



# TOMKAT SUPER FUND



# TRUST DEED



Prepared by



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**THIS DEED POLL** is made on the 5<sup>th</sup> Day of September 2012. ....

BY: Tomo Kalic of  
13 Shearwater Street  
Port Douglas Qld 4877 and

Katie Kalic  
13 Shearwater Street  
Port Douglas Qld 4877

hereby known as "the Trustee"

WHEREAS:

- A. The Trustee has decided to establish an indefinitely continuing superannuation plan to be known as the Tomkat Super Fund (the "Fund").
- B The Trustee has agreed to act as the first Trustee of the Fund.
- C. The primary purpose of the Fund is to provide old age pensions to the Members.

NOW THIS DEED WITNESSES as follows:

- 1. a. The Trustees include the Trustees for the time being of this Deed.  
b. The Rules means the Rules set forth in the attachments hereto as amended from time to time as therein provided.
- 2. The Fund shall come into operation on the Commencement Date shown in the Rules.
- 3. The assets of the Fund shall be vested in the Trustee upon trust to apply the same in the manner set forth in the Rules. The Trustees shall manage and administer the Fund in all respects according to the Rules.
- 4. The power of appointing new Trustees shall be as provided in and subject to the Rules and the Trustees may be appointed or removed in the manner provided for in the Rules.
- 5. The provisions of this Deed may be amended in the manner set out in the Rules.
- 6. This Deed and the Rules shall be governed by and construed in accordance with the law of Queensland

IN WITNESS the party has duly executed this Deed on the date first above written.

Signed Sealed & Delivered by )  
Tomo Kalic )  
in the presence of )  
 )  
 )  
 )  
 )  
\_\_\_\_\_)  
signature of witness )  
 )  
 )  
\_\_\_\_\_)  
name of witness )

\_\_\_\_\_  
Tomo Kalic

Signed sealed & delivered by )  
Katie Kalic )  
in the presence of )  
 )  
 )  
 )  
 )  
\_\_\_\_\_)  
signature of witness )  
 )  
 )  
\_\_\_\_\_)  
name of witness )

\_\_\_\_\_  
Katie Kalic

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**THE RULES**

**RULE 1 DEFINITIONS AND INTERPRETATIONS**

## DEFINITIONS

- 1.1 In the Trust Deed to which these Rules are an annexure and in these Rules the meaning of terms and expressions shall have the meaning given to them by the Regulations unless the context indicates otherwise. The following words and expressions shall have the following meaning:
- 1.1.1 **Accumulated Contributions** means the total of contributions made to the Fund accumulated in accordance with Schedule 1 paragraph 1.1 hereto.
  - 1.1.2 **Accrued Benefit** means the amount determined in accordance with Schedule 1 paragraph 2 herein.
  - 1.1.3 **Ancillary Benefits** means the Benefits described in Rule 4.10.
  - 1.1.4 **Asset Test Exempt Pension** means a Pension Benefit that is exempt from or excluded from the assets test in whole or part under the Social Security Act 1991 or the Veteran Affairs Entitlement Act 1986 (and any applicable regulations).
  - 1.1.5 **Beneficiary** means a Dependant, a Trustee for a Dependant, a Reversionary Pensioner, other Beneficiary or legal personal representative of the Member who is entitled to Benefits under Rules 5.8, 5.9. and 5.10.
  - 1.1.6 **Benefit** means any benefit payable in respect of the Member's membership of the Fund pursuant to the Rules and the Regulations but does not include any amount standing to the credit of a Member which unless required by the Regulations to be vested is not fully vested until the Trustees exercise a discretion to fully vest the whole or part of such unvested amount.
  - 1.1.7 **Commencement Date** means the date that is the later of:
    - 1.1.7.1 The date upon which the Deed was executed; or
    - 1.1.7.2 The date upon which the first contribution of monies were received by the Fund on behalf of any Member of the fund; or
    - 1.1.7.3 The date, if any, specified in the Deed as the Commencement Date.
  - 1.1.8 **Complying Superannuation Fund** means in relation to a year of income a fund which is a complying superannuation fund in accordance with the Regulations.
  - 1.1.9 **Constitutional Corporation** means a body corporate that is either a trading corporation or a financial corporation, formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the *Commonwealth of Australia Constitution Act*).
  - 1.1.10 **Contributor** means any person permitted by the Regulations to make a contribution to the Fund (which may be money, securities or other property) for the benefit of one or more Members.
  - 1.1.11 **Dependants** means the Spouse and children of a Member (including any step-child, any exnuptial, any adopted child and any child of the Member born within 10 months after the death of the Member), any person in an interdependency relationship with the Member or any other person whom the Trustees determines for the purposes of the Regulations to be a Dependant of that Member at the relevant time (being in the case of a deceased person the date of that person's death) and any other person permitted by the Regulations to be considered a Dependant.
  - 1.1.12 **Eligible Fund** means an Australian Superannuation Fund, Foreign Superannuation Fund approved deposit fund, Eligible Rollover Fund, retirement savings account, small accounts holding reserve or other approved fund including a pension fund or annuity arrangement which can accept from the Fund a transfer of assets of the Fund or is authorised or permitted to transfer assets to the Fund in a manner not prohibited by the Regulations.
  - 1.1.13 **Eligible Person** means any person who is not prohibited by the Regulations from becoming a Member of the Fund.
  - 1.1.14 **Employee** means any Eligible Person in the employ of an Employer and who is classified as an Employee for the purposes of the Deed and Rules or comes within a class of persons which is so classified. The term "employ" bears both its ordinary meaning and any expanded meaning provided by the Regulations.

- 1.1.15 **Employer** means the Employer of any particular Member who is an Employee.
- 1.1.16 **Financial Year** means a period of twelve calendar months ending on the last day of June or such other date as the Trustees may be permitted to determine.
- 1.1.17 **Fund** means the superannuation fund constituted by the Trust Deed to which these Rules are an annexure.
- 1.1.18 **Gainful Employment** means in relation to a Member, engagement in any business, trade, profession, vocation, calling, occupation or employment for gain or reward to the extent required pursuant to the provisions of the Regulations.
- 1.1.19 **Government Approval** means such approval of a Regulator, or other person, appointed by the Australian Government or such compliance with the Regulations (whether or not the approval of that Regulator or other person has been given to the Trustees in relation to such compliance) as may be required to ensure that the fund is regarded as a bona fide superannuation fund and qualifies for the maximum taxation concessions.
- 1.1.20 **Individual Policy**, in relation to a Member, means a life insurance policy or an interest in a group life insurance policy which the Trustees have nominated as being held specifically for the purpose of providing Benefits in respect of that Member.
- 1.1.21 **Member** means any person admitted by the Trustees as a Member of the Fund and who has not ceased to be a Member of the Fund and any person required by the Regulations to be treated as a Member of the Fund and, where the context permits, if a Member:
- 1.1.21.1 is under a legal disability includes the legal personal representative of that Member but not where the Rules expressly provide that the personal consent of a Member is required; and
- 1.1.21.2 is under a legal disability because of age and does not have a legal personal representative includes the parent or guardian of that Member.
- 1.1.22 **Nominated Beneficiary** means the person or persons nominated as Beneficiary under a notice given under Rule 5.6 or an agreement made under Rule 5.7.
- 1.1.23 **Old-Age Pensions** has the same meaning as that in paragraph 51 (xxiii) of the *Commonwealth of Australia Constitution Act*.
- 1.1.24 **Pension** means an annuity or pension contemplated by the Regulations.
- 1.1.25 **Permanent Disablement** in relation to a Member has the same meaning as that contained in any insurance policy effected to cover Permanent Disablement of the Member and in force at the time of the disablement or where there is no such insurance policy means ill-health which, in the opinion of the Trustees, renders a Member unlikely to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience or any other circumstances which are acceptable to the Trustees and which are acceptable to the Regulator. **Permanently Disabled** and **Permanent Disability** shall each have a corresponding meaning. Every question as to Permanent Disablement shall be decided by the Trustees after receipt of any relevant information and reports by such registered medical practitioners approved by the Trustees as they consider appropriate, and having regard to any requirements for Government Approval of the Fund and of any insurer underwriting the Member's Permanent Disability Benefit. The decision of the Trustees shall be conclusive and binding upon all parties concerned.
- 1.1.26 **Preserved Benefit** means any Benefit (or part thereof) that, having regard to the requirements for Government Approval of the Fund, must be held in the Fund until the Member Retires or attains such age prescribed in the Regulations, dies, becomes Permanently Disabled or satisfies such other condition as would enable, or require, the Trustees to make payment of the benefit.
- 1.1.27 **Public Offer Superannuation Fund** means a fund that is a public offer superannuation fund within the meaning of the Regulations.
- 1.1.28 **QROPS Requirements** means any requirements under laws relating to superannuation funds that the Fund must satisfy to be a qualified recognised overseas pension scheme under s169 of the Finance Act 2004 (United Kingdom).
- 1.1.29 **Recognised Transfer Amount** means the amount transferred to the Fund or a previous superannuation arrangement in respect of a Member as a recognised transfer under section 169 of the Finance Act 2004 (United Kingdom).



- 1.1.30 **Regulated Superannuation Fund** means a fund where the Trustees have caused to be made the necessary election to be such a fund as required by the Regulations.
- 1.1.31 **Regulations** means the obligations imposed upon the Fund by the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations*, the Superannuation Splitting Law, any amending or replacement legislation and any other present or future relevant legislation, regulation, rulings and explanatory notes published with the approval or knowledge of the Regulator which the Fund must satisfy in order for the Fund to:
- 1.1.31.1 qualify as a Complying Superannuation Fund;
  - 1.1.31.2 remain entitled to concessional tax treatment;
  - 1.1.31.3 provide an income stream which is to be an Asset Test Exempt Pension;
  - 1.1.31.4 comply with the law.
- 1.1.32 **Regulator** means, as the case may require one or more of the Federal Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Department of Human Services or any other authority or government regulatory body who may be involved with the regulation of superannuation, taxation or financial products.
- 1.1.33 **Reserve Accounts** means any of the accounts that may be established by the Trustees to which is credited amounts that the Trustees determine to credit to the account and to which are debited amounts that the Trustees determine to allocate to the Members in accordance with these Rules.
- 1.1.34 **Retires** means ceasing Gainful Employment and **Retirement** shall have a corresponding meaning.
- 1.1.35 **Reversionary Pension** means a Pension payable to a Beneficiary who succeeds a Member to the entitlement of the Member's Pension. **Reversionary Pensioner** has corresponding meaning.
- 1.1.36 **Shortfall Component** has the same meaning as that contained in the Superannuation Guarantee (Administration) Act
- 1.1.37 **Splittable Contributions** has the same meaning as that contained in the Regulations.
- 1.1.38 **Spouse** in relation to a Member means, subject to the Regulations, a person married to the Member or a person who, although not legally married to the Member, lives with the Member or had lived with the Member immediately prior to the Member's death on a genuine domestic basis as a partner of that Member and if there is more than one spouse the Trustees shall determine whether and how the entitlement of a spouse shall be distributed between them or whether one shall be exclusively treated as spouse.
- 1.1.39 **Superannuation Splitting Law** means the law dealing with superannuation interests as set out in Part VIIIIB of the Family Law Act 1975.
- 1.1.40 **Temporary Disability** means physical or mental incapacity that causes the Member to cease Gainful Employment or which otherwise qualifies as temporary disablement (or its equivalent) under the Regulations but which does not qualify as Permanent Disablement. Every question as to Temporary Disablement shall be decided by the Trustees after receipt of any relevant information and reports by such registered medical practitioners approved by the Trustees as they consider appropriate, and having regard to any requirements for Government Approval of the Fund and of any insurer underwriting the Member's Temporary Disability Benefit. The decision of the Trustees shall be conclusive and binding upon all parties concerned.
- 1.1.41 **Trust Deed** means the deed to which these Rules are annexed and any authorised alterations, additions, amendments, modifications or variations due to any amendment or change made to the Regulations or by amending deed or otherwise.
- 1.1.42 **Trustees** means the individual trustees of the Fund or a corporate trustee of the Fund, for the time being, appointed in accordance with these Rules and where the context permits includes the directors of a Constitutional Corporation appointed as Trustee.

## INTERPRETATION

- 1.2 In the Trust Deed and Rules:
- 1.2.1 Unless the context indicates otherwise, words importing the singular shall include the plural and vice versa, words importing one gender shall include other genders;
  - 1.2.2 references to statutes (including any section thereof) shall include all statutes amending, consolidating or replacing the same;
  - 1.2.3 Headings inserted in any Rule are for convenience only and shall not affect the interpretation of the Rules

set out in that Rule;

- 1.2.4 The use of the words "includes" or "including" in these Rules is given by way of example and is not intended to limit the term or expression to which it applies; and
- 1.2.5 Reference to the Rules includes the terms of any agreement made under Rule 5.7.
- 1.3 Except where otherwise expressly provided, if any question or dispute arises about the interpretation of the Rules or the incidence or application of any rights, benefit, duties or liabilities arising under these, the decision of the Trustees shall be binding upon a Member.
- 1.4 The Trustees shall, at all times administer the Fund in a manner that will ensure Government Approval of the Fund. Where there is anything contained in these Rules which would during the course of the application to specific circumstances, require the Trustees to act in a manner that would prejudice Government Approval of the Fund, that Rule shall be void for those circumstances.
- 1.5 If any term defined in the Regulations is used in this Deed but not defined herein then such term shall have the same meaning that it has for the purposes of the Regulations.
- 1.6 A reference in these Rules to the Regulations includes a reference to those Regulations as amended, consolidated, re-enacted or replaced from time to time and a reference to any provision of the Regulations includes a reference to the corresponding provision of those Regulations as amended, consolidated, re-enacted or replaced.

## **SEVERANCE**

- 1.7 If any provision of these Rules is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable or unenforceable or illegal if it were read down and, if it is capable of being read down, such provisions shall be read down accordingly.
- 1.8 If, notwithstanding Rule 1.7, a provision is still void, voidable, unenforceable or illegal:
  - 1.8.1 if the provision would not be void, voidable or unenforceable or illegal if a word or words were omitted, that word or those words are hereby severed;
  - 1.8.2 in any other case, the whole provision is hereby severed;and the remainder of these Rules shall be of full force and effect.

## **RULE 2                      ELIGIBILITY, MEMBERSHIP & TRANSFERS**

### **ELIGIBILITY**

- 2.1 Any Eligible Person shall be eligible to apply for membership of the Fund. Where an Eligible Person is a minor, the application for membership of the Fund shall be made on behalf of the minor by a parent, guardian or legal representative of the minor.

### **MEMBERSHIP**

- 2.2 An Eligible Person may apply for membership to the Trustees in such form or manner acceptable to the Trustees. The Eligible Person may indicate a preference for the type of Benefit to be provided by the Fund but if no preference is made shall be deemed to have specified a Pension Benefit of such type determined by the Trustees. The Trustees may accept or refuse any such application in their absolute discretion and shall not be required to give any reason for a refusal. The Trustees may admit an Eligible Person as a Member without requiring an application for membership to be completed by that person. If an application from an Eligible Person is accepted by the Trustees, membership commences on the date of acceptance or such earlier or later date as the Trustees determine.

### **ALTERATION OF MEMBER'S BENEFIT**

- 2.3 The Trustees may alter a Member's preference for the type of Benefit to be provided by the Fund PROVIDED THAT:
  - 2.3.1 it does not increase the Member's obligation to the Fund unless the Member consents in writing;
  - 2.3.2 the Member's entitlements in the Fund are not reduced; and
  - 2.3.3 it is not in breach of the Regulations.
- 2.4 The Member shall be advised in writing of any alteration to the Member's preference for Benefit.

## **INFORMATION TO MEMBERS**

- 2.5 The Trustees shall ensure that every Eligible Person who applies for membership of the Fund is given such information as is required by the Regulations to be given to prospective new members. The information shall be given to the Eligible Person within the time prescribed in the Regulations.

## **COMPLAINTS AND ENQUIRIES**

- 2.6 If required by the Regulations, the Trustees shall ensure that all enquiries or complaints from Members, beneficiaries or their Dependants are considered and properly dealt with in the manner and within the time specified by the Regulations.

## **TRANSFER FROM ANOTHER FUND**

- 2.7 If a Member makes a request, the Trustees,
- 2.7.1 may accept the transfer of assets from an Eligible Fund on such terms and conditions as the Trustees think fit; and
  - 2.7.2 The details of any such terms and conditions shall be recorded in a letter written by the Trustees to the Member at the time of the transfer; and
  - 2.7.3 where the transfer is made in respect of the Member's interest or entitlement in the Eligible Fund, provide Benefits to the Member pursuant to such transfer in the manner set forth in these Rules; and
  - 2.7.4 where the transfer is not attributable to a Member's interest or entitlement in the Eligible Fund, the Trustees may treat the amount of such transfer in such manner as they consider equitable, including deeming the assets being transferred as a foregone benefit and applied accordingly, or as required by the Regulations;

PROVIDED that any transfer must not be prohibited by the Regulations and PROVIDED that any Benefit arising from funds transferred shall be a Preserved Benefit to the extent advised by the Eligible Fund and PROVIDED that where the Eligible Fund is a Foreign Superannuation Fund, the Trustees shall comply with all necessary foreign law requirements to ensure that concessional tax treatment is attained, retained or maintained in respect of the assets transferred from the Eligible Fund.

## **TRANSFER TO ANOTHER FUND**

- 2.8 If a Member makes a request or if the Trustees resolve or are required by the Regulations to do so, the Trustees may pay or transfer all or part of the Member's interest or entitlement in the Fund to an Eligible Fund (including such portion of the assets of the Fund as the Trustees consider equitable) for the benefit of the Member or such other person as is permitted by the Regulations and shall advise the Eligible Fund the proportions (if any) of the amount so paid which are deemed to be transferred from the Member's Accrued Benefit PROVIDED HOWEVER THAT:
- 2.8.1 no such transfer shall be made in respect of a Preserved Benefit, unless there exists a condition in the rules of the Eligible Fund that such a transfer shall be treated as a Preserved Benefit;
  - 2.8.2 the payment or transfer must be consistent with the Regulations;
  - 2.8.3 the Trustees may not pay or transfer more than the amount requested by the Member; and
  - 2.8.4 the payment or transfer satisfies the Member's entitlement to any Benefit in relation to the amount so paid or transferred.
- 2.9 The receipt of the trustees of such Eligible Fund shall be sufficient discharge to the Trustees and Trustees shall not be in any way responsible or liable for the application or disposal by the trustees of such Eligible Fund of the benefits or assets so paid or transferred. Upon the completion of such payment or transfer in respect of a Member, all of the rights and interests of that Member (and any person entitled to claim under or in respect of that Member) under this Deed shall be extinguished or shall be adjusted in such manner and to such extent (if any) as may be determined by the Trustees.
- 2.10 Where the continuing Membership of a Member would affect the status of the Fund as a Complying Superannuation Fund, the Trustees may pay or transfer the whole or part of any Benefit or the interest or entitlement of that Member to an Eligible Fund in circumstances permitted or required by the Regulations or otherwise whether or not such Member has requested such payment or transfer. Such payment or transfer will satisfy the Member's entitlement to any Benefit in relation to the amounts so paid or transferred. The Member shall be deemed to have consented to such payment or transfer. The Trustees shall provide any information to the Member and to the trustee of the Eligible Fund as such time and in such manner as required by the Regulations,

## **TRANSFERS WITHIN THE FUND**

- 2.11 If a Member makes a request or if the Trustees resolve or are required by the Regulations to do so, the Trustees

may pay or transfer all or part of the Member's interest or entitlement in the Fund (including such portion of the assets of the Fund as the Trustees consider equitable) to another Member provided however that:

- 2.11.1 The payment or transfer is not prohibited by the Regulations; and
- 2.11.2 The payment or transfer is made in accordance with the provisions, if any, of the Regulations.

### **CESSATION OF MEMBERSHIP**

- 2.12 A person ceases to be a Member of the Fund when:
  - 2.12.1 the Member dies;
  - 2.12.2 all Benefits which are or may be payable under these Rules in respect of the Member have been paid;
  - 2.12.3 a transfer is made to an Eligible Fund in satisfaction of all the Member's entitlement to Benefits;
  - 2.12.4 the Member's entitlement to Benefits is terminated;
  - 2.12.5 the Trustees require a Member to cease Membership of the Fund to comply with the Regulations;
  - 2.12.6 the Trustees determine that continued membership may cause the Fund to become a Public Offer Superannuation Fund;
  - 2.12.7 the Trustees determine that a Member is no longer required to be recognised as a Member of the Fund;
  - 2.12.8 the Fund fails to satisfy the definition of self managed superannuation fund under the Regulations by reason of the Member's continuing membership of the Fund;
  - 2.12.9 the Trustees shall otherwise reasonably determine.

### **CLOSURE OF MEMBERSHIP**

- 2.13 In order that the Fund obtains, retains or maintains a duty exemption or nominal assessment of duty obtained under the laws of any State or Territory to the transfer of an asset to the Fund when the asset was first acquired by the Trustees and held for the benefit of those particular Members of the Fund at that time, the Trustees may close the membership of the Fund to new members permanently or until such time as such asset has been used to pay benefits to those Members. The Trustees shall do all things and execute all such necessary deeds or documents to give effect to the closure to new members.

### **TRANSFER FROM UK REGISTERED PENSION SCHEMES**

- 2.14 Notwithstanding Rule 5, this Rule 2.14 applies to Recognised Transfer Amounts accepted by the Trustees pursuant to Rule 2.7 from a registered pension scheme in the United Kingdom:
  - 2.14.1 subject to this Rule, a Member is entitled to receive a Recognised Transfer Amount when the Member is entitled to a Benefit when permitted by the Regulations;
  - 2.14.2 subject to this Rule, the Trustee must pay a Recognised Transfer Amount to a Member where the Regulations require a Benefit to be paid from the Fund;
  - 2.14.3 this Rule 2.14 may be amended only if, after the amendment, the Rule would continue to comply with the QROPS Requirements;
  - 2.14.4 a Recognised Transfer Amount may be transferred to an Eligible Fund only in accordance with Rule 2.8 and only where the provisions governing the Eligible Fund contain provisions to the same effect as this Rule 2.14 in respect of a Recognised Transfer Amount;
  - 2.14.5 subject to complying with the Regulations, the Trustees must do all necessary things to comply with the QROPS Requirements.

## **RULE 3      CONTRIBUTIONS**

### **MEMBER CONTRIBUTIONS**

- 3.1 A Member may from time to time pay contributions to the Fund.

### **EMPLOYER CONTRIBUTIONS**

- 3.2 An Employer may from time to time pay contributions to the Fund.

## **OTHER CONTRIBUTIONS**

- 3.3 The Trustee may accept such other contributions not covered by Rules 3.1 or 3.2 from any person including:
- 3.3.1 government co-contribution;
  - 3.3.2 child contributions;
  - 3.3.3 spouse contributions;
  - 3.3.4 the whole or part of any Shortfall Component in respect of any Employee or Member received from the Commissioner of Taxation which shall be treated as a contribution for the Employee or Member.

## **PAYMENT OF CONTRIBUTIONS**

- 3.4 The Trustees:
- 3.4.1 must not accept contributions where the acceptance of the contributions is contrary to the requirements of the Regulations;
  - 3.4.2 may refuse to accept the whole or part of a contribution;
  - 3.4.3 may allocate or transfer the whole or part of a contribution to a Reserve established for that purpose, if not prohibited by the Regulations.
- 3.5 The Trustees may agree to accept contributions to the Fund in the form of a transfer of assets to the Fund which shall be subject to the following restrictions:
- 3.5.1 Any asset transferred to the Fund under this Rule shall comply with the provisions of Rules 7.6, 7.7 and 7.8 as if the Trustees had accepted the contribution in cash and had then invested in the asset transferred to the Fund.
  - 3.5.2 In the event that the Trustees wish to restrict the benefits arising from the assets transferred to the Fund under this Rule to particular Members, they shall either proceed under Rules 7.10 and 7.11 to hold the assets specifically to provide benefits for those Members, or, if those Members are the only Members of the Fund at the time of transfer, the Trustees may close the membership of the Fund to new members under Rule 2.13.
  - 3.5.3 The Trustees shall not acquire any asset from a Member or a relative of a Member if that acquisition would contravene the Regulations and prejudice Government Approval of the Fund.
- 3.6 Unless the Trustees are advised otherwise by the Employer, all contributions made by an Employer shall be fully vested except to the extent that they are not required to be fully vested by the Regulations.

## **SPLITTABLE CONTRIBUTIONS**

- 3.7 Subject to the Regulations, the Trustees may allow Splittable Contributions and a Member may request the Trustees in any form approved by the Trustees to allocate the whole or part of that contribution or transfer any part of that Contribution to any other Member or person so long as any transfer or allocation is in accordance with the Regulations.

## **TAXATION DEDUCTION CLAIMED**

- 3.8 Where required by the Regulations, the Contributors shall advise the Trustees of the amount of contributions that shall be claimed and not claimed as a tax deduction by the Contributor.

## **REPAYMENT OF CONTRIBUTIONS**

- 3.9 The Trustees may repay the whole or any part of a contribution to the Contributor but only if the repayment is not in breach of the Regulations. The Trustee may repay a contribution which at the time of making the payment was not intended to be a contribution. The Trustees must repay the whole or part of a contribution to the Contributor if directed by the Regulator. The Trustees may deduct from the repayment any liabilities or expenses incurred or provision for liabilities or expenses in relation to the contribution.

## **RULE 4      BENEFIT ENTITLEMENT & DETERMINATION**

### **WHEN BENEFIT PAYABLE**

- 4.1 A Member shall be entitled to receive a Benefit which shall comprise the total of the Member's Accrued Benefit, the Member's entitlement to be paid out of any Reserve and any insurance proceeds to which the Member is entitled and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations when
- 4.1.1 A Member Retires provided the conditions for payment of a Preserved Benefit have been met; or

- 4.1.2 A Member reaches such minimum age allowed under the Regulations, whether or not the Member Retires, provided the conditions for payment of a Preserved Benefit have been met; or
  - 4.1.3 Permitted by the Regulations and the Trustees consent to the payment of a Benefit.
- 4.2 Subject to the Regulations, the Trustees may with the Member's consent retain a Member's Benefit in the Fund for as long as the Trustees determine, even though the Member is entitled to be paid that Benefit PROVIDED THAT the Benefit must be paid or commence or be transferred or paid to an Eligible Fund when it is mandatory to do so under the Regulations.

#### **DISABLEMENT**

- 4.3 If a Member Retires on the grounds of Permanent Disablement, the Member shall be entitled to receive a Permanent Disablement Benefit which shall comprise the total of the Member's Accrued Benefit, the Member's entitlement to be paid out of any Reserve and any insurance proceeds to which the Member is entitled and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations.
- 4.4 If a Member is unable to work due to Temporary Disability then the Member shall be entitled to receive payment of a Temporary Disablement Benefit from the time the Member is unable to continue to work.
- 4.5 Notwithstanding anything to the contrary contained within these Rules, where the Trustees receive a Benefit under an insurance policy effected to cover the Permanent or Temporary Disability of a Member then that Member will be entitled to receive a disablement benefit under these Rules providing that the payment of such a Benefit is allowed under the Regulations.

#### **DEATH**

- 4.6 On the death of a Member, a Death Benefit which shall comprise the total of the Member's Accrued Benefit, the Member's entitlement to be paid out of any Reserve and any insurance proceeds to which the Member is entitled and any other amount which the Trustees determine is to form part of the Benefit including but not limited to an anti-detriment payment provided such other amount is not prohibited by the Regulations shall become payable in accordance with Rule 5.8, 5.9 and 5.10.

#### **TERMINAL ILLNESS**

- 4.7 Where at least two (2) Registered Medical Practitioners certify to the satisfaction of the Trustees and in accordance with the requirements of the Regulations that a Member has an illness or injury that is likely to result in the death of the Member within twelve (12) months of certification, the Member is entitled to receive payment of a Benefit which shall comprise the total of the Member's Accrued Benefit, the Member's entitlement to be paid out of any Reserve and any insurance proceeds to which the Member is entitled and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations.

#### **TERMINATION OF SERVICE**

- 4.8 A Member whose Employer has contributed to the Fund and who leaves the service of the Employer and who is not entitled to a Retirement Benefit or a Permanent Disablement Benefit and in respect of whom a Death Benefit is not payable shall be entitled to receive a Withdrawal Benefit being a Benefit which shall comprise the total of the Member's Accrued Benefit and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations and which will be paid subject to such restrictions imposed by the Regulations.

#### **TRANSITION TO RETIREMENT PENSION**

- 4.9 Where a Member has reached age 55 or such other minimum age permitted by the Regulations, the Member may receive a Benefit in the form of a Pension contemplated by Rule 5. Notwithstanding anything to the contrary contained in Rule 5, any Pension paid under this Rule subject to cashing restrictions shall not be capable of commutation except in accordance with the Regulations.

#### **ANCILLARY BENEFIT**

- 4.10 The Trustees may provide a Member with a Benefit with minimum conditions of release and/or cashing restrictions permitted by the Regulations:
- 4.10.1 on severe financial hardship as approved by the Trustees or Regulator,
  - 4.10.2 on compassionate grounds as approved by the Trustees or Regulator;
  - 4.10.3 when the Member is no longer in Gainful Employment and the Member's benefit is a Restricted Non-Preserved Benefit under the Regulations;
  - 4.10.4 when the Benefit is an Unrestricted Non-Preserved Benefit under the Regulations;

- 4.10.5 on the Temporary Disablement of the Member where the Benefit is paid in accordance with the Regulations;
- 4.10.6 any other type of Benefit approved under the Regulations; or
- 4.10.7 any other Benefit provided for the other ancillary purposes approved by the Regulations or the Regulator.

#### **OTHER CIRCUMSTANCES**

- 4.11 In circumstances where the Regulations would allow the Trustees to release or make a payment of part or all of the Member's Accrued Benefit to the Member or the Member's Dependants or other person authorised by the Regulations without prejudicing Government Approval of the Fund, the Trustees may release or make such payment as requested by the Member or as required by the Regulations notwithstanding that the Benefit may not be provided for in Rules 4.1 to 4.10 inclusive.

### **RULE 5      PAYMENT OF BENEFITS**

#### **TYPE OF BENEFIT**

- 5.1 The Benefit payable to a Member or a Beneficiary, where permitted by the Regulations, may be paid as:
  - 5.1.1 a Lump Sum;
  - 5.1.2 a Pension which may include a lump sum component subject to any applicable limitations imposed by the Regulations;
  - 5.1.3 an Ancillary Benefit;
  - 5.1.4 a Benefit permitted to be provided under the Regulations in such form or manner as is required under the Regulations; or

a combination of the above which may include more than one of each and may be paid to the Member or Beneficiary either in money or in other property provided the Benefit is paid in accordance with the Regulations.

#### **LUMP SUM BENEFIT**

- 5.2 When a Member is entitled to a Benefit and has elected to receive a Lump Sum Benefit, the Member is entitled to a Benefit which does not exceed the Member's Accrued Benefit and any other amount which the Trustee determines is to form part of the Benefit provided such amount is not prohibited by the Regulations.

#### **PENSION BENEFIT**

- 5.3 A Pension Benefit payable under these Rules shall be paid in such form and manner which complies with the Regulations if to do otherwise were to affect Government Approval of the Fund and is subject to the following conditions:

##### Trustees' Discretion

- 5.3.1 Where a Benefit is payable under these Rules by way of a Pension, the Trustees and the Member may agree on the terms and conditions upon which the pension shall be paid providing that such manner and form of payment is allowed under the Regulations. In the absence of agreement, the Trustees shall determine the basis on which the Pension is paid.

##### No Assignment or Encumbrance

- 5.3.2 Pensions payable from the Fund shall not be assigned or otherwise transferred by the person in receipt thereof (except to the extent permitted by the Rules) and shall not be mortgaged or encumbered in any manner whatsoever.
- 5.3.3 Neither the capital value (if any) of any pension payable from the Fund nor any income from it, may be used as a Security for a borrowing.

##### Annuities

- 5.3.4 The Trustees may, in their absolute discretion, (including where an Old-Age Pension is required to be paid) provide pensions payable under these Rules by applying a Member's Benefit to the purchase of an annuity that meets the requirements of the Regulations.

##### Imputation Credits

- 5.3.5 The Trustees may, in their absolute discretion and subject to the Regulations, debit amounts to the accounts of Members to whom current pensions are not being paid and credit corresponding amounts to the accounts of Members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

#### Asset Test Exempt Pension

- 5.3.6 Where the Pension is also an Asset Test Exempt Pension, the relevant provisions of the Social Security Act or the Veterans Entitlement Act apply to the extent of any inconsistency to ensure the Pension qualifies or continues to qualify as an Asset Test Exempt Pension.

#### Reversionary Pension

- 5.3.7 A Member's Pension may include a nomination, direction, term or condition requiring the Trustees to continue to pay the Member's Pension as a Reversionary Pension to a Reversionary Pensioner permitted under the Regulations to receive a Reversionary Pension upon the death of the Member and which shall be binding upon the Trustees unless the nomination, direction, term or condition expressly provides otherwise.

### **FORMS OF BENEFIT PAYMENT**

- 5.4 Any form of Benefit payment agreed to by the Trustees shall conform to the requirements of the Regulations and shall not prejudice Government Approval of the Fund. When entitled to a Benefit from the Fund, before the Benefit is paid or commences or within such time as permitted by the Trustees, a Member may, subject to the Regulations, make an election in writing (which is not binding upon the Trustees) to receive the Benefit in any manner contemplated by Rule 5 and indicate the desired amount or extent, as the case may be, that the Benefit is sought to be received as a Lump Sum or Pension. In the case of an election relating to a Pension, a Member may specify whether or not it is intended to be a Reversionary Pension and, if so, to whom and under what terms or conditions the Member requires the Pension to be subject.

### **PAYMENT OF BENEFITS IN SPECIE - BY TRANSFER OF ASSETS**

- 5.5 The Trustees may with the agreement of a Member or beneficiary to whom a Benefit is payable, transfer in specie investments of the Fund of equivalent value to the Member or beneficiary in lieu of paying the whole or part of the amount otherwise payable under these Rules.

### **BENEFICIARY AND DEATH BENEFIT NOMINATIONS**

- 5.6 A Member may from time to time give the Trustees notice in writing (the form and content of which notice need not comply with the Regulations) as to the names of those Nominated Beneficiaries (being persons who would be Dependants, if the Trustees were determining dependency at the time of notification, or the Member's legal personal representative or any other person authorised by the Regulations) to whom the Member directs Death Benefits to be paid and, if more than one, in what proportion. The Member may elect that all or some (as specified by the Member in the notice) of the directions in any such notice shall be binding upon the Trustees. If the Member does not make a binding election, the Trustees shall use their discretion in distributing any Death Benefit not covered by a binding election in accordance with Rules 5.10 and 5.11. The notice may:
- 5.6.1 specify the type, amount and proportion of different components of Benefit to be paid;
  - 5.6.2 specify whether a Pension including a Reversionary Pension is to be provided;
  - 5.6.3 contain conditions which must be satisfied or met in order for a Death Benefit to be paid;
  - 5.6.4 specify a period of time or date after which any direction which the Member elected to be binding upon the Trustees is to be no longer binding but is otherwise to remain valid;
  - 5.6.5 specify a period of time or date after which the notice lapses;
  - 5.6.6 specify the circumstances in which directions in such a notice intended to be binding upon the Trustees are to be treated as no longer binding upon the Trustees including but not limited to:
    - 5.6.6.1 the marriage, separation, divorce or death of a Nominated Beneficiary;
    - 5.6.6.2 the marriage, separation, divorce of a Member;
    - 5.6.6.3 where a Nominated Beneficiary consents.
- 5.7 The Trustees and a Member may enter into an agreement in writing about the payment of Death Benefits to Nominated Beneficiaries and which include terms and conditions of the type set out in Rules 5.6.1 to 5.6.6. The terms of an agreement made under this Rule shall form part of the Rules of the Fund as between Member and the Trustees and shall be read together with the Fund Rules as follows:
- 5.7.1 the agreement prevails over any notice given under Rule 5.6 unless the notice expressly revokes or replaces the agreement made under Rule 5.7;
  - 5.7.2 the agreement replaces any previous agreement made under this Rule;
  - 5.7.3 any previous notice given under Rule 5.6 is to be treated as not in effect for the purposes of Rules 5.6 and



- 5.9;
- 5.7.4 the terms of the agreement are to prevail if there is any inconsistency between the agreement and these Rules;
- 5.7.5 the agreement may specify the manner in which the terms of the agreement may be modified, revoked or amended; and
- 5.7.6 if part of an agreement is invalid because a Nominated Beneficiary is not eligible to receive a Death Benefit Payment under the Regulations then that part of the Death Benefit shall be distributed in accordance with Rules 5.10 and 5.11.

#### **PAYMENT OF DEATH BENEFITS**

- 5.8 Where the Trustees and a Member have entered into an agreement made under Rule 5.7, any Death Benefit must be paid or applied in accordance with the terms of that agreement. Where the agreement does not cover the whole of the Member's Death Benefit, so much of the Member's Death Benefit as is not covered by the agreement shall be paid by the Trustees in accordance with Rules 5.10 and 5.11.
- 5.9 Any Death Benefit to the extent that the Trustees are bound by a notice made under Rule 5.6 shall be paid by the Trustees in accordance with that notice. Where the notice does not cover the whole of the Member's Death Benefit, so much of the Member's Death Benefit as is not covered by the notice shall be paid by the Trustees in accordance with Rules 5.10 and 5.11.
- 5.10 Subject to Rules 5.8 and 5.9, the Trustees may decide as to the type, amount and proportions of different components in any Death Benefit and whether a Pension is provided and, if so, whether it is reversionary or not and any Death Benefit may be paid as the Trustees in their absolute discretion decide but in accordance with any restrictions or conditions imposed by the Regulations to any one or more of the following persons and in such proportions as the Trustees may decide, namely:
- 5.10.1 the Member's Dependants,
- 5.10.2 the Member's legal personal representative, and
- 5.10.3 any other person permitted by the Regulations;
- PROVIDED THAT any payment of a Death Benefit shall be in accordance with the Regulations if to do otherwise would affect the status of the Fund as a Complying Superannuation Fund.
- 5.11 If the Trustees are unable to establish within 6 months of the death of the Member that there are any Dependants, then the Death Benefit shall be paid to the Member's legal personal representative but, if a Grant of Probate or Letters of Administration in respect of the estate of the Member is not made within 3 years of the Member's date of death (or such other period that the Trustees determine), then the Death Benefit shall be paid to such person or persons that the Trustees determine or shall be dealt with pursuant to Rule 5.13 or Rule 5.14.
- 5.12 Notwithstanding Rules 5.8 and 5.9, where a Nominated Beneficiary gives notice in writing to the Trustees that the Nominated Beneficiary elects not to receive a benefit under a notice made under Rule 5.6 or an Agreement made under Rule 5.7 then so much of the Member's Death Benefit as is covered by the Nominated Beneficiary's written notice shall be paid by the Trustees in accordance with Rules 5.10 and 5.11 unless the notice made under Rule 5.6 or the Agreement made under Rule 5.7 contains provisions for the payment of a Benefit to an alternative Beneficiary.

#### **UNCLAIMED MONIES**

- 5.13 The Trustees shall comply with the Regulations relating to unclaimed money which becomes payable by the Fund to a Member or a Dependant or other person whom the Trustees are unable to locate after making reasonable efforts and enquiries which shall be paid in accordance with any applicable unclaimed money law or, in the event that no such law is applicable, to the Regulators.

## **PAYMENT OF MONIES TO AN EMPLOYER**

- 5.14 In the event that the Trustees determine that an Employer is entitled to receive monies from the Fund, the Trustees shall pay such amount to the Employer in accordance with the requirements of the Regulations and provided Government Approval of the Fund is not prejudiced.

## **ROLLOVER OF BENEFITS BETWEEN FUNDS**

- 5.15 In the event that the Trustees determine that a Benefit (other than a Pension) is immediately payable to a Member, to an Eligible Fund in respect of a Member or to another person in respect of a Member, and the Benefit has not been paid within 90 days (or such other period of time specified by the Regulations) of the date the Benefit first became payable, the Trustees may pay the benefit to an Eligible Fund that has been declared by the Regulator to be a fund eligible to receive such rolled-over benefits.
- 5.16 Where a Benefit has become payable and the Trustees are satisfied that at least 2 consecutive annual Member Statements and Reports, as described in Rules 8.14 and 8.15, have not been received by the Member the Trustees shall pay the Benefit to an Eligible Fund that has been declared by the Regulator to be a fund eligible to receive such rolled-over benefits.

## **BENEFIT PAYABLE IN OTHER CIRCUMSTANCES**

- 5.17 The Trustees may, in its absolute discretion, pay part or all of a Member's benefit to a Member, or another person, in the circumstances provided for in the Regulations, notwithstanding the restrictions imposed by the Rules.

## **PRESERVATION**

- 5.18 The Trustees shall ensure that any Preserved Benefit is preserved within the Fund or is transferred to an Eligible Fund in accordance with the Regulations.

## **NON-COMMUTABLE BENEFITS**

- 5.19 When a Member is entitled to a Benefit which is subject to cashing restrictions, the Trustees shall ensure that the Benefit is not commuted except in accordance with the Regulations.

## **DISCHARGE OF OBLIGATIONS**

- 5.20 The payment or application of any moneys pursuant to Rule 5 shall be a complete discharge thereof.
- 5.21 No Benefit shall be payable until the Trustees have ascertained that it may be paid in accordance with the provisions of these Rules.
- 5.22 Payment or assignment of a Benefit in good faith to a person believed by the Trustees to be entitled to receive it shall be deemed for the purposes of these Rules to be payment or assignment to a person entitled to receive such Benefit and shall be a valid discharge by the Trustees of their obligations in respect of the payment or assignment of that Benefit.
- 5.23 The Trustees when determining questions of fact may act upon such proofs or presumptions as they may deem satisfactory whether strictly legal proofs or presumptions or not.

## **RULE 6      ADMINISTRATION**

### **SOLE OR PRIMARY PURPOSE**

- 6.1 The sole or primary purpose of the Fund shall be the payment of Benefits to Members but if the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund shall be the payment of Old-Age Pensions to Members .

### **ENTITLEMENT**

- 6.2 All questions as to whether any person is entitled to a payment out of the Fund and, if so, the amount of such payment shall be determined by the Trustees whose decision shall be final.

### **EXPENSES, TAX AND CHARGES**

- 6.3 Notwithstanding anything expressed or implied to the contrary in these Rules:
- 6.3.1 the Trustees may deduct from any moneys which but for this Rule would be payable to or for the benefit of a Member or Dependant and may retain in the Fund, any amount which the Trustees determine is owing to the Trustee or the Fund by the Member or Dependant;
- 6.3.2 the Trustees shall estimate and deduct from any contribution to the Fund or debit the Fund with such amount as the Trustees shall think fit in respect of any income or other tax assessed or likely to be assessed in relation to the contribution received from the Fund;
- 6.3.3 the Trustees may deduct an amount equal to any tax or charges in respect of any payment out of the Fund

from such payment as they think proper and the Trustees shall not be liable to any Member or Dependant in respect of any amount so deducted and the Trustees shall only be required to pay the residual amount of the payment; and

nothing in this Rule shall prejudice any other rights which the Trustees may have to deduct tax or charges from any payment out of the Fund, or to pay from the Fund any other tax or charges which such payment may incur.

- 6.4 For the purpose of Rule 6.3 the Trustees may alter, exchange and segregate current pension assets from non-current pension assets and deal with the Fund as different sub-funds, segments or portions and account for them in accordance with these Rules.

#### **FORFEITURE OF BENEFITS**

- 6.5 The Trustees may only forfeit Benefits where such forfeiture is allowed under the Regulations or the Bankruptcy Act 1966.
- 6.6 Benefits forfeited under Rule 6.5 shall be applied by the Trustees as the Trustees may think fit for the benefit of any such person and the person's Dependants or any one or more of them, provided that where the person is a Member the Trustees shall not make any payment to or for the benefit of the Member or the Member's Dependants until the Member attains such age as is prescribed in the Regulations, other than for personal maintenance and support in case of hardship. Such application of the benefit shall be a discharge by the Trustees of their obligations in respect of payment.

#### **RIGHTS OF MEMBERS**

- 6.7 No person, whether as a Member or otherwise, shall have any claim, right or interest to or in respect of the Fund or any contributions thereto or any interest therein or any claim upon or against the Trustees except under and in accordance with the provisions of the Rules in these Rules.
- 6.8 A Member shall be bound by the Rules in these Rules.
- 6.9 A Member shall not more than once a year, be entitled to receive from the Trustees, on request, a copy of the latest accounts, balance sheet, auditor's report, actuarial report, returns to a Regulator, certificates received from a Regulator and such other information as is required by the Regulations to be provided to a Member.

#### **MEMBERS TO GIVE INFORMATION**

- 6.10 A Member and every person claiming a Benefit ("claimant") shall, from time to time, give the Trustees such documents as they consider are required for the purpose of putting the Rules in these Rules into effect. If any Member or claimant fails to supply all or any of such information then the Trustees may suspend the payment of any Benefits.
- 6.11 Where information or a document is not furnished within six (6) months of the first request the Benefits payable to or in respect of such Member or claimant may cease or may be transferred in part or in whole in such amounts as shall be determined by the Trustees in their absolute discretion (subject at all times to the provisions of the Regulations) to an Eligible Fund PROVIDED HOWEVER in the case of the information furnished by or in respect of a Member or claimant in any statement submitted to the Trustees being fraudulently incorrect in any material particular such Member's Benefit shall be otherwise dealt with in accordance with the provisions of the Regulations.

#### **NOTICES**

- 6.12 Any notices to be given under these Rules shall be deemed to have been validly given if they were handed to the party to be served or, if posted, duly addressed to the party to be served at the last known address of such party.

#### **POWER OF ATTORNEY**

- 6.13 Each Member hereby irrevocably appoints the Trustees and each of them as the Member's attorney to execute and sign and do all such deeds, instruments and things as the Trustees may consider necessary or desirable in order to carry out and give effect to the Trust Deed or these Rules or the powers vested in the Trustees.

#### **VARIATION OF TRUST DEED AND RULES**

- 6.14 Subject to Rules 6.16, 6.17 and 6.18, the Trustees may, at any time, by oral or written resolution or by instrument in writing amend, delete or replace all or any of the provisions of the Trust Deed and these Rules provided that no reduction of the Accrued Benefit of a Member shall be made as a result of a variation of the Trust Deed or these Rules without the Member's consent in writing, or the consent in writing of the Regulator and the consent in writing of such other persons as is necessary to avoid prejudicing Government Approval of the Fund.
- 6.15 The Trustees shall notify the Members of any addition, amendment, deletion or replacement to these Rules. The provisions of section 35B of the Trustee Act of South Australia shall not apply.
- 6.16 No addition, amendment, deletion or replacement of these Rules shall have the effect of invalidating, overriding

or otherwise affecting:

6.16.1 a notice given by a Member under Rule 5.6; or

6.16.2 any agreement made under Rule 5.7;

without the express personal consent in writing of the Member who has given the notice or made the agreement and unless and until such express personal consent is given, such notice and/or agreement shall continue to apply.

6.17 No amendment to the Trust Deed or the Rules introduced primarily for the purpose of securing exemption or relief from liability for taxation, stamp duty, gift duty, death duty, or any other form of taxation imposed or to be imposed or primarily for the purpose of complying with or conforming to future State or Commonwealth legislation governing or regulating the maintenance or operation of superannuation pension or like funds shall be deemed prejudicially to vary or to affect the Accrued Benefit of a Member.

6.18 No amendment to the Trust Deed or Rules shall be made:

6.18.1 While an individual is a Trustee, to allow the sole or primary purpose of the Fund to be other than the provision of Old-Age Pensions; or

6.18.2 While the sole or primary purpose of the Fund is other than the provision of Old-Age Pensions to allow the Trustees to be other than a Constitutional Corporation.

6.18.3 Which would have the effect of adding to, amending, deleting or replacing Rule 6.16 unless all Members personally consent in writing to such addition, amendment, deletion or replacement.

6.18.4 Which would have the effect of adding to, amending, deleting or replacing Rule 2.14 if to do so resulted in the Fund failing to comply with the QROPS Requirements unless all Members personally consent in writing to such addition, amendment, deletion or replacement.

## **LAW**

6.19 The Fund or any of the provisions thereof shall be governed by and construed according to the law of the State as detailed in the Trust Deed.

## **SUPERANNUATION SPLITTING LAW**

6.20 The Trustees shall only be obliged to comply with any request for information, agreement or order made under the Superannuation Splitting Law to the extent permitted or required by the Regulations.

6.21 The Trustees may impose a fee not exceeding the amount, if any, prescribed by the Regulations for the administrative costs associated with complying with an agreement or order made under the Superannuation Splitting Law and such fee shall be payable by such persons and in such proportions as prescribed by the Regulations. The Trustee may add interest, at a rate the Trustee determines, to any unpaid fee that the Trustee imposes and may debit the interest to a benefit or interest that the relevant Member or person deemed to be a Member has in the Fund.

6.22 Nothing in these Rules shall impose a duty or obligation upon the Trustees to admit as a Member of the Fund any person being a party to an agreement or order made under the Superannuation Splitting Law who is not already a Member of the Fund and the Trustees may transfer any Benefit to which such person is entitled to an Eligible Fund in accordance with the Regulations.

6.23 Notwithstanding anything contained in these Rules, a Benefit payable to a Member or Dependant under these Rules shall be subject to any agreement or order made under the Superannuation Splitting Law applying to that Benefit.

## **COMPLIANCE WITH REGULATIONS**

6.24 This Trust Deed shall be read and construed on the basis that the provisions of the Regulations are incorporated herein to the extent that they impose requirements on the Trustees or are required by the Regulations to be so incorporated but this Trust Deed shall not be so read or construed if to do so would constitute a breach of the power granted by Rules 6.14 to 6.18 inclusive to amend the provisions of this Trust Deed or where provisions of the Regulations may be lawfully excluded and are expressly excluded by these Rules. Where there is any inconsistency between a provision in this Trust Deed and a provision in the Regulations which is so incorporated, the latter shall prevail.

## **RULE 7      THE ASSETS, EXPENSES & INVESTMENTS**

### **THE ASSETS**

- 7.1 The following property and the property for the time being representing the same and the income thereof shall constitute the assets of the Fund namely;
- 7.1.1 contributions;
  - 7.1.2 any assets paid or transferred to the Fund,
  - 7.1.3 all profits, accumulations and earnings of the Fund, and
  - 7.1.4 any other moneys received or receivable by the Trustees for the purposes of the Fund.

### **ASSETS HELD BY TRUSTEES**

- 7.2 The assets of the Fund shall be held by the Trustees upon trust to be applied in accordance with the provisions of these Rules.

### **EXPENSES OF THE FUND**

- 7.3 All the expenses of operation of the Fund incurred from time to time shall be paid out of the assets of the Fund. Costs of the Fund must be distributed in a fair and reasonable manner as between all Members of the Fund in compliance with the Regulations.

### **INVESTMENTS IN NAME OF NOMINEE**

- 7.4 Subject to the requirements of the Regulations, any investments may be held in such names including the name of a nominee (whether an individual or a corporation as the Trustees shall from time to time determine).

### **LOANS TO MEMBERS**

- 7.5 The Trustees shall not make loans, or use the resources of the Fund to give any other financial assistance, to Members or to Related Parties except to the extent permitted in the Regulations or unless the Fund was established before 16 December 1985 and either the Rules of the Fund contained provisions allowing the Trustees to make loans to Members or the Trustees lent money to Members and that lending was not expressly prohibited by the Rules of the Fund.

### **ACQUIRING ASSETS FROM MEMBERS**

- 7.6 The Trustees will not acquire assets from a Member or from a relative of a Member if such acquisition would contravene the Regulations and prejudice Government Approval of the Fund.

### **IN-HOUSE ASSETS**

- 7.7 The Trustees shall not invest in any In-house Assets as defined in the Regulations unless such investment can be made without prejudicing Government Approval of the Fund.

### **INVESTMENTS**

- 7.8 Subject to the provisions of the Regulations and Rules 7.5, 7.6 and 7.7 and provided investments are made on an arm's-length basis, all moneys received by the Trustees but not required to meet current payments may in the absolute discretion of the Trustees either be or remain on deposit or be reinvested either directly or indirectly in any manner in which the Trustees, if they were personally entitled to such assets, could invest without prejudicing Government Approval of the Fund. Without restricting the generality of the foregoing, moneys may be invested:
- 7.8.1 in any one or more of the modes of investment considered by law to be prudent or authorised by law for the investment of trust funds;
  - 7.8.2 on deposit with or on loan to any bank, company or business whether secured or unsecured and at such rate of interest and upon such terms as the Trustees think fit;
  - 7.8.3 on the purchase or acquisition of or at interest upon the security of such real or personal property of whatsoever nature and wheresoever situate;
  - 7.8.4 in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-governmental body or public authority;
  - 7.8.5 in options, hedging contracts, futures contracts, derivatives and other financial instruments or contracts;
  - 7.8.6 in a limited recourse borrowing arrangement or in an instalment warrant arrangement that satisfies the requirements of the Regulations;
  - 7.8.7 in units of any common fund property trust or unit trust;

- 7.8.8 in any policies of life insurance or annuities; and
  - 7.8.9 any other investment which the Trustees consider to be appropriate and which is acceptable to the Regulator.
- 7.9 The Trustees shall have full power to vary, replace and otherwise deal with such investments as fully and effectively and with the same unrestricted powers in all respects as if the Trustees were the absolute and beneficial owners.

#### **ASSETS SPECIFIC TO A MEMBER**

- 7.10 The Trustees, with the agreement of the Member concerned, may invest in or acquire certain identifiable investments or assets for the benefit of any Member and to make a specific investment for the benefit of any Member providing that such investment complies with the investment strategy of the Trustees and shall hold such assets for the specific benefit of the Member concerned and which shall be recorded in the Member's account.
- 7.11 Notwithstanding anything contained in these Rules, any asset held for the specific benefit of a Member shall be segregated from other assets of the Fund and shall not be transferred out of the Member's account and no other person shall obtain an interest in the asset unless:
- 7.11.1 the asset is being transferred to the Member as payment of a Benefit in specie to the Member;
  - 7.11.2 the asset is being sold and the proceeds are to be paid to the Member as payment of a Benefit; or
  - 7.11.3 the transfer of the asset does not affect any duty exemption or nominal assessment of duty obtained under the laws of any State or Territory to the transfer of the asset to the Fund when the asset was first acquired by the Trustees.

#### **RESERVE ACCOUNTS**

- 7.12 The Trustees to the extent permitted by the Regulations may establish and maintain the following Reserve Accounts:
- 7.12.1 a Taxation Reserve (in which is recorded any unpaid or expected taxation liabilities);
  - 7.12.2 an Expense Reserve;
  - 7.12.3 an Investment Reserve;
  - 7.12.4 a Contributions Reserve;
  - 7.12.5 a Miscellaneous Reserve;
  - 7.12.6 an Accumulation Reserve;
  - 7.12.7 a Pension Reserve;
  - 7.12.8 such Reserves or liability accounts as may assist the Trustees to identify the value of assets that may be exchanged or segregated as either current pension assets, non-current pension assets or that are dealt with as a different sub-fund, segment or partition; and
  - 7.12.9 such other Reserves and accounts as the Trustees consider appropriate from time to time;
- and the Trustees may transfer any amount from the income of the Fund including contributions for any Member to any one or more of the Reserves and vice versa and between the Reserves so established as they consider appropriate and which is acceptable to the Regulators.

#### **PENSION RESERVE**

- 7.13 Based on the advice of an actuary, the Trustees may credit a Pension Reserve with:
- 7.13.1 contributions for a Member to fund a Complying Pension including any contributions which exceed the Member's maximum contribution limit in a Financial Year as determined by the Regulations;
  - 7.13.2 transfers from an Eligible Fund under Rule 2.7;
  - 7.13.3 allocations of income and profit of the Fund pursuant to paragraphs 1 and 2 of Schedule 1;
  - 7.13.4 allocations made from time to time by the Trustees from the Accumulation Reserve;
  - 7.13.5 proceeds of policies of insurance effected to provide benefits on the death or disablement of the Member;
  - 7.13.6 transfers from the Member's Accrued Benefit or any of the Reserves where the Trustees determine that an anticipated Member's Complying Pension requires further funding; and
  - 7.13.7 such other amounts as the Trustees may determine be properly credited to a Pension Reserve in respect

of a Member;

and shall debit a Pension Reserve with:

- 7.13.8 amounts paid by way of Benefits in respect of a Member;
- 7.13.9 transfers to a Member's Accrued Benefit or any of the Reserve Accounts where the Trustees determine that an anticipated Member's Complying Pension is over-funded;
- 7.13.10 amounts debited to pay premiums on policies of insurance effected to provide benefits to Members;
- 7.13.11 amounts debited to pay any tax and other expenses, or amounts to provide for them;
- 7.13.12 any part of an amount transferred to an Eligible Fund in respect of the Member pursuant to Rule 2.8 or Rule 2.10 which the Trustees have determined shall be debited to Pension Reserve; and
- 7.13.13 any other amount which shall be debited for the purposes of these Rules;

PROVIDED THAT the transfer, payment or provision is in accordance with the Regulations and the amounts credited are not a minimum benefit.

#### **ACCUMULATION RESERVE**

7.14 The Trustees may credit an Accumulation Reserve with:

- 7.14.1 transfers of any balance remaining of any Member's Accrued Benefit after all Benefits have been paid to a Member or is otherwise satisfied in full;
- 7.14.2 transfers from a Member's Accrued Benefit where the Trustees consider that it is in the interests of the Member to do so;
- 7.14.3 allocations of income and profit of the Fund pursuant to paragraphs 1 and 2 of Schedule 1;
- 7.14.4 transfers from a Pension Reserve where the Trustees determine that an anticipated Member's Complying Pension is over-funded;
- 7.14.5 the value of any Benefit covered by Rules 5.9, 5.9 and 5.10;
- 7.14.6 the value of any Benefit covered by Rule 6.5; and
- 7.14.7 such other amounts as the Trustees may determine be properly credited to the Accumulation Reserve in respect of a Member;

and shall debit an Accumulation Reserve with:

- 7.14.8 transfers to a Member's Accrued Benefit as determined by the Trustees from time to time;
- 7.14.9 transfers to a Pension Reserve where the Trustees determine that an anticipated Member's Complying Pension requires further funding
- 7.14.10 amounts debited to pay any tax and other expenses, or amounts to provide for them;
- 7.14.11 any part of an amount transferred to an Eligible Fund in respect of the Member pursuant to Rule 2.8 or Rule 2.10 which the Trustees have determined shall be debited to an Accumulation Reserve; and
- 7.14.12 any other amount which shall be debited for the purposes of these Rules;

PROVIDED THAT the transfer, payment or provision is in accordance with the Regulations and actuarial advice.

#### **RULE 8 RECORDS, ACCOUNTS AND REPORTS**

##### **RECORDS**

8.1 The Trustees shall keep or cause to be kept:

- 8.1.1 such accounting records as correctly record and explain the transactions and financial position of the Fund, including a complete record of the income and expenditure of the Fund, personal details of the Members of the Fund including a record of their Benefit entitlements, details of any orders or agreements made under the Superannuation Splitting Law and all other matters essential for the working of the Fund; and
- 8.1.2 all such records in writing in the English language in Australia for the period specified in the Regulations.

##### **ACCOUNTS**

8.2 The Trustees shall at the end of each Financial Year prepare a statement of financial position of the Fund and an operating statement for the Fund or alternatively such accounts and statements as are provided for in the

Regulations.

#### **AUDIT**

- 8.3 The Trustees shall appoint an Auditor to the Fund in accordance with the Regulations to audit the accounts and records of the Fund and to:
- 8.3.1 report in writing to the Trustees the result of such audit; and
  - 8.3.2 to certify to the Trustees whether the Fund complies with the Regulations.

#### **ACTUARIAL REVIEW**

- 8.4 The Trustees shall when required by the Regulations or when the Trustees determine appoint an actuary to make such enquiries and investigations as they may determine and to report in writing to the Trustees.

#### **ANNUAL RETURNS**

- 8.5 The Trustees shall, at the end of each Financial Year, give to the Regulator:
- 8.5.1 a return, in the approved form, containing such information as is required by that form in relation to the Fund in respect of that year of income;
  - 8.5.2 a certificate, in the approved form, by the Trustees in relation to the Fund in respect of that year of income; and
  - 8.5.3 a certificate given to the Trustees by the Auditor in relation to the Fund in respect of that year of income.

#### **REPORTS ON SIGNIFICANT EVENTS**

- 8.6 The Trustees shall give every Member information and details concerning any significant event that the Trustees reasonably believe a Member would reasonably need to understand the nature, purpose and effect of the event. The Trustees shall give the necessary information to the Member before, or as soon as practicable after the occurrence of the significant event but, in any case, no later than three months after the occurrence of the event.
- 8.7 Significant events requiring the Trustees to notify the Members include:
- 8.7.1 A change to the Rules of the Fund adversely affecting the Member's Benefits in any way;
  - 8.7.2 A change to the Member's category of membership;
  - 8.7.3 A transfer of the Member's benefit to another fund;
  - 8.7.4 The receipt by the Trustees of a notice of non-compliance.
- 8.8 In the event of the receipt of a notice of non-compliance the Trustees shall give to every Member:
- 8.8.1 A statement of the circumstances that gave rise to the notice;
  - 8.8.2 A statement of the effect of the notice on the Fund and its taxation position;
  - 8.8.3 Details of the action to be taken to return the Fund to complying status; and
  - 8.8.4 Any information that the Regulator directs to be given to the Members.
- 8.9 The Trustees shall give to the Regulator notice of changes to the Fund that the Trustees must give to the Regulator in accordance with the Regulations in such form and in such manner as specified in the Regulations.

#### **RECEIVING OF INFORMATION ON REQUEST**

- 8.10 The Trustees shall make available to any Member and any person entitled, who makes a written request to the Trustees, any information or copies of any documents that the Member and any person entitled could reasonably require to understand the Member's benefit entitlements under the Fund, the main features of the Fund, the investment performance of the Fund and any other matter referred to in the Regulations. If not prohibited by the Regulations, the Trustees may charge a fee for the provision of information requested by a Member and any other person.



- 8.11 The Trustees shall specifically make available copies of the Rules, the audited accounts, the auditor's report, and advice to the extent they are relevant to the financial condition of the Fund and the person's entitlements and the latest Member Fund Report.
- 8.12 The Trustees shall not make available to a Member any information that is confidential to the Fund, other Members of the Fund and other persons provided that the Regulations allow the Trustees to keep such information confidential.
- 8.13 Where the Trustees would otherwise be required to provide a Product Disclosure Statement under the requirements of the Corporations Act 2001 the Trustees shall provide access to any Member, or any person applying to become a Member, to any information that a Product Disclosure Statement would otherwise be required to contain.

#### **MEMBER BENEFIT STATEMENTS**

- 8.14 As soon as practicable, after the end of each Financial Year, the Trustees shall give each Member a written statement detailing such information as the Trustees reasonably believe a Member reasonably needs to understand the Member's benefit entitlements in the Fund and such information as is required by the Regulations.

#### **MEMBER FUND REPORT**

- 8.15 As soon as practicable after the end of each Financial Year, the Trustees shall give each Member a written report on the financial affairs of the Fund showing such details as the Trustees reasonably believe a Member would reasonably need to understand the management, the financial condition and the investment performance of the Fund and such information as is required by the Regulations.

#### **MEMBER LEAVING STATEMENT**

- 8.16 The Trustees shall give a person, as soon as practicable after becoming aware that the Person has ceased to be a Member of the Fund, a statement detailing such information as the Trustees reasonably believe the Person reasonably needs to understand the Member's benefit entitlements from the Fund and such information as is required by the Regulations.

### **RULE 9      TRUSTEES**

#### **TRUSTEES STRUCTURE**

- 9.1 The Trustee of the Fund shall be a Constitutional Corporation if the Sole or Primary purpose of the Fund is other than the provision of Old-Age Pensions.

#### **APPOINTMENT AND REMOVAL OF TRUSTEES**

- 9.2 The Trustees shall take such action as they consider necessary and appropriate to ensure that the Trustees are constituted in a manner which complies with the Regulations including action relating to constitution or governing rules of a Trustee which is a Constitutional Corporation and the eligibility, appointment, replacement, representation, removal and composition of Trustees and the board of directors of a Trustee which is a Constitutional Corporation.
- 9.3 A person shall only be appointed as a Trustee or a director of a corporate Trustee if that person consents in writing to the appointment. Each Trustee or a director of a corporate Trustee shall complete such other declarations, forms or notices regarding appointment as required under the Regulations. Each written consent, declaration, form or notice shall be retained by the Trustees for 10 years or such other period required by the Regulations.
- 9.4 The Members may at any time by writing and in accordance with the Regulations and in accordance with the other provisions of these Rules remove from office any Trustee other than a Trustee appointed by the court or the Regulator and may at any time in writing appoint a new or additional Trustee. The appointment, removal or replacement of a Trustee shall be by resolution in writing of at least two thirds of the Members except where there are only two Members in which case unanimous agreement is required. Where there is a deadlock each individual Member's vote shall be weighted in relation to the value of the Member's interest or entitlement in the Fund. A Trustee who retires or ceases to hold office shall be replaced by the Members in the manner set out in this Rule 9.4.
- 9.5 Any requirement under the law of the commonwealth, any state or territory that:
- 9.5.1 an appointment of a Trustee, new Trustee, replacement Trustee or additional Trustee must be registered for that appointment to be effective is expressly excluded; and
- 9.5.2 where the Fund has an individual Trustee, the Fund must not have less than two individual Trustees or places a limit on the number of Trustees that may be appointed and is capable of being expressly excluded by these Fund Rules is expressly excluded provided always that the Fund complies with the Regulations.

#### **RETIREMENT OF TRUSTEES**

- 9.6 A Trustee for the time being must retire or ceases to hold that office when:

- 9.6.1 being an individual Trustee, the person dies or becomes bankrupt or legally incompetent;
- 9.6.2 the Trustee resigns by notice in writing to the Members and the other Trustees, if any;
- 9.6.3 the Trustee is no longer eligible to be a Trustee pursuant to the Regulations;
- 9.6.4 the Trustee is removed by the Members pursuant to Rule 9.4;
- 9.6.5 the Trustee is suspended or removed by the Regulator pursuant to the Regulations;
- 9.6.6 being a Constitutional Corporation, the Trustee is placed into receivership or liquidation whether compulsory or voluntary;
- 9.6.7 the Trustee is a disqualified person pursuant to the Regulations;
- 9.6.8 the Trustee is a parent or guardian of a Member and that Member attains the age of 18 years;
- 9.6.9 subject to the Regulations, complying status of the Fund would be jeopardised or altered unless the Trustee ceased to act in that role; or
- 9.6.10 the Trustee is removed by the procedure for the removal of Trustees set out in these Rules or the Regulations.

#### **VACANCY**

- 9.7 Any vacancy in the office of Trustee or the board of directors of a Constitutional Corporation holding the office of Trustee shall be filled within such period as and when required by the Regulations but until and unless the vacancy is filled, the continuing Trustees or the board of directors may exercise any of the powers, authorities and discretions conferred on the Trustees under the Deed provided that where:
  - 9.7.1 there is at least two continuing Trustees or one continuing director there shall be no obligation to fill any vacancy unless required by the Regulations; and
  - 9.7.2 a vacancy occurs by reason of Rule 9.6.7, and the Trustees are individuals, that Member who has attained the age of 18 years shall be appointed as a Trustee of the Fund provided the appointment does not breach the Regulations or effect the status of the Fund as a Complying Superannuation Fund.
- 9.8 Notwithstanding anything contained in Rule 9.7 and without limiting the power to remove a Trustee under Rule 9.4:
  - 9.8.1 where a Trustee being an individual dies or is under a legal disability the legal personal representative of the Trustee shall to the extent permitted by the Regulations replace that Trustee;
  - 9.8.2 notwithstanding Rule 9.8.1, if there is more than one legal personal representative of the Trustee, the continuing Trustees shall determine which of the legal personal representatives shall be appointed as a replacement Trustee;
  - 9.8.3 where a Trustee is a Constitutional Corporation, the Trustee shall ensure that the constitution or governing rules of the Constitutional Corporation do not prohibit the legal personal representative of a director of the Constitutional Corporation who dies or is under a legal disability from replacing that director as a director of the Constitutional Corporation:
  - 9.8.4 this Rule 9.8 shall not apply to any individual Trustee or a director of a Constitutional Corporation who is not also a Member of the Fund.

#### **TRANSFER OF ASSETS**

- 9.9 Upon a change of Trustees, the estate and property of the Fund shall vest in the new Trustees and/or continuing Trustees (as the case may be) and the retiring Trustee shall execute all transfers, deeds or other documents necessary to transfer the estate and property of the Fund into the name of the new Trustees and/or continuing Trustees (as the case may be).

#### **COVENANTS GIVEN BY THE TRUSTEES**

- 9.10 The Trustees give the following covenants:
  - 9.10.1 to act honestly in all matters concerning the Fund;
  - 9.10.2 to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
  - 9.10.3 to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;

- 9.10.4 to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - 9.10.4.1 that are held by the Trustees personally; or
  - 9.10.4.2 that are money or assets, as the case may be, of an Employer or an associate of an Employer;
- 9.10.5 not to enter into any contract, or do anything else, that would prevent the Trustees from, or hinder the Trustees in, properly performing or exercising the Trustee's functions and powers;
- 9.10.6 to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - 9.10.6.1 the risk involved in making, holding and realising, and the likely return from the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - 9.10.6.2 the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - 9.10.6.3 the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - 9.10.6.4 the ability of the Fund to discharge its existing and prospective liabilities;
- 9.10.7 if there are any Reserve Accounts of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- 9.10.8 to allow a Member access to any prescribed information or any prescribed documents.

**POWERS OF TRUSTEES**

- 9.11 Without prejudice to the powers vested in the Trustees by the Trust Deed and the Rules or otherwise the Trustees shall have the following powers, that is to say, power:
  - 9.11.1 to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, licence, lease or otherwise deal with real or personal property and, without limiting the generality of this sub-rule, to develop any commercial or retail premises and hold or sell, convey, surrender, lease or licence such premises on such terms and conditions as they shall think fit;
  - 9.11.2 to appoint and at their discretion remove or suspend the auditor, actuary, investment managers, investment advisers, custodian, managers, secretaries, clerks, agents and other servants, appoint them for permanent, temporary or special services as they from time to time think fit, determine their powers and duties and fix their salaries or emoluments and require security in such instances and to such amount as they may think fit and any person so employed shall be deemed for the purposes of the Rules to be employed by the Trustees;
  - 9.11.3 to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;
  - 9.11.4 to refer any claims or demands by or against the Fund to arbitration and observe and perform the awards;
  - 9.11.5 to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
  - 9.11.6 to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
  - 9.11.7 to determine who shall be entitled to sign on the Fund's behalf, receipts, acceptances, endorsements, releases, contracts and documents;
  - 9.11.8 to pay benefits out of the Fund to persons entitled;
  - 9.11.9 to decide as and when the need shall arise who are Dependants for the purposes of the Rules;
  - 9.11.10 in case of mental or physical ill-health, or incapacity of a person entitled to benefits to pay or apply such benefits or any part thereof at their discretion to or for the benefit of such person and the Dependants of such person or any of them as the case may be without being responsible for seeing the application of payments under this sub-clause or payments made in the exercise of any other powers vested in the Trustees by the Trust Deed and the Rules;
  - 9.11.11 to borrow or raise any financial accommodation including by drawing, endorsing, accepting or otherwise

dealing in any bill of exchange, promissory note or other negotiable instrument for the purposes permitted by the Regulations (including for the purpose of investing in a limited recourse borrowing arrangement or an instalment warrant arrangement as permitted by Rule 7.8.6 of these Rules) and secure the borrowing or financial accommodation in such a manner and upon such terms and conditions and at such rate of interest as the Trustees determine and in particular, by assigning, pledging, charging or mortgaging all or any of the assets of the Fund;

- 9.11.12 to elect that the Fund become a Regulated Superannuation Fund;
- 9.11.13 to act on a direction given by a Court or the Regulator;
- 9.11.14 to comply with the covenants of Trustees imposed by the *Superannuation Industry (Supervision) Act 1993* (Commonwealth);
- 9.11.15 to delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustees and to execute any powers of attorney or other instruments necessary to effect such a delegation;
- 9.11.16 to provide indemnities to or on behalf of any person the Trustees see fit;
- 9.11.17 to appoint a custodian to hold assets of the Fund on such terms and conditions as the Trustees deem fit including the power to execute any deed creating a bare trust or such other form of trust permitted by the Regulations to give effect to the power to invest in a limited recourse borrowing arrangement or an instalment warrant arrangement as permitted by Rule 7.8.6;
- 9.11.18 to effect mortgage protection insurance or like insurances to cover the payment of borrowings by the Fund;
- 9.11.19 to effect life insurance policies for the purposes of providing benefits for Members; and.
- 9.11.20 to do those things permitted or required by the Regulations.

#### **DUTIES OF TRUSTEES**

9.12 The Trustees must:

- 9.12.1 ensure that any agreement made with an investment manager under which money of the Fund is placed in the control of the investment manager, is in writing and contains provisions which comply with the Regulations, including adequate provision to enable the Trustees to obtain information concerning the making of, and return on, the investments and to assess the capability of the investment manager.
- 9.12.2 keep and retain for at least 10 years minutes of all meetings of the Trustees at which matters affecting the Fund were considered.
- 9.12.3 keep and retain for at least 10 years records of all changes of trustees and, in the case of corporate trustees, directors of the corporate trustees.
- 9.12.4 keep and retain for at least 10 years copies of reports given in the same form to all Members of the Fund.
- 9.12.5 within the time, if any, specified in the Regulations give written notice to the Regulator of any event or change having a significant adverse effect on the financial position of the Fund or any other event or change specified by the Regulations requiring written notice be given to the Regulator.
- 9.12.6 establish a procedure for the appointment and removal of member representatives to the board of directors of the Trustee, if the Trustee of the Fund is a Constitutional Corporation and it is necessary for Government Approval of the Fund.

#### **INDEMNITY TO TRUSTEES**

9.13 The Trustees and each person thereof in the case of a group of persons shall, unless prohibited by any law or court of competent jurisdiction, be indemnified out of the Fund against all liabilities incurred by them through any act or omission in the exercise of the powers, duties and discretions under the Trust Deed and the Rules or in the *bona fide* intended or purported exercise of their duties under the Trust Deed and the Rules and shall, unless prohibited by the Regulations have a lien on the Fund for such indemnity. The Trustees shall not be liable for any act or default done or omitted to be done in the exercise of their powers, duties and discretions or for any loss or expenses incurred by the Fund through the insufficiency or deficiency of any security in or upon which any of the moneys of the Fund shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities shall be deposited or for any other loss, damage or misfortune whatsoever except where the Trustees fail to act honestly in a matter concerning the Fund, where the Trustees intentionally or recklessly fail to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustees were required to exercise or where the Trustees are liable for monetary penalty under a civil penalty order.

- 9.14 For the purposes of the Trust Deed and the Rules the Trustees shall be entitled to regard a discretion, instruction or other written authorisation signed by a Member as a valid discretion, instruction or other written authorisation of the Member.

## **DISCRETIONS**

- 9.15 Save as expressly provided in these Rules and under the Regulations, the Trustees shall have an absolute and uncontrolled discretion in the exercise of the powers, authorities and discretions vested in them by the Deed and these Rules and may exercise or enforce all or any of those powers, authorities and discretions from time to time or may refrain from exercising all or any of those powers, authorities and discretions from time to time or at all.
- 9.16 The Trustees or any director, employee, delegate, agent or other officer of the Trustees may be involved in the exercise of all powers, authorities and discretions conferred on the Trustees notwithstanding that they may have a conflict of interest or duty.
- 9.17 The Trustees may exercise or concur in exercising all of the powers and discretions contained in the Deed and Rules or otherwise conferred by law notwithstanding that the Trustees or any person being an individual trustee of the Fund or any person being a director or shareholder of a corporate trustee of the Fund or any person being a relative of a Trustee or any person being a relative of a director or shareholder of a corporate trustee of the Fund has or may have a direct personal interest (whether as trustee of any other trust or settlement or in his personal capacity or as a director or shareholder or as a relative of a Trustee or relative of a director or shareholder of a corporate trustee of the Fund or member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee may be a sole Trustee.

## **DELEGATION**

- 9.18 The Trustees may delegate any of their powers, authorities and discretions vested in them (including the power of delegation) to any person in such manner and upon such terms and conditions as they think fit if the delegation is in accordance with the Regulations and may vary or revoke any delegation in such manner and terms as they see fit. The Trustees may exercise any power, authority or discretion in conjunction with or to the temporary or permanent exclusion of a delegate.

## **MANNER OF EXERCISE BY TRUSTEES OF DISCRETIONS, POWERS, ETC.**

- 9.19 Where the Trustees consist of more than one person they:
- 9.19.1 may meet together in person, by telephone and/or by video conference facilities for the dispatch of business;
  - 9.19.2 may adjourn and otherwise regulate their meetings as they think fit;
  - 9.19.3 may determine the quorum necessary for the transaction of business;
  - 9.19.4 shall appoint a chairman for the time being, from time to time or of each meeting, and
  - 9.19.5 shall act unanimously but if the Trustees are unable to reach a decision unanimously then decisions will be made by poll where each individual Trustee's vote shall be weighted in relation to the value of their interest or entitlement in the Fund and all such decisions of the Trustee shall be binding on all Trustees provided always that in making any decision the Trustees have regard to the covenants or obligations imposed on the Trustees under the Regulations and the covenants given by the Trustees under Rule 9.10.
- 9.20 Where the Trustees consist of more than one person, a resolution in writing, signed by all the Trustees for the time being, shall be as valid and effectual as if it had been passed unanimously at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Trustees.
- 9.21 Notwithstanding Rules 9.19 and 9.20, where more than one legal personal representative or parent or guardian of a Member has been appointed as a Trustee place of that Member, those legal personal representatives or parents or guardians as Trustees shall have one joint vote for the purposes of any meeting and resolution but this restriction shall not apply if the legal personal representatives or parents or guardians as Trustees are the only Trustees of the Fund.
- 9.22 Where a Trustee is a Trustee of the Fund in a personal capacity to comply with the Regulations and is also a Trustee in a representative capacity as the legal personal representative or parent or guardian of a Member, that Trustee shall have a deliberative vote for the purposes of any meeting and resolution as Trustee in their personal capacity and a deliberative vote in their representative capacity.
- 9.23 Any minutes or resolutions so entered that purport to be signed as provided in Rules 9.18 and 9.19 shall be evidence of the proceedings or of the exercise of the discretion, authority or power to which it relates, as the case

may be. When minutes or resolutions have been so entered and signed, then, until the contrary is proved:

9.23.1 the meeting (if any) shall be deemed to have been duly held and convened;

9.23.2 all proceedings had at any such meeting shall be deemed to have been duly had;

9.23.3 all determinations or decisions made at any meeting shall be deemed to be valid; and

9.23.4 where the minute or resolution does not relate to a meeting, the discretion, authority or power to which the minute or resolution relates shall be deemed to have been duly exercised.

9.24 If the Trustee is a Constitutional Corporation then such Constitutional Corporation may exercise or concur in exercising any discretion or power conferred on the Trustees by the Trust Deed to which these Rules are an annexure or by these Rules by a resolution of its directors or governing body in accordance with the company's Constitution, Memorandum and Articles of Association or other constituent document and may delegate the rights and powers conferred on it by the Trust Deed to which these Rules are an annexure or by these Rules.

#### **NO REMUNERATION**

9.25 The Trustees shall not be entitled to remuneration except as permitted by the Regulations.

#### **RULE 10      WINDING UP**

##### **TERMINATION OF FUND**

10.1 If it shall, at any time, appear to the Trustees, for such reasons as they shall think fit, appropriate so to do or if required by the Regulations then the Fund shall be terminated and the Trustees shall determine a termination date. In any event, if required by law the Fund shall be terminated on the eightieth anniversary of the Date of the Trust Deed or such later date as permitted by law.

10.2 Upon the termination of the Fund in accordance with Rule 10.1, no further contributions shall be accepted by the Trustees other than any arrears of contributions already due, which shall be called in immediately.

10.3 Subject to any requirement of the Regulations including any requirements relating to the preservation of Benefits, as from the termination date, the assets of the Fund shall, after provision is made for all expenses and liabilities of the Fund, be held in trust and applied in the following priority:

10.3.1 in payment of benefits which on or before the termination date have become payable to Members or Dependants or legal personal representatives of deceased Members but not paid;

10.3.2 in payment or transfer of a Member's Accrued Benefit (but not including any amount that has not vested unless the Trustees determine that such amount shall vest) or entitlements to the Pension Reserve in accordance with these Rules;

10.3.3 in payment of any surplus to Members, former Members, Dependants of Members and former Members, or legal personal representatives of Members, former Members or Dependants in proportions the Trustees in their discretion determine is appropriate.

10.4 Where a Member dies before receiving a Benefit to which the Member has become entitled pursuant to Rule 10.3 such Benefit shall be paid in accordance with Rule 5.9.

**RULE 11**      **SAVING PROVISIONS**

- 11.1      If a provision of the Deed or Rules would otherwise be wholly or partly invalid because it:
- 11.1.1    subjects the Trustees to direction by another person; or
  - 11.1.2    permits a person to exercise a discretion without the consent of the Trustees,
- then the Trustees' consent is required for the giving of the direction or exercise of the discretion.

**RULE 12**      **INCORPORATION OF REGULATIONS**

- 12.1      The Rules include and incorporate the Regulations to the extent that Regulations impose covenants or obligations on the Trustees and these Rules shall be read on the basis that:-
- 12.1.1    where there is any inconsistency between a provision in these Rules and a provision under the Regulations, the Regulations shall prevail to the extent of the inconsistency and these Rules shall be read down to the extent of the inconsistency;
  - 12.1.2    where there is any doubt arising as to the effect of the Regulations or whether there is an inconsistency between the Regulations and a provision of these Rules, the decision of the Trustees shall be final;
  - 12.1.3    if the Regulations no longer require any such covenant or obligation to be included then that covenant or obligation ceases to be included;
  - 12.1.4    the Trustees are not taken to be in contravention of these Rules or in breach of trust if the Trustees do or omit to do anything which is in contravention of such covenant or obligation if the contravention is waived by the Regulator;
- provided that these Rules shall not be so read and no such provision of the Regulations shall be incorporated if to do so would constitute a breach of the power granted in Rule 6 to amend all or any of the provisions of these Rules or if express provision is made in these Rules excluding provisions of the Regulations and the Trustees are permitted by law to do so.
- 12.2      This Rule is paramount and it shall prevail over any inconsistent Rule herein.

## SCHEDULE 1

- 1 The Accumulated Contributions in respect of each Member shall be determined at the end of each Financial Year as follows:
  - 1.1 To the Accumulated Contributions in respect of the Member at the beginning of the Financial Year there shall be added:
    - 1.1.1 contributions made in respect of the Member during the Financial Year; and
    - 1.1.2 the proceeds of any Individual Policies in respect of the Member of the kind referred to in paragraph 1.1.5 below;
    - 1.1.3 the income derived from any assets held in respect of the Member in accordance with Rule 7.10 and which are deemed by the Trustees to have been secured with monies debited to the Member's Accumulated Contributions as referred to in paragraph 1.1.6 below;
    - 1.1.4 Splittable Contributions transferred or allocated to a Member which the Trustees have determined shall be credited to the Member's Accumulated Contributions; and
    - 1.1.5 amounts credited to the Member out of the Reserve Account;and there shall be subtracted:
    - 1.1.6 premiums paid during the Financial Year under any Individual Policy in respect of the Member which the Trustees have determined shall be funded out of Member contributions, and
    - 1.1.7 amounts paid during the Financial Year to secure assets specific to the Member in accordance with Rule 7.10 and which the Trustees have determined shall be funded out of the Member's Accumulated Contributions; and
    - 1.1.8 Benefits paid in respect of the Member during the Financial Year;
    - 1.1.9 Splittable Contributions transferred or allocated from the Member to another Member or an Eligible Fund which the Trustees have determined shall be debited to the Member's Accumulated Contributions;
    - 1.1.10 any amounts by way of tax and expenses which are or may become payable and which the Trustees consider proper to be deducted from the Member's Accumulated Contributions; and
    - 1.1.11 any other amounts that the Trustees are required to deduct in accordance with the Regulations.
  - 1.2 The profit for the Financial Year shall be determined by deducting from the net assets of the Fund (which may include the proceeds of insurance policies not being Individual Policies and surpluses resulting from a revaluation of assets), as shown in the balance sheet at the end of the Financial Year, the total value of any Individual Policies, the total value of any assets held in respect of specific Members in accordance with Rule 7.10, the total of the amounts determined under paragraph 1.1 above for all Members, any amount in the Reserve Accounts and such other amounts credited to Members in accordance with paragraph 2.3 below.
  - 1.3 The profit for the Financial Year shall, after deducting any amount that the Trustees determine to allocate to the Reserve Accounts, be allocated to each Member's Accumulated Contributions in one of the following ways, as the Trustees shall determine:
    - 1.3.1 in proportion to the Member's Accumulated Contributions as at the beginning of the Financial Year;
    - 1.3.2 in proportion to the amount determined under paragraph 1.1; or
    - 1.3.3 in proportion to the amount determined under paragraph 1.1 above but with allowance being made, on such basis as the Trustees may determine, for the time during the Financial Year at which each item required to be added or subtracted under paragraph 1.1 was received or paid.
- 2 The Accrued Benefit in respect of a Member shall be determined as follows:
  - 2.1 The Member's Accumulated Contributions at the beginning of the Financial Year shall be increased and decreased in the manner indicated in paragraph 1.1 above.
  - 2.2 To the amount determined under paragraph 2.1 above, shall be added an amount representing a share of the profit for the Financial Year to date. This share will be determined by the Trustees and will be calculated as a proportion of the profit allocated to the Member's Accumulated Contributions at the end of the previous Financial Year in accordance with paragraph 1.3 above but with such allowance as the Trustees think fit having regard to:



- 2.2.1 the growth in the Member's Accumulated Contributions;
  - 2.2.2 the property held on behalf of a Member and the income earned from that property;
  - 2.2.3 the balance of any Reserve Accounts;
  - 2.2.4 the length of time since the beginning of the Financial Year;
  - 2.2.5 length of membership;
  - 2.2.6 investment strategies;
  - 2.2.7 any actuarial advice;
  - 2.2.8 the exchange and segregation of any Fund assets set aside to meet current pension liabilities or for other Fund purposes and the extent to which profit is attributable to those assets; and
  - 2.2.9 and any particularly adverse or favourable circumstances known to the Trustees.;
- 2.3 To the amount determined under paragraphs 2.1 and 2.2 above, provided they have not already been added to or deducted from the Member's Accumulated Contributions under the provisions of paragraph 2.1 above, as the case may be:
- 2.3.1 shall be added:
    - 2.3.1.1 the value of any Individual Policy or Assets held in respect of the Member in accordance with Rule 7.10;
    - 2.3.1.2 any part of an amount transferred from an Eligible Fund in respect of the Member pursuant to Rule 2.7 which the Trustees have determined shall be credited to the Member's Accrued Benefit;
    - 2.3.1.3 any other amount which shall be credited for the purposes of these Rules or required by the Regulations;
  - 2.3.2 shall be subtracted:
    - 2.3.2.1 any part of an amount transferred to an Eligible Fund in respect of the Member pursuant to Rule 2.8 or Rule 2.10 which the Trustees have determined shall be debited to the Member's Accrued Benefit;
    - 2.3.2.2 any other amount which shall be debited for the purposes of these Rules or required by the Regulations;
- 2.4 In determining the share of profit from property under paragraph 2.2.2 above, attributing profit to assets set aside to meet current pension liabilities of the Fund or for other purposes of the Fund for the purposes of paragraph 2.2.8 above or identifying value to be credited to reserves or liability accounts established in accordance with Rule 7.12.8, the Trustees may determine that any debit, credit or adjustment to an Accrued Benefit, Reserve Account or account that impacts on a Member's Accrued Benefit, Reserve Accounts or accounts, expenses or financial position of the Fund is to be included or excluded as the case may be at the discretion of the Trustees from such determination, attribution or identification and the Trustees shall not be bound to either explain or give reasons unless required by the Regulations.

