


**PATRICK SULLIVAN SUPERANNUATION FUND**  
**TRUST DEED**

**HIGH PLACE DEVELOPMENTS PTY LTD**  
**ACN 064 279 321**  
**("Trustee")**



 1800 786 396

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DEED made at Perth the 10<sup>th</sup> day of MAY

2001

**BY HIGH PLACE DEVELOPMENTS PTY LTD** ACN 064 279 321 of 7/84 William Street, Melbourne in the State of Victoria (the "Trustee")

## WHEREAS

- A. The Trustee wishes to establish a superannuation trust fund to provide superannuation benefits for those persons who become members of the fund.
- B. The Trustee has agreed to act as the first trustee(s) of the fund constituted by this trust deed which shall be named the **Patrick Sullivan Superannuation Fund** ("the Fund").

## THIS DEED WITNESSES AS FOLLOWS:

### 1. THE FUND

#### 1.1 Purpose of Paying Old-Age Pensions

From the date on which the Fund becomes a regulated superannuation fund under the Superannuation Industry (Supervision) Act, 1993 (C'th), if the Trustee is not a Constitutional Corporation, the primary purpose of the Fund shall be the payment of old-age pensions in accordance with the requirements of these Rules. Notwithstanding any other provision in this Trust Deed, this provision shall not be amended in any manner which affects the purpose of this Rule 1.1.

#### 1.2 Objects of the Fund

The Fund shall consist of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Trust Deed who shall hold the same on trust for the objects and the purposes of this Trust Deed.

### 2. PROPER LAW

This Trust Deed shall in all respects be governed and construed in accordance with the laws of the State or Territory in which it is executed.

### 3. DATE OF COMMENCEMENT

The Fund was constituted on the Commencement Date.

## 4. INTERPRETATION

### 4.1 General

- (a) This Trust Deed shall be read and construed on the basis that the provisions of the Act and the regulations made thereunder are incorporated herein or are required by the Act to be so incorporated and any reference in this Trust Deed to the provisions or requirements of the Act includes without limitation provisions or requirements which must be complied with in order for the Fund to qualify as or remain as a Regulated Superannuation Fund or to qualify as or to remain as a Complying Superannuation Fund or for the Fund to obtain the maximum income tax concessions available in respect of superannuation and (and without derogating from the above), unless express provision is made in this Deed excluding the application of the Act, to the extent that the Trustee is able under or required by the Act to do or to omit to do any act or thing including, without limitation, in relation to paying or dealing with any Member's Benefits under this Fund including, without limitation, paying, commuting, reverting or otherwise dealing with any form of pension or annuity sanctioned by the Act, such provisions setting out such requirements shall be deemed to be incorporated into this Deed in order, to the extent necessary, to give the Trustee the necessary power, direction or assistance as the case may be and where there is a conflict between such terms of the Deed and such provisions of the Act, the provisions of the Act shall prevail.
- (b) If any Rule or part thereof is judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Trust Deed and such invalid Rule or part thereof shall be deemed to have been deleted from this Trust Deed.
- (c) Headings are for convenience only and shall not affect the interpretation of the Trust Deed.
- (d) Words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa.
- (e) A reference to an Act, a Bill before it is enacted or any statutory enactment or to any legislation, regulation, declarations or orders or any provision in the same includes, with any necessary adaptations or modifications, references to any equivalent or substituted Act, Bill or statutory enactment or any such equivalent or substituted legislation, regulation, declarations or orders or provisions contained in any amendment, variation, addition, substitution, enactment or re-enactment which may have been made or may hereafter be made thereto.

### 4.2 Definitions

In this Trust Deed, unless the context otherwise requires:

"Act" means the Superannuation Industry (Supervision) Act, 1993 (C'th) and regulations, declarations or orders made or issued thereunder or any replacement or

any other legislation, regulations, declarations or orders in respect of the regulation or taxation of superannuation funds or contributions made in relation thereto or benefits paid therefrom including without limitation the Tax Act.

**"Allocated Annuity"** means an annuity that satisfies the requirements in regulation 1.05(4) and (5) of the Act, as outlined in Rule 50.

**"Allocated Pension"** means a pension that satisfies the requirements in regulation 1.06(4) and (5) of the Act, as outlined in Rule 50.

**"Approved Trustee"** has the meaning attributed to it in the Act.

**"APRA"** means the Australian Prudential Regulation Authority.

**"ASIC"** means the Australian Securities and Investments Commission.

**"Category"** means the category of membership in the Fund of an Employer Sponsored Member which is selected by his Employer and is specified in the form of application for membership completed in accordance with the requirements of Rule 15 or is specified in an application by the Member for a transfer in category of membership which is accepted by the Trustee and his Employer or is specified in a notice given to the Member by the Trustee or an Employer.

**"Commencement Date"** means the date of execution of this Deed.

**"Complying Superannuation Fund"** has the same meaning as in the Act.

**"Constitutional Corporation"** has the meaning attributed to it in the Act.

**"Contributions Tax Acts"** means the following acts or any amendments or successive legislation relating thereto; the Superannuation Contributions Tax (Assessment and Collection) Act 1997, the Superannuation Contributions Tax Imposition Act 1997, the Termination Payments Tax (Assessment and Collection) Act 1997, the Termination Payments Tax Imposition Act 1997, the Superannuation Contributions Tax (Consequential Amendments) Act 1997, the Superannuation Contributions Tax (Application to the Commonwealth) Act 1997 and the Superannuation Contributions Tax (Application to the Commonwealth-Reduction of Benefits) Act 1997.

**"Defined Annuity"** means an annuity that satisfies the requirements in regulation 1.05(6) and (7) of the Act, as outlined in Rule 50.

**"Defined Pension"** means a pension that satisfies the requirements in regulation 1.06(6) of the Act, as outlined in Rule 50.

**"Dependant"** means the spouse (including de facto spouse), widow, widower or children of a Member or any other person who, in the opinion of the Trustee, was dependent on the Member at the relevant date or who, in the opinion of the Trustee, the Member had a legal or moral obligation to support at the relevant date.



**"Employed"** means employed by an employer.

**"Employee"**, subject to the proviso herein, has the same meaning as in the Act and includes and is not limited to a person in the employ of an Employer and includes any person who is a director of an Employer which is a company and any person in respect of whom an Employer wishes to make a contribution to the Fund in lieu of the Employer paying the superannuation guarantee charge under the Guarantee Act PROVIDED THAT where at any time the Fund constituted by this Deed is not an SMSF then the extended meaning of employee in section 17A of the Act will not be applicable.

**"Employer"** means a Member's Employer who makes contributions to the Fund and in relation to a particular Member means the employer of that person at the relevant time.

**"Employer Representative"** has the meaning attributed to it in Rule 6.5.

**"Employer's Contribution Account"** has the meaning attributed to it in Rule 25.1.

**"Employer Sponsored Member"** means a Member whose Employer is contributing to the Fund at the relevant time.

**"Full-Time Basis"** means a Member who is employed or self-employed on a full-time basis within the meaning of the Act.

**"Fund"** means the Fund established by this Deed and includes without limitation assets (including Segregated Assets) and any monies of the Fund.

**"Fund Accounts"** means the Employer's Contribution Accounts, Members' Contribution Accounts, Vested Employer's Contribution Accounts, and Reserve Account.

**"GST"** means the tax imposed by any of the A New Tax System (Goods and Services Tax Imposition – General) Act 1999, the A New Tax System (Goods and Services Tax Imposition – Customs) Act 1999 and the A New Tax System (Goods and Services Tax Imposition – Excise) Act 1999.

**"Guarantee Act"** means the Superannuation Guarantee Charge Act, 1992 (C'th), as amended from time to time.

**"Large Fund"** means a fund with 5 or more Members.

**"Lease Arrangement"** has the same meaning as in the Act.

**"Life Expectancy"** has the same meaning as in the Act.

**"Life Expectancy Annuity"** means an annuity that satisfies the requirements in regulation 1.05(9) of the Act, as outlined in Rule 50.

**"Life Expectancy Pension"** means a pension that satisfies the requirements in

regulation 1.06(7) of the Act, as outlined in Rule 50.

**“Lifetime Annuity”** means an annuity that satisfies the requirements in regulation 1.05(2) and (3) of the Act, as outlined in Rule 50.

**“Lifetime Pension”** means a pension that satisfies the requirements in regulation 1.06(2) and (3) of the Act, as outlined in Rule 50.

**“Member”** means either an Employer Sponsored Member or a Non-Employer Sponsored Member who the Trustee has admitted as a member of the Fund and in relation to a SMSF includes a member within the meaning of section 10(3) of the Act. A person shall cease to be a Member when the whole of that person's benefit entitlement under the Trust Deed has been paid or when the Member dies or in the circumstances prescribed in Rule 15.6.

**“Member Representative”** has the meaning attributed to it in Rule 6.5.

**“Member's Accounts”** means the Member's Employer's Contribution Account, the Member's Contribution Account and the Member's Vested Employer's Contribution Account.

**“Member's Benefit”** in respect of a Member is the net amount standing to his credit in the Employer's Contribution Account, the Member's Contribution Account and the Vested Employer's Contribution Account plus the value (if any) at that time of any policy of insurance owned by the Trustee on the life of that Member or paid for out of that Member's Employer's Contribution Account, Member's Contribution Account or Vested Employer's Contribution Account.

**“Member's Contribution Account”** has the meaning attributed to it in Rule 25.1.

**“Non-Employer Sponsored Member”** means a Member who is not, at the relevant time, an employee or whose employer (if any) is not contributing to the Fund.

**“Participating Employer”** means an Employer who has been admitted by the Trustee pursuant to Rule 36 to be a participant in the Fund.

**“Part-Time Basis”** means a Member who is employed or self-employed for at least 10 hours per week or such other number of hours as are prescribed under the Act, but who is not employed or self-employed on a Full-Time Basis.

**“Pension Age”** has the same meaning as in the Act.

**“Permanently Disabled” and “Permanent Disablement”** means:

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainful employment for which the Member is reasonably qualified by training, education or experience; or
- (ii) where any part of the benefit payable on permanent disablement is insured, the definition of permanent disablement or permanent and total disablement contained in the policy document evidencing the contract of insurance,



provided that, for the purposes of payment of a Preserved Benefit, the Trustee shall only regard a Member as being permanently disabled or incapacitated in the circumstances provided for in the Act in relation to the payment of such a benefit.

**"Preserved Benefit"** means any benefit (or part thereof) which is required by the Act, to be preserved for the Member in the Fund or in another fund until he has retired from the workforce and attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) or until the Member's earlier death or Permanent Disablement or payment of the benefit in such other circumstances as are permitted by the Act.

**"Prospective Member"** has the same meaning as that attributed to that expression in the Act.

**"Regulated Superannuation Fund"** has the same meaning as in the Act.

**"Regulator"** has the meaning attributed to it in the Act, being APRA, ASIC or the Commissioner of Taxation as the context requires.

**"Related Party"** has the meaning attributed to it in the Act.

**"Related Trust"** has the same meaning as in the Act.

**"Relative"** means:

- (a) where the Fund is an SMSF, "relative" as defined in the Act, including without limitation, its meaning in section 17A(9) of the Act; or
- (b) in any other case, "relative" as defined in the Act, excluding its meaning in section 17A(9) of the Act.

**"Reserve Accounts"** has the meaning attributed to it in Rule 25.1;

**"Retiring Age"** means such age, being not less than 55, as the Trustee and the Member agree on as being the retiring age for that Member.

**"RSA"** has the same meaning as in the Retirement Savings Accounts Act 1997.

**"Rules"** mean the provisions of this Trust Deed and any alteration to, addition to or variation thereof made from time to time.

**"Segregated Assets"** means segregated current pension assets of the Fund of any kind as defined in the Tax Act.

**"Self-Employed"** refers to a Member who is self-employed in a business, trade, profession, vocation, calling or occupation for at least 10 hours a week or such other number of hours as are prescribed under the Act.

**"Small APRA Fund"** means a fund with less than 5 Members which is not an SMSF.

**"SMSF"** means a self managed superannuation fund as defined in section 17A of the Act.

**"Superannuation Contributions Surcharge"** means the superannuation contributions surcharge imposed by the Superannuation Contributions Tax Imposition Act 1997.

**"Tax"** means any tax or charge, including without limitation, GST, any tax assessed pursuant to or under any one or more of the Contributions Tax Acts, income tax levied under the Tax Act or any other State or Federal taxes, charges, duties, levies or imposts.

**"Tax Act"** means the Income Tax Assessment Act 1936 as amended and any regulations thereto or the Income Tax Assessment Act 1997 or any Act and regulations replacing or in substitution of any or each of those Acts.

**"Trust Deed"** means this Trust Deed and any alteration to, addition to or variation thereof made from time to time.

**"Vested Benefit"** means any part of the Member's Benefit which is required by the Act to be treated as the minimum benefit vested in and payable to a Member on termination of the Member's employment (subject to any preservation requirements).

**"Vested Employer's Contribution Account"** has the meaning attributed to it in Rule 25.1.

## 5. THE TRUSTEE

The expression the "Trustee" means the person, persons or company referred to or described as such on page 1 of this Deed and shall include such other replacement or additional trustees as may be appointed hereunder.

## 6. TRUSTEE: APPOINTMENT AND REMOVAL

### 6.1 Eligibility for Appointment as a Trustee

- (a) Unless, under Rule 1.1, the primary purpose of the Fund is the provision of old-age pensions (within the meaning of section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900), the Trustee must be a Constitutional Corporation with effect from the date on which the Fund becomes a regulated superannuation fund within the meaning of the Act.
- (b) With respect to a Large Fund, if the Act requires it, the board of Trustees or directors of a corporate Trustee shall consist of an equal number of Employer Representatives and Member Representatives elected in accordance with the procedure set out in Rules 6.5 and 6.6.

- (c) Where the Fund is a Large Fund, if the Trustee is appointed under the alternative agreed representation rule within the meaning of the Act, the Trustee shall be a company that meets the requirements of the Act.
- (d) Where the Fund is a Small APRA Fund, the Trustee shall be an Approved Trustee.
- (e) Unless otherwise permitted by the Act, where the Fund is an SMSF with 2 to 4 Members:
  - (i) Each Trustee or director of a corporate Trustee shall be a Member;
  - (ii) Each Member shall be a Trustee or a director of a corporate Trustee; and
  - (iii) No Member shall be an Employee of another Member, unless the Members concerned are Relatives.
- (f) Where the Fund is an SMSF with only 1 Member:
  - (i) If there is a corporate Trustee – the Member is the sole director of the corporate Trustee or the Member is one of only two directors of the corporate Trustee and the Member and the other director are either Relatives or the Member is not an Employee of the other director; or
  - (ii) Where there are individual Trustees – the Member is one of only two individuals acting as Trustee, of whom one is the Member and the other is either a Relative of the Member or the Member is not an Employee of the other individual acting as Trustee.

## 6.2 Ceasing to Act as Trustee

A Trustee, or a director of a corporate Trustee, shall cease to be a Trustee or a director of a corporate Trustee if:

- (a) the Trustee or director resigns his office; or
- (b) he dies; or
- (c) he becomes bankrupt or has, within the preceding 3 years, made an assignment to or an arrangement or composition with his creditors under Part X of the Bankruptcy Act, 1966 (C'th) or any replacement legislation; or
- (d) he is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
- (e) he or it is disqualified from being a trustee of a superannuation fund by the operation of an Act of Parliament.



- (f) in the case of a director of a corporate Trustee, he ceases to hold office as a director.
- (g) where the Fund is an SMSF, unless determined otherwise by the other individuals acting as Trustee or the other directors of a corporate Trustee, he or she ceases to be a Member of the SMSF.

Where, under this Rule 6.2 or Rules 6.6, 6.8 or 6.10, a director of a corporate Trustee is required to cease to be a director, the directors of the Trustee shall use their best endeavours to terminate that person's directorship.

If the Trustee is a company it shall cease to be the Trustee if a resolution is passed or a petition is presented for its winding up or liquidation or a receiver of its assets is appointed.

### 6.3 Members may Remove a Trustee or Trustees

Subject to the requirements in the Act relating to SMSF's, unless there is an equal number of Employer Representatives and Member Representatives appointed pursuant to Rule 6.5, a majority of the Members may, by resolution or in writing, remove any Trustee from office and may, by resolution or in writing, appoint any replacement Trustee or additional Trustee.

### 6.4 Trustee Company Placed into Receivership

If a company is, at the time of being placed in receivership or liquidation, the sole Trustee of the Fund, the receiver or liquidator shall have the power by deed to appoint a replacement Trustee or Trustees. If the receiver or liquidator fails to appoint a replacement Trustee within 60 days after a vacancy occurs, a majority of the Participating Employers or a majority of the Members shall have the power by deed to appoint a replacement Trustee.

### 6.5 Member Representatives and Employer Representatives – Large Fund

If the Act requires that there should be Trustees, or directors of the Trustee, representing the Members (in which case they shall advise the existing Trustees in writing), there shall be, in addition to any independent Trustee appointed pursuant to Rule 6.10, a total number of Trustees, or directors of a corporate Trustee, of 4, or another even number determined by the Participating Employer or Employers, one-half of whom shall be nominated by the Participating Employer or Employers (the "Employer Representatives") and one-half of whom shall be elected by the Members ("Member Representatives"). The Member Representatives shall be elected either by means of a poll conducted in accordance with Rule 6.6(f) or, in the discretion of the Trustee, at a meeting called in accordance with paragraphs (a) or (e) of Rule 6.6 in respect of the appointment and removal of Member Trustees. The Employer and Member Representatives shall be appointed for a fixed term of 3 years, or for such other term, the length of which shall be determined by agreement between the Trustee and the Participating Employer or Employers prior to the calling of the election of Member Representatives.

## 6.6 Member Representatives: Appointment and Removal – Large Fund

- (a) A meeting of Members shall be called by the Trustee in accordance with Rule 6.6(b) in relation to the election or removal of Member Representatives or for any other purposes.
- (b) A meeting of Members shall be called as follows:
- (i) The Trustee shall circulate a notice of the meeting to the Members by either handing to each Member personally or by sending to the Member at the business address of the Member last known to the Trustee, notice of the meeting provided that accidental or unintentional failure to notify any Member shall not invalidate any meeting of Members.
  - (ii) A meeting of Members shall not be held prior to the expiration of 3 weeks from the date of giving or mailing the notice of the proposed meeting.
  - (iii) The notice given to Members shall stipulate the time and place of such meeting, the reason for calling it and provide an agenda for the meeting.
  - (iv) A meeting may be held at two or more locations determined by the Trustee.
- (c) Where the purpose of the meeting is to elect one or more Member Representatives:
- (i) The Trustee shall appoint a returning officer.
  - (ii) The notice of the meeting shall call for nominations to fill any office of Member Representative and state the date by which such nominations must be received by the returning officer.
  - (iii) Any nomination of a Member to act as a Member Representative must be signed by the nominated Member and by the proposer and seconder of such Member and be forwarded to the returning officer no later than 4 days before the appointed day of the meeting.
  - (iv) If, 3 days before the appointed day of the meeting, there have been no nominations, the meeting shall be adjourned for a period of 4 weeks and fresh notice to Members shall be given in accordance with the provisions of this Rule.
  - (v) if there is a nominee or nominees but the number of nominees does not exceed the number of vacancies in the office of Member Representative, the meeting shall be cancelled and the nominees shall be declared by the returning officer to be elected.



- (d) The following procedures shall apply at a meeting of Members and to the election of Member Representatives by means of a meeting:
- (i) The Trustee shall appoint the chairman of the meeting.
  - (ii) A quorum shall consist of one-third of the Members present either in person or represented by proxy provided that if the meeting is being held at more than one location, there shall be a quorum if one-third of the Members are present either in person or represented by proxy at the various locations but a Member shall not be entitled to attend the meeting or be represented by proxy at more than one location.
  - (iii) Questions to be decided at the meeting shall be decided by simple majority of the Members present and voting.
  - (iv) Where a purpose of the meeting is the election of one or more Member Representatives, the chairman shall distribute to each Member present at the meeting a ballot paper listing in alphabetical order the names of Members nominated as Member Representatives.
  - (v) The Members present at the meeting or represented by proxy may record one vote for each vacancy in the office of Member Representatives.
  - (vi) The Member who receives the greatest number of votes shall become a Member Representative.
  - (vii) Where more than one Member Representative is to be elected, the Member who receives the next greater number of votes after the election of a Member Representative shall be elected a Member Representative until all vacant positions have been filled.
  - (viii) Where not all of the vacancies in the office of Member Representatives are filled in accordance with the foregoing procedure, the elected Member Representative or Representatives shall appoint the other Member Representatives by deed.
  - (ix) The Trustee shall advise the Members by notice in writing of the names of the Members appointed as Member Representatives.
  - (x) If the Trustee is a company, the directors shall use their best endeavours to appoint the Member Representatives elected or appointed in accordance with this Rule as directors of the Trustee pursuant to the articles of association of the Trustee.
- (e) A resolution in writing signed by all the members entitled to vote at a meeting of Members shall be as valid and effectual as if it had been passed at a duly called and constitutional meeting of Members. Separate copies of a document may be used for signing by the Members. The resolution is passed when the last Member signs.

- (f) Where the Trustee determines that an election of Member Representatives is to be conducted by a poll, the following procedure shall apply:
- (i) The Trustee shall appoint a returning officer and the Trustee shall circulate a notice to the Members by either handing it to each Member personally or by sending it to the Member at the business address of the Member last known to the Trustee provided that accidental or unintentional failure to send a notice to a Member shall not invalidate the poll. The notice shall call for nominations to fill any vacancy/ies in the office of Member Representative, state the date by which such nominations must be received by the returning officer and state that any nomination of a Member to act as a Member Representative must be signed by the nominated Member and by the proposer and seconder of such Member.
  - (ii) If no nominations have been received by the returning officer by the date referred to in sub-paragraph (i), the Trustee shall circulate a fresh notice in accordance with the provisions of this Rule.
  - (iii) After the date for receipt of nominations has passed, if the number of nominees does not exceed the number of vacancies in the office of Member Representative, the nominees shall be declared by the returning officer to be elected.
  - (iv) After the date for receipt of nominations has passed, if there has been more nominees than there are vacancies in the office of Member Representative, the Trustee shall distribute a ballot paper to each Member by either handing it to each Member personally or by sending it to the Member at the business address of the Member last known to the Trustee provided that accidental or unintentional failure to distribute a ballot paper to a Member shall not invalidate the poll. The ballot paper shall list in alphabetical order the names of Members nominated for election as Member Representatives. A note shall be included on the ballot paper requesting the Members to record one vote for each vacancy in the office of Member Representative and specifying the date by which the ballot paper must be returned to the returning officer.
  - (v) The Member who receives the greatest number of votes shall become a Member Representative.
  - (vi) Where more than one Member Representative is to be elected, the Member who receives the next greater number of votes after the election of a Member Representative shall be elected a Member Representative until all vacant positions have been filled.
  - (vii) Where not all of the vacancies in the office of Member Representatives are filled in accordance with the foregoing procedure, the elected Member Representative or Representatives shall appoint the other Member Representatives by deed.

- (viii) The Trustee shall advise the Members by notice in writing of the names of the Members appointed as Member Representatives.
- (ix) If the Trustee is a company, the directors shall use their best endeavours to appoint the Member Representatives elected or appointed in accordance with this Rule as directors of the Trustee pursuant to the articles of association of the Trustee.
- (g) Any Member Representative may be removed by resolution of Members passed at a meeting of Members convened by the Trustee on receiving a written request by 4 Members to do so and conducted in accordance with the provisions of this Rule.
- (h) A Member Representative shall cease to be a Trustee or a director of a corporate Trustee on the earlier of the day on which he ceases to be a Member or the day that he ceases to be an Employee or on the happening of any of the events referred to in Rule 6.2 or the day that a resolution is passed in accordance with paragraph (g) of this Rule that he be removed or the day on which his term expires.

#### **6.7 Member Representatives, Casual Vacancies – Large Fund**

- (a) Where there is a casual vacancy in the office of a Member Representative, the Trustee can, in its absolute discretion, decide not to require another election of Member Representatives but rather to ask the person who received the next greatest number of votes at the last election, but who was unelected, if he or she is willing to accept appointment as a Member Representative. If that person accepts that appointment, he or she shall become a Member Representative and, if the Trustee is a company, the directors of the Trustee shall use their best endeavours to appoint that person to the board of directors pursuant to the articles of association of the Trustee.
- (b) If the person who is asked to accept appointment as a Member Representative in accordance with paragraph (a) of this Rule refuses to accept the appointment, the Trustee shall ask, in turn, the persons who received the next greatest number of votes at the last election whether they are willing to accept appointment as a Member Representative. If any of them accept the appointment, he or she shall become a Member Representative and, if the Trustee is a company, the directors of the Trustee shall use their best endeavours to appoint that person to the board of directors pursuant to the articles of association of the Trustee. If none of the persons who received votes at the last election are willing to accept appointment as a Member Representative, a fresh election shall be conducted in accordance with Rule 6.6.
- (c) The Trustee shall advise the Members of the name of the Member Representative who is appointed as a Trustee or a director of the Trustee as a result of there being a casual vacancy in the office of a Member Representative.



## **6.8 Employer Representatives – Large Fund**

Employer Representatives may be appointed to office and removed from office by the Participating Employers. If the Trustee is a company, the directors shall use their best endeavours to appoint the Employer Representatives as directors of the Trustee pursuant to the articles of association of the Trustee.

## **6.9 Existing Trustee to Resign – Large Fund**

If an equal number of Member Representatives and Employer Representatives are appointed as Trustees in accordance with Rule 6.6, the existing Trustees shall resign with effect from the date the appointment of the Employer Representatives and Member Representatives takes effect, unless they have been appointed as Employer or Member Representative Trustees. If they fail to resign, they shall be removed as Trustees by the Participating Employers.

## **6.10 Independent Trustee – Large Fund**

If either the Employer Representatives or the Member Representatives advise the remaining Trustees, or the remaining directors of a corporate Trustee, that they require the appointment of an independent Trustee, or an independent director of a corporate Trustee, the Trustee or Trustees shall appoint as a Trustee, or as a director of a corporate Trustee, a person that the Trustee or directors of a corporate Trustee regard as being independent of the Employers and the Members and their representatives. An independent Trustee or director of a corporate Trustee so appointed may be removed from office by a resolution of the Trustees or the directors of a corporate trustee. He shall cease to be a Trustee if he resigns by giving notice to the other Trustees or shall cease to be a director of a corporate Trustee, if he resigns by giving notice to the corporate Trustee, or on the happening of any of the events referred to in paragraphs (b), (c), (d), (e) or (f) of Rule 6.2.

## **6.11 Vacancies**

Any vacancy in the office of a Trustee, or a director of a corporate Trustee, shall, where such vacancy is required to be filled, be filled within 60 days (or such other number of days as is provided for in the Act) of the date on which the vacancy occurred provided that the failure to fill a vacancy shall not invalidate any subsequent appointment.

## **6.12 Consent to Act as Trustee or Director**

A person shall only be appointed as a Trustee or as a director of a corporate Trustee if that person consents in writing to the appointment. Each written consent shall be retained by the Trustee for 10 years or for such other period required by the Act.

## **6.13 Records of Changes in Trustees or Directors**

The Trustee shall maintain a record of changes in Trustees or directors of a corporate Trustee for 10 years or for such other period required by the Act.

#### 6.14 Exclusion of Trustees Act

Notwithstanding any other provision in this Deed section 7(2)(c) of the Trustees Act (W.A.) 1962 as amended is expressly excluded from application to this Fund. Subject to the provisions of this Deed a single individual or company or any number of individuals or companies may at any time be appointed a Trustee or Trustees of the Fund.

#### 6.15 Notice to Commissioner of Taxation

The Trustee shall give written notice to the Commissioner of Taxation within 21 days (or such other period as the Act may allow) of the Trustee becoming aware that the Fund has ceased to be an SMSF or has become an SMSF since first becoming a Regulated Superannuation Fund.

### 7. POWERS OF TRUSTEE

The Trustee shall have complete management and control of the Fund and may do anything it considers appropriate to administer the Fund and may without limitation exercise any of the following powers:

- (a) to pay out of the Fund all Taxes and costs incidental to the administration, management or winding up of the Fund;
- (b) to pay out of the Fund expenses incurred in:
  - (i) providing for the secretarial work required for proper record keeping and administration to be performed;
  - (ii) having the accounts of the Fund audited;
  - (iii) having taxation returns and Government returns prepared; and
  - (iv) engaging such persons as the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
- (c) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
- (d) to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee on such terms and conditions as the Trustee, in its absolute discretion, determines and the Trustee shall not be responsible for any loss incurred as a result of such delegation;
- (e) to take and act on the advice of a barrister, solicitor, accountant, actuary, superannuation consultant or any other adviser in relation to the administration of the Fund and pay out of the Fund the fees payable to such advisers;



- (f) to commence, carry on and defend any legal proceedings that the Trustee, in its absolute discretion, determines to undertake for the proper administration of the Fund or to protect the rights of Members;
- (g) to open and maintain such bank accounts as the Trustee determines;
- (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee determines and transfer any assets of the Fund to another trust or fund notwithstanding the Trustee of the Fund and the trustee of the other trust or fund are the same person or persons or entity or if one or more of the individual trustees of the Fund are directors of the corporate trustee of the other trust or fund or vice versa.
- (i) to borrow any sum of money for the purposes permitted by the Act and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee determines and, in particular, by charging or mortgaging all or any of the assets of the Fund and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;
- (j) to elect that the Fund become a regulated superannuation fund under the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (k) if required by the Act, to implement and administer an arrangement for beneficiaries of the Fund to make inquiries into, or complaints about, the operation or management of the Fund in relation to the beneficiary making the inquiry or complaint and for such inquiries or complaints to be considered and dealt with within 90 days (or such other period prescribed under the Act) of the date on which they were made;
- (l) to act on a direction given by a Court, the Regulator or the superannuation complaints tribunal established under the Superannuation (Resolution of Complaints) Act, 1993 (C'th);
- (m) to comply with covenants of trustees imposed by the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (n) to do those things permitted or required by the Act or the Contributions Tax Acts; and
- (o) to register for the GST and to do all such things and perform such acts as the Trustee, in its absolute discretion determines to be appropriate in complying with the obligations imposed under the GST; and
- (p) generally to do all such things and perform such acts as the Trustee, in its absolute discretion, determines to be appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed.

## **8. TRUSTEE: EXERCISING DISCRETIONS AND ANTI-DISCRIMINATION LAW**

In administering the Fund and in exercising the trusts, powers and authorities vested in it, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities, provided however that the Trustee shall not discriminate against any person in a way which infringes any law of the Commonwealth or of a State or Territory law, that is applicable to the Fund, in respect of discrimination.

## **9. LIABILITY OF TRUSTEE, DIRECTORS AND MEMBERS**

### **9.1 Liability of Trustee and Directors**

The Trustee, and each director of a corporate Trustee, shall not be liable for any acts or omissions other than those that are:

- (a) dishonest; or
- (b) attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a trustee.

### **9.2 Members' Liability**

Each of the Members (other than in their capacities as Trustees or directors of a corporate Trustee) shall not be liable for any action taken or omitted in administering the Fund.

## **10. TRUSTEE'S AND DIRECTORS' INDEMNITY**

The Trustee, and each of the directors of a corporate Trustee shall be indemnified out of the Fund against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund other than in the circumstances stated in Rule 9.1 or where the law prevents such indemnification. The Trustee and the directors of a corporate Trustee shall not be indemnified out of the Fund for any penalty imposed on them under the Act.

## **11. TRUSTEE'S MEETINGS**

### **11.1 Individuals**

- (a) Where the Trustees are individual persons, they may meet together to dispose of business concerned with the administration of the Fund, determine a quorum, adjourn the meetings and otherwise regulate their meetings as they see fit. Two-thirds of the Trustees shall be a quorum unless there is only one Trustee in which case a quorum shall be that Trustee.

- (b) A meeting of the Trustees at which a quorum is present shall be competent to exercise the trusts, powers, authorities and discretions vested in the Trustees by this Trust Deed.
- (c) The Trustees may elect a chairman of each meeting.
- (d) A resolution of the Trustees shall be valid and binding if two-thirds of the total number of Trustees have voted in favour of it.
- (e) The Trustees shall keep minutes of their resolutions and proceedings in a book provided for that purpose.
- (f) A resolution in writing, signed by two-thirds of the Trustees, shall have the same effect and validity as a resolution of the Trustees passed at a duly convened meeting.

## 11.2 Directors

Where the Trustee is a company, the meetings of the directors shall, subject to meeting the requirements of the Act, be governed by the articles of association of the company.

## 12. SIGNING OF DOCUMENTS BY TRUSTEES

Where there are 2 or more individual persons acting as Trustees, any one of the Trustees is hereby authorised on behalf of all the Trustees to execute, sign, enter into and acknowledge all cheques, negotiable instruments, agreements, contracts, writings, proposals for insurance, transfers of shares, policies of insurance or units in a unit trust and all other documents as validly and effectually as all the Trustees could do.

## 13. REMUNERATION OF TRUSTEE

- (a) Where the Fund is not an SMSF, the Trustee shall be entitled to be paid and retain out of the Fund such remuneration as it determines to be reasonable.
- (b) Where the Fund is an SMSF, the Trustee shall not be entitled to receive any remuneration from the fund or from any person for any duties or services performed by the Trustee in relation to the Fund.

## 14. TRUSTEE AS MEMBER'S ATTORNEY

Each Member hereby irrevocably appoints the Trustee as his attorney to execute and sign all such deeds and instruments and do all such things the Trustee decides to be necessary or desirable in administering the Fund.



## **15. ADMISSION OF MEMBERS AND CESSATION OF MEMBERSHIP**

### **15.1 Selection and Admission of Members**

Persons who wish to become Members may apply for membership by completing the form of application in:

- (a) Appendix "A" for Employer Sponsored Members; or
- (b) Appendix "B" for Non-Employer Sponsored Members; or

or such other form of application as the Trustee decides upon.

Upon acceptance of the application by the Trustee, the person making the application is bound by this Trust Deed in all respects as if he were an original party to this Trust Deed.

### **15.2 Applicants to Provide Information**

All applicants for membership of the Fund shall provide the Trustee with such information that the Trustee may require, including proof of their correct age.

### **15.3 Prospective Member - Written Declarations**

A Prospective Member shall provide the Trustee with such written declarations as are required by the Act.

### **15.4 Deemed Membership**

- (a) The Trustee may accept an Employee selected by an Employer as a Member without requiring the Employee to complete a membership application form in accordance with Rule 15.1, if the Employer has made an application for membership on behalf of the Employee and has provided the Trustee with such information that the Trustee may require, including the name, address and age of the Employee.
- (b) Where the Employee is being admitted to membership so that the Employer can comply with its superannuation obligations under the industrial award or industrial agreement which governs the terms and conditions of the Employee's employment by that Employer, the Employee shall, after 14 days employment by the Employer (or such other period specified in the award or agreement) become a Member, provided the Employer complies with the requirements of paragraph (a).
- (c) Upon acceptance of such an Employee as a Member, the Employee is bound by this Trust Deed in all respects as if he were an original party to this Trust Deed. The Trustee shall, as soon as practicable, advise the Member in writing that he or she has been accepted as a Member and provide to the Member such other information as is required by the Act.



## 15.5 Self Managed Superannuation Fund Additional Requirement

Notwithstanding the other provisions in Rule 15, where the Fund is an SMSF, a person shall not be admitted as a Member unless that person or, in the circumstances prescribed in section 17A(3) of the Act, the legal personal representative (or guardian or parent if the person is a minor without a legal personal representative) of that person, at the time of being admitted to membership, becomes:

- (a) if the Trustee consists of individuals – a Trustee of the Fund; or
- (b) if the Trustee is a body corporate – a director of the corporate Trustee.

## 15.6 Deemed Cessation of Membership – SMSF

Where the Fund is an SMSF and:

- (a) a Member, or the Member's legal personal representative or guardian or parent acting on that Member's behalf in the circumstances prescribed in Rule 15.5, ceases to act as Trustee or a director of a corporate Trustee; or
- (b) a Member becomes an Employee of another Member of which he or she is not a Relative;

then that Member's membership of the Fund shall be deemed to cease 30 days after such date of ceasing to so act or so becoming an Employee unless determined otherwise by the remaining individuals acting as Trustee or the remaining directors of a corporate Trustee as the case may be.

## 16. CONTRIBUTIONS BY AN EMPLOYER

### 16.1 Employer Contributions

- (a) An Employer, or any other person authorised by the Act to make contributions to the Fund, may contribute to the Fund in respect of each Member such amount as it, in its absolute and uncontrolled discretion, determines. The maximum contribution made in any period shall not exceed the maximum permitted under the Act.
- (b) Any contributions made by an Employer may be in cash or by transfer of assets provided that the transfer of assets meets the requirements of the Act.
- (c) Where the contributions are being made pursuant to an industrial award or agreement, the Employer shall contribute in respect of each Member affected by such award or agreement such amount or percentage of remuneration as is determined by the relevant award or agreement.
- (d) Employer contributions shall be credited to the Employer's Contribution Accounts, Vested Employer's Contribution Accounts or Reserve Accounts as is appropriate.

## **16.2 Trustee to be Advised**

At the time of making such contributions, the Employer, or any other person contributing, shall advise the Trustee of the contribution in respect of each Member, and whether the contributions are made:

- (a) pursuant to an industrial award or agreement; and/or
- (b) so that the Employer avoids any liability to pay the superannuation guarantee charge pursuant to the Guarantee Act.

## **16.3 Deemed Payment to Trustee**

Any payment of contributions by an Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

## **16.4 Refusal to Accept Contributions**

The Trustee may refuse, at its absolute discretion, to accept contributions to the Fund from persons other than the persons permitted to contribute to the Fund under the Act. The Trustee shall refuse to accept contributions where the acceptance of the contributions is contrary to the requirements of the Act.

## **16.5 Leave of Absence**

If an Employer Sponsored Member is granted leave of absence (other than annual leave or long service leave) by the Employer for any reason, the Member shall remain a Member for the period of leave, unless the Trustee otherwise determines. No contribution shall be made in respect of that Member during the period that the Member is on such leave unless the Employer determines otherwise and so advises the Trustee.

## **17. CONTRIBUTIONS BY MEMBERS**

### **17.1 Member Contributions**

- (a) Each Member may contribute to the Fund such amount as is agreed upon between the Member and the Trustee provided that the maximum contribution made in any period shall not exceed any maximum permitted under the Act.
- (b) Any contributions made by a Member may be in cash or by transfer of assets provided that the transfer of assets meets the requirements of the Act.
- (c) Unless otherwise allowed by the Act, the Trustee shall refuse to accept any such contribution during any period that a Member is not engaged in a business, trade, profession, vocation, calling, occupation or employment.

- (d) The Employer may, if authorised by the Member, deduct such contributions from the Member's salary and remit them to the Trustee within 28 days of the end of the calendar month in which they were deducted.

### 17.2 Employer to Advise Trustee

At the time of paying the Members' contribution to the Trustee, the Employer shall advise the Trustee of the amount of the contribution in respect of each Member.

### 17.3 Deemed Payment to Trustee

Any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

### 17.4 Payment on Behalf of a Member

The Employer may pay, on behalf of a Member, contributions that are payable by the Member and any contributions so paid by the Employer shall, if the Trustee is so advised, be deemed to be contributions made by the Member and shall be credited to the Member's Vested Employer's Contribution Account.

### 17.5 No Enquiry

The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to Rule 17.1 from the Member's Salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice thereof.

### 17.6 Refusal to Accept Contributions

The Trustee may refuse, at its absolute discretion, to accept contributions from Members in the circumstances stated in Rules 16.4 and 16.5.

## 18. COMMON LAW RIGHTS OF MEMBERS

### 18.1 Compensation or Damages Claim

The provisions of this Trust Deed shall not in any way affect the right of a Member or his personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law in the event of the Member being injured or dying as a result of an event arising out of and in the course of his employment.

### 18.2 Work-Related Claims

The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.



## 19. MEMBER'S RIGHTS TO BENEFITS AND STATEMENTS

- (a) A Member shall have no right to or interest in his Member's Benefit except as provided in this Trust Deed.
- (b) The rights of the Members and their Dependants to receive benefits from the Fund shall be those set out in this Trust Deed.
- (c) The rights of the Members and their Dependants to receive the benefits payable under this Trust Deed shall be fully secured within the meaning of the Act.
- (d) The Trustee shall provide to the Members and Prospective Members, or cause the Members or Prospective Members to be provided with, such statements, notices, documents and information concerning the administration of the Fund as is required by the Act, including prescribed information on request and information concerning significant events. The Trustee shall retain for so long as they are relevant and, in any event, for at least 10 years or for such further period as is required by the Act, copies of all reports given to the Members.
- (e) If the Trustee causes someone else to provide a Member or Prospective Member with such a statement, notice, document or with such information, the Trustee shall, if required by the Act, obtain from that person a written declaration stating that the person has provided the statement, notice, document or information, as the case may be, to the Member or Prospective Member.

## 20. NOTICES AND STATEMENTS TO EMPLOYERS

The Trustee shall provide the Employers with such notices, statements and other information as are required by the Act.

## 21. EMPLOYER'S RIGHT TO TERMINATE EMPLOYMENT AND REQUEST AN AUDIT

### 21.1 No Prejudice to Employer's Powers

Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise terminate the employment of a Member or remove a director of the Employer from office and being a Member shall not be taken as guaranteeing continuation of employment or as a director.

### 21.2 Auditors

The Trustee shall, whenever requested to do so by the majority of the Employers or a majority of the Non-Employer Sponsored Members, appoint auditors approved by the Employers or a majority of the Non-Employer Sponsored Members (as the case may be) to report on the affairs of the Fund and such report shall be produced to the Employers or the Non-Employer Sponsored Members (as the case may be).

### 21.3 Documents

The Trustee shall provide to an Employer, on request, a copy of this Trust Deed and any other documents which are required by the Act to be provided.

## 22. PAYMENT TO EMPLOYERS

### 22.1 Notice to Member

The Trustee shall give to the Members 3 months written notice of a proposed payment from a Member's Employer's Contribution Account to the Employer, if the purpose of the payment is other than to reimburse the Employer for expenses incurred on behalf of the Fund.

### 22.2 Repayment

An Employer to whom an amount is paid under this Rule 22 shall repay to the Trustee, on demand, any amount which the Trustee determines the Employer was not entitled to be paid.

## 23. INVESTMENTS

### 23.1 Investment Power

- (a) Subject to the qualifications in this Rule 23 and subject to the restrictions contained in and the provisions of the Act and provided investments are made on an arm's length basis, the Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee, in exercising its absolute discretion, determines.
- (b) The Trustee acknowledges that there are detailed provisions and requirements in the Act pertaining to investments made by Regulated Superannuation Funds including, without limitation, acquiring assets from Related Parties of the Fund or investing in a Related Trust of the Fund or in an asset of the Fund subject to a lease or Lease Arrangement between the Trustee of the Fund and a Related Party of the Fund.
- (c) The Trustee acknowledges that there are certain permitted exceptions and that transitional provisions in the Act can apply to the restrictions referred to above.

### 23.2 Types of Investments

Without limiting the generality of Rule 23.1, but subject to the restrictions contained in and the provisions of the Act, including without limitation the in-house assets rules, the Trustee may invest either directly or indirectly in:

- (a) investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
- (c) on deposit with any of the Employers, any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustee, in its absolute discretion determines provided that the Trustee may not lend any part of the moneys or assets of the Fund to Members or relatives of Members or give any financial assistance to Members or relatives of Members or to lend money or give financial assistance to any other person where to do so would breach the Act;
- (d) shares, stock, options, debentures, bonds, unsecured notes or other securities including commodities;
- (e) units or sub-units of any unit trust;
- (f) bills of exchange and other negotiable instruments;
- (g) the purchase or the acquisition by way of lease finance or hire purchase or otherwise of any plant, equipment or other property for lease, or rental, or hire purchase or sale to any person provided such transactions do not breach the Act.

### 23.3 Variation of Investments

The Trustee shall have power to vary, transpose and replace such investments in such manner as it determines without being responsible for loss occasioned by so varying, transposing or replacing.

### 23.4 Acquisition of Assets from a Related Party

The Trustee shall not acquire assets from a Related Party except in the circumstances permitted under the Act.

### 23.5 Particular Investments for Particular Members

- (a) The Trustee may hold particular investments solely for particular Members or categories of Members and shall identify such investments and the Member or category or categories of Members for whom they are held, in the records of the Fund. The earnings on such investments shall be credited to the relevant accounts of the Members for whom such particular investments are held and income tax and expenses payable in respect of such investments shall be debited to the relevant Members' accounts. In offering the Members the facility for them to choose their own investments, the Trustees shall comply with the requirements of the Act.



- (b) Unless prohibited by the Act, a Member may transfer assets of the Fund allocated to or held by that Member to another Member with the Trustee's consent and with that other Member's consent, provided such transfer complies with any requirements imposed by the Act.

### **23.6 Investment Strategy**

The Trustee shall, if required by the Act, from time to time, formulate and give effect to an investment strategy in accordance with the requirements of the Act.

### **23.7 Agreement with Investment Manager and Custodian**

If the Trustee appoints or has appointed a company as an investment manager or custodian for the Fund or any part of it, the agreement with the investment manager must be in writing and contain provisions which comply with the Act.

### **23.8 Charge over Assets**

The Trustee shall not give a charge over, or in relation to, an asset of the Fund except in the circumstances prescribed in the Act.

## **24. POLICIES OF INSURANCE AND ANNUITIES**

### **24.1 Investment in Life Policies and Annuities**

- (a) The Trustee may, in its absolute discretion, invest or apply the whole or any part of the Fund in the payment of premiums of a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest or in payment of the consideration for an annuity.
- (b) The Trustee may effect such policies or annuities which such company on such terms and conditions and for such periods as the Trustee determines. The Trustee has the power to accept an assignment of a policy of life, disability or accident insurance or of any annuity on such terms as the Trustee, in its absolute discretion, determines.
- (c) The Trustee has the power to continue such policies or annuities for such periods as the Trustee determines and to discontinue or surrender such policies or annuities.

### **24.2 Payment of Premiums and Application of Proceeds**

The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the credit of the Member's Accounts in such proportion as is agreed upon by the Trustee and the Employer or the Member and, in the absence of any such agreement, on such basis as the Trustee determines. The proceeds of such policies shall be credited to the Member's Accounts in the same proportion as premiums for such policies were paid from those accounts.

## 25. RECORDS, ACCOUNTS AND AUDITING

### 25.1 Records

The Trustee shall keep such accounts and records as correctly record and explain the transactions and financial position of the Fund including without limitation:

- (a) a **minute book** in which proceedings and resolutions of the Trustee are recorded which shall be retained for 10 years or for such other period required by the Act;
- (b) an **Employer's Contribution Account** for each Employer Sponsored Member (or, where 2 or more Employers contribute in respect of a Member, an account for that Member in respect of each Employer) in which is recorded:
  - (i) contributions to the Fund by the Employer in respect of that Member pursuant to Rule 16.1;
  - (ii) profits or losses of the Fund credited or debited to such account pursuant to Rules 26.1 and 26.2;
  - (iii) forfeited benefits credited to such account pursuant to Rule 29;
  - (iv) amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 24.2;
  - (v) the proceeds of policies of insurance credited to such account pursuant to Rule 24.2;
  - (vi) amounts credited to such account pursuant to Rule 33;
  - (vii) amounts debited to such account to pay any Taxes or expenses;
  - (viii) amounts which are not required to meet any Taxes which are credited to the account pursuant to Rule 25.1(e);
  - (ix) other amounts which are credited to the account pursuant to Rule 25.1(e);
- (c) a **Member's Contribution Account** for each Member in which is recorded:
  - (i) contributions by that Member pursuant to Rule 17.1;
  - (ii) profits or losses of the Fund credited or debited to such account pursuant to Rules 26.1 and 26.2;
  - (iii) amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 24.2;

- (iv) the proceeds of policies of insurance credited to such account pursuant to Rule 24.2;
  - (v) amounts credited to such account pursuant to Rule 33;
  - (vi) amounts debited to such account to pay any Taxes or other expenses;
  - (vii) amounts which are not required to meet Tax liabilities and which are credited to the account pursuant to Rule 25.1(e);
- (d) a **Vested Employer's Contribution Account** for each Member in which is recorded:
- (i) contributions made by the Employer in respect of that Member pursuant to an industrial award or agreement or to avoid any liability to the superannuation guarantee charge under the Guarantee Act;
  - (ii) contributions made by the Employer in respect of that Member pursuant to Rule 17.4 plus such other Employer contributions which the Employer advises the Trustee that it requires to be fully vested in the Member;
  - (iii) profits or losses of the Fund credited or debited to such account pursuant to Rules 26.1 and 26.2;
  - (iv) amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 24.2;
  - (v) the proceeds of policies of insurance credited to such account pursuant to Rule 24.2;
  - (vi) amounts credited to such account pursuant to Rule 33;
  - (vii) amounts debited to such account to pay Tax and expenses;
  - (viii) amounts which are not required to meet Tax liabilities and which are credited to the account pursuant to Rule 25.1(e);
- (e) **Reserve Accounts** to which shall be credited profits, amounts or assets in accordance with Rules 26.1 and 26.2, any unallocated Employer contributions, forfeited benefits in accordance with Rule 28 and amounts set aside by the Trustee to pay any Taxes and to which shall be debited taxes paid, such of the expenses of the Fund as the Trustee determines to debit to any Reserve Accounts, and any profits, amounts or assets which the Trustee determines from time to time to transfer to the Members' Accounts on such basis as the Trustee from time to time determines.
- (f) maintaining more than one account for each Member of the Fund, including without limitation, an accumulation account and a pension account.



## 25.2 Auditor

The Trustee shall appoint an auditor or a registered company auditor (as required by the Act) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the Fund complies with the relevant requirements of the Act.

## 25.3 Keeping the Accounts and Records

The accounting records of the Fund must be retained for at least 5 years, or for such other period required by the Act, must be kept in Australia and must be kept in the English language or in a form in which they are readily accessible and readily convertible into the English language.

## 25.4 Compliance with Act

The Trustee shall comply with such reporting standards and shall maintain such records as are required under the Act including a statement of the financial position of the Fund and an operating statement (when required) for each financial year of the Fund. Such accounts and statements must be signed by at least 2 Trustees or 2 directors of a corporate Trustee or as the Act otherwise requires.

## 26. VALUATIONS AND ALLOCATION OF PROFITS OR LOSSES

### 26.1 Allocation of Profits or Losses

- (a) After the end of each financial year of the Fund, the profits or losses arising from the investment of the assets of the Fund during the preceding financial year; or
- (b) on the winding-up of the Fund or whenever the Trustee determines it to be necessary, the profits or losses arising from the investment of the assets of the Fund during the current financial year,

less such provision for depreciation, liabilities, losses and Taxes as the Trustee, in its absolute discretion, deems prudent, shall be credited or debited by the Trustee to the Members' Accounts of the Members in proportion to the amount standing to the credit of such accounts at the beginning of the Fund's financial year for which the accounts are being prepared or on such other basis as the Trustee determines. The Trustee may, in its absolute discretion, credit such proportion as it determines of the amount that would otherwise be credited to the Employer's Contribution Accounts to any of the Reserve Accounts.

### 26.2 Valuation of Assets of the Fund

- (a) The Trustee may make a valuation of the assets of the Fund (other than policies of life insurance and annuities) after the end of each financial year of the Fund or whenever it determines in such manner as the Trustee determines and deduct therefrom the amount of outstanding liabilities and expenses, the

estimated costs of realising the investments and such provision for Tax as the Trustee, in its absolute discretion, deems to be prudent.

- (b) If the net value of the assets of the Fund determined in accordance with this Rule exceeds or is less than the aggregate of the net amount standing to the credit of all of the Members' Accounts at that date the Trustee shall credit the surplus or debit the deficit to the Members' Accounts in proportion to the amounts standing to their respective credits at the beginning of the Fund's financial year for which accounts are being prepared or on such other basis as the Trustee determines to be equitable.
- (c) The Trustee may, in its absolute discretion, credit to any of the Reserve Accounts such proportion as it determines of the amount that would otherwise be credited to the Employer's Contribution Accounts.
- (d) Notwithstanding any other provisions in this Trust Deed, the Trustee shall have the power to transfer Segregated Assets to a Reserve Account, including without limitation a miscellaneous Reserve Account or any other account that the Trustee determines, or to transfer assets of the Fund of any kind into the Segregated Assets in order to carry out, without limitation, any or all of its obligations under the Act.

### **26.3 Interim Earning Rate**

The Trustee may allocate to the Member's Accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under Rule 26.1 or 26.2 to the date on which the benefit is being paid.

### **26.4 Requirements of the Act**

Notwithstanding Rules 26.1, 26.2 and 26.3, the Trustee shall only credit an amount to a Member's Account if to do so would not breach the requirements of the Act.

## **27. EXCESSIVE BENEFITS**

If, at any time, in the opinion of the Trustee, a Member's Benefit exceeds or would be likely to exceed the maximum reasonable benefit for the purposes of the Act, the Trustee, in its absolute discretion, may advise the Member of the same and, if the Member requests, decline to accept any further contributions for the benefit of that Member.

## **28. FORFEITURE OF BENEFITS**

A Member or former Member shall cease to be presently or presumptively or contingently entitled to the Member's Benefit but only at the discretion of the Trustee if:

- (a) in its opinion, the Member has attempted to assign, alienate, charge or encumber all or part of his Member's Benefit;

- (b) the Member is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health;
- (c) subject to Rule 34.3, the Member's whereabouts cannot be traced by the Trustee for a period of 3 years after making reasonable enquiries; or
- (d) the Member voluntarily forfeits all or part of his Member's Benefit and such forfeiture is permitted by the Act.

## **29. APPLICATION OF FORFEITED BENEFITS**

### **29.1 For the Benefit of the Member**

Where Rule 28 applies, the Trustee may apply the amount so forfeited that stood to the credit of the Member's Contribution Account and Member's Vested Employer's Contribution Account and any other Vested Benefit for the benefit of the Member or such of the Member's Dependants as the Trustee, in its absolute discretion, determines.

### **29.2 Relief of Hardship**

In order to relieve hardship only, the Trustee may, in its absolute discretion, apply the amount that stood to the credit of the Member's Employer's Contribution Account, which is forfeited by reason of the operation of Rule 28, for the maintenance or support of the Member or such of his Dependants as the Trustee, in its discretion, determines and such application of the Member's Benefit shall be a discharge to the Trustee for the payment thereof.

### **29.3 Credit to Reserve Accounts**

The amount of any forfeited benefit in the Fund by reason of the operation of Rule 28 and the benefit payment Rules which is not applied in accordance with Rules 29.1 and 29.2 shall be credited to such Reserve Account or Reserve Accounts as may be determined by the Trustee and may be applied at any time:

- (a) to the provision of the benefits that other Members or their Dependants have rights to receive from the Fund; or
- (b) to the provision for other Members or their Dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Regulator regards as reasonable having regard to all the circumstances; or
- (c) for any other purpose approved in writing by the Regulator; or
- (d) in such other manner, including without limitation the crediting of any Members' Accounts, that is permitted or required under the Act.



#### 29.4 Payment to Employer

If the Trustee decides to pay the amount of any forfeited benefit to an Employer, not being a payment reimbursing the Employer for expenses incurred on behalf of the Fund, the Trustee shall give the Members written notice of the proposed payment not less than 3 months before the day when the payment is proposed to be made to the Employer and shall do and effect all other acts and matters as the Act may require.

#### 29.5 Unclaimed Money

The Trustee shall comply with the requirements of the Act in relation to payment of unclaimed money.

### 30. REMUNERATION OF PROFESSIONAL PERSONS

Subject to Rule 13, any person who is an accountant, actuary, solicitor, barrister or other professional person and is also a Trustee or a director of a company acting as Trustee, who is called upon or whose firm is called upon to perform any service in relation to the Fund shall be entitled to make appropriate professional charges for such service.

### 31. TRUST DEED AVAILABLE FOR INSPECTION

- (a) A copy of this Trust Deed shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.
- (b) If required by the Act, the Trustee shall provide a Member with a copy of this Trust Deed.

### 32. VARIATION OF TRUST DEED

#### 32.1 Variation of Trust Deed

The Trustee may, at any time and from time to time, either by deed executed by the Trustee or by oral resolution, vary, add to or rescind all or any of the provisions from time to time of this Trust Deed and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and such new provisions may take effect from a date before or after the time they are made and shall be subject to being varied, added to or rescinded in like manner but no such variation, addition or rescission shall be made if it breaches the requirements of the Act or if it has the effect of:

- (a) reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable to a Member, before the date of the variation, addition or rescission; or
- (b) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this Rule, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

unless:

- (i) the reduction is required because of, and does not exceed the value of, any Taxes payable by the Fund; or
  - (ii) the reduction is required to enable the Fund to comply with the Act; or
  - (iii) the Member so affected approves in writing of the reduction; or
  - (iv) the Regulator approves in writing of the reduction; or
- (c) enabling a person to be appointed as Trustee or director of a corporate Trustee unless the Act permits.

### 32.2 Notification to Members

As soon as practicable after a provision of the Trust Deed is varied, added to or rescinded, the Trustee shall give to a Member whose entitlements or rights are affected by the variation, addition or rescission, and in any other circumstances prescribed under the Act, written advice that complies with the Act and which explains the nature and purpose of the variation, addition or rescission and the effect of the variation, addition or rescission on the Member's entitlements or rights.

## 33. TRANSFER OF BENEFIT FROM ANOTHER FUND

### 33.1 Transfer from Another Fund

Where a Member requests that an amount standing to his credit or a policy of insurance in another superannuation fund or in an approved deposit fund or an RSA be transferred to the Fund, the Trustee may accept the transfer of such amount or policy to the credit of the Member's Contribution Account provided that if the said amount or policy is being transferred from a superannuation fund conducted by or contributed to by an Employer or an associate of an Employer, the amount or policy shall be credited to the Member's Contribution Account and/or the Employer's Contribution Account and/or the Member's Vested Employer's Contribution Account in the same proportion as such amount or policy stood to the credit of the member's contribution account and/or the employer's contribution account and/or the member's vested employer's contribution account (or the equivalent thereof) in the previous superannuation fund, or on such other basis as the Trustee and the Member agree on.

### 33.2 Preserved Benefits

If any part of the benefit or the value of the policy which is transferred is a Preserved Benefit, the benefit and accretions thereto shall not, notwithstanding any other provisions in this Trust Deed, be paid prior to the Member retiring from the workforce and attaining the age of 55, or such other age prescribed in the Act as being the preservation age for that Member, except in the event of the Member's death or Permanent Disablement or in such other circumstances as may be allowed under the Act.



## **34. TRANSFER OF BENEFIT TO ANOTHER FUND**

### **34.1 Transfer to Another Fund**

Subject to Rule 34.2, provided the Trustee is not prohibited by the Act, the Trustee may, on receiving the written request of a Member unless the transfer is to a successor fund within the meaning of the Act or in the event that it is determined, pursuant to the provisions of this Deed, that a Member's membership of the Fund shall cease, transfer the whole or part of the Member's Benefit to the trustees of another superannuation fund which the Trustee is satisfied complies with the Act or an RSA held by the Member or, provided termination of employment has occurred or it is determined, pursuant to the provisions of this Deed, that a Member's membership of the Fund shall cease, transfer the benefit to an approved deposit fund which the Trustee is satisfied complies with the Act. The receipt by the trustee of such fund of such payments shall be a complete discharge to the Trustee in respect of any liability to that Member and persons claiming through him in relation to the amount so transferred.

### **34.2 Preserved Benefits**

A transfer of any Preserved Benefit pursuant to Rule 34.1 shall only be made if it is a condition of such transfer that the amount of any Preserved Benefit transferred shall not be paid from the transferee fund prior to the Member retiring from the workforce and attaining age 55, or such other age prescribed in the Act as being the preservation age for that Member, except in the event of the Member's death or Permanent Disablement or in such other circumstances as are permitted under the Act and if it is a condition of such transfer that the Preserved Benefit will not be transferred from the transferee fund except on the aforesaid terms and conditions.

### **34.3 Transfer to Eligible Roll-over Fund**

Where permitted or required by the Act, the Trustee may or must, as the case may be, pay the benefit to an eligible roll-over fund, as defined in the Act without requiring the Member's consent to such payment. If the benefit payable is less than \$500 (or another amount prescribed in the Act) the Trustee may treat the benefit as unclaimed money and pay it to the Regulator in accordance with the Act.

## **35. BENEFITS PAYABLE IN AUSTRALIAN CURRENCY**

The benefits payable hereunder shall be calculated in and be payable in Australian currency.

## **36. ADMISSION OF PARTICIPATING EMPLOYERS TO FUND**

The Trustee may admit a Participating Employer as a contributor to and a participant in the Fund on completion of Appendix "C" or such other form of application as the Trustee decides upon. A Participating Employer so admitted shall be bound by the provisions of this Trust Deed in the same way the Participating Employer would be if it had been an original party to the Trust Deed.



### 37. WITHDRAWAL OF PARTICIPATING EMPLOYERS FROM FUND

- (a) A Participating Employer shall cease to be a contributor to and a participant in the Fund:
- 
- (i) from the effective date of a written notice that it gives to the Trustee of its intention to cease to be a Participating Employer; or
  - (ii) with effect from the date it becomes bankrupt or is placed in liquidation or ceases to carry on a business.
- (b) Employees of a Participating Employer that has ceased to be a participant in the Fund shall continue to be Members until such time as their employment is terminated and their benefits have been paid in accordance with these Rules. No benefit shall be paid to such Members during the period that their employment by the Participating Employer continues unless such payment is permitted by the Act or unless the consent of the Regulator has been obtained in writing.
- (c) The Trustee can, if it so determines, accept contributions from Employees of an Employer that has ceased to be a participant in the Fund as Non-Employer Sponsored Members.

### 38. TERMINATION OF CONTRIBUTIONS

In the event of all of the Participating Employers and all of the Members ceasing to make contributions to the Fund, the Fund shall continue to be administered by the Trustee until dissolved in accordance with Rule 39.

### 39. DISSOLUTION OF THE FUND

#### 39.1 Dissolution of the Fund

When the last remaining person who has a benefit entitlement is paid the benefit, the Trustee shall wind up the Fund and shall, subject to the provisions of the Trust Deed, pay or transfer to the Members or former Members, benefits in accordance with the provisions of these Rules, after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payment or transfer shall be accepted by Members and former Members in full discharge of all claims in respect of the Fund. The Trustee shall continue to administer the Fund until benefits are paid or transferred in accordance with these Rules.

#### 39.2 Amount Remaining in the Fund

If any amount remains in the Fund after all of the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependants or the Participating Employers in such proportions as the Trustee determines to be equitable.

### 39.3 Preserved Benefits

Notwithstanding anything contained in Rule 39.1, the Trustee shall not, in the case of a Preserved Benefit, pay or transfer the benefit to a Member, until the Member retires from the workforce and attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, except in the event of his earlier death or Permanent Disablement or the payment of the benefit in such other circumstances as are permitted under the Act.

### 39.4 Perpetuity Period

The trusts constituted by this Trust Deed shall endure for such period as is allowed by law for the duration of the trusts hereby established.

## PAYMENT OF BENEFITS

### 40. BENEFIT PAYABLE ON RETIREMENT OR ATTAINING CERTAIN AGES

#### 40.1 Payment on Retirement or later - Employer Sponsored Member

Subject to the provisions of these Rules, the amount of the Member's Benefit may be paid or commence to be paid to an Employer Sponsored Member who, having attained the Retiring Age, ceases to be an Employee. Unless the Act otherwise requires or allows, an Employer Sponsored Member's Benefit (other than the Member's "post 65 employer financed benefits" as defined in the Act) shall be paid or commence to be paid to a Member on attaining age 65 or such other age prescribed by the Act if he continues to be employed by the Employer after attaining age 65 or such other age prescribed by the Act but the number of hours worked are insufficient for the Member to be considered to be employed on a Part-Time Basis. Notwithstanding Rules 40.3 and 40.4, a Member's Benefit shall be paid or commence to be paid to an Employer Sponsored Member who, having attained age 65, or such other age as may be prescribed by the Act, continues in employment but requests payment of his benefit.

#### 40.2 Payment on Retirement or later - Non-Employer Sponsored Member

Subject to the provisions of these Rules, the amount of the Member's Benefit may be paid or commence to be paid to a Non-Employer Sponsored Member who retires from the workforce and attains the Retiring Age. Unless the Act otherwise requires or allows the Member's Benefit (other than the Member's "post 65 employer financed benefits" as defined in the Act) shall be paid or commence to be paid to a Non-Employer Sponsored Member on attaining age 65 or such other age prescribed by the Act if he continues to be Employed or Self-Employed (whichever is applicable) after that age but the number of hours worked are insufficient for the Member to be considered to be Employed or Self-Employed on a Part-Time Basis (whichever is applicable). Notwithstanding Rules 40.3 and 40.4, the Member's Benefit shall be paid or commence to be paid to a Non-Employer Sponsored Member who having attained age 65, or such other age prescribed by the Act continues to be Employed or Self-Employed but requests payment of his benefit.



#### **40.3 Continuation of Employment on a Part-Time Basis after Age 65**

Unless the Act otherwise requires or allows, in the event that the Member is and continues to be Employed or Self-Employed on a Part-Time Basis after attaining age 65, or such other age prescribed by the Act the Member's Benefit shall be paid or commence to be paid to the Member when he requests payment or upon his attaining age 70 or such other age prescribed by the Act or if the number of hours that he works reduces below the level required to be Employed or Self-Employed on a Part-Time Basis, whichever occurs first.

#### **40.4 Continuation of Employment on a Full-Time Basis after Age 65**

Unless the Act otherwise requires or allows, in the event that the Member is and continues to be Employed or Self-Employed on a Full-Time Basis after attaining age 70, or such other age prescribed by the Act the Member's Benefit shall be paid or commence to be paid to the Member when he requests payment or upon his ceasing to be Employed or Self-Employed on a Full-Time Basis. If the Member, after age 65, or such other age prescribed by the Act becomes Employed or Self-Employed on a Part-Time Basis after having ceased to be Employed or Self-Employed on a Full Time Basis, then Rule 40.3 shall apply.

#### **40.5 Member to Inform Trustee**

A Member shall inform the Trustee as soon as practicable after he ceases:

- (a) to be Employed on a Part-Time Basis after age 65; or
- (b) to be Employed on a Full-Time Basis after age 65; or
- (c) to be Self-Employed on a Part-Time Basis after age 65; or
- (d) to be Self-Employed on a Full-Time Basis after age 65.

#### **40.6 Payment of Benefit by Pension**

The benefit payable under this Rule 40 may, in the discretion of the Trustee, be paid by way of a pension in accordance with Rule 50. However, unless the Act otherwise requires or allows from the date on which the Fund becomes a regulated superannuation fund under the Act, a benefit that becomes payable after that date shall (subject to any permitted commutations by Members and beneficiaries to lump sums) be paid by way of a pension that qualifies as or is an old-age pension within the meaning of section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900 if the Trustee is not, at the time the benefit becomes payable, a Constitutional Corporation.

#### **40.7 Payment of Unclaimed Money to the Regulator**

If a benefit (other than a pension) has become payable under this Rule 40 and the Trustee is unable to pay the benefit because the Trustee, after making reasonable efforts to trace the person to whom the benefit is payable, is unable to do so, the



Trustee shall treat the benefit as unclaimed money and pay it to the Regulator in accordance with the requirements of the Act.

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## **41. BENEFIT PAYABLE ON DEATH**

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### **41.1 Benefit Payable on Death**

If a Member dies before payment or commencement of payment of a benefit under Rule 40, the amount of the Member's Benefit may be paid to the Member's legal personal representative or may be held by the Trustee on trust for the benefit of such one or more of the Member's Dependants, to be paid in proportions which the Trustee may determine unless the Member has directed the Trustee to be bound by his or her nomination. The Trustee may pay such benefit as a lump sum, pension or annuity, or in any other form as the Trustee considers appropriate. The Trustee shall take account of any nomination of beneficiaries made by the Member, but shall only be bound by it if permitted by the Act and where the Member has so stipulated that the Trustee be bound.

### **41.2 Payment to Legal Personal Representative**

Subject to Rule 41.1 if the Trustee is unable to establish within 6 months after the Member's death that there are any Dependants, the Member's Benefit shall be paid to the Member's legal personal representative.

### **41.3 Payment other than to Dependant or Legal Personal Representative**

If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants nor a legal personal representative of the deceased Member the death benefit may be paid to any other person if the Act so permits.

### **41.4 Forfeited Benefits**

Subject to Rule 41.3, if a grant of probate or letters of administration is not made in respect of the estate of the Member within 3 years after his death (or such longer period as the Trustee determines), the benefit payable hereunder shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or, in the absence of any such provision, shall be applied by the Trustee in accordance with the provisions of Rule 29.

## **42. BENEFIT PAYABLE ON DISABLEMENT**

### **42.1 Benefit Payable on Disablement**

Subject to the provisions of these Rules, if, before a benefit is paid or commences to be paid under Rule 40, the employment of an Employer Sponsored Member is terminated as a result of the Member being Permanently Disabled or if a Non-Employer Sponsored Member becomes Permanently Disabled, the Member's Benefit shall be paid to the Member or, if he is unable to manage his own affairs, to such of

his Dependents and in such proportions as the Trustee, in its absolute discretion, determines.

#### 42.2 Proceeds of Temporary Disablement Insurance Policy

If, prior to a benefit becoming payable under Rule 42.1, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, such proceeds shall be paid to the Member or his Dependents as aforesaid subject to such limitations as are imposed under the Act.

#### 43. BENEFIT PAYABLE ON DISMISSAL

(a) If an Employer Sponsored Member is dismissed from the employment of the Employer for misconduct involving fraud or dishonesty, the benefit payable to that Member shall, subject to the provisions of these Rules, be the amount of the Member's Contribution Account (if any) plus the amount of the Member's Vested Employer's Contribution Account (if any) plus any other Vested Benefit plus such additional part (if any) of the Employer's Contribution Account which the Trustee, in its absolute discretion, determines.

(b) Any Preserved Benefit shall be paid on the terms and conditions set out in Rule 45 in relation to such benefit.

#### 44. BENEFIT PAYABLE TO AN EMPLOYER SPONSORED MEMBER ON TERMINATION OF EMPLOYMENT BEFORE RETIRING AGE

If the employment by the Employer of an Employer Sponsored Member is terminated before the Retiring Age otherwise than in the circumstances referred to in Rules 41, 42 or 43 and his new employer does not make any contributions to the Fund on his behalf:

- (a) the amount of the Member's Contribution Account; plus
- (b) that part (if any) of the amount of the Member's Employer's Contribution Account calculated in accordance with the provisions of the Vesting Schedule in the relevant Appendix for that Member's Category of membership annexed to these Rules; plus
- (c) such additional part (if any) of the amount of the Member's Employer's Contribution Account which the Trustee, in its absolute discretion, determines, (with the balance of that Account to be applied in accordance with Rule 29 as a forfeited benefit); plus
- (d) the amount of the Member's Vested Employer's Contribution Account; plus
- (e) any other Vested Benefit not otherwise payable hereunder,

shall, if required by the Act if the Member has attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) and is retiring from the workforce, be paid to the Member. If the Member has not attained age 55



(or such other age prescribed in the Act as being the preservation age for that Member) or, having attained age 55, has not retired from the workforce, the Trustee shall pay or commence to pay the Member only that part of the benefit payable which is not a Preserved Benefit or which it otherwise is entitled to pay pursuant to the Act.

#### 45. PAYMENT OF PRESERVED BENEFIT

If any part of the benefit payable under Rules 43 or 44 is a Preserved Benefit and if the Member has not attained age 55 (or such other age prescribed in the Act as being the preservation age for that Member) or, having attained age 55, has not retired from the workforce, the Trustee shall:

- (a) retain the Member's Preserved Benefit in the Fund (to which earnings of the Fund shall be proportionately credited) and either pay such benefit to the Member after he retires from the workforce and attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, and requests that the benefit be paid to him provided that the Trustee shall pay or commence to pay the Preserved Benefit no later than the attainment by the Member of the age of 65 years or at such other age or in such other circumstances as are permitted under the Act, or shall pay such benefit in accordance with Rules 41 or 42 in the event of the Member's earlier death or Permanent Disablement or shall pay such benefit to the Member if the Trustee is satisfied that he is leaving Australia to reside permanently overseas; or
- (b) if the Member requests that his Preserved Benefit be transferred to another superannuation fund or to an approved deposit fund, transfer the benefit in accordance with Rule 34 provided the Trustee is satisfied that the trust deed for the transferee fund contains restrictions similar to those in this Rule 45; or
- (c) in its discretion, pay the Preserved Benefit to the Member by a non-commutable pension or annuity for the life of the Member; or
- (d) if the Member so requests, apply the Preserved Benefit to purchase a deferred annuity to be held by the Trustee until the Member attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, and
  - (i) under which the first annuity payment is not to be made until on or after the Member attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, provided that the annuity instalments shall commence to be paid no later than the attainment by the Member of the age of 65 years or at such other age or in such other circumstances as are permitted by the Act, and
  - (ii) which cannot be surrendered or assigned (except to make a payment in accordance with Rule 34) until the Member attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, and
  - (iii) which cannot be mortgaged or encumbered in any manner whatsoever,



provided that if the amount of the Member's Preserved Benefit does not exceed \$500 (or such other amount that is prescribed under the Act), it shall be paid to the Member on termination of his employment and paragraphs (a), (b), (c) and (d) of this Rule 45 shall not apply to such benefit.

**46. DEFERMENT OF PAYMENT OF BENEFIT**

The payment of any benefit payable under Rules 43 or 44 which is not a Preserved Benefit or payable under Rules 40.1 or 42.1 may, at the request of the Member and with the consent of the Trustee, be deferred until the Member requests payment of the benefit. Unless the Act otherwise requires or allows, such deferred benefit shall, however, be paid to the Member in accordance with Rules 41 or 42 in the event of the Member's death or Permanent Disablement or on the attainment by the Member of age 65 or in accordance with Rules 40.3 or 40.4 or in accordance with the requirements of the Act. Earnings of the Fund shall be allocated to such deferred benefit in accordance with Rule 26.

**47. PAYMENT OF BENEFITS TO MINORS**

Where a person to whom benefits are payable hereunder is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.

**48. DEDUCTION OF TAX**

The Trustee may deduct from any benefit payable the amount of any Tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit or pay any amount so deducted to the Commissioner of Taxation or any person to whom the Fund is so required to remit or pay such amount.

**49. MODE OF PAYMENT OF BENEFITS**

**49.1 Lump Sum or Pension**

The benefits payable under Rules 40, 41, 42, 43 or 44 shall, in the discretion of the Trustee, be paid in a lump sum or by way of pension unless any part of the benefit is required by the Act to be paid by way of lump sum or pension. Unless the Act otherwise requires or allows from the date on which the Fund becomes a regulated superannuation fund under the Act, a benefit that becomes payable under Rule 40 after that date shall (subject to any permitted commutations by Members and beneficiaries to lump sums) be paid by way of a pension that qualifies as or is an old-age pension within the meaning of section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900 if the Trustee is not, at the time the benefit becomes payable, a Constitutional Corporation.

## 49.2 Transfer in Specie

The Trustee may, at the request of the recipient of a benefit and, if required under the Act, with the approval of the Regulator, pay benefits by transferring in specie, assets of equivalent value to the benefit payable.

## 50. PENSION CONDITIONS

### 50.1 Payments Conditions

Subject to Rule 49.1 where a benefit is payable under Rules 40, 41, 42, 43 or 44 by way of pension, the pension shall be paid on a basis that complies with the requirements of the Act; and

- (a) where the pension is an Allocated Pension – the trustee shall, in its absolute discretion, determine the amount of the pension and the manner in which and period for which it is paid, provided that the pension shall be paid at least annually and the annual amount of the pension shall not be greater than any maximum nor less than any minimum amount stated in the Act.
- (b) where the pension is a Lifetime Pension – the Trustee shall ensure that:
  - (i) the pension is paid at least annually throughout the life of the Member and, if there is a reversionary beneficiary:
    - (A) throughout the reversionary beneficiary's life; or
    - (B) if he or she is a child of the Member or of a former reversionary beneficiary under the pension – at least until his or her 16<sup>th</sup> birthday; or
    - (C) if the person referred to in subparagraph (B) is a full-time student at age 16 – at least until the end of his or her full-time studies or until his or her 25<sup>th</sup> birthday (whichever occurs sooner); and
  - (ii) unless the Regulator approves otherwise, the annual amount of the pension (payable to the Member or to the reversionary beneficiary, as the case may be) is fixed allowing for variation only as specified in these Rules or to allow commutation to pay a Superannuation Contributions Surcharge, subject to any allowances for indexation of the annual amount permitted by the Act; and
  - (iii) the pension does not have a residual capital value; and
  - (iv) of the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion.
- (c) where the pension is a Defined Pension – the Trustee shall ensure that:

- (i) the pension is paid at least annually; and
  - (ii) the annual amount of the pension is fixed, allowing for variation only as specified in the Rules or to allow commutation to pay a Superannuation Contributions Surcharge, subject to any allowances for indexation of the annual amount permitted by the Act; and
  - (iii) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion.
- (d) where the pension is a Life Expectancy Pension – the Trustee shall ensure that:
- (i) the Member only becomes entitled to be paid the pension on or after the day when the Member becomes of Pension Age; and
  - (ii) the pension is paid at least annually to the Member or to a reversionary beneficiary:
    - (A) if the life expectancy of the Member on the commencement day is less than 15 years – throughout a period equal to the Member's Life Expectancy; or
    - (B) if the Life Expectancy of the Member on the commencement day is 15 years or more – throughout a period that is not less than 15 years but not more than the Member's Life Expectancy; and
  - (iii) the annual amount of the pension is fixed, allowing for variation only to allow commutation to pay a Superannuation Contributions Surcharge, subject to any allowances for indexation of the annual amount permitted by the Act; and
  - (iv) the pension does not have a residual capital value; and
  - (v) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion.

## 50.2 Cessation of Payments

When the Member's Benefit is reduced to nil, the pension payable under these Rules shall cease to be payable and the person who was receiving the pension shall cease to be entitled to any further benefits and, if a Member, shall cease to be a Member.

## 50.3 Commutation of Pension

The recipient of a pension under these Rules may only commute the pension or part thereof to a lump sum on making written application to the Trustee, provided the commutation complies with the requirements of the Act; and

- (a) where the pension is a Lifetime Pension – the commuted amount does not



exceed the benefit payable immediately before the commutation, and the commutation is made:

- (i) within 6 months after commencement day of the pension; or
  - (ii) within 10 years after the commencement day of the pension to the benefit of a reversionary beneficiary on the death of the Member; or
  - (iii) to purchase another Lifetime Pension, Lifetime Annuity, Life Expectancy Pension or Life Expectancy Annuity; or
  - (iv) to pay a Superannuation Contributions Surcharge.
- (b) where the pension is a Defined Pension – the commuted amount does not exceed the benefit payable immediately before the commutation, except if the commutation is to pay a Superannuation Contributions Surcharge.
- (c) where the pension is a Life Expectancy Pension – the commuted amount does not exceed the benefit payable immediately before the commutation, and the commutation is made:
- (i) within 6 months after the commencement day of the pension; or
  - (ii) by payment, on the death of the Member, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the Member; or
  - (iii) by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
  - (iv) to purchase another Lifetime Pension, Lifetime Annuity, Life Expectancy Pension or Life Expectancy Annuity; or
  - (v) to pay a Superannuation Contributions Surcharge.

#### 50.4 Actuary

The Trustee shall, where required by the Act and/or Tax Act, appoint an actuary or actuaries to conduct an annual actuarial investigation and provide all necessary certifications.

#### 50.5 Benefit Payable to Spouse on Death of Member

- (a) On the death of a Member to whom a pension is being paid and who is survived by a spouse, the Trustee may determine to pay to the spouse until the spouse's death, or until the Member's Benefit is reduced to nil, if that occurs before the spouse's death, a pension that complies with the requirements of the Act; and

- (i) where the Member was being paid an Allocated Pension – the pension paid to the spouse shall be such amount as the deceased Member’s spouse and the Trustee agree upon from time to time or, in the absence of such agreement, of such amounts and on such terms and conditions as the Trustee determines provided that if the pension has to be paid on some other basis for the Fund to comply with the Act, it shall be paid on that basis. The annual amount of the pension shall not be greater than any maximum nor less than any minimum amount stated in the Act.
  - (ii) where the pension being paid to the Member was a Lifetime Pension, Defined Benefit Pension or Life Expectancy Pension – unless the Regulator approves otherwise, the annual amount of the pension paid to the spouse shall be fixed, subject to the requirements of the Act generally and any commutations or allowances for indexation of the annual amount permitted by the Act.
- (b) A pension payable to a Member’s spouse pursuant to this Rule 50.5 shall commence on the date of the Member’s death.

#### 50.6 Payment to Member’s Dependants

- (a) In the event of the death of a Member in receipt of a pension who does not have a spouse, or to whose spouse a pension is not paid under Rule 50.5, or in the event of the death of a Member’s spouse to whom a pension was payable under Rule 50.5, the balance of the Member’s Benefit (if any) shall be paid at the absolute discretion of the Trustee in a manner permitted by the Act, and if the Act permits in a lump sum or pension or in any other manner in such shares and proportions as the Trustee, in its absolute discretion, determines.
- (b) If payment of part or all of such benefit does not comply with the requirements of the Act, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied in the manner stated in paragraph (d) of this Rule.
- (c) If the Trustee is unable to establish within 6 months after the death of a Member or the Member’s spouse (if a pension was being paid to the Member’s spouse) that there are any Dependants, the benefit payable under this Rule 50.6 shall, in the discretion of the Trustee, be paid to the Member’s or the Member’s spouse’s legal personal representative but, if a grant of probate or letters of administration in respect of the estate of the deceased member or the deceased Member’s spouse is not made within 3 years after his or her death, (or such longer period as the Trustee determines), the benefit payable under this Rule shall be treated as a forfeited benefit and applied in the manner stated in paragraph (d) of this Rule.
- (d) A forfeited benefit shall be applied in the manner provided for in the Act or, in the absence of any such provision, shall be applied by the Trustee in accordance with the provisions of Rule 29.

### 50.7 No Assignment or Encumbrance

- (a) Pensions payable from the Fund shall not be assigned or otherwise transferred ~~by the person in receipt thereof (except to the extent provided for in these Rules)~~ and shall not be mortgaged or encumbered in any manner whatsoever.
- (b) 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.

### 50.8 Annuities

The Trustee may in its 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 Act; and

- (a) where the annuity is an Allocated Annuity – the requirements in this Rule 50 for an Allocated Pension shall be satisfied for the Allocated Annuity.
- (b) where the annuity is a Lifetime Annuity – the requirements in this Rule 50 for a Lifetime Pension shall be satisfied for the Lifetime Annuity and the amount paid as the purchase price of the Lifetime Annuity shall be wholly converted into annuity income.
- (c) where the annuity is a Defined Annuity – the requirements in this Rule 50 for a Defined Pension shall be satisfied for the Defined Annuity and the amount paid as the purchase price of the Defined Annuity shall be wholly converted into annuity income.
- (d) where the annuity is a Life Expectancy Annuity – the requirements in this Rule 50 for a Life Expectancy Pension shall be satisfied for the Life Expectancy Annuity and the amount paid as the purchase price of the Life Expectancy Annuity shall be wholly converted into annuity income.

### 51. BENEFIT PAYABLE ON THE GROUNDS OF FINANCIAL HARDSHIP

The Trustee may, in its absolute discretion, pay part or all of the Member's Benefit to a Member who is not entitled to be paid a benefit under the balance of these Rules, if the Trustee is satisfied that the Member would suffer financial hardship if part or the whole of his benefit is not paid to him. Any such payment may be required to be approved by the Regulator, if the Act so requires.

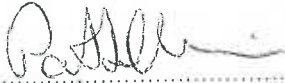
### 52. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES

The Trustee 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 Act, including, without limitation, unrestricted non-preserved benefits for the purposes of Regulation 6.20, notwithstanding the restrictions imposed by these Rules.

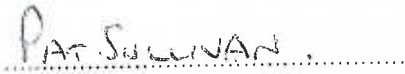


EXECUTED as a deed.

\_\_\_\_\_  
\_\_\_\_\_  
**THE COMMON SEAL of** \_\_\_\_\_ )  
**HIGH PLACE DEVELOPMENTS PTY** )  
**LTD** ACN 064 279 321 was hereunto )  
affixed in accordance with its Constitution )  
in the presence of its sole director and )  
secretary: )



.....  
(Signature of Secretary/Director)



.....  
(Name of Secretary/Director in Full)

APPENDIX "A"

APPLICATION FOR MEMBERSHIP

(EMPLOYER SPONSORED MEMBER)

OF

PATRICK SULLIVAN SUPERANNUATION FUND

("the Fund")

1. I, of apply for membership of the Fund which is administered in terms of the Trust Deed governing the Fund.
2. I have been advised in writing of the benefits which I will be entitled to receive from the Fund on joining the Fund, in the event of my retirement, death, disablement or termination of service with my Employer, the method of determining those benefits and any conditions relating to those benefits.
3. In consideration of my admission to membership, I agree to abide by and be bound by the provisions of the Trust Deed governing the Fund.
4. I authorise my current Employer to deduct from my salary such amounts (if any) as are from time to time agreed upon by myself, the Trustee and my Employer as contributions to be made by me to the Fund.
5. I agree to **High Place Developments Pty Ltd** ACN 064 279 321 acting as Trustee of the Fund.

6. **NOMINATION OF BENEFICIARIES**

- (a) I nominate the following person(s) to receive the benefit payable by the Trustee in the event of my death:

PERSON	RELATIONSHIP	PERCENTAGE
		%
		%
		%

- (b) I do/do not wish this nomination to be binding on the Trustee

7. I hereby authorise the Trustee, in the event of my termination of employment or in the event that it is determined, pursuant to the Deed, that my membership shall cease, to transfer any benefit payable to me but which cannot be paid to me on my termination of employment (a preserved benefit) or cessation of membership, to a fund nominated ~~by me in writing to the Trustee at the time of my termination of employment or~~ cessation of membership, or, if I fail to make such a nomination within 60 days of the date of my termination of employment or cessation of membership, to the Fund.

If a fund nominated above is not, in the opinion of the Trustee available or appropriate for such a transfer to be made to it or if a fund is not nominated above, or if I fail to nominate a fund to which the transfer can be made within 60 days of my termination of employment or cessation of membership I understand that the effect of the Trust Deed is that the Trustee can, if my benefit is not able to be paid to me within 90 days after I have become entitled to it, or in such other circumstances as the Superannuation Industry (Supervision) Act 1993 may allow, pay the benefit to an eligible rollover fund for my benefit. Until the Trustee decides otherwise, the eligible rollover fund to which any such payment would be made is and the address of which is

Date:

Applicant's Signature:

Witness:



**APPENDIX "B"**

**APPLICATION FOR MEMBERSHIP**

~~(NON-EMPLOYER SPONSORED MEMBER)~~

**OF**

**PATRICK SULLIVAN SUPERANNUATION FUND**

**("the Fund")**

1. I, \_\_\_\_\_ of \_\_\_\_\_ apply for membership of the Fund which is administered in terms of the Trust Deed governing the Fund.
2. I have been advised in writing of the benefits which I will be entitled to receive from the Fund on joining the Fund, in the event of my retirement, death or disablement, the method of determining those benefits and any conditions relating to those benefits.
3. In consideration of my admission to membership, I agree to abide by and be bound by the provisions of the Trust Deed governing the Fund.
4. I agree to **High Place Developments Pty Ltd** ACN 064 279 321 acting as Trustee of the Fund.

5. **NOMINATION OF BENEFICIARIES**

- (a) I nominate the following person(s) to receive the benefit payable by the Trustee in the event of my death:

<b>PERSON</b>	<b>RELATIONSHIP</b>	<b>PERCENTAGE</b>
---------------	---------------------	-------------------

	%
	%
	%

- (b) I do/do not wish this nomination to be binding on the Trustee

6. I hereby authorise the Trustee, in the event that it is determined, pursuant to the Deed, that my membership shall cease, to transfer any benefit payable to me but which cannot be paid to me on my cessation of membership, to a fund nominated by me in writing to the Trustee at the time of my cessation of membership, or, if I fail to make such a nomination within 60 days of the date of my cessation of membership, to the Fund.

If a fund nominated above is not, in the opinion of the Trustee available or appropriate for such a transfer to be made to it or if a fund is not nominated above, or if I fail to nominate a fund to which the transfer can be made within 60 days of my cessation of membership I understand that the effect of the Trust Deed is that the Trustee can, if my benefit is not able to be paid to me within 90 days after I have become entitled to it, or in such other circumstances as the Superannuation Industry (Supervision) Act 1993 may allow, pay the benefit to an eligible rollover fund for my benefit. Until the Trustee decides otherwise, the eligible rollover fund to which any such payment would be made is  
and the address of which is

Date:

Applicant's Signature:

Witness:





**To be signed by sole trader or partner/s applicants:**

**SIGNED SEALED AND DELIVERED** )

by )

.....

(Signature)

In the presence of:

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

**SIGNED SEALED AND DELIVERED** )

by )

.....

(Signature)

In the presence of:

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

**APPENDIX "D"**

**VESTING SCHEDULE**

**PATRICK SULLIVAN SUPERANNUATION FUND**

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**CATEGORY ONE**

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Percentage entitlement of the amount standing to the credit of the Member's Employer's Contribution Account for the purpose of Rule 44	100%
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APPENDIX "D"

VESTING SCHEDULE

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PATRICK SULLIVAN SUPERANNUATION FUND

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CATEGORY

---

Number of years completed as an Employee  
of the Employer

Percentage entitlement of the amount  
standing to the credit of the Member's  
Employer's Contribution Account for the  
purpose of Rule 44

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**APPENDIX "D"**

**VESTING SCHEDULE**

**PATRICK SULLIVAN SUPERANNUATION FUND**

**CATEGORY**

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Number of years completed as a Member of the Fund	Percentage entitlement of the amount standing to the credit of the Member's Employer's Contribution Account for the purpose of Rule 44
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