

26/9/08  
Signed

**Deed of Variation of Superannuation Trust Deed for the**

**Mitchell Superannuation Fund**

26 September 2008

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**Trustee company:**

**TDJ Pty Limited, ACN 085 630 897**

**Members:**

**Michael Mitchell and Beverley Mitchell**

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Deed of Variation of Superannuation Trust Deed for the Mitchell Superannuation Fund.

26 September 2008

**Between**

**TDJ Pty Limited, ACN 085 630 897** of 126 Clontarf Street, Seaforth NSW 2092 (Trustee)

and

**Michael Mitchell** of 126 Clontarf Street, Seaforth NSW 2092 (Member) and **Beverley Mitchell** of 126 Clontarf Street, Seaforth NSW 2092 (Member)

**Background**

- 1 This deed supplements the original deed.
- 2 The trustee is the trustee of the fund, the members are the members of the fund and the fund was established by the original deed.
- 3 Clause 6.15 of the original deed provides that the trustee may by deed vary the provisions of the original deed subject to the limitations contained in the original deed and superannuation law.
- 4 The parties wish to vary the original deed by deleting all of its provisions and replacing them with the provisions contained in Schedule A to this deed.

**This Deed witnesses**

**Variation of original deed**

- 1 The original deed is varied by this deed, with effect from the effective date, by deleting all the provisions of the original deed, including any schedules or appendices, and replacing them with the provisions contained in Schedule A to this deed.

**The parties consent to the variation**

- 2 The parties consent to the variation of the original deed by this deed and each of them (with the exception of the members) has passed a resolution to this effect.

**Compliance with original deed**

- 3 The parties are satisfied that the requirements of the original deed have been complied with in this deed.
- 4 The parties do not consider that this deed has either of the following effects:
  - reducing or adversely affecting the rights of a member to accrued entitlements that arose before the effective date;
  - reducing the amount of any other entitlement that is or may become payable in relation to a time before the effective date.

- 5 Furthermore, the parties do not consider that this deed will allow any further amendments to the terms governing the fund that will have the effect of:
- unless the trustee is a corporation, altering the purpose of the fund so that it is no longer solely or primarily the provision of old age pensions under superannuation law.
  - unless the sole or primary purpose of the fund is to provide old age pensions to members, allowing any person except a corporation to be appointed trustee of the fund.

#### **Compliance with superannuation law**

- 6 The parties are satisfied that the requirements of the superannuation law have been complied with. They will, if required to do so by superannuation law, notify the fund's members of the variation to the original deed effected by this deed.

#### **Continued operation**

- 7 The original deed remains effective and unaltered, except as varied by this deed. The trustee declares that as from the effective date, it will stand possessed of the assets of the fund and the income of the fund upon the trusts and with and subject to the powers and provisions contained in the original deed as varied by this deed.

#### **Definitions and interpretation**

- 8 Unless the context otherwise requires the words defined in the original deed have the same meaning whenever they appear in this deed.

- 9 In this deed, unless expressed or implied to the contrary:

**Deed** means this deed of variation.

**Effective date** means the date of execution of this deed.

**Fund** means the trust fund known as Mitchell Superannuation Fund.

**Original deed** means the document entitled 'Mitchell Superannuation Fund' made on 18 February 1999 between Michael Mitchell, Beverley Mitchell and TDJ Pty Limited.

**Superannuation law** means any law of the Commonwealth of Australia which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the fund of the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation. It includes any change to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the trustee believes may have retrospective effect.

**Execution**

Executed as a deed.

Dated: 26th September, 2008

Signed for and on behalf of  
TDJ Pty Limited  
in its capacity as trustee by its authorised  
representative:

M Mitchell

Michael Mitchell

in the presence of:

V. Hugo

Signature of witness

Victor Hugo

Witnesses' name and title (please print)

Signed for and on behalf of  
TDJ Pty Limited  
in its capacity as trustee by its authorised  
representative:

B Mitchell

Beverley Mitchell

in the presence of:

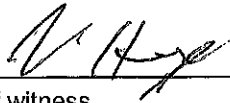
V. Hugo

Signature of witness

Victor Hugo

Witnesses' name and title (please print)

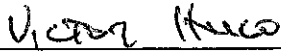
Signed sealed and delivered by Michael Mitchell in the capacity as member in the presence of:



Signature of witness

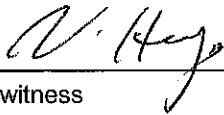


Signature of member



Name of witness (please print)

Signed sealed and delivered by Beverley Mitchell in the capacity as member in the presence of:



Signature of witness



Signature of member



Name of witness (please print)

# Schedule A

The new terms for the Trust Deed for the  
Mitchell Superannuation Fund  
as updated by a Deed of Variation dated 26 September 2008

# **Superannuation Trust Deed for a Self- Managed Fund**

for

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## **Mitchell Superannuation Fund**

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## Overview

For the convenience of users, this superannuation trust deed is written in plain language. It contains only those clauses that are appropriate for the particular form of self-managed superannuation fund that you have chosen. It is therefore suitable for a self managed superannuation trust whose trustee is a corporation of which the members of the fund are the only directors. *It is not suitable for any other form of fund.*

If you decide to change the form of the fund from a fund whose trustee is a corporation of which the members of the fund are the only directors to a fund whose trustees are the members of the fund, you will have to use the Cleardocs system to create a replacement deed that incorporates the necessary clauses for the new form of fund.

*You cannot change the form of the fund in any other way.*

## **A The fund**

### **The fund**

- 1 The Mitchell Superannuation Fund is a self-managed superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cth). It is an indefinitely continuing superannuation fund.

### **Purpose of the fund**

- 2 The sole or primary purpose of the fund is to provide old age pensions and other benefits to members on their retirement.

### **Trustee of the fund**

- 3 The fund is vested in the trustee. No other person (including a member) has any legal or beneficial interest in any asset of the fund except to the extent expressly stated elsewhere in this deed. The trustee must manage the fund in accordance with this deed.

### **Method of decision by trustee under this deed**

- 4 The trustee may only make decisions under this deed in the manner set out in the trustee's constitution.

### **Deed subject to superannuation law**

- 5 This deed is to be interpreted so as to comply with superannuation law. In particular, it is to be construed so that the fund it establishes qualifies as a self managed fund under superannuation law and qualifies for concessional tax treatment under the *Tax Act*. To the extent that anything in this deed is inconsistent with superannuation law, it is to be severed from the deed. Any obligation imposed by superannuation law in respect of the fund established by this deed that is not expressed in this deed is nonetheless to be regarded as incorporated in it by reference.

### **Trustee must comply with law**

- 6 The trustee must not do or fail to do anything as trustee of the fund that would result in either of the following:
  - a breach of law, including superannuation law; or
  - the fund ceasing to qualify as a self managed fund under superannuation law or to qualify for concessional tax treatment under the *Tax Act*.

## **B Membership**

### **Members of the fund**

- 7 The membership of the fund is comprised of the members listed in Schedule 1, less any persons who cease to be members, plus any persons admitted as members in accordance with this deed.

### **Trustee may appoint additional members**

- 8 The trustee may appoint a person as an additional member of the fund if he or she has completed and signed an 'Application to become a Member' in a form that is equivalent to the form for initial members set out in Schedule 2, or on another form approved by the trustee.

The additional member must consent to doing all things necessary to become a director of the trustee of the fund upon appointment unless the additional member is unable to become a director of a trustee under superannuation law.

### **Applicant to provide information to trustee**

- 9 On written request by the trustee, a member or applicant for membership of the fund must supply the trustee with information that the trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the trustee.
- 10 If a member fails to do so, the trustee may refuse to accept further contributions in respect of that member.
- 11 If an applicant fails to do so, the trustee may decline to accept the applicant as a member.

### **Conditions must be met**

- 12 Subject to clause 27, the trustee must not accept a person as an additional member of the fund unless each of the following conditions is met:
- the total number of members would be no more than 4;
  - the person is not disqualified from being a director of the trustee of the fund;
  - the person is not in an employment relationship with another member of the fund except another member who is also a relative of that person;
  - the trustee is satisfied that the person will become a director of the trustee of the fund on being accepted as a member of the fund.

### **Effect of becoming member**

- 13 An additional member becomes bound by this deed as if he or she were an initial party to this deed.



### **Date of commencement of membership of additional member**

- 14 An additional member's membership commences on the date the trustee specifies when accepting the person as a member. If no date is specified, the additional member's membership commences on the date the trustee received his or her application.

### **Date of additional member's commencement as trustee**

- 15 An additional member becomes director of the trustee of the fund on the date his or her membership commences provided that the trustee has done everything necessary to appoint the additional member as a director of the trustee.

### **Back-dating of membership**

- 16 With the trustee's consent, the relevant participating employer may back-date the commencement of an additional member's membership for any period the employer thinks fit. Unless the employer decides otherwise with the agreement of the trustee, that additional period will count as a period of membership.

### **Conditions on membership**

- 17 The trustee may impose any conditions the trustee thinks fit on the membership of an additional member and the additional member's rights and duties. The trustee may remove or vary any condition at any time.

### **Trustee must notify new member**

- 18 As soon as practicable after a person becomes a member of the fund (and not later than 3 months after the person becomes a member), the trustee must ensure that the member is given a product disclosure statement (in the form set out in Schedule 6, updated as required) which the superannuation law requires to be given to new members of the fund.

### **Trustee must disclose and report**

- 19 The trustee must ensure that members, former members and beneficiaries are provided with information in writing, or copies of accounts, records and documents of the fund, that the superannuation law requires them to be given.

### **Trustee must notify exiting member**

- 20 As soon as practicable after a person ceases to be a member of the fund, the trustee must ensure that that person (or his or her legal personal representative) is given a written statement of the information the superannuation law requires to be given to persons who cease to be members of the fund.

### **Limit on disclosure**

- 21 A dependant of a member is not entitled to any additional information relating to the operation or conduct of the fund which the trustee thinks it is inappropriate to disclose.

### **Members must inform trustee of change affecting fund compliance**

- 22 A member must immediately inform the trustee if the member becomes aware that either of the following may happen:
- the member may enter into an employment relationship with another member who is not also a relative of the member; or
  - the member may be disqualified from being a director of the trustee of the fund.

### **Members and trustee must ensure fund compliance**

- 23 A member and the trustee must ensure that the member ceases to be a member of the fund within 6 months after either of the following happens:
- the member enters into an employment relationship with another member who is not also a relative of the member; or
  - the member is disqualified from being a director of the trustee of the fund.

### **Trustee and members must rectify non-compliance**

- 24 If a member of the fund enters into an employment relationship with another member who is not also a relative of the member, or becomes disqualified from being a director of the trustee of the fund, the trustee and the members must do whatever is necessary to ensure that, within 6 months after the member entered into the employment relationship or became disqualified:
- no member of the fund is in an employment relationship with another member who is not also a relative of the member; and
  - no member of the fund is disqualified from being a director of the trustee of the fund.

### **Types of compliance arrangement**

- 25 The types of things that may be done to ensure compliance include each of the following:
- a member may request the member's benefits or entitlement in the fund to be paid in accordance with this deed or to be transferred or rolled over to an approved benefit arrangement under clause 142.
  - the trustee may transfer a member's benefits or entitlement in the fund to an eligible roll over fund under clause 143.

### **Ceasing to be a member**

- 26 A person ceases to be a member of the fund as soon as the first of the following happens:
- the person dies.
  - the person ceases to be a director of the trustee of the fund.
  - when payment of all the member's benefits is made to the member or to an approved benefit arrangement for the member.
  - when benefits payable to or for the member cease to be payable.

When a person ceases to be a member of the fund, the person ceases to be a director of the trustee of the fund, if he or she has not already ceased to act in that role.

### **Minor as a member**

- 27 A minor, being a person who is under 18 years of age, may be a member of the fund provided the superannuation law is complied with. In relation to a member who is a minor:
- the minor's parent or guardian must make the application for the minor to become a member in the form set out in Schedule 5 or in the form otherwise approved by the trustee;
  - decisions in relation to the minor's membership must be made by the minor's parent or guardian until:
    - the minor turns 18; or
    - after the minor turns 16, the time at which the parent or guardian notifies the fund that the minor will be making decisions in relation to the minor's membership.
  - when the minor turns 18, the minor becomes a director of the trustee of the fund provided that the trustee has done everything necessary to appoint the minor as a director of the trustee.

## **C Accounts of the fund**

### **Trustee must establish certain types of account**

- 28 The trustee must establish:
- an accumulation account and/or a pension account in respect of each member or beneficiary for each class; and
  - an income account.

### **Credits to accumulation accounts**

- 29 The trustee must credit (and in the case of clause 29.11, allot and credit) each of the following to the accumulation account of a member according to the class to which they are relevant:
- 29.1 Contributions made by a member.
  - 29.2 Contributions made in respect of the member or a beneficiary of that member by an employer.
  - 29.3 Other contributions allowed under this deed and superannuation law that are made in respect of the member.
  - 29.4 Positive earnings transferred from the income account.
  - 29.5 A shortfall component paid in respect of that member after any tax that is payable in relation to it has been deducted from it.
  - 29.6 An amount paid to the trustee as a transfer or roll over payment in respect of that member which the trustee thinks it appropriate to credit to the account.

- 29.7 A forfeited amount allocated to the member or beneficiary under clause 118.
- 29.8 An amount transferred from the pension account of a beneficiary of the member.
- 29.9 The proceeds of an annuity or insurance policy effected by the trustee in respect of the member or a beneficiary of the member which the trustee thinks it appropriate to credit to the account.
- 29.10 Financial assistance under part 23 of the *Superannuation Industry (Supervision) Act 1993* which the trustee thinks it appropriate to credit to the account.
- 29.11 An amount deducted from the accumulation account of another member pursuant to a contributions-split request made by that other member and accepted by the trustee.
- 29.12 Any other amount the trustee thinks it appropriate to credit to the account.

### **Debits to accumulation accounts**

- 30 The trustee must debit each of the following from the accumulation account of a member according to the class to which they are relevant:
  - 30.1 The proportion that the trustee thinks appropriate of the expenses of the fund.
  - 30.2 The proportion that the trustee thinks appropriate of either of the following:
    - tax payable in respect of contributions or any shortfall component that are paid to the fund; or
    - any earnings of the fund credited to the accumulation account or arising as a result of a roll over payment.
  - 30.3 A payment of a benefit to or in respect of the member or a beneficiary of the member except a payment from a pension account.
  - 30.4 An amount paid out of the fund in respect of the member or a beneficiary of the member as a transfer or roll over payment.
  - 30.5 The cost of any annuity or policy of insurance effected by the trustee in respect of the member or a beneficiary of the member; and the proportion that the trustee thinks equitable of any group policy effected by the trustee in respect of the member or beneficiary and another member or beneficiary.
  - 30.6 The amount of a lien in respect of an indemnity exercised by the trustee in accordance with this deed.
  - 30.7 An amount forfeited in accordance with this deed.
  - 30.8 The proportion that the trustee thinks appropriate of any negative earnings of the fund determined in accordance with this deed.
  - 30.9 An amount paid to indemnify the trustee in accordance with this deed.
  - 30.10 An amount credited to the pension account of a beneficiary.
  - 30.11 The proportion that the trustee thinks appropriate of a levy.
  - 30.12 The amount of tax attributable to the member or a beneficiary of the member.

- 30.13 An amount to be allotted and credited to the accumulation account of another member pursuant to a contributions-split request made by the member whose accumulation account is to be debited and accepted by the trustee.
- 30.14 Any other amount the trustee thinks it appropriate to debit.

### **Contributions-split requests**

- 31 A member may ask the trustee (in a way that satisfies the requirements of superannuation law) that contributions made to the fund in respect of that member in the previous financial year be:
- 31.1 allotted to the accumulation account of that member's spouse; or
- 31.2 rolled-over or transferred to the trustee of an approved benefit arrangement of which that member's spouse has joined or is eligible to join.
- 32 The trustee must allot, roll-over or transfer the relevant contributions pursuant to a request received under clause 31 provided:
- The request satisfies the requirements of superannuation law.
  - The trustee is satisfied that the allotment, roll-over or transfer complies with superannuation law; and
  - The amount of the contributions that the trustee allots, rolls-over or transfers does not exceed the amount in the member's accumulation account, taking into account any amount that the trustee otherwise determines to debit from the member's accumulation account.

### **Credits to the income account**

- 33 The trustee must credit each of the following to the income account of the fund:
- 33.1 Income and profits of the fund.
- 33.2 Adjustment credits made in accordance with clause 36.
- 33.3 The proceeds of an insurance policy which the trustee decides not to credit to a member's or beneficiary's accumulation or pension account.
- 33.4 A surplus resulting from a valuation under clause 40.
- 33.5 Financial assistance received by the fund under part 23 of the *Superannuation Industry (Supervision) Act 1993* which the trustee decides not to credit to a member's or beneficiary's accumulation or pension account.

### **Debits to the income account**

- 34 The trustee must debit each of the following to the income account of the fund:
- 34.1 The expenses of the fund, except those the trustee debits from a member's or beneficiary's accumulation or pension account.
- 34.2 Tax payable or likely to become payable in respect of contributions, shortfall components, or income and profits of the fund, except tax the trustee debits from a member's or beneficiary's accumulation or pension account.
- 34.3 Adjustment debits made in accordance with clause 36.

- 34.4 The cost of an insurance policy which the trustee decides not to debit from a member's or beneficiary's accumulation or pension account.
- 34.5 A deficiency resulting from a valuation under clause 40.
- 34.6 The amount of a levy, except an amount the trustee debits from a member's or beneficiary's accumulation or pension account.
- 34.7 Any loss on the disposal of an investment of the fund.

### **Tax on income**

- 35 The trustee must make provision for the payment of any tax payable in relation to the taxable income of the fund and must deduct any tax that is payable and that has not already been deducted from the income account or an accumulation or pension account.

### **Distribution from income account**

- 36 At the end of each fund year, the trustee must determine the fund earning rate. The trustee must allocate amounts from the income account to each accumulation or pension account in proportion to the amount standing to the credit of that account at the beginning of the relevant fund year. The trustee must make an appropriate adjustment for any amount credited or debited to the account since the beginning of that year.

### **Trustee may establish equalisation account**

- 37 The trustee may establish an equalisation account which the trustee may use for any of the following purposes:
- 37.1 To give effect to the reserving strategy the trustee establishes to smooth the investment earnings of the fund.
- 37.2 To increase the fund earning rate.
- 37.3 To pay tax payable by the fund.
- 37.4 To pay the expenses of the fund.
- 37.5 To provide for any contingencies the trustee decides to provide for.
- 37.6 To provide an amount to or for a member, former member, pensioner, beneficiary, including adding to an accumulation or pension account, provided there is no breach of superannuation law.
- 37.7 To do anything else the trustee decides to do, provided there is no breach of trust or superannuation law.

### **Credits to equalisation account**

- 38 The trustee may credit the equalisation account with any of the following:
- the portion the trustee thinks fit of an amount paid into the fund as a transfer or roll over payment.
  - an amount transferred from the forfeiture account under clause 118.
  - an amount transferred from a pension account under clause 85.

### **Trustee may establish or maintain other accounts or reserves**

- 39 The trustee may establish or maintain any other account for or reserve of the fund that the trustee thinks necessary or desirable or that is required or permitted by superannuation law. The trustee may use such accounts or reserves for any purpose permitted by superannuation law and may credit or debit amounts from such accounts or reserves as the trustee sees fit.

### **Valuation of fund**

- 40 The trustee must value the assets of the fund at the end of each fund year, when superannuation law requires it, and when the trustee thinks it appropriate to do so. The trustee must also determine whether there is a surplus or deficiency which it is equitable in the trustee's opinion to transfer to the income account.

### **Interim fund earning rate**

- 41 If the trustee is required to establish an interim fund earning rate, the trustee must do so in accordance with superannuation law on a basis the trustee believes to be equitable. If the Regulator or superannuation law requires it, the trustee must inform members of that basis.

## **D Contributions**

### **Member contributions**

- 42 With the trustee's consent, a member may make any contributions to the fund that the member decides to. With the member's and the participating employer's consent, contributions can be paid by deduction from wages or salary. In that case, the member's employer must pay them to the fund in the way the trustee directs.

### **Employer contributions**

- 43 A participating employer of a member may make any contributions to the fund in respect of that member that the trustee and the employer agree to.

### **Other contributions**

- 44 With the consent of the trustee and the member, any other person including:
- a spouse of that member;
  - another member;
  - another trustee of a regulated superannuation fund (including pursuant to a contributions-split requested by the member's spouse);
  - any State, Territory or Federal government (including under the Federal government's co-contribution scheme);
- may make contributions to the fund in respect of that member.

### **Participating employers**

- 45 The trustee may allow an employer to become a participating employer and to make contributions in respect of a member or an eligible person who wishes to become a member. The trustee may require the employer to apply in the form in Schedule 3 'Application to become a Participating Employer'. The employer becomes a participating employer either on the date appointed by the trustee or the date it begins making contributions on behalf of a member, whichever is the earlier.

### **How contributions to be made**

- 46 A contribution to the fund must be made in the way the trustee directs. It must be made within the time specified by superannuation law. It may be made in cash, or by the transfer of assets in accordance with superannuation law. The only assets that may be transferred are those that are authorised investments under clause 58.

### **Interest on contributions**

- 47 The trustee may require the employer to pay interest on an employer contribution which is in arrears. The trustee may also require either the employer or the member (whichever is appropriate) to pay interest on a member contribution which is in arrears. Interest will be payable at a rate decided on by the trustee.

### **Failure to contribute**

- 48 In the absence of an agreement, neither a member nor his or her employer is under an obligation to make a contribution to the fund in respect of that member. A failure to do so does not affect the member's membership of the fund.

### **Contributions etc not accepted**

- 49 The trustee must not accept any of the following:
- a contribution that is not permitted by superannuation law;
  - a contribution or shortfall component the acceptance of which would prevent the fund from qualifying as a complying superannuation fund;
  - an employer contribution or shortfall component which the regulator lawfully directs the trustee not to accept;
  - a contribution that the trustee has determined not to accept because the trustee has not been informed of the relevant member's tax file number.

### **Breach of clause headed 'Contributions etc not accepted'**

- 50 If the trustee becomes aware that a contribution or shortfall component has been accepted in breach of clause 49, the trustee must refund the amount within time specified by superannuation law. However, the trustee may deduct each of the following from that amount:
- any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;



- reasonable administration charges.

The trustee may reduce the benefits of the member to those which the member would have had if the contribution or shortfall component had not been accepted.

### **Allocation of contributions**

51 If the trustee receives a contribution in a month, the trustee must allocate the contribution to the relevant member of the fund:

- within 28 days after the end of the month; or
- if it is not reasonably practicable to allocate the contribution to the relevant member of the fund within 28 days after the end of the month – within such longer period as is reasonable in the circumstances.

### **Reduction of contributions by employer**

52 An employer who is under an obligation to make contributions in respect of a member may, with the trustee's consent, reduce the amount of those contributions to the extent that it becomes required to make contributions in respect of that member to another fund of which the member is also a member.

### **Tax on contributions and shortfall components**

53 Either the trustee or the employer or other appropriate body must deduct any tax that is payable in relation to any contribution or shortfall component before it is credited to the member's accumulation account.

### **Surcharge**

54 The trustee must make provision for any surcharge or other amount that is payable under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and related legislation, and must deduct the amount from the relevant contributions.

### **Termination of employer's contributions**

55 A participating employer ceases being a participating employer and may cease making contributions to the fund if any of the following occurs to the employer:

- a deed of appointment is executed under which the employer is placed in receivership or under official management;
- a resolution of its members is passed for it to be liquidated or a court order places it in liquidation;
- the employer gives the trustee written notice that it is permanently terminating its contributions to the fund.

### **Effect of termination on member's contributions**

56 A member whose participating employer has ceased to make contributions under this deed under the previous clause may not make any contributions without the trustee's consent.

### **No termination on transfer of business to another employer**

- 57 If a participating employer amalgamates with another participating employer or disposes of its business to another participating employer, members who were employees of the former participating employer are deemed to have become employees of the latter participating employer, which may then make contributions in respect of them.

## **E Investment**

### **Authorised investments**

- 58 The trustee must invest any assets of the fund that are not required for payment of benefits or other amounts under this deed. The trustee must do so in accordance with the current investment strategy or strategies. The following are the types of investment in which the assets may be invested:

- 58.1 Investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia.
- 58.2 Securities in any company incorporated anywhere, whether carrying on business in Australia or not.
- 58.3 Deposit (whether secured or not) with a bank, friendly society, building society, credit co-operative, trustee company, or other registered financial institution.
- 58.4 Real or personal property, including an improvement to that property.
- 58.5 Units (including sub-units) in a unit trust established or situated anywhere in the world) by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant.
- 58.6 Futures, options or any other synthetic investment.
- 58.7 Hedging, swapping or any similar arrangement, even though it is not linked to any property of the fund.
- 58.8 Deposit (whether secured or not) with, or loan (whether secured or not) to, any person (including an employer) on any terms the trustee thinks reasonable. The fact that the trustee has a direct or indirect interest in the deposit or borrowing or may benefit directly or indirectly from it is irrelevant.
- 58.9 A policy or annuity with an insurer, whether by proposal or purchase.
- 58.10 An "instalment warrant arrangement" in accordance with clause 133.
- 58.11 Any other investment allowed by superannuation law that the trustee thinks appropriate.

### **Forbidden investments**

- 59 The trustee must not invest in any investment that is forbidden by superannuation law. The trustee must not make an investment in the form of a loan or other financial assistance to a member or a relative of a member.

## **Strategy**

- 60 The trustee must formulate one or more investment strategies for the fund. The trustee must inform members and beneficiaries of the strategies adopted by the trustee. The trustee may review and change a strategy at any time. The trustee must continually monitor the strategies to ensure that they remain appropriate.

## **Power to deal with investments**

- 61 The trustee may sell, transfer or vary any investment at the trustee's absolute discretion in accordance with this deed. The trustee must do so in the interests of members and beneficiaries. The trustee must continually monitor the investments to ensure that they remain appropriate.

## **Investment choice by members**

- 62 The trustee may decide to allow one or more members or beneficiaries to choose between investment strategies. If the trustee does, the trustee must establish a range of possible investment strategies, and may designate particular assets for those strategies. The trustee must provide the members or beneficiaries with information concerning the strategies and the relevant investment objectives to enable the member or beneficiary to choose between them on an informed basis. The trustee must also provide them with information concerning their rights under this deed.

## **Member or beneficiary may choose strategy**

- 63 A member or beneficiary who has been offered investment choice by the trustee may choose one or more of the strategies prepared by the trustee by completing any documents the trustee requires. On having done so, the member or beneficiary may direct the trustee to invest any part of the fund that is held for that person in accordance with those strategies. Any direction must be in accordance with superannuation law.

## **Member or beneficiary may not choose particular investments within strategy**

- 64 A member or beneficiary who has directed the trustee to invest any part of the fund that is held for that person in accordance with those strategies may not direct the trustee to invest in any particular investment. However, the member or beneficiary may request the trustee to develop an investment specific strategy and to make it available to that member or beneficiary. The trustee may accept or reject the request.

## **Chosen strategies to be monitored**

- 65 The trustee must continually monitor any strategies adopted by members or beneficiaries for investment choice to ensure that they remain appropriate for the members or beneficiaries to whom they are available.

## **Sub-accounts etc for investment choice**

- 66 If a member adopts a strategy for investment choice, the trustee must do each of the following:

- 66.1 Establish a sub-account of the income account in respect of that strategy.
- 66.2 Credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the income account itself.
- 66.3 Allocate earnings attributable to that strategy to the member's or beneficiary's accumulation account in a way that the trustee thinks equitable.
- 66.4 Determine a fund earning rate for that sub-account.

#### **Power to deal with investment choice investments**

- 67 The trustee may sell, transfer or vary any investment made in accordance with a strategy for investment choice, at the trustee's absolute discretion in accordance with this deed. The trustee must do so in the interests of the relevant members or beneficiaries. The trustee must continually monitor the investments to ensure that they remain appropriate.

### **F Benefits: general**

#### **Limit on payment of preserved payment benefits**

- 68 The trustee must not pay out to a member or a dependant of a member any preserved payment benefit that superannuation law does not allow the trustee to pay out.

#### **When payment of preserved payment benefits allowed**

- 69 The trustee may pay a member or, if applicable, a dependant of a member, a preserved payment benefit in any of the following circumstances:
  - 69.1 The member reaches the relevant preservation age and takes a transition to retirement pension in accordance with Part G.
  - 69.2 The member retires from gainful employment on or after reaching the relevant preservation age.
  - 69.3 The member becomes totally and permanently disabled.
  - 69.4 The member becomes totally and temporarily disabled.
  - 69.5 The member reaches age 65.
  - 69.6 The member dies.
  - 69.7 Any other circumstance allowed by superannuation law.

#### **Payment of non-preserved amount**

- 70 With the trustee's consent, a member may withdraw any part of the non-preserved amount in the member's accumulation account. The member must apply to the trustee in writing for the withdrawal in a form acceptable to the trustee. The trustee may set a minimum withdrawal amount by notifying the members of the fund.

### **Vesting and compulsory payment**

- 71 A member's benefit entitlement will vest in accordance with superannuation law. The trustee must cash or commence to cash a member's benefit entitlement as soon as practicable after the member dies or the entitlement has vested. If a lump sum is payable, the trustee may pay it in several stages: an initial payment and then subsequent payments.

### **Possible addition to entitlement when member ceases to be member**

- 72 If a member ceases to be a member of the fund, the trustee may pay an amount that the trustee thinks appropriate from the equalisation account (if any) into the member's accumulation account.

### **Anti-detriment payments (section 295-485 of the *Income Assessment Act 1997*)**

- 73 Where the trustee is to make a payment because a member has died (a **death benefit**), the trustee may pass on to the recipient of that payment any benefit that would accrue to the fund if a deduction were allowed under section 295-485 of the *Income Tax Assessment Act 1997*.

### **Trustee may retain benefit in fund**

- 74 If a member or beneficiary requests it, the trustee may retain any part of a benefit in the fund. The trustee may do so until one of the following occurs:

- 74.1 The member or beneficiary decides otherwise.
- 74.2 The member or beneficiary dies.
- 74.3 The amount has to be paid under this deed or superannuation law.
- 74.4 The trustee decides otherwise.

The payment the trustee then makes must be the amount standing to the credit of the member's or beneficiary's accumulation account at that time.

### **Transfer of insurance policy**

- 75 If a member or beneficiary is entitled to a benefit which includes an interest in an insurance policy, the trustee may assign that policy to the member or beneficiary, or to any of the dependants of the member the trustee thinks fit. The trustee must debit the value of the policy to the relevant accumulation or pension account. Neither the trustee nor an employer is liable for any further payment of premiums in relation to the policy.

### **Information to be provided to trustee**

- 76 On written request by the trustee, an applicant, member or beneficiary must supply the trustee with information that the trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the trustee.

If an applicant, member or beneficiary fails to do so, the trustee may suspend collection of contributions in respect of that person, may withhold benefits from that person, and may impose conditions on the person, as the trustee thinks fit.

### **Trustee may adjust benefits for wrong information**

- 77 The trustee may adjust any benefit payable to or in respect of a member if an applicant, member or beneficiary has supplied false or misleading information to the trustee, or has deliberately withheld information from the trustee, that affects or is likely to affect benefits payable to or in respect of that member.

## **G Pensions: general**

### **Trustee's power to pay pension**

- 78 When any part of a benefit becomes payable to a member under this deed or in accordance with superannuation law, the trustee has a discretion to decide whether to pay one or more pensions to the member or to use the benefit payable to acquire one or more annuities in the name of the member. The pensions or annuities will be in substitution for the relevant part of any lump sum benefit that was payable to the member for the amounts credited to the member's pension account as a transfer of a roll over payment under clause 84.2.

### **Actuarial certificate**

- 79 The trustee must obtain an actuarial certificate in accordance with superannuation law in relation to any pension that the trustee decides to pay, unless either section 295-390 (or any other provision) of the *Income Tax Assessment Act 1997 (Cth)* provides otherwise in which case the trustee has a discretion as to whether to obtain an actuarial certificate.

### **Funding pension through annuity**

- 80 The trustee may fund a person's pension by purchasing an annuity payable to the trustee.

### **Trustee may allocate benefit between 2 or more spouses**

- 81 If there are 2 or more spouses of a member, the trustee may decide in what proportion each is entitled to a benefit payable under this deed to the member's spouse.

### **Member or beneficiary may choose type of pension**

- 82 The relevant member or beneficiary may choose the type of pension that is to be paid, including a transition to retirement pension. However, the pension must be of a type that is allowed by superannuation law or is acceptable to the Regulator. It may include a pension wholly determined by reference to policies of life assurance purchased or obtained by the trustee of a regulated superannuation fund solely for the purposes of providing benefits to members of that fund. The pension must be paid in accordance with the requirements of the superannuation law.

### **Trustee must establish pension account**

- 83 If the trustee decides to pay a pension to a person in accordance with this deed, the trustee must establish a pension account in the name of that person.

### **Credits to pension account**

- 84 The trustee must credit each of the following amounts to the person's pension account:
- 84.1 The amount the trustee believes necessary to fund the pension.
  - 84.2 The amount paid into the fund in respect of the pensioner as a transfer or roll over payment which the trustee thinks it appropriate to credit to that account.
  - 84.3 Earnings of the fund which the trustee thinks it appropriate to credit to that account.
  - 84.4 A shortfall component paid in respect of the pensioner.
  - 84.5 Contributions lawfully paid in respect of the relevant member.
  - 84.6 Adjustment credits made in accordance with clause 36.
  - 84.7 The proceeds of an annuity or insurance policy effected by the trustee in respect of the pensioner which the trustee thinks it appropriate to credit to the account.
  - 84.8 Financial assistance under part 23 of the *Superannuation Industry (Supervision) Act 1993* which the trustee thinks it appropriate to credit to the account.
  - 84.9 Any other amount the trustee thinks it appropriate to credit to the account.

### **Debits to pension account**

- 85 The trustee must debit each of the following amounts to the person's pension account:
- 85.1 The proportion that the trustee thinks appropriate of the expenses of the fund.
  - 85.2 The proportion that the trustee thinks equitable of any negative earnings of the fund determined in accordance with clauses 36, 66 or 86.
  - 85.3 The proportion of the loss on the disposal of investments of the fund that the trustee thinks equitable.
  - 85.4 Amounts transferred from the fund in respect of the pensioner as a transfer of a roll over payment which the trustee thinks it appropriate to debit to the account.
  - 85.5 Payments made to or in respect of the pensioner or a reversionary beneficiary under this deed.
  - 85.6 The cost of an insurance policy or annuity effected by the trustee in respect of the pensioner which are not debited from the member's accumulation account.
  - 85.7 The proportion of an amount payable as taxation in respect of the earnings of the fund that are credited to the pensioner's account or arise from a roll over payment that the trustee thinks equitable.
  - 85.8 The proportion of an amount paid in respect of an indemnity to the trustee or other person under this deed that the trustee thinks equitable.
  - 85.9 The amount of a levy that the trustee thinks equitable.
  - 85.10 An amount transferred to the accumulation account of a beneficiary.
  - 85.11 Any other amount that the trustee thinks it appropriate to debit from the account.

### **Adjustment based on fund earning rate**

- 86 In determining the amount standing to the credit of an accumulation account at the time a benefit or pension is calculated or becomes payable, the trustee must make an adjustment to the account that the trustee thinks equitable on the basis of the interim fund earning rate at that date. The adjustment must be made in respect of the period from the beginning of the current fund year to the relevant date. The income account must be credited or debited accordingly.

### **Segregation of assets and valuation**

- 87 The trustee may segregate from other assets those assets which are to fund the pension of a person under this deed. The trustee must value those assets at least annually. If they are insufficient or more than sufficient to fund the pension, the trustee must do anything that superannuation law requires. The trustee must obtain any certificate of adequacy that the trustee considers necessary in respect of those assets in order to comply with the *Tax Act* or superannuation law.

### **Pensions: residue in account**

- 88 On the death of a pensioner being paid a pension, if the pension is not commuted or transferred in accordance with this deed, the trustee must pay any residue in the pension account in any way permitted by superannuation law.

### **Trustee's right to commute pensions generally**

- 89 On written request by a pensioner, or in accordance with superannuation law or this deed, the trustee may commute any part of a pension to a lump sum, and pay it to the relevant person or his or her estate. The following general conditions apply in respect of all types of pension:

- The commutation must be allowed by, and be in accordance with, superannuation law.
- The commutation must not disadvantage the fund, an employer, a member, a pensioner or a reversionary beneficiary.

If the trustee commutes only part of a pension to a lump sum, the trustee must then adjust the amount of the pension payable as required by superannuation law.

### **Qualification of pensions as asset test exempt income streams**

- 90 The trustee may decide that a pension should qualify as an asset test exempt income stream (as that term is defined by the *Social Security Act 1991*). If the trustee so decides:
- 90.1 the superannuation law prevails over the terms of this deed to the extent of any inconsistency;
- 90.2 this deed is deemed to contain any provision that is required by superannuation law; and
- 90.3 this deed is deemed not to contain any provision that is required to be excluded by superannuation law.



## **H Death, disability and retirement benefits**

### **Death benefit**

- 91 The trustee may pay the death benefit on the death of a current member of the fund. The trustee must pay the full amount standing to the credit of the accumulation account as a lump sum, or must pay that amount in the form of one or more pensions or annuities.

### **Payment on death**

- 92 On the death of a member or beneficiary, the trustee must pay or apply the relevant benefit in the way the trustee thinks fit in accordance with the following rules:
- 92.1 If the member or beneficiary has given the trustee a binding death benefit notice, the trustee must comply with it.
  - 92.2 If there is no binding death benefit notice, but the member or beneficiary has left dependants, the trustee must pay or apply the benefit to or for the benefit of anyone or more of the dependants of the member or beneficiary and the legal personal representatives of the member or beneficiary as the trustee thinks fit. The trustee may do so in any proportions the trustee thinks fit and may take into account a member's wishes contained in a non-binding nomination form.
  - 92.3 If there is no binding death benefit notice, and the member or beneficiary has not left any dependants, the trustee must pay the benefit to the legal personal representatives of the member or beneficiary.
  - 92.4 If there is no binding death benefit notice, and the member or beneficiary has not left any dependants, and there is no legal personal representative, the trustee may pay or apply the benefit to or for the benefit of any individual at the trustee's discretion. The trustee may do so in any proportions the trustee thinks fit.
  - 92.5 If there is no binding death benefit notice, and the trustee has not paid or applied the benefit to or for the benefit of any person under the preceding sub-clauses 92.1 to 92.4 above, the trustee must treat the benefit as a forfeited benefit entitlement.

### **Death of member or former member**

- 93 If a member or former member who has become entitled to a lump sum benefit dies before the payment is made, the trustee must pay the amount in accordance with clause 92.

### **Discharge of trustee**

- 94 The receipt by a dependant, legal personal representative, relative or other person of any part of a benefit under either of the previous clauses discharges the trustee from liability in relation to it. The trustee is not responsible for seeing to its application.

### **Total and permanent disablement benefit**

- 95 The trustee must pay a benefit to a member whom the trustee believes to be totally and permanently disabled unless requested otherwise by the member. The benefit may be either of the following:

- A lump sum equal to the full amount standing to the credit of the accumulation account of the member; or
- One or more pensions or annuities representing that amount.

### **Temporary total disablement benefit**

96 The trustee must pay a benefit to a member whom the trustee believes to be temporarily totally disabled unless requested otherwise by the member. The benefit must be in the form of a pension or annuity that represent the following amounts:

- In the case where the trustee is entitled to a benefit under an insurance policy in relation to the member's temporary total disablement, the amount payable to the trustee.
- In any other case, the amount decided by the trustee, provided it does not reduce the minimum withdrawal benefit of the member under superannuation law.

The member is not entitled to commute any part of this benefit.

### **Period of payment: temporary total disablement**

97 The trustee must cease paying the benefit for temporary total disablement:

- In a case where the trustee is entitled to benefit under an insurance policy in relation to the member's temporary total disablement, when the trustee ceases to be entitled to that benefit.
- In any other case, when the member ceases to be temporarily totally disabled, or reaches normal retirement age, or becomes entitled to another benefit under this deed or requests that the benefit ceases to be paid.

### **Method of payment: temporary total disablement**

98 The trustee must pay the benefit in respect of temporary total disablement in the following way:

- In a case where the trustee is entitled to benefit under an insurance policy in relation to the member's temporary total disablement, in the way the benefit is paid by the insurer.
- In any other case, in the way the trustee decides.

### **Member contributions may be suspended: temporary total disablement**

99 A member may suspend his or her contributions during a period while he or she is receiving a benefit in relation to temporary total disablement.

### **Membership not affected by temporary total disablement**

100 A member does not cease being a member because he or she is receiving a benefit in respect of temporary total disablement.

## **Retirement benefit**

101 The trustee may pay a member the retirement benefit at the member's request if either of the following applies:

- the member retires from employment with a participating employer on or after reaching normal retirement age; or
- the member becomes entitled under superannuation law to the payment of a benefit despite still being employed by a participating employer.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of a lump sum representing the amount standing to the credit of the member's accumulation account. However, the trustee may elect to use part or all of that amount, instead, to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

## **Early retirement**

102 On request by a member, the trustee must pay a benefit to that member in each of the following cases:

- the member ceased to be employed by a participating employer before normal retirement age, but has reached the relevant preservation age.
- the member retired from an arrangement under which the member was gainfully employed and has reached 60 or another age prescribed by superannuation law.
- in any other case as permitted by superannuation law.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of a lump sum representing the amount standing to the credit of the member's accumulation account. However, the trustee may elect to use part or all of that amount, instead, to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

## **I Payment of benefit**

### **Trustee must notify that benefit is payable**

103 The trustee must give notice that a benefit is payable to the following persons:

- If the benefit is payable to a member, to that member.
- If the benefit is payable on the death of a member, to the nominated beneficiary, the reversionary beneficiary, the legal representatives of the member, known dependants of the member and any other person the trustee reasonably believes may have an entitlement or interest in the benefit.
- In any other case, any persons the trustee reasonably believes may have an entitlement or interest in the benefit.

### **Method of notice**

104 The trustee must give a person written notice of the time within which that person may claim an entitlement to the benefit and of how to make that claim. If the person satisfies

the trustee that he or she is entitled to a benefit, the trustee must notify any persons to whom a notice was required to be sent under clause 103 to enable them to object to a payment to that person. If no objection is received or the specified period for objecting has passed, the trustee must pay the relevant part of the benefit to that person.

#### **Claim out of time**

- 105 If a person makes a claim out of time to an entitlement to a benefit, the trustee is not bound to make any payment to that person.

#### **Unclaimed benefit**

- 106 The trustee must give the Regulator a statement of any unclaimed benefits and must pay them to the Regulator as required by superannuation law.

#### **Tax on benefit**

- 107 Either the trustee or an insurer or other appropriate body must deduct any tax that is payable in relation to a benefit before that benefit is paid.

#### **Where benefit is payable**

- 108 A benefit is payable at the trustee's principal office, or at a substitute place the trustee notifies to the member or beneficiary.

#### **Trustee may send benefit to person entitled**

- 109 The trustee may send a benefit to the postal address that the person entitled to it has last notified to the trustee, or to the bank account into which that person has asked the benefit to be paid, or to some other place the trustee decides on.

#### **Notification of address etc**

- 110 A person to whom a benefit becomes payable must notify the trustee of his or her full residential address, and of any change in that address. He or she must also notify the trustee of a bank account into which he or she asks the benefit to be paid.

#### **Receipt to be given**

- 111 On request by the trustee, a person to whom a benefit is paid must give the trustee a receipt and release for the payment in the form required by the trustee.

#### **Person under legal disability**

- 112 If a person to whom the trustee is to pay any part of a benefit is under a legal disability, or the trustee believes that it would be in that person's best interests for the trustee not to make the payment to that person, the trustee may make the payment in any of the following ways as the trustee thinks fit:

- To or for the maintenance, education, advancement, support or benefit of the person on any conditions.

- To, and for the benefit of, another person who appears to the trustee to be any of the following: the trustee, spouse, child, parent or guardian of the person, or a person having custody of that person.

### **Discharge of trustee**

- 113 The receipt by a person of a payment in accordance with clause 112 discharges the trustee from liability in relation to it. The trustee is not responsible for seeing to its application.

### **Transfer of assets**

- 114 With the consent of a member or beneficiary to whom a benefit is payable, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

## **J Forfeiture of benefit entitlements**

*Note: Forfeiture accounts are now generally prohibited. Maddocks recommends that you seek professional advice before establishing such an account.*

### **Forfeiture account**

- 115 The trustee may establish or maintain a forfeiture account into which the trustee must pay any amount forfeited under this deed. Money held in that account does not form part of an accumulation account. The trustee must credit any income from that money to the forfeiture account.

### **Circumstances of forfeiture**

- 116 All benefit entitlements of a person are forfeited in each the events in 116.1-116.6 — unless the trustee has determined otherwise within six months after the relevant event. The trustee's determination has effect from the date specified by the trustee which may be a date before the date of the event.

- 116.1 The person assigns or charges, or attempts to assign or charge a benefit entitlement, except in accordance with superannuation law.
- 116.2 The person's interest in a benefit entitlement becomes payable to or vested in another person or a government or public authority.
- 116.3 The person is or becomes insolvent or has committed or commits an act of bankruptcy.
- 116.4 The person is unable personally to receive or enjoy any part of the entitlement.
- 116.5 In the trustee's opinion, the person is incapable of managing his or her affairs.
- 116.6 In the trustee's opinion, the person is guilty of fraud or dishonesty.

This clause does not apply to the extent that it would be made ineffective by the *Bankruptcy Act 1966* or superannuation law.

### **Forfeiture of residue**

- 117 A person forfeits the residue in an accumulation account if the trustee is satisfied that the person has been paid all benefits that he or she is entitled to be paid under this deed.

### **Application of forfeiture account**

- 118 The trustee may pay or apply forfeited money held in the forfeiture account in any one or more of the following ways in accordance with superannuation law:
- 118.1 To or for the benefit of the relevant person or the dependants of the relevant member in any proportions the trustee decides on.
  - 118.2 To the trustee of the relevant member's estate.
  - 118.3 To or for the benefit of other members or their dependants who have rights to receive benefits under this deed.
  - 118.4 To provide additional benefits to other members or their dependants in accordance with superannuation law.
  - 118.5 To the equalisation account (if any).
  - 118.6 To any employees of the member or former member the trustee thinks appropriate.
  - 118.7 To any other person or entity the Regulator approves in writing.

### **Limit in relation to payments to member or dependants**

- 119 The trustee must not make a payment under clause 118 to a member who is still being employed by an employer, except for the purpose of relieving the hardship of that member or his or her dependants.

### **Possible adjustment to entitlements**

- 120 If the event that gave rise to forfeiture of an entitlement in respect of a member ceases to affect that member, the trustee may re-establish any rights in the member that the trustee thinks fit. They must not be greater than they were before the forfeiture.

## **K Provisions relating to the *Family Law Act***

### **Payment splits**

- 121 If the trustee receives a splitting agreement or court order under Part VIIIB of the *Family Law Act*, then provided the agreement or court order has been properly served and subject to superannuation law, the trustee may:
- vary the relevant member's benefit or benefit entitlement on such bases (including by commutation of any pension having regard to the advice of an actuary) and at any time the trustee determines from time to time, to the extent permitted by superannuation law; and
  - make a payment to the non-member spouse or a transfer in respect of the non-member spouse in accordance with clause 125.

### Rules for payment splits

- 122 The trustee may as it determines from time to time subject to superannuation law, make rules dealing with:
- the valuation of a non-member spouse's benefit or benefit entitlement (including any adjustments);
  - the timing of the calculation of the non-member spouse's benefit or benefit entitlement;
  - other matters relating to the payment split or the non-member spouse's benefit or benefit entitlement.

### Deferred payment splits

- 123 If the trustee is required by superannuation law or considers that it is appropriate to defer giving effect to a payment split, then provided the splitting agreement has been served properly, the trustee must:
- record the existence of the agreement or court order; and
  - keep a record of the non-member spouse's benefit or benefit entitlement on such basis (including a notional basis) and in such manner as the trustee determines from time to time subject to superannuation law.

### Flagging agreements

- 124 If the trustee receives a flagging agreement or court order under Part VIII B of the *Family Law Act*, then provided the agreement or court order has been properly served, the trustee must:
- record the existence of the agreement or court order; and
  - defer payment of the benefit to or in respect of the relevant member until the agreement or court order is lifted.

### Transfer of non-member spouse interests

- 125 If the trustee receives a splitting agreement or court order under Part VIII B of the *Family Law Act*, the agreement or court order has been validly served, then if any amount becomes payable in respect of the non-member spouse under that agreement or order:
- the trustee must pay that amount to the non-member spouse – if the non-member asks for that payment in writing; or
  - the trustee must transfer that amount to another fund (including an eligible rollover fund) in respect of that non-member spouse if the non-member asks for that transfer in writing.

Any payment amount under this clause must be in accordance with superannuation law. The receipt by the non-member spouse or the trustee of that other fund will sufficiently discharge the trustee of its liability in respect of that non-member spouse.

### **Refusal to admit as member**

- 126 Provided that the trustee acts in accordance with superannuation law, the trustee may refuse to admit a non-member spouse as a member of the fund.

## **L Trustee's powers**

### **All the powers of an individual**

- 127 The trustee has all the powers in relation to the assets of the fund that the trustee would have if the trustee were the legal and beneficial owner of those assets. It also has all the powers that a trustee has at law and the powers specifically conferred on the trustee by this deed.

### **Trustee's discretion**

- 128 The trustee has an absolute discretion in relation to exercising or not exercising any power under this deed or at law, and in relation to the way in which any power is exercised. The trustee's decision on such a matter is final and binding.

### **Delegation of power**

- 129 The trustee may delegate to another person, including one or more directors of the trustee, any power or duty on any terms the trustee thinks fit. The trustee may alter or revoke any delegation.

### **Trustee not subject to direction**

- 130 The trustee is not subject to direction in exercising any power under this deed or at law, except to the extent indicated under superannuation law.

### **Specific powers**

- 131 To exclude any possible doubt, the trustee has the power to do any of the following to the extent allowed by superannuation law:
- 131.1 To underwrite or sub-underwrite risks, contingencies or liabilities under a superannuation arrangement conducted by an employer under an agreement for the transfer of employees to the fund.
  - 131.2 To indemnify a person.
  - 131.3 To do anything the trustee considers necessary or desirable in connection with performing its obligations under this deed.

### **Limit on borrowing**

- 132 The trustee must not (except as provided by this deed in clause 133 and superannuation law):
- 132.1 borrow money; or
  - 132.2 maintain an existing borrowing of money.



### **When borrowing is allowed (including "instalment warrant arrangements")**

- 133 The trustee may borrow or maintain a borrowing of money in any one or more of the following cases:
- 133.1 to enable the trustee to pay a surcharge or advance instalment which the trustee is required to pay under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* — as long as the borrowing complies with section 67(2A) of the SIS Act;
  - 133.2 to enable the trustee to settle a transaction to acquire any one or more of the securities listed in section 67(3)(a) of the SIS Act — as long as the borrowing complies with all of the requirements of section 67(3) of the SIS Act;
  - 133.3 under an arrangement (an "instalment warrant arrangement") which the trustee enters, or has entered into, in which the money borrowed is, or has been, used to acquire an asset that superannuation law allows the trustee to acquire — as long as the borrowing complies with section 67(4A) of the SIS Act.
- 134 Clause 133 does not limit the circumstances in which the trustee may borrow or maintain a borrowing of money.

**Note:** *There are strict requirements which must be met for a borrowing to be lawful (see Section 67 of the SIS Act). A breach of those requirements is a strict liability offence (see section 67(7) of the SIS Act). Maddocks recommends that you seek professional advice before entering into any arrangements under which the fund borrows money.*

### **Trustee's power to effect insurance**

- 135 The trustee may arrange one or more insurance policies with one or more insurers to secure the benefit of a member. A policy may be a group policy or an individual policy.

### **Trustee bound to exercise power in limited cases**

- 136 The trustee is not bound to arrange one or more insurance policies, except where the trustee has informed the member or beneficiary that the trustee will arrange a policy of a specified type and amount and the member or beneficiary has not asked the trustee in writing not to do so, or has withdrawn his or her request for the trustee to arrange that policy.
- Even so, the trustee is not bound to arrange a policy that the trustee is unable to arrange.

### **Inconsistent conditions in policy**

- 137 If an insurer will only insure a member or beneficiary on conditions that are inconsistent with the conditions in respect of a benefit payable in respect of the member or beneficiary, the trustee may impose the policy conditions on that benefit despite the conditions stated in this deed.

### **Powers not affected by conflict of interests**

- 138 The trustee may exercise any power under this deed or at law despite the fact that the trustee has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise.

### **Disclosure of conflict of interest**

- 139 The trustee and any director of the trustee must disclose a conflict of interests of the type described in clause 138 in accordance with superannuation law.

### **Trustee's power to effect transfer on written request**

- 140 On written request by a member or beneficiary, the trustee may transfer to the trustee of an approved benefit arrangement any part of the amount in the fund that represents the member's or beneficiary's benefit or benefit entitlement. The trustee may only do so if the following conditions are met:

- The member or beneficiary is eligible to join or has joined the arrangement.
- The trustee is satisfied that the transfer complies with superannuation law.
- The amount the trustee transfers must not exceed the amount in the member's or beneficiary's accumulation account, except to the extent of any amount that the trustee decides to add to that account from the equalisation account (if any) under clause 37.

### **Form and effect of transfer**

- 141 The member or beneficiary must complete and execute any documents required by the *Tax Act* for the transfer to be completed as a roll over payment. A receipt from the approved benefit arrangement discharges the trustee from all liability in respect of the amount transferred. The trustee is not responsible for seeing to the application of that amount by the approved benefit arrangement. On completion of the transfer, the member or beneficiary (and anyone entitled to claim in any way in respect of that person) ceases to have any rights against the trustee or the fund in respect of the relevant amount.

### **Trustee's power to transfer to successor fund**

- 142 The trustee may transfer to the trustee of an approved benefit arrangement that is a successor fund to the fund under superannuation law any part of the amount in the fund that represents a benefit entitlement. The consent of the member or beneficiary is not required. Nor is it necessary that the member already be a member of the successor fund.

### **Trustee's power to transfer to eligible roll over fund**

- 143 In accordance with superannuation law, the trustee may transfer to an eligible roll over fund any part of the amount in the fund that represents a member's or beneficiary's benefit entitlement. The trustee must do so if superannuation law requires it.

### **Transfer of assets**

- 144 With the consent of a member or beneficiary to whom or in respect of whom a transfer is to be made under clauses 142 or 143, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

### **The trustee's power to receive transfer**

- 145 The trustee may take over or acquire by transfer from an approved benefit arrangement any part of the assets of that arrangement that represent the interest of a participant in that arrangement who has become or is to become a member or beneficiary of the fund. The trustee will hold the amount on trust for that person in the relevant accumulation or pension account. The person will have rights in respect of that amount that are equivalent to the rights he or she had under the approved benefit arrangement. The trustee may decide that the person is to be treated as having been a member of the fund from the time he or she became a member of the approved benefit arrangement.

## **M Administration of fund**

### **Dealing with money received**

- 146 The trustee must ensure that any money received by the fund is dealt with as soon as practicable in one of the following ways:
- Deposited to the credit of the fund in an account kept with a bank, friendly society, building society, or other similar body chosen by the trustee.
  - Paid to the credit of an insurer for the payment of premiums in relation to a policy of insurance effected by the trustee for the purposes of the fund.
  - Paid into the trust account of a lawyer, accountant or investment manager appointed in accordance with this deed.

### **Effect of receipts**

- 147 A receipt given by the trustee or the secretary of the fund or another person authorised by the trustee in writing to issue receipts is a sufficient discharge to the person by whom money is paid to the fund.

### **Employers to provide information to trustee**

- 148 On written request by the trustee, an employer must give the trustee any information which it has or can obtain that is, in the trustee's opinion, necessary or desirable for managing and administering the fund. The trustee may act on that information and is not required to verify it.

### **Compliance**

- 149 The trustee must comply with superannuation law and with any directions of the Regulator in relation to the fund.

### **Trustee may not charge fees**

- 150 The trustee must not charge any fees in relation to acting as trustee under this deed or performing any services in respect of the fund.

### **Trustee entitled to be reimbursed for expenses**

- 151 The trustee is entitled to be reimbursed from the fund for all expenses, taxes, levies, charges, fees and other amounts necessarily or reasonably incurred in acting as trustee under this deed.

### **Trustee to keep records and accounts**

- 152 The trustee must keep proper records and accounts of all money received by the fund and paid out by it, including adequate details of all dealings by the fund in connection with that money.

### **Trustee to collect money owing to the fund**

- 153 The trustee must ensure that money owing to the fund is collected promptly and dealt with in accordance with this deed.

### **Trustee to keep records, accounts, books etc**

- 154 The trustee must ensure that all records, books, accounts, minutes, reports and other documents are maintained and kept safe in accordance with superannuation law for the period required by that law.

### **Documents to be prepared**

- 155 The trustee must ensure that each of the following is prepared in respect of the fund in accordance with superannuation law:
- A statement of its financial position.
  - An operating statement.
  - Any other account or statement required by superannuation law.

### **Annual return**

- 156 The trustee must ensure that an annual return and any other documents required under superannuation law are prepared and lodged with the Regulator in accordance with that law.

### **Audit**

- 157 The trustee must arrange for the books, accounts and records of the fund to be audited annually or as required by superannuation law by an auditor qualified in accordance with superannuation law.

### **Disclosure requirements**

- 158 The trustee must ensure that information and documents are provided to each of the following persons in accordance with the requirements of superannuation law:
- employers.
  - the Regulator.

- the actuary (if one is appointed).
- the auditor.
- any other person.

#### **Availability of books and records**

159 The trustee must ensure that the books of the fund and information relating to it are available for inspection and copying, and that access is provided to premises where the books and information are available to be inspected and copied, in accordance with superannuation law.

#### **Availability of deed and documents**

160 The trustee must ensure that this deed and any other documents (or copies of the deed and documents) are made available for inspection by a member, or by a beneficiary on the beneficiary's request, as required by superannuation law. It is sufficient if they are available for inspection at the trustee's office while that office is open.

#### **Appointment of auditor**

161 The trustee may appoint a suitably qualified person as auditor of the fund.

#### **Appointment of actuary**

162 The trustee may appoint as actuary of the fund:

- an actuary who is a Fellow of the Institute of Actuaries of Australia;
- a member of a firm or company of which at least one member or director is a Fellow of the Institute of Actuaries of Australia; or
- an auditor who is appropriately qualified and is independent according to criteria specified by superannuation law.

#### **Appointment of administration manager**

163 The trustee may appoint one or more suitably qualified persons to act as administration manager of the fund or a specified part of the fund.

#### **Appointment of investment manager**

164 The trustee may appoint one or more suitably qualified persons to act as investment manager of the fund or a specified part of the fund in accordance with superannuation law.

#### **Appointment of custodian**

165 The trustee may appoint one or more suitably qualified persons to act as custodian of the fund or a specified part of the fund.

### **Superannuation law to be observed**

166 Any appointment by the trustee must be in accordance with superannuation law.

### **Trustee may remove person from office**

167 The trustee may remove from office a person the trustee has appointed to an office.

### **Trustee not bound by advice**

168 Except to the extent required by superannuation law, the trustee is not bound to follow the advice of a person the trustee has appointed.

### **Liability of the trustee is limited**

169 To the extent allowed by superannuation law, neither the trustee nor any of its directors, officers or employees is liable for anything done or not done in connection with acting as trustee, unless at least one of the following applies:

- The person fails to act honestly.
- The person intentionally or recklessly fails to exercise the degree of care and diligence the person is required to exercise.
- The person incurs a monetary penalty under a civil penalty order made in accordance with superannuation law.

### **Indemnity**

170 To the extent allowed by superannuation law, the trustee and each of its directors, officers and employees are entitled to an indemnity from the fund in all cases where the person is not liable under the preceding clause. The trustee has a lien on the assets of the fund for this purpose.

### **Other persons who may act**

171 Subject to superannuation law, the trustee may appoint the following persons to act as director of the trustee of the fund.

- the legal personal representative of a deceased member, from the date of the member's death until the member's death benefits begin to be paid;
- the legal personal representative of a member, while he or she holds an enduring power of attorney in respect of the member or while the member is under a legal disability;
- the legal personal representative, parent or guardian of a member who is a minor; or
- any other person if the superannuation law allows that person to be a director of the trustee and the fund would remain a self managed superannuation fund.

### **Appointment of members as trustee**

- 172 The trustee may appoint the members of the fund as trustees in place of the trustee by executing a deed to that effect. It may only do so if immediately afterwards it executes another deed which provides the mechanisms to enable the members of the fund to act as trustees.

### **Appointment of replacement corporate trustee**

- 173 The trustee may appoint as a replacement trustee a corporation of which the members of the fund are the only directors. The trustee must do everything necessary to vest the fund in the replacement trustee and must deliver all records and other books to the replacement trustee.

### **Continuity of office**

- 174 When a person ceases to be a trustee or becomes a trustee, any other person acting as trustee must do everything necessary to vest the fund in the new or remaining trustees and must deliver all records and other books to the new or remaining trustees.

### **Appointment of trustee**

- 175 The trustee will determine who acts as trustee in accordance with this deed and superannuation law for the fund to continue as a self managed superannuation fund and will take the necessary steps to appoint or remove the persons or body to or from the office of trustee. The trustee may accept the trustee's resignation in writing for this purpose.
- The appointment or removal of a trustee must be in writing and must immediately be advised to any other trustee.
  - Where the trustee is unable or unwilling to determine who will act as trustee then the majority of members of the fund will determine who will act as trustee. If there are no members in the fund, the former members of the fund (or their legal personal representatives) will determine who acts as trustee of the fund.

## **N Miscellaneous**

### **Trustee may elect to wind up fund**

- 176 The trustee may elect to wind up the fund on a specified date in either of the following cases:

- 176.1 The trustee decides to wind up the fund.  
176.2 There are no longer any members of the fund.

The trustee must elect to wind up the fund on a specified date if the Regulator requires the fund to be wound up.

### **Notice of winding up**

- 177 The trustee must give notice to each participating employer and member that the fund is to be wound up on the specified date.

### **Payment etc on winding up**

178 After deducting from the assets of the fund the costs of administering and winding up the fund, the trustee must pay the benefits in the following order to the extent that the assets of the fund are sufficient to do so:

- Benefits to which members, former members or their dependants are entitled but which they have not been paid on the day before the termination date.
- Additional benefits to members, former members or their dependants as the trustee thinks appropriate.
- Payment to the participating employers that have made contributions in respect of members or former members as the trustee thinks appropriate.

### **Employment relationship not affected by this deed**

179 Nothing in this deed affects any powers an employer has in relation to a contract of employment. An actual or prospective right under this deed, or the ending of such a right, is not to be taken into account in relation to any legal action, including one based on termination of employment.

### **Legal rights of member not affected by this deed**

180 Nothing in this deed affects any right a person may have to claim compensation or damages at common law or under statute.

### **Variation**

181 The trustee may vary this deed either prospectively or retrospectively. The trustee may do so by oral declaration, written resolution or deed. If superannuation law requires it, the trustee must promptly give a certified copy of the resolution or a copy of the deed to the Regulator.

### **Limits on power to vary**

182 The trustee does not have power to vary this deed so as to do either of the following:

- Reduce or adversely affect the rights of a member to accrued entitlements that arise before the variation is effected.
- Reduce the amount of any other entitlement that is or may become payable in relation to a time before the date of the variation.

However, this (the rule in the previous sentence with the 2 dot points) does not apply if the reduction is necessary to enable the fund to comply with superannuation law or if each affected member, or the Regulator, consents in writing to the reduction.

The trustee also does not have power to vary this deed in a way that would have either of the following effects:

- unless the trustee is a corporation, altering the purpose of the fund so that it is no longer solely or primarily the provision of old age pensions under superannuation law.
- unless the sole or primary purpose of the fund is to provide old age pensions to



members, allowing any person except a corporation to be appointed trustee of the fund.

### **Notice of variation**

183 If superannuation law requires it, the trustee must inform members and beneficiaries in writing of the nature and purpose of the variation and its effect on their entitlements or rights. The trustee must do so in accordance with superannuation law.

### **Dispute resolution**

184 If superannuation law requires it, the trustee must establish a system complying with that law for dealing with enquiries and complaints from members, beneficiaries and dependants.

### **Interpretation**

185 A reference in this deed to:

- a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- a person includes the legal personal representatives, successors and assigns of that person;
- any body which no longer exists or has been reconstituted, renamed, replaced or whose powers and functions have been removed or transferred to another body or agency, whether expressly or impliedly, is a reference to the body which most closely serves the purpose or objects of the first-mentioned body;
- a clause, schedule or appendix is reference to a clause, schedule or appendix in or to this deed;
- this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- the singular includes the plural and vice versa; and
- a gender includes the other gender.

### **Proper law**

186 This deed is governed by the law of New South Wales. The parties consent to the exercise of jurisdiction by the courts of that place.

# Mitchell Superannuation Fund

## Schedule 1 to this deed

**1 Name and address and ACN of trustee**

TDJ Pty Limited, ACN 085630897  
126 Clontarf Street  
Seaforth, NSW 2092

**2 Name and address of members**

Michael Mitchell  
126 Clontarf Street  
Seaforth, NSW 2092

Beverley Mitchell  
126 Clontarf Street  
Seaforth, NSW 2092

## Schedule 2 to this deed

*[The fields in all of the following schedules are left intentionally 'blank' as the schedules are to be used as 'pro-forma' documents if the fund wishes to add members etc. in the future. These schedules are to be bound in and form part of this Deed.]*

### Application to become a Member

This Application Form contains your Death Benefit Nomination and undertakings which must be made by you. It is also accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

#### Part 1 Application and Undertakings

I apply to become an *[Either initial Or additional]* member of this fund under the trust deed.

I make each of the following undertakings:

- *[Either I am not in an employment relationship with another member. Or I am not in an employment relationship with another member who is not a relative of mine.]*
- I am not a disqualified person under superannuation law from being a *[Either trustee Or director of the trustee]* of the fund.
- I will comply with the trust deed.
- Upon request, I will fully disclose in writing any information required by the trustee in respect of my membership of the fund. This includes disclosing:
  - Any circumstance which may lead to my entering into an employment relationship with any other member of the fund who is not also a relative of mine.
  - That I may become disqualified under superannuation law from being a *[Either trustee Or director of the trustee]* of the fund.
  - Any information in relation to my medical condition.
- I will act as a *[Either trustee Or director of the trustee]* of the fund.
- I understand the trust deed, particularly its terms concerning the benefits payable under it, and I have read and understood the attached Product Disclosure Statement, annexed and marked 'A'.
- I have read and understand the prescribed information relating to the collection of Tax File Numbers by the trustees of superannuation funds.

I attach a completed ATO Individual Tax File Number Notification form.

Applicant name [Insert applicant's name]  
 Applicant address [Insert applicant's address]  
 Applicant occupation [Insert applicant's occupation]  
 Date of birth [Insert applicant's date of birth]  
 Applicant place of birth [Insert applicant's place of birth]

**Part 2: Death Benefit: Beneficiary Nomination**

*If death benefit nomination is to be binding* This is a binding death benefit notice. By completing and signing it you are requiring the trustee to provide any benefit payable on or after your death to the person or persons you mentioned in this notice, being one or more dependants or your legal personal representative. *Or If death benefit notice is to be non binding* This is a direction to the trustee as to how to apportion any benefit payable on your death. It is a non binding death benefit notice and the trustee retains the discretion as to how to apply any benefit payable on your death.

I direct [Either the trustees Or the directors of the trustee] that the person[s] named in the following table [are/is] to receive the proportions specified in that table of the benefit that is payable if I die.

Person	Relationship to member	Proportion of death benefit
[Insert beneficiary's name]	[Insert beneficiary's relationship to member]	[Insert proportion of the death benefit to be paid to this person] %
[Add rows to table as required]		

*[If death benefit nomination is to be binding (Please note, that this beneficiary direction is valid for only 3 years.)]*

Signed by the  
applicant: \_\_\_\_\_

Date: \_\_\_\_\_

[Insert member's name]

[If the death benefit is not binding

Witness: \_\_\_\_\_ Name: \_\_\_\_\_

Or

If the death benefit is to be binding The following persons declare that:

- they are 18 years of age or older;
- they are not persons otherwise mentioned in this notice; and
- this form was signed by or on behalf of the member in their presence.

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

Witness name: \_\_\_\_\_ Witness name: \_\_\_\_\_

**Annexure A to Application to become a member**

***[Here you need to attach the Product Disclosure Statement from Schedule 6.]***

**Schedule 3 to this deed**

**Application to become Participating Employer**

*[Insert name and address, and ACN if applicable, of applicant]* applies to become a participating employer in the Mitchell Superannuation Fund. The applicant agrees to comply with the trust deed.

Signed by the applicant's authorised officer

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Name of authorised officer]*

**Annexure A to Application to become and Employer-Sponsor**

*[Here you need to attach the Product Disclosure Statement from Schedule 6.]*

## Schedule 4 to this deed

### Application to become an Employer-Sponsor

This Application form is accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

*[Insert name and address, and ACN if applicable, of applicant]* applies to become an employer-sponsor of the *[name of fund]*. The applicant agrees to comply with the trust deed.

Signed by the applicant's authorised officer

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Name of authorised officer]*

### Annexure A to Application to become an Employer-Sponsor

***[Here you need to attach the Product Disclosure Statement from Schedule 6.]***



## Schedule 5 to this deed

### Application to become a member (if member is a minor)

This Application Form contains your Death Benefit Nomination and undertakings which must be made by you. It is also accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

### Part 1 Application and undertakings

I apply, as the parent or guardian of, and on behalf of, the person listed below (**Applicant**), that the Applicant become an initial member of this fund under the trust deed.

I make each of the following undertakings:

- *[Either* The Applicant is not in an employment relationship with another member.  
*Or* The Applicant is not in an employment relationship with another member who is not a relative of the Applicant.]
- I am not disqualified under superannuation law from being a *[Either* trustee *Or* director of the trustee] of the fund.
- I will comply with the trust deed.
- Upon request, I will fully disclose in writing any information required by the trustee in respect of the Applicant's my membership of the fund. This includes disclosing:
  - Any circumstance which may lead to the Applicant entering into an employment relationship with any other member of the fund who is not also a relative of the Applicant.
  - That I may become disqualified under superannuation law from being a *[Either* trustee *Or* director of the trustee] of the fund.
  - Any information in relation to the Applicant's medical condition.

*[If the parent or guardian is NOT also separate member of the fund in their own right, then]*

- *[Either* I will act as a trustee of the fund. *Or* I will act as a director of the trustee of the fund.]

*[If the parent or guardian IS a separate member of the fund, then]*

- *[Either* I am a member of the fund myself and I will act as a trustee of the fund.  
*Or* I am a member of the fund myself and will act as a director of the trustee of the fund.]
- I understand the trust deed, particularly its terms concerning the benefits payable under it, and I have read and understood the attached Product Disclosure Statement, annexed and marked 'A'.
- I have read and understand the prescribed information relating to the collection of Tax File Numbers by the trustees of superannuation funds.

In consideration of the Applicant's status as a minor, I have not attached a completed ATO Individual Tax File Number Notification form.

Applicant name	[Insert applicant's name]
Applicant address	[Insert applicant's address]
Applicant occupation	[Insert applicant's occupation]
Date of birth	[Insert applicant's date of birth]
Applicant place of birth	[Insert applicant's place of birth]
Parent or guardian name	[Insert parent or guardian's name]
Parent or guardian address	[Insert parent or guardian's address]
Parent or guardian date of birth	[Insert parent or guardian's date of birth]
Parent or guardian place of birth	[Insert parent or guardian's place of birth]

**Part 2: Death Benefit: Beneficiary Nomination**

*If death benefit nomination is to be binding* This is a binding death benefit notice. By completing and signing it you are requiring the trustee to provide any benefit payable on or after the Applicant's death to the person or persons you mentioned in this notice, being one or more of the Applicant's dependants or the Applicant's legal personal representative. *Or If death benefit notice is to be non binding* This is a direction to the trustee as to how to apportion any benefit payable on the Applicant's death. It is a non binding death benefit notice and the trustee retains the discretion as to how to apply any benefit payable on the Applicant's death.

On behalf of the Applicant, I direct [*Either the trustees Or the directors of the trustee*] that the person[s] named in the following table [are/is] to receive the proportions specified in that table of the benefit that is payable if I die.

Person	Relationship to member	Proportion of death benefit
[Insert beneficiary's name]	[Insert beneficiary's relationship to member]	[Insert proportion of the death benefit to be paid to this person] %
[Add rows to table as required]		

*If the death beneficiary nomination is binding* (Please note that this beneficiary direction is valid for only 3 years.)

Signed by the  
parent/guardian: \_\_\_\_\_

Date: \_\_\_\_\_

*[Insert parent or guardian's name]*

*[If the death benefit is not binding]*

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Or

*If the death benefit is to be binding* The following persons declare that:

- they are 18 years of age or older;
- they are not persons otherwise mentioned in this notice; and
- this form was signed by or on behalf of the member in their presence.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

**Annexure A to Application to become a Member (where member is a minor)**  
***[Here you need to attach the Product Disclosure Statement from Schedule 6.]***

**Schedule 6 to this deed**

**Form of Product Disclosure Statement**

**Product Disclosure Statement**

**Mitchell Superannuation Fund**

[Date]

[Name of member]

[Address of member]

[Contact details of member – PDS may be sent by email, fax or post]

[Name of trustee or trustees]

[Address]

[Contact details]

**The details of the Product Disclosure Statement (PDS) start on the next page. Attach that page and the following pages of the PDS to the Member Application form and to any Employer-Sponsor Application form.**

## Introduction

This PDS contains a summary of the important provisions of the fund's deed and the effects which those provisions may have on you. The *Corporations Act* requires that you be given this PDS within 3 months after you become a member of the fund.

If you have any questions at any time, you should refer those to the trustee. However, the trustee can only provide you with information – so you will need to seek your own legal, accounting and financial advice.

Terms which are capitalised in this PDS are either defined in the fund's deed or are contained in Schedule 1.

### You should consider getting professional advice about the fund

Your decision to become a member of the fund is important and involves issues including retirement planning, estate planning, taxation, and social security. The trustee strongly recommends that you consider consulting an appropriately qualified adviser before you decide to become a member or to have contributions made to the fund on your behalf.

This PDS is prepared for your general information only and is not, and is not intended to be, a recommendation to become a member of the fund. This PDS does not take into account your investment objectives, financial situation or retirement planning needs. You should not base a decision whether to become a member solely on the information in this PDS. You need to consider, and obtain advice on, the suitability of the fund in view of your investment objectives, financial situation and retirement planning needs.

### Information about your potential benefits

#### 1 Details of potential lump sum benefits

##### 1.1 On your retirement

You will become entitled to a lump sum benefit, equal to the amount in your Accumulation Account on your retirement. As the definition of retirement suggests, there will be some circumstances in which you will become entitled to payment of a retirement benefit while you are still employed or when you retire and have reached the relevant Preservation Age. Your trustee will be able to advise you further in this regard at the relevant time.

##### 1.2 Total and permanent disability

If you become totally and permanently disabled, you may become entitled to a lump sum benefit from your Accumulation Account.

##### 1.3 Temporary total disability

If you become totally disabled temporarily, you may become entitled to payment of a pension or annuity representing the amount:

- decided by the trustee, provided it does not infringe the limit set out in the superannuation law; or
- payable to the trustee under an insurance policy which the trustee may have purchased and which covers the disability you suffer. (Premiums for these insurance policies are generally paid by the trustee from your Accumulation Account but may be paid out of other Accounts of the fund (such as the Income Account)).

#### 1.4 On death

On your death, the trustee may pay a lump sum benefit from your Accumulation Account to the persons named in your 'Death Benefit: Beneficiary Nomination' (which is on your Application for Membership) or to your dependants. The trustee may have also taken out a life insurance policy for you which may also entitle your dependants, or some other person, to a lump sum benefit. Your 'Death Benefit: Beneficiary Nomination' can be binding or non-binding on the trustee (you can choose). Binding nominations need to be renewed every 3 years.

#### 1.5 Other circumstances

'Severe Financial Hardship' – in the case of severe financial hardship, you may be able to apply to have all benefits owing to you, paid to you by the trustee. There are certain conditions to be met and the benefits can only be paid to you to meet expenses in the nature of treatment of life-threatening illnesses, prevention of foreclosure under a mortgage, medical transport costs, palliative care costs and so on.

## 2 Details of potential income benefits

### *Income benefits where you retire or reach your preservation age*

When you become entitled to payment of a **lump sum benefit**, the trustee may allow you to choose to receive that lump sum in the form of regularly paid income. This is called a pension. The fund can only provide you with a 'simple pension'.

The rules for a 'simple pension' include:

- **Minimum annual amount:** a minimum amount of the capital funding the pension must be paid to the pensioner each year. The minimum, which is expressed as a percentage of the capital, is determined by reference to the pensioner's age.
- **No maximum:** there will be no maximum amount that can be paid in a year, reflecting the fact that pensions and lump sums will be taxed in the same way. RBLs do not apply from 1 July 2007.
- **But a maximum for transition to retirement pensions:** pensioners being paid a transition to retirement pension will only be able to be paid a maximum of 10% of the capital per annum.
- **Transfer on death:** on death, the pension may only be transferred to a Pension Dependant or cashed as a lump sum to the pensioner's dependants or estate.

### *Existing pensions*

If this PDS is being provided as a consequence of an update to the fund's existing deed, and the fund is presently paying you a pension, then:

- the pension will be deemed to meet the current rules provided that it was commenced before 20 September 2007 in accordance with the rules that applied at that time;
- if the pension is a complying pension (such as a life pension) then it will only be able to be terminated pursuant to the rules as they were in force before 1 July 2007; and

- if the pension is an allocated pension then it may be transferred to a simple pension without having to first be commuted.

### **Social Security Eligibility**

Your eligibility for a government age pension is means tested

The assets test reduces the amount of any aged pension payments to which a member may be eligible by \$1.50 per fortnight for every \$1,000 of the member's assets.

### **Income benefits where you may not have retired but you have reached your preservation age.**

In some circumstances, you may be able to be paid a pension before you actually retire but after you have reached your preservation age. In the fund's deed these are referred to as 'Transition to retirement pensions'.

#### **2.1 Transition to retirement pensions**

Once you reach your preservation age you may still be restricted from accessing your superannuation benefits (because, for instance, you may not have retired). However, once you reach your preservation age you may access a non-commutable pension, or what the fund's deed refers to as a transition to retirement pension.

So you may receive a transition to retirement simple pension, but additional restrictions apply if you want to commute (or cash out) that pension. Essentially the transition to retirement pensions are 'non-commutable' but there are some very limited exceptions. If you are interested in a transition to retirement pension, you should discuss this in detail with the trustee before requesting the payment of such a pension.

### **3 Taxation of benefits**

#### **3.1 Seek advice**

This section is general only. You must seek professional advice concerning your own circumstances and how tax will impact on your participation in the fund and on amounts payable to you.

#### **3.2 Benefits paid to you**

Superannuation benefits paid to persons **aged less than 60** are taxed as follows:

- **Lump sum benefits** have two components: an exempt component and a taxed component. The exempt component is tax free (it includes amounts such as pre-1983 contributions and undeducted contributions). The taxed component is tax free up to a low rate threshold (initially \$140,000). After that threshold, it is taxed at 15% — except where the recipient is aged less than 55, in which case this component is taxed at 20%.
- **Pension benefits** are taxed in a similar manner to pensions at the moment, though overall tax can be less in some circumstances. Once the recipient turns 60, the pension is tax free.
- **Proportional drawdown:** In both cases, payments are deemed to include both exempt and taxable components, paid in proportion to the amount these components constitute of the recipient's total benefit.



### 3.3 Death benefits

Benefits paid in the event of your death are taxed as follows:

- **Lump sum benefits** to a member's dependant are tax free, as long as they are also a death benefits dependant as defined in section 302-195 of the ITAA97. Lump sum benefits paid to a dependant (who is not a death benefits dependant for ITAA97 purposes) have the taxable component taxed at 15%.
- **Reversionary pensions** are taxed according to the age of the primary and reversionary beneficiaries. If the primary beneficiary was aged 60 or over at the time of death, then the payments to the reversionary will be tax free. If the primary beneficiary was aged less than 60, then the payments will be taxed at the reversionary beneficiary's marginal tax rate until the reversionary turns 60 (then it will be tax-free). However, a reversionary pension will only be payable to a Pension Dependant. Also a pension paid to a Pension Dependant who is a child will have to be cashed to a lump sum when the child turns 25 (unless they're permanently disabled).
- Pensions can only revert to a Pension Dependant: simply being a dependant is not sufficient. Therefore, these benefits must be paid as a lump sum to a dependant or the member's estate.

## Information about risks associated with the fund

### 4 Details of risks: General

The assets of the fund must be invested in accordance with an appropriate investment strategy as devised by the trustee. Although the trustee decides on an investment strategy aimed at increasing the value of the fund's assets, this value can be reduced by movements in the underlying value of the funds assets, for instances movement in share or property prices. This may mean the value of the assets held in the fund for your benefit, or to pay you a pension, may be reduced. Indeed, if the performance of the fund's assets is very poor, the value of the assets held in the fund for your benefit, or to pay you a pension, may be less than the value of the contributions made to the fund on your behalf. Poor investment performance may also affect the trustee's capacity to make payments to you or to sustain the level of payments made to you. More information about risks associated with the fund borrowing in order to invest are set out under "Investment of fund assets" at paragraph 11 below.

If you choose to receive a pension then the amounts you receive are calculated by reference to the value of the assets in the fund. Therefore, if the value of the assets decreases, there may be a corresponding decrease in benefit or pension amounts payable to you and you effectively bear the risk associated with potentially poor investment performance of those assets. Broadly speaking, 100% of the amount used to fund the pension will be taken into account for the aged pension means test.

Finally, if a benefit payable to you is commuted so that the trustee may purchase:

- an annuity from a third party (such as a life assurance company), then you will have a regular income stream and the associated risk will be born by the third party; or
- a simple pension from a third party (such as a life assurance company), then the situation is the same as for a simple pension from the trustee and you effectively bear the risk associated with the variations in the value of the assets which fund

the pension.

## 5 Regulatory Risk

The fund is a self-managed superannuation fund regulated by the ATO. As a member, you will also have to be a trustee, or a director of the corporate trustee. These persons are responsible for ensuring the fund complies with all relevant superannuation laws, as enforced by the ATO.

Serious consequences flow if the fund is operated in a manner inconsistent with these rules. The consequences include prosecution by the ATO or a determination by the ATO that the fund is non-complying, with the result that the concessional tax treatment of the fund ends.

You must ensure that you are familiar with, and understand these rules. If you are not confident of this, then you should seek professional advice as to whether you will be in a position to comply with these obligations on joining the fund as a member.

## Information about amounts paid to the fund for or by you

### 6 Contributions

If you have an employer, who is an Employer-Sponsor or a Participating Employer of the fund, then they must contribute a certain portion of your income to the fund. In this situation, contributions made personally by you are unlikely to be deductible for taxation purposes although if you are on a smaller wage, you may be entitled to a co-contribution from the Federal Government (that is, the Government will match your payments to set units).

If you are unemployed or self-employed, then you may make contributions to the fund yourself. These contributions are deductible for tax purposes, subject to the caps discussed immediately below.

Alternatively you may make contributions, or another person may make contributions on your behalf.

**Caps on concessional contributions:** you may make, or have made on your behalf, up to \$50,000 in concessional contributions (they used to be referred to as 'deductible contributions') in a year across all of your superannuation accounts. Concessional contributions are taxed at 15%. Members aged 50 years or over in the 5 years from 1 July 2007 (and who are eligible to contribute to super) may make, or have made on their behalf, up to \$100,000 per annum in concessional contributions. Generally, concessional contributions can only be made by employers or persons who are self-employed.

**Caps on non-concessional contributions:** You are entitled to make up to \$150,000 in non-concessional contributions (they used to be referred to as 'non-deductible contributions' and are contributions that are made from money on which you have already paid applicable income tax) in a year across all of your superannuation accounts.

In addition, if you are under 65 and eligible to contribute to super, then you may bring forward two years of contributions and contribute \$450,000 of non-concessional contributions in one year (and not make any contributions for the following two years).

### 7 Contributions-splitting

Spouses may split superannuation contributions between them. Contributions-splitting allows members to ask the trustee to transfer certain contributions made after 1 January

2006 (**Splittable contributions**) made in respect of the member to the superannuation fund, or account of that member's spouse.

At present, the split can only take place in respect of splittable contributions made in the previous financial year.

## **Information about amounts deducted from the fund**

### **8 Debits from your Accumulation and Pension Accounts**

The trustee can make deductions from your Accumulation or Pension Accounts to, for example, meet the fund's expenses, to pay taxes (or to set aside for anticipated taxes), to pay for an insurance policy or Annuity premiums or to pay an amount from your Pension Account to your Accumulation Account or vice versa.

### **9 Other application of income**

The trustee also:

- maintains an income account: This is a general account of the fund and does not relate to a specific member. Amounts such as the income and profits of the fund or proceeds of insurance policies (which the trustee decides not to pay to a member or beneficiary) are paid into this account. From this income account the trustee can make payments to your Accumulation Account, but it may also make deductions from the income account to:
  - pay the expenses of the fund;
  - pay taxes due and payable, or likely to become due and payable;
  - pay costs of insurance policies;
  - meet losses suffered on disposal of an asset of the fund and so on.
- may maintain an Equalisation Account: This is also a general account of the fund. The trustee may decide to pay amounts into this account to:
  - smooth the investment earnings of the fund (that is, to even out years of good growth and performance with years of poor growth and performance);
  - provide for tax liabilities;
  - pay fund expenses;
  - otherwise provide for contingencies of the fund.

The trustee is not permitted to charge fees in relation to the services it provides to the fund.

## **Other significant information about the fund**

### **10 Preservation Age**

Set out below are the Preservation Ages relevant to members of the fund:

- for a person born before 1 July 1960 – 55 years
- for a person born during the year 1 July 1960 to 30 June 1961 – 56 years
- for a person born during the year 1 July 1961 to 30 June 1962 – 57 years
- for a person born during the year 1 July 1962 to 30 June 1963 – 58 years
- for a person born during the year 1 July 1963 to 30 June 1964 – 59 years

- for a person born after 30 June 1964 – 60 years.

## 11 Investment of fund assets

The trustee is permitted to make a wide range of investments provided that they accord with the trustee's investment strategy. The trustee is required to establish an investment strategy or strategies, outlining how the assets of the fund will be invested. The trustee can alter the strategy or strategies provided they remain appropriate. If the trustee offers more than one strategy, you may choose the appropriate strategy but you cannot choose the investments the trustee is to make within the strategy.

The trustee cannot loan money from the fund to a member or a member's relative.

The trustee may borrow money to make any investment — but only in restricted circumstances. In such cases:

- the only fund asset that may be used as security for the borrowing is the asset that the fund is acquiring with the borrowed money;
- the asset acquired must be an asset which the fund could ordinarily and lawfully acquire (for example, the fund is prohibited from acquiring assets which do not satisfy the sole purpose test in section 62 of the *Superannuation Industry (Supervision) Act 1993* – this stays the same even though the fund is borrowing to acquire the asset);
- the terms on which the asset is acquired must meet strict requirements set out in superannuation law.

The risks associated with any investment (as described generally under "Details of risks: General" at paragraph 4 above) increase when made using borrowed money. You should always obtain professional advice before making any such investment.

## 12 Taxation

### 12.1 Income of the fund

For tax purposes, the fund's income is divided into 2 components:

- Special Component: which includes the fund's special income (income such as private company distributions, non arms-length income, trust distributions), reduced by tax deductions relating to that special income.
- Standard Component: which is the total of all fund income, less the Special Component.

The Standard Component is taxed at the concessional rate of 15% in the hands of the trustee. The Special Component is taxed at the rate of 45%.

### 12.2 Contributions

Contributions to the fund (made by your employer, yourself, your spouse, etc) are generally treated as contributions of capital and will not be included in the fund's Income. However, if the person making a contribution is entitled to a tax deduction in relation to that contribution, then the contribution will usually be treated as fund Income and will be taxed as outlined in paragraph 12.1 above.

Information about the deductibility of contributions is in paragraph 6 above.

### 12.3 Surcharge on High Income Earners

With effect from 1 July 2005 the superannuation contributions surcharge was abolished in respect of all contributions made **on or after 1 July 2005**. However it still applies to contributions made before that date.

### 12.4 Low Income Spouse Rebate

If a person makes a contribution on behalf of a member who is their low income (or no income) spouse, the person making the contribution may be entitled to a tax rebate.

Spouse's Assessable Income (AI)	Maximum Rebatable Contributions (MRC)	Maximum Rebate (18% of the lesser of)
\$0 - \$10,800	\$3,000	MRC or actual contributions
\$10,801 to \$13,799	\$3,000 - (AI - \$10,800)	MRC or actual contributions
\$13,800	\$0	\$0

For example, if the spouse's assessable income is \$5,000, the maximum amount of contributions which are rebatable is \$3,000. If actual contributions were \$2,700, then the rebate would be  $18\% \times \$2,700 = \$486$ .

The current low-income spouse rebate figures, and other key superannuation rates, can be confirmed at:

<http://www.ato.gov.au/super/content.asp?doc=/content/60489.htm&mnu=26961&mfp=001/006>

**12.5 Contributions for children**

Since 1 July 2002, parents, grandparents, relations and friends can make contributions of up to \$3,000 in each 3 year period for a member who is a child. These contributions are not taxable in the hands of the trustee and will therefore not be deductible.

**13 The fund deed**

The fund deed is written in plain English. Provisions that are not relevant to the particular fund of which you are a member have been excluded. For example, if individuals are trustees of the fund, then all provisions relevant to a company being a trustee of the fund have been removed. Therefore, if a company is later appointed as trustee, the fund deed will have to be varied to include the relevant provisions.

You should read the trust deed and seek professional advice if you do not understand it.

**14 Other considerations concerning investments made by the fund**

The trustee is required to inform you of whether labour standards or environmental, social or ethical considerations are, or will be, taken into account when the trustee selects, retains or realises an investment. At this stage, the trustee does not take any such considerations into account. However, the trustee is obviously free to incorporate this into its investment strategy if it sees fit.

**15 Contacting the trustee for additional information**

If at any time you require further information including information concerning the fund, the fund deed, the fund's performance or your rights as a member, you can contact the trustee using the contact details at the beginning of this PDS.

## Product Disclosure Statement – Schedule 1

### Definitions

Where a term is capitalised in this PDS, the meaning is either explained below or is explained in the trust deed:

**Accumulation Account** means the account established for you by the trustee. Each member of the fund has an Accumulation Account, into which are paid that member's contributions or contributions made on behalf of that member, as well as other amounts specific to that member (such as the proceeds of an insurance policy taken out by the trustee for your benefit).

**Annuity** means what it means under superannuation law. Essentially, it refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier who undertakes to pay you an income for a specified time. Unlike a pension, the capital disappears when you purchase the annuity and you receive a contractual right to receive income.

**Commute** refers to when a right to receive a **regular payment** (like pension or annuity payments) is converted into the right to receive a **lump sum payment**.

**Dependant** – *in relation to a member, former member or beneficiary (the 'primary person')*, means each of the following:

- the spouse or widow or widower of that primary person.
- any child of that primary person, including a person who, in the trustee's opinion, is or was actually maintained by the primary person as the child of the primary person.
- any person with whom the primary person has an interdependency relationship.
- any other person who, in the trustee's opinion, was substantially dependent on the primary person at the relevant time.

**Life Expectancy** means the period which a person is expected to live in addition to their age, calculated in accordance with the life expectancy table published by the Australian Government Actuary. For instance, a 40 year old Australian male would have a life expectancy of approximately an additional 35 years.

**Normal Retirement Age** has the meaning set out in Part A of Schedule 2 to this PDS.

**Pension** refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier, who invests the lump sum, manages that investment, and pays you a regular income from the proceeds of those investments. As well as paying you the proceeds of the investments, the financial product supplier may include in your payments part of the initial capital you contributed.

**Pension Dependant** means a dependant of a member to whom a pension may be paid on the member's death, as defined by r6.21(2A) of the SIS Regulations.

**Preservation Age** means what it means under superannuation law. Essentially it is the minimum age after which your Preserved Benefits may be paid to you. Those ages are set out in paragraph 10 above.

**Preserved Benefits** means a benefit arising from a preserved payment.

**Preserved Payment** means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.

**Retirement** occurs:

- if you have reached a Preservation Age less than 60, and
  - an arrangement under which you were gainfully employed comes to an end; and
  - the trustee is reasonably satisfied that you never intend to become gainfully employed (either full time or part time); or
- if you have reached age 60 and an arrangement under which you were gainfully employed has come to an end on or after you attained that age; or
- when you reach your Normal Retirement Age and;
  - an arrangement under which you were gainfully employed comes to an end; or
  - superannuation law provides that you have retired despite still being gainfully employed.

**Service Pension Age** has the meaning set out in Part B of Schedule 2 to this PDS.

**Superannuation Contributions Surcharge** means an amount which you may be liable to pay if your taxable income is greater than the relevant superannuation surcharge level for a year of income.



## Product Disclosure Statement – Schedule 2

### Part A

#### Normal retirement age

- A man reaches normal retirement age when he turns 65
- A woman born before 1 July 1935 reaches normal retirement age when she turns 60
- A woman born from 1 July 1935 to 31 December 1936 reached normal retirement age at 60 years and 6 months
- A woman born between 1 January 1937 to 30 June 1938 reaches normal retirement age at 61 years
- A woman born between 1 July 1938 to 31 December 1939 reaches normal retirement age at 61 years and 6 months
- A woman born between 1 January 1940 to 30 June 1941 reaches normal retirement age at 62 years
- A woman born between 1 July 1941 to 31 December 1942 reaches normal retirement age at 62 years and 6 months
- A woman born between 1 January 1943 to 30 June 1944 reaches normal retirement age at 63 years
- A woman born between 1 July 1944 to 31 December 1945 reaches normal retirement age at 63 years and 6 months
- A woman born between 1 January 1946 to 30 June 1947 reaches normal retirement age at 64 years
- A woman born between 1 July 1947 to 31 December 1948 reaches normal retirement age at 64 years and 6 months
- A woman born on or after 1 January 1949 reaches normal retirement age when she turns 65.

### Part B

#### Service pension age

- A man reaches service pension age when he turns 60 years
- A woman born before 1 July 1940 reaches service pension age when she turns 55
- A woman born between 1 July 1940 to 31 December 1941 reaches service pension age when she turns 55 years and 6 months
- A woman born between 1 January 1942 to 30 June 1943 reaches service pension age when she turns 56 years
- A woman born between 1 July 1943 to 31 December 1944 reaches service pension age when she turns 56 years and 6 months
- A woman born between 1 January 1945 to 30 June 1946 reaches service pension age when she turns 57 years

- A woman born between 1 July 1946 to 31 December 1947 reaches service pension age when she turns 57 years and 6 months
- A woman born between 1 January 1948 to 30 June 1949 reaches service pension age when she turns 58 years
- A woman born between 1 July 1949 to 31 December 1950 reaches service pension age when she turns 58 years and 6 months
- A woman born between 1 January 1951 to 30 June 1952 reaches service pension age when she turns 59 years
- A woman born between 1 July 1952 to 31 December 1953 reaches service pension age when she turns 59 years and 6 months
- A woman born on or after 1 January 1954, reaches service pension age when she turns 60 years.

## Superannuation Trust Deed Definitions

**Annuity** means what it means under superannuation law.

**Approved benefit arrangement** means an arrangement into which or from which assets of the fund can be transferred without a breach of superannuation law. It includes a roll over fund, a complying superannuation fund, an approved deposit fund and an annuity arrangement.

**Approved deposit fund** means a fund which is a complying ADF under the *Tax Act*.

**Amount standing to the credit** in relation to an accumulation account, includes an amount the trustee decides to pay to that account from the equalisation account (if any).

**Assets** means the cash, investments and other property of the fund held by the trustee on the trusts established by or under this deed, including:

- any amount standing to the credit of the fund on or after the date when this deed commences.
- contributions made by a member.
- contributions made by an employer.
- contributions allowed by this deed that are superannuation lawfully made by another person.
- interest, dividends, distributions, profits and other benefits of any kind arising from investments and accumulation of income.
- the proceeds of any annuity or insurance policy effected by the trustee.
- the value of any annuity or insurance policy effected by the trustee.
- money, investments and other property received by the trustee as a roll over payment.
- shortfall components and financial assistance received by the trustee.

**Beneficiary** means a person immediately and absolutely entitled to a benefit under this deed in respect of a member. It does not include a member except where that member is immediately and absolutely entitled to a benefit under this deed in respect of another member.

**Benefit** means an amount payable out of the fund to or in respect of a member or beneficiary.

**Benefit entitlement** means an amount in the fund which may become payable to a member, dependant or beneficiary, but to which that person has not become absolutely entitled. It includes a contingent right to payment.

**Binding death benefit notice** means a notice given by a member or beneficiary to the trustee in accordance with regulation 6.17A of the Superannuation Industry (Supervision) Regulations and with this deed.

**Business day** means Monday to Friday excluding public holidays in the state or territory identified in clause 186.

**Business hours** means between 9:00 am and 5:00 pm on a business day.

**Cash** means what it means under superannuation law.

**Complying superannuation fund** means a complying superannuation fund under superannuation law.

**Contributions** means gross contributions made to the fund before tax in accordance with this deed.

**Corporation** means a constitutional corporation under superannuation law.

**Dependant** – in relation to a member, former member or beneficiary (the 'primary person'), means each of the following:

- the spouse or widow or widower of that primary person.
- any child of that primary person, including a person who, in the trustee's opinion, is or was actually maintained by the primary person as the child of the primary person.
- any person with whom the primary person has an interdependency relationship.
- any other person who, in the trustee's opinion, was substantially dependent on the primary person at the relevant time.

**Doctor** means a registered medical practitioner.

**Eligible roll over fund** means what it means in Part 24 of the *Superannuation Industry (Supervision) Act 1993*.

**Employee** means a person who is an eligible person under superannuation law for the purpose of an employer making contributions in order to avoid a liability for the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992*.

**Employer** means what it means under superannuation law and includes a participating employer.

**Employment relationship** – an employment relationship exists between 2 persons if any of the following applies:

- one person is an employee of the other within the ordinary meaning of that term, or within the meaning of section 15A of the *Superannuation Industry (Supervision) Act 1993*, or is taken to be an employee under superannuation law.
- one person is the trustee of a trust of which the other person, or a relative of the other person, is a beneficiary.
- one person is a member of a partnership in which the other person, or a relative of the other person, is either a partner or a director of a body corporate that is a partner.
- one person is a member of a partnership in which the other person, or a relative of the other person, is a beneficiary of a trust, the trustee of which is a partner.

However, an employment relationship does not exist between 2 persons if superannuation law has the contrary effect.

**Expenses of the fund** means the expenses for which the trustee is entitled to be reimbursed under this deed.

**Family Law Act** means the *Family Law Act 1975 (Cth)*.

**Fund earning rate** means the positive or negative earning rate the trustee determines after taking account of any provision or reserve for future contingencies.

**Fund year** means the 12 month period ending on 30 June or a substitute date decided on by the trustee. At the beginning of the trust, and at the end of the trust, it means the lesser period ending on that date, or commencing on the following day.

**Gainful employment** means what it means under superannuation law. It includes gainful employment on a full-time basis and gainful employment on a part-time basis.

**Insurance policy** means an insurance policy effected on the life of the member or a beneficiary of the member or in respect of the member's or beneficiary's illness, accident or disablement.

**Interdependency relationship** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**Levy** means a levy payable by the fund under superannuation law.

**Nominated dependant** means a person nominated (except in a death benefit notice) by a member as his or her 'nominated dependant'. The nomination must, in the trustee's opinion, be in accordance with superannuation law.

**Non-binding nomination form** means a notice given by a member or beneficiary to the trustee in the form set out in Part 2 of Schedule 2, but which does not meet the requirements of regulation 6.17A of the Superannuation Industry (Supervision) Regulations.

**Non-member spouse** means a person who is:

- a spouse or former spouse of a member; or
- a Non-Member Spouse within the meaning of that term under Part VIIIB of the *Family Law Act 1975*.

**Non-preserved amount** means an amount (including a roll over payment) that is payable to or in respect of a member that is not subject to cashing restrictions under superannuation law at the time of payment.

**Normal retirement age** means 65, or a substitute age that is at least 55 (or, if the trustee is not a corporation, 60) that is accepted or required by superannuation law and is agreed by the trustee.

**Participating employer** means an employer the trustee admits as a participating employer under clause 45.

**Payment flag** means an agreement or court order referred to in clause 124.

**Payment split** means a payment split under Part VIIIB of the *Family Law Act 1975*.

**Pension account** means a pension account established under clause 83.

**Pension age** means what it means under superannuation law.

**Pension dependant** means a dependant of a member to whom a pension may be paid on the member's death, as defined by r6.21(2A) of the SIS Regulations.

**Preservation age** means what it means under superannuation law.

**Preserved benefit** has the same meaning as preserved payment benefit.

**Preserved payment** means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.

**Preserved payment benefit** means a benefit arising from a preserved payment.

**Regulator** means the particular Commonwealth body responsible for the administration of the relevant aspect of superannuation. It may be the Regulator of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or some other body.

**Relative** for the purpose of the definition of 'employment relationship' and for the purpose of eligibility to be a director of the trustee, means each of the following in respect of a person:

- a parent, grandparent, child, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin or second cousin of the person;

- another person who has any such relationship to the person by reason of adoption or re-marriage;
- the spouse or former spouse of the person or of any of the persons listed in the previous bullet points.

For any other purpose, means each of the following in respect of a person:

- the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the spouse of the person;
- the spouse of the person or of any person listed in the previous bullet point.

**Retires** in relation to employment, means retirement for the purpose of the payment of benefits under superannuation law.

**Reversionary beneficiary** means an eligible dependant for the purpose of superannuation law, including a Pension Dependand, nominated by a pensioner at the commencement of the pension as his or her residuary beneficiary.

**Roll over payment** includes a transitional employment termination payment made or received by the trustee in accordance with superannuation law and an eligible benefit payment rolled out of or in to a complying superannuation fund.

**RSA Regulations** means the regulations made under the *Retirement Savings Account Act 1997*.

**Securities** includes fully paid and partly paid shares, fully paid and partly paid stocks, debentures, notes, bonds, mortgages, options and other similar securities. Neither security nor registration is required.

**Self managed superannuation fund** means what it means under the *Superannuation Industry (Supervision) Act 1993*.

**Shortfall component** means what it means in section 64 of the *Superannuation Guarantee (Administration) Act 1992* and regulations made under that Act.

**SIS Act** means the Superannuation Industry (Supervision) Act 1993, as amended from time to time.

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations 1994, as amended from time to time.

**Spouse** means a person legally married to the member at any time; and a person who is not legally married to the member, but who, in the trustee's opinion, lives or lived with the member on a bona fide domestic basis as the partner of that member.

If there are 2 or more persons who are spouses within this definition, 'spouse' means that person or those persons whom the trustee decides to treat as the spouse or spouses.

**Superannuation law** means any law of the Commonwealth of Australia including the *Corporations Act 2001* and the *Social Security Act 1991*, which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the fund by the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation. It includes changes to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the trustee believes may have retrospective effect.

**Tax** includes any form of taxation, surcharge, levy, duty or other government charge that the trustee is required to pay out of the fund, or a member, former member or beneficiary is required to pay.

**Tax Act** means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, as appropriate, and the regulations made under the relevant Act.

**Taxation** includes any tax, charge duty or levy of any type paid or payable by the trustee, or by a member, former member or beneficiary, in relation to any part of the fund.

**Temporary total disablement** means what it means in the relevant policy effected by the trustee.

If there is no such policy, it means total physical or mental disablement that is not total and permanent disablement that makes the relevant member incapable of continuing in the gainful employment that the member was in immediately before the incapacity.

**Total permanent disablement** means what it means in the relevant policy effected by the trustee.

If there is no such policy, it means such total physical or mental disablement that the trustee is reasonably satisfied that the relevant member is unlikely ever again to be able to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

**Transition to retirement pension** means a transition to retirement income stream paid as a pension, as defined by r6.01(2) of the SIS Regulations.

**Transitional employment termination payment** means the same as it means in section 82-130 of the *Income Tax (Transitional Provisions) Act 1997* (Cth).

**Unclaimed benefits** means benefits described as 'unclaimed money' under superannuation law.

**Unrestricted non-preserved benefit** means what it means under superannuation law.

**Withdrawal benefit** means the minimum benefit that must be paid to a member on withdrawal from the fund under superannuation law.

To the extent that a member's contributions have been applied towards an endowment or whole of life policy, the member's withdrawal benefit is the surrender value of that policy.