clause 24.2(c), the following amounts may be debited to the Operating Account:–

- (i) any loss realised on the sale or disposal of any asset of the Fund;
- (ii) any Taxation, costs, charges and expenses which have not been debited to a Member's Accumulation Account;
- (iii) any unrealised loss arising from a revaluation of the assets of the Fund;
- (iv) any costs or expenses incurred by the Trustee related to the purchase or continuance of any insurance policy for the benefit of any Member or a Dependant or Dependants of any Member which have not been debited to a Member's Accumulation Account;
- (v) any amount transferred to a Reserve Account;
- (vi) such other amounts as the Trustee shall determine from time to time,

and, at the end of each financial year (or on an interim basis, if required), after having made all relevant credits and debits to the Operating Account, the Trustee, having regard to any requirement to create any provisions or reserves, shall determine the earnings rate (whether positive or negative) for the Fund and shall then transfer to (or from) the Accumulation Account and Pension Accounts (if any) of each Member, and such other Accounts as the Trustee determines, the earnings (or negative earnings) based upon the credit balance of each Member's Accumulation Account and Pension Accounts (if any) as a proportion of the total assets held by the Fund, or on such other basis as the Trustee determines to be fair and reasonable.

(c) Multiple Operating Accounts

If the Trustee has provided to one or more Members or Beneficiaries investment choice in accordance with Clause 15, the Trustee shall create a separate Member's Operating Account or Beneficiary's Operating Account for each such Member or Beneficiary to facilitate the calculation of earning rate for the investment strategy or strategies chosen by such Members or Beneficiaries. The Trustee shall determine in its absolute discretion the amounts and type of debits which are to be borne by each separate Member's Operating Account or Beneficiary's Operating Account.

24.3 Operating Reserve Account

- (a) The Trustee may in its absolute discretion establish one or more Operating Reserve Accounts at any time and transfer to an Operating Reserve Account amounts derived from:–

- (i) a Member's Accumulation Account; or
- (ii) a Member's Pension Account; or
- (iii) an Operating Account; or
- (iv) another Operating Reserve Account; or
- (v) a Pension Reserve Account,

provided such transfers are permitted by the Relevant Law and provided that the resulting balance of a Member's Accumulation Account or a Member's Pension Account does not fall below the minimum balance required to be maintained by the Relevant Law.

- (b) The Trustee may transfer an amount from an Operating Reserve Account and credit that amount to:–

- (i) a Member's Accumulation Account; or
- (ii) a Member's Pension Account; or

- (iii) an Operating Account; or
- (iv) another Operating Reserve Account; or
- (v) a Pension Reserve Account,

provided such transfers are permitted by the Relevant Law.

- (c) Funds standing to the credit of an Operating Reserve Account shall not be deemed to form part of any other Account.
- (d) Income earned on the funds held in an Operating Reserve Account shall be credited to that Operating Reserve Account.

24.4 Pension Reserve Account

- (a) The Trustee may in its absolute discretion establish one or more Pension Reserve Accounts at any time and transfer to a Pension Reserve Account amounts derived from:-

- (i) a Member's Accumulation Account; or
- (ii) a Member's Pension Account; or
- (iii) an Operating Account; or
- (iv) an Operating Reserve Account; or
- (v) another Pension Reserve Account,

provided such transfers are permitted by the Relevant Law and provided that the resulting balance of a Member's Accumulation Account or a Member's Pension Account does not fall below the minimum balance required to be maintained by the Relevant Law.

- (b) The Trustee may transfer an amount from a Pension Reserve Account and credit that amount to:-
 - (i) a Member's Accumulation Account; or
 - (ii) a Member's Pension Account; or
 - (iii) an Operating Account; or
 - (iv) an Operating Reserve Account; or
 - (v) another Pension Reserve Account,

provided such transfers are permitted by the Relevant Law.

- (c) Funds standing to the credit of a Pension Reserve Account shall not be deemed to form part of any other Account.
- (d) Income earned on the funds held in a Pension Reserve Account shall be credited to that Pension Reserve Account.

25. BENEFITS RELATING TO PAYMENT SPLITS AND FLAGGING

25.1 Payment Splits

If the Trustee receives a splitting agreement or Court Order under Part VIII B of the Family Law Act 1975, then so long as it has been properly served and subject to the Relevant Law, the Trustee may:-

- (a) adjust, vary or reduce any benefit payable or which may become payable from the Fund in respect of the relevant Member on such bases (including by commutation of any pension having regard to the advice of the Actuary) and at such times as the Trustee determines from time to time, to the extent permitted by the Relevant Law; and
- (b) make a payment to the Non-Member Spouse or a transfer in respect of the Non-Member Spouse in accordance with Clause 28.5.

25.2 Rules for Payment Splits

The Trustee may make rules dealing with:-

- (a) the valuation of the interest of the Non-Member Spouse (including any adjustments); and
 - (b) the timing of the calculation of the value of the interest of the Non-Member Spouse; and
 - (c) other matters relating to the payment split and the Non-Member Spouse's interest in the Fund,
- as it determines from time to time subject to the Relevant Law.

25.3 Deferred Payment Splits

If the Trustee is required by the Relevant Law or considers that it is appropriate to defer giving effect to a payment split, then so long as the splitting agreement or Court Order under Part VIII B of the Family Law Act 1975 has been served properly, the Trustee shall:-

- (a) record the existence of the notice of payment split; and
- (b) keep a record of the Non-Member Spouse's interest in the Fund on such bases (including a notional basis) and in such manner as the Trustee determines from time to time subject to the Relevant Law.

25.4 Flagging Agreements

If the Trustee receives a flagging agreement or Court Order Under Part VIII B of the Family Law Act 1975 that has been properly served, the Trustee shall:-

- (a) record the existence of the agreement or Court Order; and
- (b) defer payment of the benefit to or in respect of the Member until the agreement or Court Order is lifted.

26. STATEMENTS TO MEMBERS

- 26.1 To the extent required by the Relevant Law, the Trustee must give to each Member who is not a Pensioner a written statement each year setting out:-
- (a) the amount of any Benefit accrued in the Member's Accumulation Account at the commencement of the first day of the year of income to which the statement relates;
 - (b) the amount of any Benefit accrued in the Member's Accumulation Account at the expiration of the last day of that year of income;
 - (c) the method of determining the amount of the Benefit referred to in Clause 26.1(b);
 - (d) the amount of contributions made in respect of the Member by the Member, any Participating Employer, or any other person during that year of income; and
 - (e) any other information required by the Relevant Law.
- 26.2 Where a person ceases to be a Member on a day other than the last day of a year of income of the Fund, the Trustee shall give, or arrange to be given, to the Member as soon as practicable thereafter a written statement setting out:-

- (a) the amount of any Benefit entitlement of the Member, identifying any amounts that are required by the Relevant Law or by this Deed to be preserved in relation to the Member;
- (b) the method of determining that entitlement;
- (c) if the person ceases to be a Member otherwise than as a result of his death or retirement from the workforce - the amounts and other particulars referred to in Clause 26.2(a) as though a reference in that Clause to the year of income to which the statement relates were a reference to the period commencing on the first day of the year of income during which the person ceased to be such a Member and ending at the expiration of the day on which the person ceased to be such a Member;
- (d) details of all transfers to and from the Member's Accumulation Account since any previous notification; and
- (e) any other information required by the Relevant Law.

BENEFITS

27.1 Election of Type of Benefit

When a Beneficiary becomes entitled and wishes, or is otherwise required, to receive a Benefit from the Fund, the Beneficiary shall provide to the Trustee a written instruction to advise how the Beneficiary wishes to receive the Benefit (**Benefit Election Form**). The Benefit Election Form is to be in a form substantially similar to Appendix 1 and is to advise the proportions or amounts of the Benefit which is to be received in the form of one or more of the following options:-

- (a) cash paid in the form of one or more lump sums;
- (b) one or more Pensions;
- (c) the purchase of one or more Annuities from an Annuity Provider;
- (d) the transfer of one or more assets from the Fund to the Beneficiary; or
- (e) any other method permitted by the Relevant Law.

27.2 Paying Benefits

Subject to the Relevant Law and having regard to the Benefit Election Form but without being bound by it, the Trustee may provide a Benefit payable to a Beneficiary in one or more of the following forms:-

- (a) cash paid in the form of one or more lump sums;
- (b) one or more Pensions;
- (c) the purchase of one or more Annuities from an Annuity Provider;
- (d) the transfer of one or more assets from the Fund to the Beneficiary; or
- (e) any other method permitted by the Relevant Law.

27.3 Forfeiture

- (a) To the extent permitted by the Relevant Law, a Member or Beneficiary forfeits the whole of his or her right title or interest in and to any Benefit which may (but which has not already) become

- (b) Clause 27.3(a) has no effect to the extent that its operation would be contrary to the Bankruptcy Act 1966.
- (c) The Trustee may (but need not) apply all or part of a forfeited Benefit for the benefit of one or more of the Members (other than the Member whose Benefit is subject to the operation of Clause 27.3) or a Beneficiary and his or her Dependants as the Trustee considers appropriate and the Relevant Law permits.
- (d) If the Trustee determines that an event of forfeiture no longer applies to a Member or Beneficiary, the Trustee may pay all or part of the forfeited Benefit (less any amount applied under Clause 27.3(c)) to or in respect of the Member or Beneficiary as the Trustee considers appropriate and the Relevant Law permits.

27.4 Release of Benefits to pay excess contributions tax

- (a) Where the Trustee receives a Release Authority from or in respect of a Member, the Trustee must pay to the Member or the Commissioner of Taxation, as the case requires, within the time and in the manner prescribed by the Relevant Law the least of the following amounts:-
 - (i) if the Member or the Commissioner of Taxation requests the Trustee, in writing, to pay a specific amount in relation to the Release Authority – that amount;
 - (ii) the amount of Excess Concessional Contributions Tax or Excess Non-Concessional Contributions Tax stated in the Release Authority;
 - (iii) the sum of all of the Member's Benefits in the Fund.
- (b) The amount paid by the Trustee in accordance with this Clause 27.4 must be paid from the relevant Member's Benefits.

BENEFITS PAYABLE PRIOR TO ATTAINING AGE 65 ON RETIREMENT OR AT OTHER TIMES

28.1 Early Retirement Benefit Entitlement

In the event of the Early Retirement (within the meaning of the Regulations) of a Member and not being entitled to a Benefit under any other provision of this Deed, a Benefit (hereinafter called an **Early Retirement Benefit**) shall be payable by the Trustee out of the Fund to that Member.

28.2 Quantum of Early Retirement Benefit

The Early Retirement Benefit that a Member is entitled to withdraw pursuant to Clause 28.1 shall comprise the amount standing to the credit of the Member's Accumulation Account at the time of becoming entitled to the Benefit pursuant to Clause 28.1.

28.3 Severe Financial Hardship

The Trustee may pay a Benefit to a Member in the event that the Member is taken by the Trustee acting in accordance with the Regulations to be in severe financial hardship and the Trustee in determining the amount and form of the Benefit shall comply with the Relevant Law.

28.4 Compassionate Grounds

If the Regulator makes a determination in respect of a Member that an amount of his or her Benefit may be released on a compassionate ground, the Trustee shall pay a Benefit equal to an amount determined by the Regulator.

28.5 Transfers of Non-Member Spouse Interests

- (b) subject to the Relevant Law and on the written request of a Non-Member Spouse or Member or otherwise, the Trustee must transfer to another fund (including an Eligible Rollover Fund) in respect of the Non-Member Spouse,

any amount which becomes payable in respect of the Non-Member Spouse following a payment split under Part VIIIB of the Family Law Act 1975, and the receipt of the Non-Member Spouse or the trustee of such other fund shall be a sufficient discharge of the Trustee of its liability in respect of that Non-Member Spouse.

28.6 Termination of Employment

- (a) The Trustee may pay a Benefit to a Member in the event of the termination of the Member's Gainful Employment with an Employer who had, or any of whose associates had, at any time contributed to the Fund in relation to the Member.
- (b) The Member is entitled to the amount standing to the credit of the Member's Accumulation Account at the time of termination of the Member's employment mentioned in Clause 28.6(a) above.

28.7 Permanent departure from Australia

- (a) The Trustee must pay a Benefit to a Member if the Member is a temporary resident permanently departing Australia and satisfies the requirements in Regulation 6.20A of the Regulations.
- (b) The Member is entitled to the amount standing to the credit of the Member's Accumulation Account at the time of satisfying the condition of release so long as the amount paid does not exceed any limitation in the Relevant Law.
- (c) The Benefit will be payable in such form as required by the Relevant Law.

28.8 Other Benefits

In respect of any Benefit not otherwise specifically dealt with in this Deed:-

- (a) a Benefit is payable in the event of a condition of release, outlined in the Regulations, being satisfied by or in respect of the Member;
- (b) the Member is entitled to the amount standing to the credit of the Member's Accumulation Account at the time of satisfying the condition of release, unless a cashing restriction applies in respect of that condition of release in which case the Benefit will be payable in accordance with the relevant cashing restriction.

29. BENEFIT ON DEATH OF A MEMBER

29.1 Binding Death Benefit Nominations

- (a) Subject to the remaining provisions of this Clause 29.1, a Member may direct the Trustee in a written notice (**Binding Death Benefit Nomination**) to pay, on or after the Member's death, the Member's Death Benefit which includes:-
- (i) the amount standing to the credit of the Member in the Member's Accumulation Account; and
- (ii) the proceeds, if any, of any policy or policies of insurance effected on the life of the Member by the Trustee on behalf of the Fund and paid to the Fund; and,
- (iii) provided it comprises a lump sum benefit to a Spouse, former Spouse or Child of the deceased Member, the amount calculated under Subdivision 295-C of the Tax Act,

to one or more of the Member's Dependents and/or legal personal representative as nominated by the Member, in the proportions or amounts, and in the form (whether as a lump sum or Pension) indicated by the Member in a Binding Death Benefit Nomination.

- (b) Subject to Clause 29.1(c), a Binding Death Benefit Nomination must be in a form approved by the Trustee from time to time and may take the form of that contained in Appendix 2.
- (c) A Binding Death Benefit Nomination must not require the Trustee to pay a Member's Death Benefit in breach of the Relevant Law, and is ineffective to the extent it so requires.
- (d) In order for the Binding Death Benefit Nomination to be legally binding on the Trustee, the Member must:-
 - (i) arrange for two (2) adult persons, neither of whom have been nominated as a Beneficiary, to witness the Member's signature on the Binding Death Benefit Nomination; and
 - (ii) only nominate persons who are eligible under the Relevant Law to be a nominated Beneficiary.
- (e) In the event of the death of a Member who at the time of death was not in receipt of a Pension under this Deed, the Trustee must pay the Death Benefit to the person or persons nominated by the Member in accordance with the Binding Death Benefit Nomination provided by the Member to the Trustee (if any) to the extent that the nomination is effective.
- (f) If the Trustee has not received a Binding Death Benefit Nomination in respect of a Member, or to the extent that a Binding Death Benefit Nomination received in respect of the Member is ineffective, the Trustee shall pay the Death Benefit (or that part not effectively disposed of by the Binding Death Benefit Nomination) to:-
 - (i) the Dependants and the legal personal representative(s) of the Member or such one or more of them to the exclusion of the other or others and in such manner and proportions as the Trustee shall determine and is permitted by the Relevant Law; or
 - (ii) any individual or individuals as permitted by the Relevant Law.

29.2 Payment of Benefit

- (a) Where a Death Benefit is payable:-
 - (i) under Clause 29.1(e); or
 - (ii) in accordance with a Binding Death Benefit Nomination that does not specify the form in which to pay the Death Benefit,the Trustee shall pay the Death Benefit in one or more of the forms referred to in Clause 27.2.
- (b) Where the Trustee is paying a Death Benefit to a Beneficiary in the form of a Pension or an Annuity, the Trustee must cash the Benefit as a lump sum to the Beneficiary when and to the extent required by the Relevant Law.

DISABILITY

30.1 Total and Permanent Disablement Benefit Entitlement

A Member shall not be treated as Totally and Permanently Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally and Permanently Disabled.

- (a) **Quantum of Benefit**

- (ii) the proceeds, if any, of any policy or policies of insurance effected to cover the Total and Permanent Disablement of the Member by the Trustee on behalf of the Fund and paid to the Fund.

(b) Payment of Total and Permanent Disablement Benefit

The Benefit in respect of a Member who is entitled to a Total and Permanent Disablement Benefit shall be applied in one or more of the forms determined by the Trustee pursuant to Clause 27.2.

30.2 Total but Temporary Disablement Benefit Entitlement

A Member shall not be treated as Totally but Temporarily Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally but Temporarily Disabled.

(a) Quantum of Benefit

The Benefit in respect of a Member who is entitled to a Total but Temporary Disablement Benefit shall be comprised of:-

- (i) the proceeds, if any, of any policy or policies of insurance effected to cover the total but temporary disability of the Member by the Trustee on behalf of the Fund and paid to the Fund; and
- (ii) such other amounts drawn from the credit balance of the Member's Accumulation Account provided that the amount so drawn does not exceed any limitations in relation to:-

- (A) income receivable by the Member under these circumstances; or
- (B) the resulting balance of the Member's Accumulation Account,

imposed by the Relevant Law.

(b) Payment of Total but Temporary Disablement Benefit

The Benefit in respect of a Member who is entitled to a Total but Temporary Disablement Benefit shall be applied in such form as permitted by the Relevant Law.

(c) Temporary Cessation of Contributions

The payment of Contributions to the Fund by a Member or Employer (if any) may be

- (iii) the Member becomes entitled to receive another type of Benefit pursuant to the provisions of this Deed.

31. TRANSITION TO RETIREMENT

When a Member attains the relevant Preservation Age, the Member is eligible to receive, and the Trustee may pay to the Member, one or more Non-Commutable Income Streams subject to the restrictions set out in the Relevant Law or as otherwise permitted by the Relevant Law.

32. BENEFITS ON ATTAINING AGE 65

32.1 Benefit Entitlement

The Member on attaining the age of 65 years is entitled to receive a Benefit (hereinafter called a Retirement Benefit).

32.2 Quantum of Benefit

The Benefit to which a Member is entitled under Clause 32.1 shall comprise the amount standing to the credit of the Member's Accumulation Account at the time of paying the relevant Benefit.

32.3 Payment of Benefits

Each Benefit shall be paid in one or more of the forms determined by the Trustee pursuant to Clause 27.2.

33. ANNUITIES

33.1 If a Member or Beneficiary has advised the Trustee that all or part of a Benefit to which they are entitled is required to be paid as an Annuity, and such payment is not in breach of the Relevant Law, the Trustee shall arrange to purchase an Annuity from an Annuity Provider for the benefit of the Member or Beneficiary.

33.2 The amount required to purchase the Annuity shall be derived from the Member's Accumulation Account and shall not exceed the balance standing to the credit of that account provided that the Trustee has made all necessary adjustments to the balance of that account having regard to the transfer of any entitlement which the Member or Beneficiary may have to funds forming part of any other account.

34. PENSION BENEFITS - GENERAL PROVISIONS

34.1 Establishment of Pension Account

Where a Member or Beneficiary has become entitled to receive a Benefit and has elected to receive that Benefit in part or in full in the form of one or more types of Pension, the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which accounts the Trustee shall transfer amounts determined in accordance with this Deed.

34.2 Operation of Pension Account

- (a) The following amounts shall be credited to the Pension Account of a Pensioner:—
- (i) any amount transferred under Clause 34.1;
 - (ii) any moneys or assets paid or transferred to the Fund from any other Approved Fund which the Trustee considers it appropriate to credit;
 - (iii) the proceeds of any policy or policies of insurance effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
 - (iv) transfers from the Operating Account;

- (v) any other payments or components referred to in item 202.2 of Schedule 2 to the Regulations;
 - (vi) any amount of financial assistance determined by the Trustee to be appropriate to credit;
 - (vii) such other amounts as the Trustee shall from time to time determine.
- (b) The following amounts are to be debited to the Pension Account of a Pensioner:—
- (i) any moneys or assets paid or transferred from the Fund to any other Approved Fund which the Trustee considers it appropriate to debit;
 - (ii) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to the provisions of this Deed;
 - (iii) the costs of any policy or policies of insurance effected by the Trustee in respect of the Pensioner which are not debited to a Member's Accumulation Account;
 - (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 transfer of any other moneys or assets to the Fund from any other Approved Fund as the Trustee shall determine;
 - (v) such of the costs, charges and expenses of the Fund or of the Pension as the Trustee shall determine;
 - (vi) such proportion of the amount paid in respect of a Trustee indemnity as the Trustee shall determine;
 - (vii) a proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee shall determine;
 - (viii) transfers to the Operating Account;
 - (ix) any amount transferred to a Member's Accumulation Account;
 - (x) any amount of levy determined by the Trustee to be appropriate to debit;
 - (xi) such other amounts as the Trustee shall from time to time determine.

34.3 Method of Payment of Pension

In relation to a Pension payable to a Pensioner or a Reversionary Beneficiary, the Trustee may transfer an asset of the Fund to the Pensioner or Reversionary Beneficiary in payment of some or all of the Pension provided that:—

- (a) a Pensioner or Reversionary Beneficiary requests such transfer, or consents to same, in writing;
- (b) the Relevant Law does not prohibit the proposed transfer; and
- (c) the value attributed to the asset transferred is equivalent to the current market value of the asset.

34.4 Segregation of Pension Assets

In relation to Pensions payable to Members and Beneficiaries, the Trustee may:—

- (a) segregate or set apart the assets which represent the Pension Accounts of the Members or Beneficiaries for the sole purpose of enabling the discharge of the whole or part of the current

or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and

- (b) constitute the segregated assets as segregated current and non-current pension assets (as those terms are defined in the Tax Act), and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Law shall require.

34.5 Benefit on Death of Pensioner

- (a) A Pensioner may direct the Trustee in a written notice (**Binding Death Benefit Nomination**) to pay, on or after the Pensioner's death, the Pensioner's Benefits (**Death Benefit**) which includes:-

- (i) the amount standing to the credit of the Pensioner's Accumulation Account;
- (ii) the proceeds, if any, of any policy or policies of insurance effected on the life of the Pensioner by the Trustee on behalf of the Fund and paid to the Fund; and
- (iii) subject to the Relevant Law and the rules of the relevant Pension, when a pension is not reversionary or not permitted to be reverted, the amount standing to the credit of all of the Pensioner's Pension Accounts,

to one or more of the Pensioner's Dependants and/or legal personal representative as nominated by the Pensioner, in the proportions or amounts, and in the form (whether as a lump sum or Pension) indicated by the Pensioner in a Binding Death Benefit Nomination.

- (b) Subject to Clause 34.5(d), a Binding Death Benefit Nomination must be in a form approved by the Trustee from time to time and may take the form of that contained in Appendix 2.
- (c) A Binding Death Benefit Nomination must not require the Trustee to pay a Pensioner's Death Benefit in breach of the Relevant Law, and is ineffective to the extent it so requires.
- (d) In order for the Binding Death Benefit Nomination described in Clause 34.5(a) to be legally binding on the Trustee, the Pensioner must:-
- (i) arrange for two (2) adult persons, neither of whom have been nominated as a Beneficiary, to witness the Pensioner's signature on the Binding Death Benefit Nomination; and
- (ii) only nominate persons who are eligible under the Relevant Law to be a nominated beneficiary.
- (e) After the death of a Pensioner who was at the time of death still in receipt of a Pension paid from this Fund, the Trustee must pay the Death Benefit to the person or persons nominated by the Pensioner in accordance with the Binding Death Benefit Nomination provided by the Pensioner to the Trustee (if any) to the extent that the nomination is effective.
- (f) If the Trustee has not received a Binding Death Benefit Nomination in respect of a Pensioner, or to the extent that a Binding Death Benefit Nomination received in respect of the Pensioner is ineffective, the Trustee shall pay the Death Benefit (or that part not effectively disposed of by the Binding Death Benefit Nomination) to:-
- (i) the Dependants and the legal personal representative(s) of the Pensioner or such one or more of them to the exclusion of the other or others and in such manner and proportions as the Trustee shall determine and as is permitted by the Relevant Law ; or
- (ii) any individual or individuals as permitted by the Relevant Law.
- (g) Where a Death Benefit is payable:-

- (i) under Clause 34.5(d); or
- (ii) in accordance with a Binding Death Benefit Nomination that does not specify the form in which to pay the Death Benefit,

the Trustee shall pay the Death Benefit in one or more of the forms referred to in Clause 27.2.

- (h) Where the Trustee is paying a Death Benefit to a Beneficiary in the form of a Pension or an Annuity, the Trustee must cash the Benefit as a lump sum to the Beneficiary when and to the extent required by the Relevant Law.

34.6 Security of Pension

The capital value of a Pension and the income from the Pension cannot be used by a person as security for a borrowing.

35. OPERATION OF PENSIONS

- 35.1 Where a Member is entitled to receive all or part of his or her Benefit in the form of a Pension the Trustee must determine the terms and conditions of the Pension.
- 35.2 Where a Pension is payable to a Member/Pensioner, the Trustee must pay or otherwise deal with the Pension in accordance with the terms and conditions of that Pension contained in the governing rules of the Fund including but not limited to this Deed, trustee resolutions or a pension agreement.

36. CHANGING BENEFIT TYPE

36.1 Application to Convert to Pension

- (a) If a lump sum benefit or part of a lump sum benefit becomes payable to or in respect of a Member or a Beneficiary and if the recipient of that lump sum benefit wishes to convert all or part of that lump sum benefit to one or more Pensions permitted under this Deed, then the Recipient shall tender a Benefit Election Notice (in a form similar or substantially similar to Appendix 1) to the Trustee:-

- (i) within 30 days of becoming entitled to the lump sum benefit; or

lieu of paying the whole or part of the amount otherwise payable provided that such transfer will not cause the Fund to fail to continue to be a complying superannuation fund.

38. VESTING OF BENEFITS

The total amount of employer-financed benefits, which term shall include any productivity payment received in respect of any Member accruing to a Member of the Fund on or after the 1st July, 1986, and Member-financed benefits shall within the meaning of the Regulations vest in that Member on the day on which the benefits accrue and any amount arising directly or indirectly from contributions made by an Employer in relation to a Member in accordance with an award made or agreement certified by an industrial authority within the meaning of the Regulations shall likewise vest in the Member on that date being a date on or after the date of effect of the award or agreement.

39. PRESERVATION AND PORTABILITY OF BENEFITS

39.1 The amount of any benefit vested in any Member in accordance with Clause 39 shall be preserved in accordance with the Relevant Law.

39.2 Any amount transferred to the Fund in relation to any Member pursuant to this Deed which is required by the Relevant Law to be preserved shall be preserved.

40. TRANSFER TO ANOTHER FUND

In the event of a Member becoming eligible for Membership of another Approved Fund the Trustee may with the written consent of the Member permit, transfer or cause to be transferred to such other Approved Fund or to the Trustee of such other Approved Fund the whole or any part of the amount standing to the credit of that Member's Accumulation Account at the date of such transfer PROVIDED THAT the Fund to which such transfer is made shall be a Fund the terms and provisions of which comply with Relevant Law and prohibit payment of any Preserved Benefit PROVIDED ALWAYS THAT the Retiring Age and the age for payment of benefits under such Approved Fund shall not be earlier than that of this Fund except where an earlier age is allowed by the Relevant Law or approved by the Regulator as being -

40.1 applicable to all Members of such other Approved Fund; or

40.2 common to a particular class of Members of such Approved Fund.

41. TRANSFER FROM ANOTHER FUND

The Trustee on such terms and conditions as it determines may receive from another Approved Fund moneys or other assets in respect of a Member's interest in that other Approved Fund and shall apply the same for the purpose of providing Benefits for or in respect of that Member and shall advise the Member in writing and no such Benefit shall be paid otherwise than as is authorised by this Deed and the Relevant Law.

42. INTERNAL ROLLBACKS

The Trustee may, upon receiving a written request from a Member:-

42.1 retain an amount resulting from the commutation in whole or in part of a Pension payable to a Member from the Fund, after the commutation, for the purpose of providing Benefits to the Member or to Dependants and/or the legal personal representative of the Member in the event of the death of the Member; or

42.2 apply an amount resulting from the commutation in whole or in part of a Pension payable to a Member from the Fund immediately after the commutation, towards the provision of one or more other Pensions payable to the Member from the Fund; or

42.3 otherwise retain or apply any Superannuation Lump Sum of the Member as permitted by the Relevant Law,

in accordance with the Member's written request.

43. RETENTION OF BENEFIT IN FUND

Where a Member or Beneficiary does not require Benefits to be immediately paid, the Trustee may in its absolute discretion retain all or any part of any Benefit payable until:-

43.1 Request

the Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary;

43.2 Death

the Member dies in which event it will be paid in accordance with Clause 29.1;

43.3 Required by Law

the provisions of the Relevant Law require the payment of the Benefit; or

43.4 Discretion

the Trustee elects for whatever reason to pay the Benefit to the Member, former Member or Beneficiary,

whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of that Member's or Beneficiary's Accumulation Account or Accounts as at the date of payment PROVIDED HOWEVER that all Benefits must be paid in accordance with the Relevant Law.

44. UNCLAIMED BENEFITS

The Trustee must comply with the Relevant Law in relation to Benefits which the Relevant Law:-

44.1 treats as unclaimed money; or

44.2 requires to be transferred to another fund.

45. TERMINATION OF THE FUND

45.1 The Fund must be wound up on the happening of any of the following events:-

(a) if there are no Members;

(b) if the liabilities (excluding any liability for future Benefits payable to Members) of the Fund exceed the assets of the Fund;

(c) for any reason the Trustee resolves to terminate the Fund.

45.2 Upon the occurrence of an event referred to in Clause 45.1, the Trustee must give notice in writing to Members (if any) and all Employers that the Fund will be wound up on a specified date.

45.3 Following the giving of the notices referred to in Clause 45.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:-

(a) no further contributions, other than contributions due on or before the date specified in the notices referred to in Clause 45.2 may be accepted in respect of any Members; and

(b) no new Members may be admitted to the Fund; and

(c) as soon as practicable after the date specified in the notices referred to in Clause 45.2, the Trustee must make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the following payments:-

(i) Benefits which on or before giving the notices referred to in Clause 45.2 had become payable to a Member or the Member's Dependents; and

(ii) transfer the remaining Benefits of all remaining Members of the Fund to other Approved Funds;

- (iii) if there are no Members and no liabilities in respect of the Fund, and there remains in the Fund an amount not applied or required for any other purpose, the Trustee must pay or apply the amount remaining for the benefit of any one or more persons who had been Members or Dependants of Members and in the shares and proportions and in the manner the Trustee determines subject to any direction received from the Regulator;
- (iv) where the amount of a Benefit payable to a Member includes a preserved benefit, the Trustee must only pay or transfer the amount of the preserved benefit to another Complying Superannuation Fund or Approved Fund;
- (v) when all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed and any amount remaining in the Fund has been paid or applied in accordance with this Deed, the Fund is deemed to be dissolved.

6. STANDARDS FOR TRUSTEES AND MANAGERS

If the Trustee appoints an investment manager of the Fund, each such appointment shall be made in writing. The Trustee and any investment manager appointed shall observe the standards contained in the Relevant Law.

7. GOVERNING LAW

This Deed shall be governed and construed in accordance with the law of the State or Territory specified in the Schedule as the Governing Law.