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PAYNE BUTLER LANG
SOLICITORS

Dated

27 JUL 2016

Grose Family Superannuation Fund Trust Deed

Trustee

Gaffel Investments Pty Ltd (ACN 009 965 128)

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Deed made

By The person(s) named and described in Item 2 of the Reference Schedule as the Trustee
(Trustee)

Reference Schedule

- Item 1 **Date of Deed**
- Item 2 **Trustee**

Gaffel Investments Pty Ltd
(ACN 009 965 128)
- Item 3 **Restrictions on persons, or class of persons, eligible to be Members (if applicable, see clause 14.1)**

None Nominated
- Item 4 **Name of Fund**

Grose Family Superannuation Fund
- Item 5 **Date of Establishment**

Introduction

- A.** It is the desire of the Trustee to establish and maintain a superannuation fund for the primary purpose of providing retiring allowances and other benefits in the form of old age pensions for any employed or retired persons eligible to become members of the Fund and in the event of their death for their Dependants.
- B.** The Trustee has agreed to act as trustee of the Fund in accordance with the provisions of this Deed.

- C. The Fund is established and maintained for the primary purpose of providing superannuation benefits in the form of old age pensions as prescribed by the Regulator for Members (as defined in this Deed) in the event of their retirement or in other circumstances acceptable to the Regulator or for the Dependants of Members in the event of the death of a Member.

It is agreed

1. Definitions and interpretation

1.1 Terms in Reference Schedule

Where a term used in this Deed appears in bold type in the Reference Schedule, that term has the meaning shown beneath it in the Reference Schedule.

1.2 Definitions

In this Deed:

- (1) **Accumulation Account** means the account established on behalf of each Member pursuant to clause 5.1;
- (2) **Actuary** means the actuary (if any) for the time being appointed pursuant to this Deed;
- (3) **Annuity** means an eligible annuity as defined in section 27A(1) of the ITAA;
- (4) **Approved Deposit Fund** means an approved deposit fund as defined in section 27A(1) of the ITAA;
- (5) **APRA** means the Australian Prudential Regulation Authority;
- (6) **Auditor** means the auditor for the time being appointed pursuant to this Deed;
- (7) **Beneficiary** means a person presently and absolutely entitled to receive a Benefit at the relevant time by reason of the membership of another person;
- (8) **Benefit** means any amount paid or payable by the Trustee out of the Fund pursuant to this Deed to or in respect of a Member;
- (9) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

- (10) **Class** means class of membership;
- (11) **Commissioner of Taxation** means the Federal Commissioner of Taxation;
- (12) **Contributions** means payments to the Fund by Members, Employers and others and include payments of a shortfall component pursuant to the SGC;
- (13) **Contributions-Splitting ETP** has the same meaning as in subsection 27A(1) of the ITAA.
- (14) **Deed** means this document, including any schedule or annexure to it;
- (15) **Dependant** in relation to a Member means:
 - (a) the Spouse of a Member or the Widow or Widower of a deceased Member;
 - (b) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as his or her child; or
 - (c) any other person who, in the opinion of the Trustee, was substantially financially dependent on the Member at the relevant time;
- (16) **Directors** means the directors or board of directors for the time being of the Trustee, or as the case requires, of an Employer;
- (17) **Employee** means a person in the employment of an Employer (or an associate as defined in section 26AAB of the ITAA) and includes a Director;
- (18) **Employer** means any employer who contributes to the Fund for a Member and in relation to an Employee or Member means the Employer of that Employee or Member;
- (19) **FLA** means the *Family Law Act 1975*;
- (20) **Flagging Order** has the same meaning as in the FLA;
- (21) **Flag Lifting Agreement** has the same meaning as in the FLA;
- (22) **FLLA** means *Family Law Legislation Amendment Act 2001*;
- (23) **FLSR** means the *Family Law (Superannuation) Regulations 2001*;

- (24) **Fund Year** means a period of 12 months ending on 30 June, or any other period ending on any other date which the Trustee from time to time determines;
- (25) **Gainful Employment** in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain or reward;
- (26) **ITAA** means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* as amended from time to time and the regulations under those Acts;
- (27) **Lump Sum** means the amount of Benefit, other than a Pension, payable to or in respect of a Member;
- (28) **Maximum Splittable Amount** means separately 85% of the amount of Taxed Splittable Contributions and 100% of the amount of Untaxed Splittable Contributions or such other amounts as stipulated in the Requirements;
- (29) **Member** means a person (including an Employee) eligible to join a superannuation fund pursuant to the Requirements and who has been accepted by the Trustee as a member of the Fund and has not ceased to be a Member pursuant to clause 14.11 and includes a Pensioner;
- (30) **Member Contributions** means the amounts contributed pursuant to clause 16.3 or transferred in respect of a Member pursuant to clause 18.1;
- (31) **Minimum Benefits** means the minimum benefits which are required to be applied in respect of a Member pursuant to Part 5 of the SIS Regulations;
- (32) **Nominated Dependant** means a Dependant nominated by a Member as a Nominated Dependant and includes a reversionary beneficiary of a Pension;
- (33) **Non-Member Spouse** has the same meaning as in the FLA;
- (34) **Normal Retirement Age** means the age of 65 years for both males and females or any other age which is acceptable to the Regulator and which the Trustee with the consent of the Member determines;
- (35) **Other Fund** means any other superannuation fund, Approved Deposit Fund or rollover fund approved by the Regulator for the purposes of the Requirements;

- (36) **Pension** means, as the context requires:
- (a) a Benefit payable by instalments and **Pensioner** means a person receiving a Pension;
 - (b) the instalment payable to or in respect of a Pensioner pursuant to clause 25;
- (37) **Permanent Incapacity or Permanent Invalidity** has the same meaning as in the Requirements or as prescribed by the Regulator except that where any part of a Benefit payable in that event is insured, the definition contained in the policy of insurance applies;
- (38) **Reasonable Benefit Limits** or **RBL** means the reasonable benefit limits calculated pursuant to the Requirements;
- (39) **Regulator** means the regulator to whom the Trustee must provide reports under SIS, or whose determination is relevant in the circumstances, being the Commissioner of Taxation or APRA as the case may be;
- (40) **Relative**, in relation to a Member or former Member, means any of the following, namely:
- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member or of his or her Spouse; and
 - (b) the Spouse of any person specified in clause 1.2(40)(a);
- (41) **Requirements** means any of the provisions of SIS, SGC, ITAA, FLA, FLLA, FLRS or other legislation applicable to superannuation funds which may be enacted after the date of this Deed the compliance with which is either mandatory or not including any requirements of the Regulator or any Minister of the Crown whether or not having the force of law relative to the operation or administration of the Fund;
- (42) **Reserve Account** means an account established pursuant to clause 5.13;
- (43) **Restricted Benefit** means a Benefit which is to be preserved or to which there is restricted access pursuant to the Requirements;
- (44) **Rollover Payment** means any payment made by or received by the Trustee pursuant to section 27D of the ITAA;
- (45) **SGC** means the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee (Administration) Regulations* as the context requires;

- (46) **SIS** means the *Superannuation Industry (Supervision) Act 1993* and the SIS Regulations;
- (47) **SIS Regulations** means the *Superannuation Industry (Supervision) Regulations*;
- (48) **Splittable Contribution** means a Contribution to the Fund or an allocated surplus amount (as defined in the Requirements) allocated on or after 1 January 2006 but does not include:
- (a) an amount that has been rolled over or transferred to the Fund;
 - (b) an amount that has been allotted to or rolled over within the Fund due to a contributions splitting application under the Requirements;
 - (c) a lump sum payment from an eligible non-resident non-complying superannuation fund;
 - (d) a CGT exempt eligible termination payment received pursuant to the small business retirement exemption under the ITAA;
 - (e) such other amounts as prescribed by the Requirements.
- (49) **Splitting Order** has the same meaning as in the FLA;
- (50) **Spouse** means:
- (a) a person legally married at any time to a Member or Employee; or
 - (b) a person not legally married to the Member or Employee who, in the opinion of the Trustee, lives with the Member or Employee as the husband or wife of the Member or Employee.

Where there is more than 1 person who comes within the definition of "Spouse" the Trustee must determine which 1 or more of them will be treated as the Spouse.

If more than 1 person is treated by the Trustee as the Spouse of a Member, the Trustee must determine the proportions in which a Benefit payable under this Deed to the Spouse is to be divided between them having regard to the period during which each person has been the Spouse of the deceased Member and any other matters the Trustee considers relevant;

- (51) **Superannuation Agreement** has the same meaning as in the FLA;

- (52) **Taxed Splittable Contribution** is a Contribution to the Fund which is taxable under section 274 of the ITAA or a Contribution that would be taxable under that section but for the Commonwealth Government's inability to tax the property of a State or such other amounts stipulated by the Requirements;
- (53) **Taxation** includes income tax, capital gains tax, tax on eligible termination payment, superannuation surcharge, payroll tax, land tax, goods and services tax, stamp duty and any other taxes or duties;
- (54) **Trustee** means the Trustee or trustee for the time being of the Fund whether original, additional or substituted; and
- (55) **Untaxed Splittable Contribution** is a Contribution made to the Fund which is not a taxable Contribution under section 274 of the ITAA or such other amounts stipulated by the Requirements;
- (56) **Widow** or **Widower** has the same meaning in relation to a deceased Member as "Spouse" has in relation to a Member.

1.3 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (i) that Statutory Provision as amended or re-enacted;
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision;
 - (f) money is to Australian dollars, unless otherwise stated; and
 - (g) month means a calendar month.
- (2) "Including" and similar expressions are not words of limitation.

- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.4 Parties

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2. The Fund

2.1 Establishment

The Trustee establishes a fund (**Fund**) which is known by the name described in Item 4 of the Reference Schedule and which commences on the Date of Establishment specified in Item 5 of the Reference Schedule.

2.2 Purpose

The Fund is to be maintained for the primary purpose of providing superannuation benefits in the form of old age pensions as prescribed by the Regulator for the Members in the event of their retirement or for any other purposes or circumstances acceptable to the Regulator or for the Dependants of the Members in the event of the death of a Member.

2.3 Self managed fund

The Trustee has resolved to maintain the Fund in a manner so that it is a self managed fund as defined in SIS.

3. Covenants to perform

3.1 General

The Trustee for itself and its successors and assigns covenants and undertakes to perform and observe the covenants, trusts and conditions of this Deed so far as the same are to be observed by the Trustee.

3.2 The Requirements

The Trustee covenants to comply with the Requirements.

4. Fund records

4.1 Receipt

A receipt given on behalf of the Fund by the Trustee or by the Fund's secretary or by any other person who may from time to time be authorised by the Trustee in writing to receive any money of the Fund is a sufficient discharge to the person by whom the money is paid.

4.2 Accounts, etc

The Trustee must:

- (1) keep account of all money received for and disbursed from the Fund and of all dealings in connection with it;
- (2) collect, and pay promptly into the bank account of the Fund, all money from time to time due to the Fund;
- (3) keep appropriate records, books and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments of the Fund as the Regulator requires;
- (4) prepare accounts as at the end of the Fund Year, as are specified in the Requirements; and
- (5) provide to the Members, any Employers and other persons reports, statements and notices as are specified in the Requirements.

4.3 Copy of Deed

A copy of this Deed must be made available for inspection by any Member on the request of that Member.

4.4 Employer information

An Employer must, as and when requested by the Trustee, give to the Trustee all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund. The Trustee may act on any information given to it by an Employer without verification.

5. Accounts and earnings

5.1 Establishment of Accumulation Account

The Trustee must establish an Accumulation Account in respect of each Member for each Class of which it is a Member.

5.2 Credits to Accumulation Account

The following amounts must be credited to the appropriate Accumulation Account of the Member according to the Class to which they relate:

- (1) any amount paid into the Fund in respect of the Member as a Rollover Payment pursuant to clause 17.9;
- (2) any Member Contributions;
- (3) any Contributions made in respect of the Member which are permitted by the Requirements;
- (4) the proceeds of any policy of assurance or Annuity effected by the Trustee in respect of the Member (to the extent that the value of the policy is not already credited to the Member's Accumulation Account);
- (5) any positive earnings allocated by the Trustee in accordance with clauses 5.8, 5.10 and 5.11; and
- (6) any forfeited amounts allocated to but not paid directly to the Member pursuant to clause 22.

5.3 Debits to Accumulation Account

The following amounts must be debited to the appropriate Accumulation Account of the Member according to the Class to which they relate:

- (1) any amount paid out of the Fund in respect of the Member as a Rollover Payment pursuant to clause 17;
- (2) any other Benefit payments made to or in respect of the Member (including the value at that time of any asset transferred pursuant to clause 20);

- (3) the costs of any policy of assurance or Annuity effected by the Trustee in respect of the Member;
- (4) any negative earnings as determined by the Trustee in accordance with clauses 5.8, 5.10 and 5.11;
- (5) any amount forfeited pursuant to clause 22;
- (6) any costs (including Taxation) that relate to that particular Member as may be determined by the Trustee; and
- (7) any amount that must be paid to a Non-Member Spouse's account.

5.4 Establishment of Income Account

The Trustee must establish an Income Account for the Fund.

5.5 Credits to Income Account

The following amounts must be credited to the Income Account:

- (1) all income and profits of the Fund each year;
- (2) credits arising out of adjustments pursuant to clause 5.10;
- (3) any surplus arising from a valuation of assets; and
- (4) any Contributions in respect of costs pursuant to clause 16.8.

5.6 Debits to Income Account

The Income Account must be debited with the following:

- (1) any loss sustained on the disposal of any investments of the Fund;
- (2) any costs or charges incurred or provided for (including income tax);
- (3) any deficiency arising from a valuation of Fund assets (including pursuant to clause 5.10);
- (4) the allocation of earnings to the Member's Accumulation Accounts; and
- (5) transfers to the Equalisation Account pursuant to clause 5.9.

5.7 Earning Rate

- (1) At the end of each Fund Year the Trustee must determine at its discretion the earning rate (which may be negative) for the Fund

and may take into account any provision or reserve for future contingencies as the Trustee considers reasonable (**Fund Earning Rate**).

- (2) The Trustee must allocate to each Accumulation Account the earnings due calculated in accordance with the Fund Earning Rate.

5.8 **Allocation of Earning Rate**

The Trustee must allocate the earnings of the Fund to each Accumulation Account in proportion to the amount standing to the credit of that Accumulation Account at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to Accumulation Accounts since that date.

5.9 **Unallocated earnings**

Any amount remaining in the Income Account after distribution of earnings must be transferred to the Equalisation Account.

5.10 **Interim Earning Rate**

- (1) If the Trustee is required to pay out a Benefit during the course of a Fund Year, the Trustee must establish a Fund Earning Rate in respect of a portion of a Fund Year on a basis which it considers equitable.
- (2) The Trustee must make such adjustment (up to the date of payment) reflecting the Fund Earning Rate then applying as the Trustee, at the Trustee's discretion, considers equitable and the Income Account and the Member's Accumulation Account must be debited or credited accordingly.

5.11 **Specific investments**

- (1) The Trustee may determine to invest separately in respect of:
 - (a) certain Members; or
 - (b) certain Classes of Members.
- (2) The Trustee must record on whose behalf any specific investments are made for the purposes of maintaining the Member's Accumulation Account.
- (3) The income and profits (less losses) arising from those specific investments and any costs or charges applicable to those specific investments which are incurred must not be allocated to the

Income Account but must be allocated directly to that Accumulation Account.

5.12 Members interest in assets

No Member or Beneficiary has or acquires any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole except where the Trustee has determined to hold specific assets to the account of and in respect solely of a Member or Class of Members.

5.13 Reserve Account

- (1) The Trustee may at any time establish 1 or more Reserve Accounts for the Fund.
- (2) While any funds are held in a Reserve Account they do not form part of any Accumulation Account.
- (3) A Reserve Account may be used by the Trustee (in the Trustee's absolute discretion) to augment Member's Benefits, to stabilise the investment earnings of the Fund or for any other purpose the Trustee sees fit.
- (4) The Trustee may deal with the assets of a Reserve Account as forfeited Benefits in accordance with the provisions of clause 22.5.
- (5) The following amounts may be credited to a Reserve Account:
 - (a) any forfeited Benefits pursuant to clause 22;
 - (b) any amounts remaining in the Income Account pursuant to clause 5.9;
 - (c) any income generated from the Reserve Account; and
 - (d) any superannuation contributions which the contributor has advised the Trustee are not to be credited to the Members' Accumulation Accounts.

5.14 Allocation of earnings in certain circumstances

- (1) If in the opinion of the Trustee:
 - (a) the amount to the credit of a Member's Accumulation Account is sufficient to provide the Member's Benefits (for example by reason of the Trustee making a determination pursuant to clause 28.1); or
 - (b) the assets of the Fund attributable to the Member or to the Member's Benefit are sufficient to provide the Member's Benefits;

then the Trustee may determine to allocate the earnings of the Fund (or of particular assets) in such manner among the Members as the Trustee in the Trustee's absolute discretion determines and which the Trustee is satisfied is fair and reasonable in all the circumstances.

- (2) In making a determination pursuant to clause 5.14(1) the Trustee must have regard to all the circumstances including the Contributions that the Trustee reasonably expects may be made in the future in respect of the Member.

5.15 Allocation at discretion of Trustee

Despite any other provisions of this clause 5 but subject to the Requirements, the Trustee may if the Trustee considers appropriate, debit or credit amounts (or tax credits) in a manner inconsistent with clause 5, including by applying tax credits or tax losses to certain accounts and crediting amounts to 1 or more Reserve Accounts if the Trustee believes to do so is for the benefit of 1 or more of the Members of the Fund.

6. Audit

6.1 Appointment of Auditor

The Trustee must appoint an independent registered auditor or any other person who is able to audit the Fund pursuant to the Requirements to carry out an annual audit of the accounts and records of the Fund.

6.2 Auditor's report

- (1) The Auditor is entitled to have access to all papers, accounts, books, records and documents in respect of the Fund and must prepare a report in writing on the affairs of the Fund.
- (2) The Auditor must submit the report to the Trustee and the Trustee may give a copy to the Members and any Employers.

6.3 Certification of Regulator return

The Auditor must certify, in the manner required by the Requirements, that the Fund's return to the Regulator for the year is true and fair in the Auditor's opinion and according to the information and explanations given by the Trustee and as shown in the books, accounts and other relevant records of the Fund.

6.4 Auditor's queries

The Trustee must use the Trustee's best endeavours to satisfactorily respond to any matters raised by the Auditor pursuant to Part 16 of SIS.

7. Disclosure standards

7.1 The Trustee must disclose to:

- (1) the Regulator;
- (2) the Members (including prospective and former Members);
- (3) any Employers;
- (4) the trustee of any Other Fund to which a Rollover Payment is made;
- (5) the Auditor; and
- (6) any other persons specified in the Requirements;

the information from time to time concerning the Fund, Contributions and Benefit entitlements which is specified in the Requirements.

8. Complaint resolution procedure

8.1 Implementation

There must be a complaints resolution procedure in accordance with this clause 8 if:

- (1) the Trustee determines that there will be a complaints resolution procedure for the Fund; or
- (2) the Requirements specify that a complaints resolution procedure must be implemented.

8.2 Appointment of a complaints officer

If there must be a complaints resolution procedure under clause 8.1:

- (1) the Trustee must appoint a complaints officer to implement the complaints resolution procedure for the Fund;
- (2) the Trustee has an absolute discretion as to whom the Trustee appoints as complaints officer; and
- (3) the appointment of the complaints officer continues until otherwise revoked by the Trustee.

8.3 Procedure

- (1) If a Beneficiary wishes to make an enquiry or complaint in respect of any matter pertaining to that person's membership of, or interest

in, the Fund (not being a matter pertaining to all the Members in general), then the Beneficiary must make the enquiry or complaint in writing to the Trustee clearly specifying that it is a matter to which the complaint resolution procedures are to apply.

- (2) The Trustee must consider the enquiry or complaint and may either:
 - (a) give written notice of its decision to the Beneficiary; or
 - (b) request a meeting (or commence any other procedure the Trustee in the Trustee's absolute discretion considers appropriate) with the Beneficiary and any other persons as the Trustee considers necessary for the purpose of seeking to resolve the complaint.
- (3) The Trustee may request further information from the Beneficiary, or any other person prior to satisfying clause 8.3.

8.4 Time limit for dealing with complaint

The Trustee must use the Trustee's best endeavours to ensure that all enquiries or complaints are properly considered and dealt with within 90 days after they are made.

8.5 Inform Members of procedure

The Trustee must provide Members with the contact details of the complaints officer and inform the Members of any complaints resolution procedure implemented for the Fund.

9. Fund assets

9.1 Gross assets

The gross assets of the Fund consists of all the cash, investments and other property for the time being held by or on account of the Trustee on the trusts of this Deed and will be established and maintained by:

- (1) the amount, if any, standing or transferred to the credit of the Fund;
- (2) the Contributions (if any) the Members make to the Fund;
- (3) the Contributions any Employer makes to the Fund;
- (4) interest dividends and distributions of income arising from any investment and the accumulation of them;

- (5) profits (less losses) and other benefits arising from any investment and the accumulation of them;
- (6) the proceeds of any policy of assurance held by the Fund; and
- (7) money, investments and other property transferred to the Fund as a Rollover Payment.

9.2 **Acceptance of money**

All money of the Fund must be paid as soon as practicable to the credit of an account in the name of the Fund kept with a bank, building society or similar body as determined from time to time by the Trustee or into a trust account of a solicitor, accountant or investment manager appointed pursuant to this Deed.

9.3 **Assets in name of Trustee or custodian**

The Fund's assets must be held in the name of the Trustee or another person the Trustee authorises in writing for that purpose. If the Fund has 5 or more Members the person must have satisfied the Requirements of SIS to be a custodian of Fund assets.

9.4 **Valuation of assets**

At:

- (1) the end of each Fund Year; or
- (2) any other time the Trustee considers it appropriate (including at the time of the payment of a Benefit to a Member);

the Trustee must make a valuation of all assets of the Fund (including the value of any policy of assurance held by the Fund) at that date and determine whether there is a surplus or deficiency.

10. **Policies of assurance**

10.1 **Power to insure**

- (1) The Trustee may insure or acquire life cover on the lives of any Member or Members (either by individual or group policies) for the provision of benefits to be payable to the Trustee on the death or disablement of the relevant Member.
- (2) In the event of death or disablement the Trustee must credit the Accumulation Account of the Member or former Member with the amount of the proceeds received under the policy of assurance less any expenses in relation to them.

10.2 **Premiums**

Premiums may be debited to the Accumulation Account of the relevant Member or the Income Account as the Trustee determines.

10.3 **Inform Member**

The Trustee must inform the Member of any policies in effect for that Member as specified in the Requirements.

11. **Fund Trustee**

11.1 **General**

The Fund is vested in the Trustee and must be managed by the Trustee on the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

11.2 **Appointment**

- (1) The then Trustee (or if there is no Trustee the Members) may appoint a new Trustee of the Fund.
- (2) If for any reason the Members are unable to appoint a new Trustee then a new Trustee may be appointed by any person who is or may be a Beneficiary and if more than 1 then by majority.

11.3 **Self managed funds**

- (1) The Trustee and the Members agree to use their best endeavours to ensure the Fund remains a self managed fund as defined in SIS.
- (2) The Trustee and the Members agree that if the Fund fails the definition of self managed fund then they will take action in relation to the appointment of an approved trustee as required by SIS or the Regulator.

11.4 **Persons eligible to be Trustee**

The Trustee of the Fund must be 1 or more of the following:

- (1) the original Trustee specified in this Deed;
- (2) any Trustee appointed by the then Trustee with the approval of the Members;
- (3) if the then Trustee is unwilling or unable to appoint a Trustee then any Trustee appointed by the Members;

- (4) any other Trustee consistent with the Requirements.

11.5 Corporate Trustee

The Trustee must (except for any period during which the provisions of the Deed are to the effect that the sole or primary purpose of the Fund is the provision of old age pensions) be a constitutional corporation as defined in SIS.

11.6 Retirement, removal of the Trustee

A person must immediately cease to act as a Trustee (or as a Director of a Trustee company) if:

- (1) it is removed by notice in writing from the Members;
- (2) a written resignation is given to the Members;
- (3) the person is disqualified from holding office by operation of law (in particular SIS);
- (4) being an individual, he or she dies;
- (5) being a company, it is wound up.

11.7 Vesting of assets

Any person who acts as a Trustee must, on ceasing to be a Trustee pursuant to this clause 11, do everything necessary to vest the Fund in the remaining or new Trustee and must deliver all records and other books to the remaining or new Trustee.

11.8 Office to be filled

- (1) The office of Trustee must be filled at all times and in the event of a vacancy occurring, a new Trustee must be appointed within 90 days of the vacancy occurring.
- (2) If for any reason there is no Trustee of the Fund at any time the Members must undertake the duties of the Trustee to the extent that it is necessary to appoint a new Trustee in accordance with the provisions of the Deed.
- (3) If the Trustee is an individual and the Members are unable to appoint a Trustee then on the death of the Trustee the Trustee's legal personal representative becomes the Trustee.

12. Trustee's powers of management

12.1 Powers

In addition to the powers which the Trustee might by law have and which are otherwise granted to it by this Deed, the Trustee has the following powers:

- (1) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (2) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries;
- (3) to borrow money and to secure its repayment in any manner and on any terms (including with or without security) which the Trustee may consider advisable in order to secure temporary finance in order to overcome cash flow problems in the payment of superannuation benefits or for other purposes acceptable pursuant to the Requirements;
- (4) to insure or reinsure any risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, reinsurance company or other body;
- (5) to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member;
- (6) to retain the services of and to appoint professional or other advisers (including Actuaries) in relation to the management, administration or investment of the Fund;
- (7) to pay and advance out of the Fund all expenses of and incidental to the management and administration of the Fund;
- (8) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund;
- (9) to comply with any order of the Superannuation Complaints Tribunal or any similarly constituted board, court or authority; and
- (10) generally to do all acts and things the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in performance of its obligations under this Deed.

12.2 **Trustee fees**

- (1) Subject to this clause 12.2, the Trustee is entitled to charge professional fees and to recover costs and outlays incurred in respect of the Trustee's services as Trustee of the Fund which fees may be charged in respect of:
 - (a) Contributions made to the Fund;
 - (b) income earned by the Fund; and
 - (c) management and administration of the Fund generally.
- (2) The fees which the Trustee may charge (if any) are those determined each Year by consultation between the Trustee and the Members.
- (3) If the Fund is a self managed fund as defined in SIS then, unless the Trustee and the Members unanimously agree (having regard to the consequences of failing the definition of self managed fund), no fees may be paid.

12.3 **Trustees indemnity**

The Trustee (and in the case of a Trustee company, its Directors) are entitled, except in the case of:

- (1) fraud;
- (2) wilful or reckless failure to exercise proper care and diligence; or
- (3) a civil penalty order pursuant to SIS;

to be indemnified out of the Fund to the maximum extent permitted by SIS against all liabilities incurred by the Trustee (or them) in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in the Trustee (or them) under this Deed or at law.

12.4 **Information confidential**

The Trustee must treat as strictly confidential (so far as practicable) all information disclosed to or gained by the Trustee in the course of administering the Fund.

12.5 **Trustee's discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed has an absolute and uncontrolled discretion. If after the exercise of a discretion, the Trustee for any reason forms the opinion that the discretion should be exercised

differently, then the Trustee may, subject to the Requirements, re-exercise the discretion.

12.6 Comply with Regulator

The Trustee must, despite any other provision contained in this Deed, abide by all lawful directions, orders and authorities issued by the Regulator in force from time to time.

13. Trustee's powers of investment and sale

13.1 Trustee to invest

So much of the money of the Fund as is not required immediately for the payment of Benefits or expenses must be invested as soon as practicable by and under the control and in the name of the Trustee (or another person authorised in writing by the Trustee for that purpose pursuant to clause 9.3) in any of the following investments:

- (1) any investment for the time being authorised by the laws of the Commonwealth of Australia or any state or territory of the Commonwealth for the investment of trust funds;
- (2) any mortgage on freehold property situated in Australia or elsewhere up to the value of the property and whether or not a formal valuation has been obtained;
- (3) on deposit with or on loan to any bank, building society, credit co-operative or other financial institution;
- (4) on deposit with or on loan to any person or organisation (including an Employer) with or without security and at a rate of interest and on terms the Trustee considers reasonable and the Trustee may make the loan even though the Trustee may have a direct or indirect interest or may benefit directly or indirectly from it;
- (5) the purchase or acquisition in any way of shares or stock (of any class or description) or of any type of bond, mortgage, debenture, note, option or other like security in or of any building society or company (including an Employer) incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock are fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (6) any policy of assurance or Annuity whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion;
- (7) the purchase or acquisition of any real or personal property and the improvement or extension of the property;

- (8) the purchase or acquisition of or subscription for any unit or subunit in any unit trust established or situated anywhere in the world whether individually or jointly and whether the units or subunits are fully paid up or whether their issue involves any contingent or reserve liability;
- (9) any other investments which the Trustee considers appropriate and which are consistent with the Requirements.

13.2 Restrictions on power to invest

Despite clause 13.1:

- (1) the Trustee is not authorised to make a loan or give any other financial assistance to any Member of the Fund contrary to section 65 of SIS unless for purposes approved under the Requirements or by the Regulator from time to time;
- (2) the Trustee is not authorised to acquire assets from Members Relatives or others in contravention of section 66 of SIS;
- (3) no investment may be made in contravention of the in-house asset rules of SIS; and
- (4) all investments must be made pursuant to the Trustee's investment strategy.

13.3 Sell and vary

The Trustee has power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed.

13.4 Investment strategy

The Trustee must formulate and implement an investment strategy in respect of the Fund having regard to the matters specified in SIS.

14. Membership of Fund

14.1 Invitation by Trustee

- (1) Subject to clause 14.1(2), the Trustee may invite any persons who are eligible to become members of superannuation funds pursuant to the Requirements to become Members of the Fund.
- (2) If the Reference Schedule specifies the persons eligible to become Members no person other than the persons specified (or within the class of persons specified) are eligible to become Members or may be invited to become Members.

- (3) If the Fund is (and is to remain) a self managed fund:
 - (a) each person admitted to membership must also be immediately appointed a Trustee or a member of the board of Directors of a corporate Trustee; and
 - (b) no person may be admitted to membership who is an employee of another member or associate (as defined in SIS for that purpose) unless they are Relatives, if to do so means the Fund is no longer a self managed fund under SIS.

14.2 Application form

- (1) The acceptance of any invitation must be made to the Trustee in writing and may be accompanied by a completed application for membership in the form of Schedule 1 or in any other form the Trustee may require.
- (2) If the Trustee has determined that no application form is necessary the Member must supply to the Trustee the information the Trustee requires to enable the person to be admitted.

14.3 Admission of Member

On receipt of a completed application for membership in the appropriate form (or upon the receipt of the required information from the Member) the Trustee may determine to admit the applicant to membership of the Fund.

14.4 Date of admission

The Member must be treated as having joined:

- (1) on a date determined by the Trustee; or
- (2) if the Trustee makes no determination, on the date of the completed application for membership.

14.5 Classes of membership

The Trustee may determine that there will be different Classes of membership. The Trustee may determine the Class of membership in which the applicant will be admitted.

14.6 Statement

On the admission of a person as a Member of the Fund, the Trustee must give to the Member a written statement containing the details specified in the Requirements.

14.7 Conditions of membership

The Trustee may impose conditions on an applicant's admission and may limit and impose conditions upon Benefits as it sees fit.

14.8 Member furnish information

Every Member and Beneficiary when requested by the Trustee must:

- (1) furnish the information the Trustee considers necessary for the purposes of the Fund; and
- (2) submit to medical examinations as required by the Trustee by a registered medical practitioner nominated by the Trustee.

14.9 Suspend Contributions, etc

If a Member or a Beneficiary fails to comply with the provisions of clause 14.8, the Trustee may suspend the acceptance of any Contributions or withhold any Benefit until the Member or Beneficiary complies.

14.10 Misleading information

Where a Member or Beneficiary furnishes information affecting or likely to affect the Benefits payable, and the information supplied is incorrect or misleading, or any relevant information is deliberately withheld, the Trustee may in the Trustee's absolute discretion alter the Benefits to amounts that would have applied had full and accurate information been supplied.

14.11 Cessation of membership

A person ceases to be a Member of the Fund on:

- (1) the date on which payment of all his or her Benefits is made;
- (2) his or her death; or
- (3) the provisions of clause 22.2 or otherwise operating to terminate his or her membership.

14.12 Self managed fund

If the Fund is (and is to remain) a self managed fund then:

- (1) if a Member becomes a disqualified person as defined in SIS then the Member must immediately resign as a Member and advise the Trustee as to how the Member's Benefits are to be paid; and

- (2) on a person ceasing to be a Member that person must also retire as a Trustee or Director of a corporate Trustee (if so required for the Fund to remain a self managed fund).

15. Meetings of Members

15.1 Notice

To call a meeting of Members requires:

- (1) a notice requesting a meeting to be served on the Trustee signed by at least ½ of the Members; or
- (2) a resolution by the Trustee.

15.2 Trustee convene

The Trustee must convene a meeting of Members as soon as practicable after the requirements of clause 15.1 are met and must send a notice of meeting to each Member specifying that a meeting will be held within 28 days of that notice being issued.

15.3 Notice of meeting

Every notice of meeting must:

- (1) be posted or given at least 10 days before the meeting;
- (2) advise the place and time of the meeting;
- (3) advise the Member that the Member may appoint a proxy to vote on behalf of the Member at the meeting provided that the Member lodges the proxy with the Trustee not later than 24 hours before the meeting;
- (4) be accompanied by a form of proxy approved by the Trustee; and
- (5) set out the matters including any resolutions to be considered at the meeting.

15.4 Notice validly given

Every notice must be treated as validly given if it is given personally to the Member or posted by prepaid ordinary mail addressed to the Member at the Member's last known address and when so posted the notice must be treated as given 3 days after the date of posting.

15.5 Conduct of meeting

The Trustee must appoint a chair of the meeting and may make regulations concerning the conduct of the meeting.

15.6 Quorum

A quorum for the meeting is 2 Members present in person or by proxy or 25% of the Members of the Fund, whichever is the lesser. If a quorum is not present within 30 minutes of the time appointed for the meeting the chair of the meeting must adjourn the meeting to the same time and place in the following week and at the adjourned meeting a quorum is the Members present in person or by proxy.

15.7 Members vote

Each Member is entitled to 1 vote with the chair being given a casting vote in the event of an equality of votes.

16. Contributions to Fund

16.1 Acceptance

The Member, any Employer or any other person permitted by the Requirements to make Contributions into the Fund may contribute the amounts and from the date the Trustee determines.

16.2 Refusal

Unless the Trustee determines otherwise, it must refuse to accept Contributions:

- (1) if the acceptance of the Contributions would be contrary to the Requirements in respect of the Member;
- (2) from persons other than those permitted by the Requirements to make superannuation contributions.

16.3 Member Contributions

- (1) Each Member may contribute the amounts (if any) and from the date agreed on between the Trustee and the Member but subject to any limits prescribed by the Requirements.
- (2) Any Contributions payable by a Member may be deducted by the Member's Employer from each salary payment and must be paid by the Employer to the Fund immediately.

16.4 **Employer Contributions**

Any Employer may, with the consent of the Member and the Trustee, contribute in respect of a Member who is an Employee in the manner agreed between the Member, the Employer and the Trustee.

16.5 **Extended leave**

If a Member takes extended leave, the Trustee may consult with the Member regarding any variation in the Contributions in respect of the Member.

16.6 **Contributions to more than 1 membership Class**

Where Contributions are made in respect of a Member and the Member is a member of more than 1 Class, the Member must state in relation to which Class or Classes the Contribution is being made and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account or Accounts.

16.7 **Contribution in cash or assets**

- (1) Any contribution made must be paid in cash or by transfer of assets. A contribution may be made by the transfer of an asset only if:
 - (a) the Trustee determines that the asset transferred is an appropriate investment for the Fund; and
 - (b) there is no breach of clauses 13.2(2), 13.2(3) or 13.2(4).
- (2) The Trustee must obtain a valuation of the asset as soon as is reasonably practicable.

16.8 **Unallocated Contributions**

The Trustee may accept Contributions without those Contributions being allocated to a Member.

17. **Transfers to Other Funds**

17.1 **Transfers out**

Where a Member joins or is eligible to join any Other Fund and the Member requests that the whole or a part of the Member's entitlement in the Fund be transferred to the Other Fund, the Trustee may pay to the trustee of the Other Fund an amount or transfer investments of the Fund of equivalent value to the amount (**Rollover Payment**) determined by the Trustee.

17.2 Requirements

The Rollover Payment must comply with the Requirements.

17.3 Transfer of Restricted Benefits

Where a Member or former Member has Restricted Benefits which form part of the Rollover Payment the Trustee must ensure that the provisions of the Other Fund provide that the amounts must be preserved or dealt with in accordance with the Requirements but the Trustee is not responsible for the manner in which the Restricted Benefits are dealt with.

17.4 Discharge

The receipt of the Rollover Payment by the proper officer of the Other Fund is a complete discharge to the Trustee of all liabilities in respect of it and the Trustee has no responsibility to see to its application.

17.5 Complete documents

The Member or former Member must complete and execute a Rollover Payment notification or any other documents and provide to the Trustee any information required to enable the Rollover Payment to be made.

17.6 Consent

Subject to clause 17.7 the Trustee must not effect a Rollover Payment without the consent of the Member or former Member.

17.7 Compulsory rollover

Subject to clause 17.8 the Trustee must pay any Benefits as required by the Requirements to an eligible rollover fund as determined by the Trustee, being a fund that satisfies the Requirements to enable it to accept the payment.

17.8 Small accounts

The Trustee is not required to pay Benefits to an eligible rollover fund if the Trustee has determined to implement any procedures prescribed to ensure that Members with account balances of less than \$1,000 (or any other figure prescribed by the Regulator) do not have their account balances eroded.

17.9 Contributions splitting

(1) Member application for contributions splitting

From 1 January 2006 a Member of the Fund may in a financial year apply to the Trustee to roll over, transfer or allot some or all of

the Members Splittable Contributions made by or in respect of the Member in a financial year to the Member's Spouse.

(2) Acceptance of contributions splitting application

The Trustee from 1 January 2006 may accept an application to roll over, transfer or allot Splittable Contributions if:

- (a) The Member has not already made an application in the same financial year in relation to a Spouse which has been given effect or is being considered by the Trustee;
- (b) The amount of the Splittable Contributions to which the application relates does not exceed the Maximum Splittable Amount under the Requirements;
- (c) The Member's Spouse is not:
 - (i) Aged 65 years or more; or
 - (ii) Aged between their preservation age and 65 years and permanently retired;

and the Spouse has provided a statement to the Trustee confirming either that they are aged less than their relevant preservation age or they are between their preservation age and 65 years and not permanently retired.

- (d) The Trustee has no reason to believe that the Spouse statement in (c) above is untrue.
- (e) The Member has specified in the application the amount of Taxed Splittable Contributions and Untaxed Splittable Contributions that the Member is seeking to split;
- (f) The amount of Untaxed Splittable Contributions specified in the application is less than or equal to the amount of undeducted contributions that would form part of an eligible termination payment if the Member withdrew their entire Benefit at the time of the Trustee giving effect to the application;
- (g) The amount of Taxed Splittable Contributions specified in the application is less than or equal to the taxed element of the Post June 1983 component that would form part of an eligible termination payment if the Member withdrew their entire Benefit at the time of the Trustee giving effect to the application;
- (h) The Splittable Contributions are not subject to a Splitting Order or Flagging Order.

(3) Trustee conditions on Splitting Application

Notwithstanding Clause 21.10(2) above the Trustee may accept a contributions splitting application in any circumstances permitted by the Requirements or may impose such conditions as it decides on the acceptance of a contributions splitting application.

(4) Time for implementing split

If the Trustee accepts a contributions splitting application it will as soon as practicable and in any case within 90 days after receiving the application or within such other time as the Requirements permit, rollover, transfer or allot the relevant Splittable Contributions to the Member's Spouse.

(5) Trustee can reject application

The Trustee has discretion to reject any contributions splitting application made by a Member without ascribing reasons thereto.

(6) Section 82AAT Notice must be given before application

Except as otherwise provided by the Requirements the Trustee cannot accept a notice provided by a Member under section 82AAT of the ITAA in respect of Contributions which are the subject of a contributions splitting application already lodged with the Trustee which has not been rejected.

18. Transfers from Other Funds

18.1 Transfers in

Where a Member is or was a member or beneficiary of any Other Fund the Trustee may take over or acquire by transfer or otherwise from the trustee of the Other Fund the whole or any part of the money or assets of that Fund with the intent of preserving the entitlements and interests of the member of the Other Fund at the time of transfer.

18.2 Entitlements in the Fund

The Trustee must hold the money or assets referred to in clause 18.1 as part of the Fund and reflect the entitlements and interests in the particular Member's Accumulation Account as the Trustee determines.

18.3 Acceptance of Restricted Benefits

Where the Trustee is advised that a transfer is or contains an amount that is a Restricted Benefit, the Trustee must preserve or deal with the amount in accordance with the Requirements.

18.4 Amount, composition of entitlement

On any transfer in accordance with this clause 17.9, the amount of any entitlement for the Member is the amount or the value of the assets transferred as determined by the Trustee and the composition of it must be as determined by the Trustee having regard to the information provided by the trustee of the Other Fund.

18.5 Trustee may receive Splittable Contributions

- (1) From 1 January 2006 where a Member of the Fund is the Spouse of another Member of the Fund or the Spouse of a member of an Other Fund the Trustee may accept into the Fund on behalf of the Member the roll over (including internal roll over), transfer or allotment of a Contributions-Splitting ETP.
- (2) Unless the Trustee decides otherwise where the Fund receives a Contributions-Splitting ETP the Member on whose behalf the Trustee receives the Contributions-Splitting ETP must advise the Trustee of the extent to which the Contributions-Splitting ETP consists of:
 - (a) the taxed element of a post-June 1983 component;
 - (b) undeducted contributions.

19. Payment of Benefits

19.1 Requirements

The Benefits must be paid in accordance with the Requirements and in particular complying with:

- (1) the payment of benefits standards (Part 6 of the SIS Regulations); and
- (2) the minimum benefits standards (Part 5 of the SIS Regulations).

19.2 Procedure before Benefits payable

No Benefit may be treated as having accrued until, and Benefits are only due and payable when:

- (1) the Member (or in the case of the Member's death, the Nominated Dependant or other Beneficiary) has given to the Trustee:
 - (a) the evidence the Trustee requires as to the event giving rise to the entitlement;

- (b) a written request that the Trustee pay the Benefit to or in respect of the Member; and
- (2) the Trustee has:
 - (a) received the evidence and the request;
 - (b) determined in writing that the Benefit is payable; and
 - (c) notified in writing the person requesting the Benefit of the Trustee's determination.

19.3 **Address, etc**

Benefits are payable in the manner and to the address of the Member or Beneficiary advised to the Trustee from time to time or otherwise as may be determined by the Trustee.

19.4 **Information to Trustee**

Every Member or Beneficiary must notify the Trustee in writing at the time a Benefit becomes payable of:

- (1) the Member or Beneficiary's place of residence and full postal address;
- (2) the manner in which the Benefit is to be paid; and
- (3) the bank account (if any) to which the Member or Beneficiary requests that the Benefit be paid.

19.5 **Receipt**

Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

19.6 **Death Benefits**

The person or persons to whom death Benefits are payable and in what proportions and in what manner must be determined by the Trustee pursuant to clause 31.

19.7 **Actual balance**

Benefits payable must be determined having regard to the balance of the Members Accumulation Account at the time of actual payment.

19.8 **Special Benefits, vesting schedule, defined Benefits**

The Trustee may agree with a Member to provide Benefits on a specified basis. The ways in which the basis may be specified include:

- (1) by way of a vesting schedule;
- (2) by reference to a formula;
- (3) by way of a promised or defined level of Benefits; and
- (4) by way of a guaranteed rate of return.

19.9 Deduction of tax from Benefits payable

The Trustee must deduct from any Benefit payable any Taxation required to be deducted or any Taxation the Trustee considers is required to be deducted, including any Taxation payable on income or profits of the Fund whether realised or unrealised.

19.10 Deferral at Member's request

With the consent of the Member (including where the Member does not request the Benefit be paid) the Trustee may defer payment (or commencement of payment) of the Benefit until the earlier of:

- (1) the Member's request for the Benefit to be paid; or
- (2) the time the Requirements specify the Benefit must be paid.

20. Transfer in specie

20.1 Life policy

- (1) Where a Benefit is payable (either by way of Pension or Lump Sum) and the Benefit includes any interest in a policy of assurance of any kind on the life of the Member the Trustee may in the Trustee's absolute discretion assign the interest to the person entitled to the Benefit.
- (2) The Trustee is not liable to pay any premiums becoming due and owing under the policy after the date of the assignment.

20.2 Assets

The Trustee may with the consent of the person entitled to a Benefit transfer investments of the Fund of equivalent value to the person in lieu of paying the whole or part of the amount otherwise payable.

21. Payment to others on behalf of Members or Beneficiaries

21.1 Subject to the Requirements where:

- (1) any Member or Beneficiary is under the age of 18 years; or

- (2) it would be in the Trustee's opinion in the best interests of the Member or Beneficiary;

the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Member or the Beneficiary.

- 21.2 The receipt of the person to whom the Benefit is paid is a complete discharge to the Trustee for the payment in respect of the Member or the Beneficiary and must be treated as payment to the Member or the Beneficiary. The Trustee is not bound or concerned to see to the application of the Benefit so paid.

22. Forfeiture of Benefits

22.1 Benefits accruing or accrued

Subject to the Requirements all Benefits:

- (1) accruing; or
- (2) accrued;

must be held by the Trustee upon the trusts contained in this Deed until the happening of any of the events described in clause 22.3.

22.2 Forfeiture

On the happening of an event as described in clause 22.3, subject to the Requirements, any Member, former Member or after his or her death, any of his or her Dependants or his or her personal representative forfeit entitlement to:

- (1) all his or her Benefits which are accruing or may accrue after that event;
- (2) all his or her Benefits which have at that time accrued;

other than that part which represents the Member's Minimum Benefit and, if there is no Minimum Benefit he or she ceases to be a Member of the Fund.

22.3 Events of forfeiture

Clauses 22.1 and 22.2 apply to any Member:

- (1) who assigns or charges or attempts to assign or charge any Benefit;

- (2) whose Benefits whether by his or her own act, operation of law, court order or otherwise become payable to or vested in any other person, company, government or other public authority;
- (3) who has a judgment entered against him or her for an amount not less than \$10,000;
- (4) who has a garnishee order made against him or her;
- (5) who becomes insolvent; or
- (6) who for any reason is unable personally to receive or enjoy the whole or any portion of his or her Benefits or, in the opinion of the Trustee, is incapable of managing his or her affairs;

except where the event would amount to an act of bankruptcy under the *Bankruptcy Act*.

22.4 Residual amounts

Subject to the Requirements, any Member or former Member who has been paid all Benefits which the Trustee considers should be paid to the Member or former Member and who still has a residual amount standing to the credit of his or her Accumulation Account forfeits the amount immediately and the amount must be dealt with as a forfeited Benefit.

22.5 Dealing with forfeited Benefits

The Trustee must, subject to the Requirements, hold on trust and pay or apply any Benefits which have been forfeited as follows:

- (1) to or for the benefit of the former Member or Beneficiary (as the case requires) or the Dependants of the former Member or Beneficiary or any 1 or more of them in the proportions between them and on the terms the Trustee in the Trustee's absolute discretion determines, but where the former Member remains in the employment of the Employer the payments must be limited to the relief of hardship of the former Member or of his or her Dependants;
- (2) to or for the benefit of Members and former Members of the Fund who have rights to receive Benefits from the Fund or for their Dependants on a basis that the Trustee in the Trustee's absolute discretion considers reasonable having regard to all the circumstances (and if more than 1 of them in the proportions between them and on the terms the Trustee in the Trustee's absolute discretion determines) and the Benefits may be applied in lieu of Contributions which were otherwise payable;
- (3) to a Reserve Account;

- (4) in lieu of Contributions; or
- (5) for any other purpose consistent with the Requirements or approved from time to time by the Regulator.

22.6 Balance to former Members on winding up

If on the winding up of the Fund there remains no person entitled to any Benefits forfeited under this Deed then any residual amount may be apportioned among the former Members in the proportions determined by the Trustee.

23. Excessive Benefits

23.1 Limit on Benefits

Despite any other clause of this Deed, including clause 27.2, the Trustee may in the Trustee's absolute discretion determine that Benefits payable to any Member under this Deed be limited so that the Member's Benefits under this Deed (when added to the RBL amount of any benefits which that Member has received or is entitled to under any other superannuation arrangements including Approved Deposit Funds and Annuities) do not exceed the Member's RBL (or the amount that the Trustee has calculated to be the Member's RBL).

23.2 Information to Trustee

A Member must, on the Trustee's request, provide to the Trustee:

- (1) sufficient information to enable the Trustee to calculate the Member's RBL; or
- (2) a copy of the Member's RBL determination.

23.3 Excess Benefits

The Trustee may in the Trustee's discretion but subject to the Requirements deal with the Benefits in excess of the Member's RBL as the Trustee determines, including treating the amount as a forfeited Benefit.

23.4 Variation in Contributions

If at any time:

- (1) the Trustee is of the opinion that a Member's Benefits may exceed the Member's RBL after taking into account the adjusted RBL amounts of any previous benefits (as determined under Division 14 of Part III of the ITAA);

- (2) the Trustee has been advised that the Benefits payable from the Fund are or may be in excess of the Member's RBL; or
- (3) where a report by an Actuary discloses that the assets of the Fund are sufficient to provide the Benefits under this Deed (or where the Trustee has formed that opinion);

then the Trustee may require the Member and the Employer to immediately reduce or cease the Contributions in respect of that Member by the amount the Trustee in the Trustee's absolute discretion determines is necessary in order to reduce the Benefit payable in respect of that Member (either alone or aggregated with any other benefits payable) to an amount which does not, and is not likely to, exceed the Member's RBL.

23.5 Compulsory Contributions

An Employer need not comply with a request under clause 23.4 where the Employer must make compulsory superannuation contributions in respect of the Member concerned.

24. Preservation of Benefits

- 24.1 The Trustee must ensure that any Benefits which are required to be preserved or which are restricted pursuant to the Requirements are so preserved or restricted until the satisfaction of the relevant condition of release prescribed in the SIS Regulations.

25. Pension Benefits

25.1 Terms of Pension

The Trustee may in consultation with the Member or the Beneficiary determine the terms on which a Pension is payable. Subject to clause 32, the Pension must be on the basis agreed between the Trustee and the Member or the Beneficiary and must:

- (1) commence on the day the Benefit becomes payable pursuant to clause 18.5;
- (2) be by monthly, quarterly, 6 monthly or yearly instalments payable in arrears;
- (3) be at the rate or paid on the basis (whether variable or constant) agreed, provided that it is consistent with the Requirements;
- (4) be payable during the life of the Pensioner or for the period agreed;

- (5) on the death of the Pensioner (if the Pension is still payable) be payable to the Nominated Dependant or as the Trustee determines under clause 31 whether by continuation of the Pension or commutation; and
- (6) not be assignable or able to be charged encumbered or mortgaged in any manner.

25.2 **Trustee may vary**

The Trustee may, subject to the Requirements, vary the frequency or basis on which any Pension may be payable.

25.3 **Limit**

No Pension may be of an amount which in the opinion of the Trustee is greater than that which the assets of the Fund are sufficient to provide.

25.4 **Allocated Pension**

- (1) Subject to clause 32, if the Trustee determines to pay an allocated Pension then the terms on which the Pension is payable will be the terms set out in clause 25.4(2) or any other terms determined by the Trustee in consultation with the Member.
- (2) The Pension must be in accordance with the following:
 - (a) the Pension shall be paid at least annually;
 - (b) the amount of the Pension in any year shall be such amount as is nominated by the Pensioner and notified to the Trustee in writing from time to time PROVIDED THAT the amount shall not be greater than or lesser than the amounts calculated as the maximum and minimum limits specified by the Requirements for the payment of a Pension;
 - (c) the Pension shall not be transferred to any person other than a reversionary beneficiary on the death of the Pensioner or on the death of a reversionary beneficiary or shall only be transferred upon such other terms as shall be acceptable under the Requirements;
 - (d) the capital value of the Pension and the income from the Pension cannot be used by a person as security for a borrowing;
 - (e) if the commencement day of the Pension occurs before 1 June in the financial year then there must be an amount paid, calculated pro rata on a daily basis during that financial year.

- (f) The commutation of any Pension shall be made in accordance with the Requirements.
- (g) The minimum amount required to be paid under the Requirements must be paid in the financial year in which a commutation takes place unless:
 - (i) the commutation results from the death of the Pensioner or a reversionary beneficiary; or
 - (ii) the sole purpose of the commutation is:
 - (A) to pay a superannuation contributions surcharge; or
 - (B) to give effect to an entitlement of a Non-Member Spouse under a Splitting Order; or
 - (C) to meet the rights of a Member to return a financial product under the *Corporations Act 2001*; or
 - (iii) where there is a partial commutation the account balance of the Pension is equal to or greater than the minimum balance required by the Requirements after the commutation.

25.5 Market-Linked Pensions

- (1) If the Trustee determines to pay a Market-Linked Pension then the terms upon which the Pension is payable shall be in accordance with clause 25.5(2) or otherwise as the Requirements permit.
- (2) The Pension shall be in accordance with the following:
 - (a) the Market-Linked Pension:
 - (i) is paid at least annually to the Pensioner or to a reversionary beneficiary throughout a period equal to the Pensioner's life expectancy on the commencement day of the Pension, rounded up to the next whole number if Pensioner's life expectancy does not consist of a whole number of years; or
 - (ii) is paid at least annually to the Pensioner or to a reversionary beneficiary throughout a period equal to the Pensioner's life expectancy mentioned in subparagraph (i) calculated, at the option of the Pensioner, as if the Pensioner were up to 5 years younger on the commencement day; or

(iii) if the pension has a commencement day on or after 1 January 2006 – the pension is paid at least annually to the Pensioner or reversionary beneficiary throughout a period that is not less than the period available under subparagraph (i) and not more than the greater of the following periods:

- (A) the maximum period available under subparagraph (ii) or;
- (B) the period of years equal to the number that is the difference between the age attained by the Pensioner at his or her most recent birthday before the commencement day, and 100; or

(iv) if:

- (A) the Pension is a pension that reverts to the Pensioner's Spouse on the death of the Pensioner; and
- (B) the life expectancy of the Pensioner's Spouse is greater than the life expectancy of the Pensioner; and
- (C) the Pensioner has not chosen to make an arrangement mentioned in subparagraph (i), (ii) or (iii) for the Pension;

the Pension is paid at least annually to the Pensioner or to a reversionary beneficiary throughout a period equal to:

- (D) the life expectancy of the Pensioner's Spouse on the commencement day; or
- (E) the life expectancy of the Pensioner's Spouse calculated, at the option of the Pensioner, as if the Spouse were up to 5 years younger on the commencement day; or
- (F) if the pension has a commencement day on or after 1 January 2006 – a period that is not less than the period available under sub-subparagraph (D), and not more than the greater of the following periods:
 - (I) the maximum period available under sub-subparagraph (E);

- (II) the period of years equal to the number that is the difference between the age attained by the Spouse at his or her most recent birthday before the commencement day, and 100;

at the option of the Pensioner, and rounded up to the next whole number if the life expectancy of the Pensioner's Spouse, or the period does not consist of a whole number of years; and

- (b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a Splitting Order) is determined in accordance with Schedule 6 of the SIS Regulations; and
- (c) the Market-Linked Pension does not have a residual capital value; and
- (d) the Market-Linked Pension cannot be commuted except:
 - (i) if the Pension:
 - (A) is not funded from the commutation of:
 - (I) an Annuity that is provided under a contract that meets the standards of SIS Regulations 1.05 (2), (3), (9) or (10); or
 - (II) another pension that is provided under rules that meet the standards of SIS Regulation 1.06(8), or SIS Regulations 1.06 (2), (3) or (7); or
 - (III) another pension that is provided under terms and conditions that meet the standards of Regulation 1.07 (3A) of the RSA Regulations; and
 - (B) the commutation is made within 6 months after the commencement day of the Pension; or
 - (ii) subject to subparagraph (iii), on the death of the Pensioner or reversionary beneficiary, by payment of:

- (A) a lump sum benefit or a new Pension to one or more Dependants of either the Pensioner or reversionary beneficiary; or
 - (B) a lump sum benefit to the legal personal representative of either the Pensioner or the reversionary beneficiary; or
 - (C) if, after making reasonable enquiries, the provider of the Pension is unable to find a person mentioned in sub-subparagraph (A) or (B), a lump sum benefit to another individual; or
- (iii) for subparagraph (ii), if the Pensioner has opted, under subparagraph (a) (iv), for a period worked out in relation to the life expectancy of the Pensioner's Spouse or the period equal to the date of commencement until the Spouse attaining 100 years of age, the Market-Linked Pension cannot be commuted until the death of both the Pensioner and the Pensioner's Spouse; or
- (iv) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit that is:
- (A) an Annuity provided under a contract that meets the standards of SIS Regulations 1.05 (2), (3), (9) or (10); or
 - (B) a pension that is provided under rules that meet the standards of SIS Regulation 1.06(8) or SIS Regulations 1.06 (2), (3) or (7); or
 - (C) a pension that is provided under terms and conditions that meet the standards of Regulation 1.07 (3A) of the RSA Regulations; or
- (v) to pay a superannuation contributions surcharge; or
- (vi) to give effect to an entitlement of a Non-Member Spouse under a Splitting Order; and
- (e) if the Market-Linked Pension reverts, it does not have a reversionary component greater than 100% of the account balance immediately before the reversion; and

- (f) if the Market- Linked Pension is commuted, the commutation amount cannot exceed the account balance immediately before the commutation; and
 - (g) the Market-Linked Pension can be transferred only:
 - (i) on the death of the Pensioner:
 - (A) to one of the Dependants of the Pensioner; or
 - (B) to the legal personal representative of the Pensioner; or
 - (ii) on the death of the reversionary beneficiary:
 - (A) to one of the Dependants of the reversionary beneficiary; or
 - (B) to the legal personal representative of the reversionary beneficiary; and
 - (h) the capital value of the Market-Linked Pension, and the income from it, cannot be used as security for a borrowing.
- (3) If the commencement day of the Market-Linked Pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.
- (4) The minimum amount for the Market-Linked Pension required to be paid under the Requirements must be paid in the financial year in which a commutation takes place unless:
- (a) the commutation results from the death of the Pensioner or a reversionary beneficiary; or
 - (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contribution surcharge; or
 - (ii) to give effect to an entitlement of a Non-Member Spouse under a Splitting Order; or
 - (iii) to meet the rights of a Member to return a financial product under the *Corporations Act 2001*; or
 - (c) where there is a partial commutation the account balance of the Pension is equal to or greater than the minimum balance required by the Requirements after the commutation.

25.6 Pre-Retirement Non-Commutable Allocated Pensions

Notwithstanding anything in these Rules where a Member attains his or her preservation age but does not retire from gainful employment the Trustee may offer an allocated pension on the terms specified in these Rules except the allocated pension cannot be commuted and cashed as a ETP unless:

- (1) the purpose of the commutation is:
 - (a) to cash an unrestricted non-preserved benefit; or
 - (b) to pay a superannuation contributions surcharge; or
 - (c) to give effect to an entitlement of a Non-Member Spouse under a family law payment split; or
- (2) before commutation the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; or
- (3) the *Superannuation Law* otherwise permits the pension to be commuted.

25.7 Pre-Retirement Non-Commutable Market Linked Pensions

Notwithstanding anything in these Rules where a Member attains his or her preservation age but does not retire from gainful employment the Trustee may offer a Market Linked Pension on the terms specified in these Rules except that the Market Linked Pension cannot be commuted and cashed as a ETP unless:

- (1) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or
- (2) before commutation the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; or
- (3) the *Superannuation Law* otherwise permits the pension to be commuted.

25.8 Purchase of Pension or Annuity

If the Trustee so determines a Pension may be provided by way of purchase of a Pension or Annuity from a life office or Other Fund.

26. Commutation of Pension

26.1 Subject to clause 32, the Trustee must on the written application of a Member commute all or part of a Pension to a Lump Sum as permitted under the Requirements if:

- (1) the commutation is allowed under the Requirements;
- (2) in the opinion of the Trustee the commutation will not disadvantage the Fund.

26.2 The following provisions apply to the commutation:

- (1) the Trustee determines the amount of the Lump Sum payable in respect of the Pension being commuted and may for that purpose obtain the advice of the Actuary;
- (2) the amount remaining (if any) of the commuted value not paid by way of Lump Sum remains payable by Pension the amount of which is determined by the Trustee (who may obtain the advice of an Actuary).

27. Lump Sum Benefits

27.1 Time for payment

- (1) Subject to clause 32, if a Lump Sum Benefit is payable then, if the Member so requests, it must be paid as soon as possible after the date on which the Benefit becomes payable.
- (2) If in the opinion of the Trustee the payment of the Benefit is likely to endanger the financial security of the Fund, payment may be deferred for a period up to 12 months from the date upon which the Benefit became payable.

27.2 Limit

No Lump Sum Benefit may be:

- (1) of an amount which in the opinion of the Trustee is greater than that which the assets of the Fund are sufficient to provide in respect of the Member; and
- (2) unless agreed to the contrary between the Trustee and the Member, of an amount which is greater than the Member's RBL less the sum of the adjusted RBL amount of any previous benefits (as determined under the ITAA).

27.3 SIS limitation

- (1) The payment of a Lump Sum (unless by way of commutation of Pension) is subject to the Trustee of the Fund at that time being a corporation as required by SIS and all other Requirements of SIS and the SIS Regulations (if any) having been met to allow the payment of Lump Sums.
- (2) If those conditions are not met the Benefit is payable as a Pension.

28. Conversion of Lump Sum to Pension

28.1 Application

Subject to clause 32, on the written application of a Member or Beneficiary the Trustee may pay to the Member from the Fund a Pension payable for life or any period certain or uncertain, in lieu of the whole or a portion of any Lump Sum Benefit.

28.2 Cost of Pension

The cost and terms of any Pension payable pursuant to this clause are determined by the Trustee (who may obtain the advice of the Actuary) in accordance with clause 25.

28.3 Trustee's decision

The decision of the Trustee as to whether or not any Pension will be paid or provided is final and binding.

29. Retirement and termination Benefits

29.1 Form of Benefit

Subject to clause 32, upon a Member:

- (1) retiring from Gainful Employment on or after the Normal Retirement Age;
- (2) terminating employment in circumstances where the Requirements permit the Benefit to be paid and the Member having requested the Benefit be paid;
- (3) having retired from employment and attained the age when the Benefit must be paid; or
- (4) requesting a Benefit (being a Benefit that is an unrestricted non-preserved benefit as defined in SIS) be paid;

the Trustee must pay to the Member his or her Benefit by way of Pension or Lump Sum as may be requested by the Member provided that:

- (5) payment is consistent with the Requirements applying to funds having individual Trustees; and
- (6) if the Member has not requested payment by way of Lump Sum and the Member has not at that time attained the age at which an old age pension (as defined in SIS) may be paid, the commencement of the Pension is deferred until that time.

29.2 Amount of Benefit

The Benefit, subject to clauses 18.5, 22 and 23, is (or has a capital value of) an amount equal to the Member's Accumulation Account.

30. Benefits for Permanent Incapacity or Permanent Invalidity

30.1 Form of Benefit

Subject to clause 32, upon a Member ceasing to be gainfully employed as a result of Permanent Incapacity or Permanent Invalidity, the Trustee must pay to or in respect of the Member his or her Benefit by way of Pension or Lump Sum as may be requested by the Member.

30.2 Amount of Benefit

The Benefit, subject to clauses 18.5, 22 and 23, is of an amount equal to the Member's Accumulation Account.

30.3 Discretionary Benefit

Subject to clause 32, the Trustee may by resolution determine to pay an additional amount of Benefit.

31. Death Benefits

31.1 Form of Benefit

Subject to clause 32, upon the death of a Member or Pensioner, before the whole of his or her Benefit has been paid, the Trustee must pay the Benefit by way of Lump Sum.

31.2 Amount of Benefit

The Benefit, subject to clauses 18.5, 22 and 23, is of an amount equal to the former Member's Accumulation Account.

31.3 Discretionary Benefit

The Trustee may by resolution determine to pay an additional amount of Benefit.

31.4 Person to whom Benefit payable

Subject to clause 31.7 the Trustee must pay the Benefit to or for the benefit of the Nominated Dependant of the former Member or Pensioner but in the event that there is no Nominated Dependant or the Trustee considers it inappropriate to pay the Benefit to any Nominated Dependant the Trustee must pay or apply the Benefit to or for the benefit of any 1 or more of the former Member's or Pensioner's Dependants in the manner, at the times, and in the proportions between them, if more than 1, the Trustee in the Trustee's absolute discretion determines.

31.5 Estate

If the Trustee determines that:

- (1) a deceased Member or Pensioner is not survived by any Dependants, or
- (2) in the Trustee's opinion having regard to the period of the dependency on the deceased Member and the extent of the dependency and any other matters the Trustee considers relevant, the whole of the Benefit should not be paid to the surviving Dependants;

the death Benefit under this Deed (or that part not paid to the surviving Dependants) must be paid to the estate of the former Member, but if the Trustee is (or becomes) of the opinion that a grant of probate or letters of administration in respect of the estate will not be made the Benefit payable under this Deed must, subject to the Requirements, be paid to 1 or more Dependants or other persons or be treated as a forfeited Benefit.

31.6 Death of a Pensioner

Subject to the terms of any Pension payable, the Trustee may on the death of a Pensioner, if requested by the person to whom the Trustee has determined the Benefit is payable, pay a Pension equal to the percentage of the Pension that was being paid to the former Member which the Trustee in the Trustee's absolute discretion determines.

31.7 Binding nomination

The Trustee must pay the Benefit (whether Lump Sum or reversionary Pension) to the Nominated Dependant if the Nominated Dependant has been nominated in accordance with SIS Regulation 6.17A and the Trustee has given the Member or Pensioner the information as required by that Regulation.

32. Family law provisions

32.1 The Trustee must do all that is necessary pursuant to the Requirements to comply with the following:

- (1) Superannuation Agreement;
- (2) Flagging Order;
- (3) Flag Lifting Agreement; or
- (4) Splitting Order;

once the Trustee is satisfied that the order or agreement (as the case may be) provided by the relevant party satisfies the Requirements.

32.2 The Trustee is entitled to charge a reasonable fee for the provision of any information and in respect to any payment split pursuant to clause 32.1.

33. Amendments to the Deed

33.1 General power

The Trustee is entitled at any time:

- (1) by instrument in writing executed by the Trustee;
- (2) without giving prior notice to the Members;

to amend, add to or revoke all or any of the provisions of the Deed including this clause.

33.2 SIS limitation

- (1) If at any time the sole or primary purpose of the Fund is the provision of old age pensions then the Deed must not then be amended to provide for a different sole or primary purpose unless the Deed is also amended to require (or at that time requires) that the Trustee must be, and must continue to be, a constitutional corporation as defined in SIS.
- (2) If at any time the sole or primary purpose of the Fund is not the provision of old age pensions the Deed must not be amended to allow an individual to be appointed as Trustee of the Fund unless the Deed is also amended to provide (or at that time provides) that the sole or primary purpose of the Fund is, and will continue to be, the provision of old age pensions.

33.3 Purpose of variation to comply with law

Subject to clause 33.4, the variation must be only to enable the Fund to comply with any law, custom or practice of the Commonwealth or any state or territory of Australia in relation to superannuation, pensions, Taxation, insurance, employee trust funds or employee benefits generally or otherwise.

33.4 Variation for other purposes

The variation may be for another purpose if the variation will not operate so as to:

- (1) vary the objects of the Deed so that the Fund would not amount to a superannuation fund as defined in the Requirements;
- (2) require the Fund to operate contrary to the prohibitions contained in SIS;
- (3) prejudicially affect the existing rights in respect of any Member at the date from which the variation is to be effective unless:
 - (a) the Member consents in writing; or
 - (b) the Regulator consents in writing after the variation has been approved by at least 2/3^{ths} of all the Members who are affected by it; or
- (4) impose any further liability on any Employer, without that Employer's consent.

33.5 Restricted membership

If this Deed specifies the persons or class of persons eligible to become Members of the Fund then no variation may operate so as to allow any persons other than those specified, or within the class specified, to be eligible to become Members of the Fund.

33.6 Advice to Members

The Trustee must notify the Members of the effect of variation but any failure to give the notification or its non-receipt by a Member does not affect the validity of the variation.

34. Termination of the Fund

34.1 Notice from Members

If all of the Members give notice in writing to the Trustee of their desire to terminate the Fund, the Trustee must:

- (1) continue to administer the Fund in accordance with the provisions of this Deed except that:
 - (a) no further Contributions except Contributions due on or before the date determined for termination under this clause, may be accepted in respect of any Member;
 - (b) no new Members may be admitted to the Fund; or
- (2) proceed to wind up the Fund.

34.2 Trustee determination

The Trustee may determine to wind up the Fund.

34.3 Notification

The Trustee must notify in writing all Members and Employers of the happening of any of the events specified in clauses 34.1 and 34.2.

34.4 Application of assets

On a winding up the Trustee must apply the Fund's assets in the following order of priority:

- (1) to meet all expenses and liabilities of the Fund;
- (2) to pay (including rollover) Benefits;
- (3) to increase Benefits as the Trustee may in the Trustee's absolute discretion determine;
- (4) to pay any remaining amounts to any of the Members and in any proportions the Trustee in the Trustee's absolute discretion determines.

34.5 Dissolution

When all Benefits and assets of the Fund have been paid, transferred or applied in accordance with the provisions of the Deed the Fund is dissolved.

35. *Superannuation Industry (Supervision) Act*

35.1 Deemed inclusion

Despite anything expressed or implied to the contrary in the Deed it is expressly agreed and declared that:

- (1) this Deed must be treated as including all the Requirements of SIS and the SIS Regulations necessary to enable the provisions contained in SIS and the SIS Regulations to be met by the Fund and to enable the Trustee to elect for the Fund to become a regulated fund within the meaning of SIS and thus to obtain the Taxation concessions available to regulated funds;
- (2) the Trustee has power to, and must, operate and administer the Fund in a way that ensures that the Fund complies with SIS and the SIS Regulations;
- (3) where any conflict arises between the provisions of this Deed and the Requirements of SIS and the SIS Regulations, SIS and the SIS Regulations prevail.

35.2 Power to elect, etc

- (1) Without limiting any of the terms of the effect of clause 35.1 it is further agreed and declared that:
 - (a) the Trustee has power to elect under SIS for the Fund to become a regulated fund as defined in SIS;
 - (b) despite any other provision of the Deed the Trustee is entitled, to the maximum extent permitted by SIS, to be indemnified out of the Fund against all liabilities incurred by the Trustee in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in the Trustee under the Deed or by operation of law;
 - (c) the provisions contained in SIS which do not apply to certain funds with fewer than 5 members (whether defined in SIS as "excluded funds", "self managed funds" or otherwise) do not apply to the Fund for any period during which the Fund meets the relevant definition.
- (2) The Trustee agrees to take whatever action is required under SIS if the Fund fails the definition referred to in clause 35.2(1)(c).

35.3 Trustee not disqualified

The Trustee declares that the Trustee is not prohibited by SIS and the SIS Regulations from being a trustee of a superannuation fund.

35.4 Non-mandatory Requirements

The Trustee in the Trustee's absolute discretion may from time to time determine not to comply with any of the Requirements which are not mandatory.

36. Arbitration

36.1 Dispute

Unless a dispute is covered by clause 8, any question or dispute with respect to the Fund or to the construction or meaning of this Deed must (if the Trustee so requires) be referred to a single arbitrator agreed to by the parties to the question or dispute, or in default of agreement, to an arbitrator appointed pursuant to the provisions of the relevant *Commercial Arbitration Act* or similar legislation in the state or territory in which this Deed is executed.

36.2 Right of action

No right of action accrues in respect of any dispute until the question or dispute has been adjudicated on by the arbitrator.

37. Severability

37.1 If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

38. Notices

38.1 A notice or other communication connected with this Deed (**Notice**) has no legal effect unless it is in writing.

38.2 In addition to any other method of service provided by law, the Notice may be:

- (1) sent by prepaid post to; or
- (2) delivered at;

the address of the addressee set out in this Deed or subsequently notified.

38.3 If the Notice is sent or delivered in a manner provided by clause 38.2, it must be treated as given to and received by the party to which it is addressed:

- (1) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- (2) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

39. Governing law and jurisdiction

- 39.1 This Deed is governed by the laws of the state or territory of the Commonwealth of Australia in which the Deed is executed.
- 39.2 The Trustee, Members and Beneficiaries and any Employers submit to the non-exclusive jurisdiction of the courts of that state or territory and of the Commonwealth of Australia.

Schedule 1
Application for membership

To: The Trustee
 Grose Family Superannuation Fund

Confidential – membership

I, the undersigned person, being eligible to do so, apply for admission to membership of the Fund. I agree and undertake as follows:

1. I will be bound by the Trust Deed governing the Fund as it is or may be by variation from time to time.
2. I will make a full disclosure in writing of any benefits I may receive or be entitled to receive from any other superannuation fund, approved deposit fund or rollover annuity.
3. I understand the terms and conditions of the Trust Deed and more particularly the terms and conditions of the Trust Deed concerning Benefits payable and I acknowledge I have been informed of my rights and the rights of my Dependants pursuant to the Trust Deed.
4. I consent to the Trustee acting as Trustee of the Fund.
5. I consent to the Trustee obtaining my details (including any tax file number) from my Employer.

I declare that the rights held by me and the amounts received by me from any superannuation fund, pension fund, approved deposit fund or annuity are set out in the attachment.

Dated 20.....

Name:
 Signature:
 Address:
 Occupation:
 Date of birth:

Nominated Dependant(s)

I nominate as my Nominated Dependents:

Surname(s)	Given name(s)	Relationship	% of total Benefit

Schedule 1 (cont)

Attachment

Part 1

Details of Other Fund or plan memberships

* Total number of other plans or funds or annuities (.....)

* Name of other plan or fund or annuity

* Trustee

* Address of trustee

* Value of accumulation account or members credit or benefit presently applicable to applicant \$

* Contributions paid by applicant to plan \$

* Value of preserved benefit (including productivity benefit) \$

Part 2

Details of amounts (not being rollovers) previously received from superannuation funds, pension funds, Approved Deposit Funds and rollover annuities

* Total number of any amounts previously received (.....)

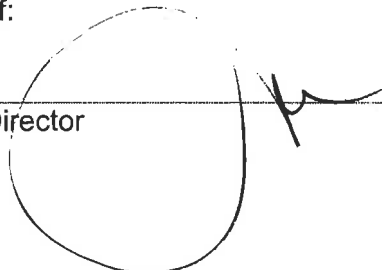
Amount received \$ Date

Name of employer, superannuation fund, Approved Deposit Fund, deferred annuity

Executed as a deed and delivered on the date shown on the first page.

Signed sealed and delivered by
GAFFEL INVESTMENTS PTY LTD
(ACN 009 965 128) in the presence
of:

Director



Director / Secretary

Signed sealed and delivered by
GLENYS JEAN EVANS in the
presence of:

Signature of witness

Name of witness (BLOCK LETTERS)

Address of witness

