

- (b) to meet all expenses and liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

To this end, to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

## 7. Investment

### 7.1 General

7.1.1 The Trustee shall invest the assets of the Fund in such a manner that complies with the investment strategy of the Fund and does not contravene the Act.

7.1.2 Subject to the Act, the Trustee may invest the Assets of the Fund in any manner or form in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the Assets. To the maximum extent possible any duties and limitations under State laws relating to trustee investments do not apply to the Fund.

7.1.3 Subject to Clause 7.1.1 and without limiting Clause 7.1.2, the Trustee has power:

- (a) to vary, substitute, sell or otherwise deal with Assets in any manner; and
- (b) to acquire an interest in an Asset jointly with any other person and mix Assets of the Fund with other property (as long as separate records are maintained that enable Assets attributable to the Fund or any Investment Option to be identified).

### 7.2 Investment strategy

7.2.1 Investments of the Fund must be made in accordance with a written investment strategy formulated by the Trustee that complies with the Act. Such strategy to be formulated in light of all of the circumstances relevant to the Fund and shall be reviewed on a regular basis.

7.2.2 The Trustee may formulate and adopt separate investment strategies for each Investment option offered in accordance with Clause 14.1.

7.2.3 If the Trustee invests in what are known as derivative investments the Trustee shall, if required by the Act, implement satisfactory risk management practices by way of a risk management statement prepared in accordance with the Act and any guidelines issued by a Regulator.

### 7.3 Reserves management

The Trustee must formulate and give effect to a strategy for prudential management of any reserves maintained in the Fund, consistent with the Act.

### 7.4 Valuation

The Trustee will arrange for valuations of Assets at such times and on such basis as it considers appropriate, subject to the Act.

7.5 Investment earnings

7.5.1 As at the end of each financial year, and at such other times as the Trustee determines, the Trustee shall distribute the whole or any portion of the Investment Earnings of the Fund as the Trustee determines to be appropriate to the Member's Account(s) maintained in respect of each Member.

7.5.2 Any Investment Earnings not applied to Member Accounts in accordance with Clause 7.5.1 shall be applied to a Reserve Account maintained under Clause 15.

8. **Records, Audit and Information**

The Trustee must, in accordance with the Act:

- (a) keep records and accounts for the Fund;
- (b) prepare and/or lodge financial and other statements and/or returns in respect of the Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund; and
- (e) provide information to Beneficiaries, prospective Members, Employers, Superannuation Authorities and any other person in connection with the Fund.

9. **Membership**

9.1 Eligibility

The Trustee may set eligibility conditions for membership of the Fund.

9.2 Acceptance

9.2.1 Membership applications:

- (a) may be made by a person who wishes to become a Member or by a person on behalf of a prospective Member (for example a child of the person); and
- (b) must be made in the form provided in Schedule 3 or in another form acceptable to the Trustee.

Schedule 3 provides forms of application to be used depending on whether the Member will make either an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination under Clause 12.6.4.

9.2.2 The Trustee may:

- (a) accept or reject any application;
- (b) establish arrangements under which people satisfying certain eligibility conditions may become Members provisionally from a certain date unless the Trustee subsequently rejects the

application;

- (c) prior to making a decision under Clause 9.2.2(a) the Trustee may, subject to the Act, request an applicant provide all relevant information and evidence and sign all documents as may be required by the Trustee.

9.2.3 The Trustee may admit a person as a Member even though a formal application has not been completed where:

- (a) the applicant is under eighteen years of age and the applicants Legal Personal Representative is eligible to act as a Trustee; or
- (b) the applicant becomes entitled to a benefit or interest in the Fund under an order or agreement made pursuant to the Family Law Act or such equivalent legislation applicable to de facto or same sex relationships.

### 9.3 Information

Without limiting Clause 9.2, the Trustee may require a prospective Member or a person admitted as a Member to undergo a medical examination and to provide any relevant information.

### 9.4 Deed

Each person admitted as a Member and each Beneficiary is deemed to have approved of, and becomes bound by, the Deed.

### 9.5 Member's attorney

Each Member irrevocably appoints the Trustee as the Member's attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Trustee reasonably considers appropriate for the purposes of administering the Fund.

### 9.6 Cessation of Membership

A person ceases to be a Member when:

- (a) all benefits to which the member has become entitled under this Deed have been paid;
- (b) the whole of the Member's Account Balance relating to that Member has been transferred out of the Fund in accordance with Clause 13.2;
- (c) the Member dies;
- (d) the Member is required to cease his membership to comply with the Family Law Act or an agreement made pursuant to that Act;
- (e) the Trustee requires that a member ceases his membership in order to comply with the Act; or
- (f) the Beneficiary's entitlement to benefits is otherwise terminated.

### 9.7 Beneficiaries' interests and liabilities

9.7.1 No Beneficiary has any interest in any particular Asset of the Fund.

9.7.2 The liability of Beneficiaries in connection with the Fund is limited as described below:

- (a) The Trustee's right of indemnity and the right of recourse of any creditor is limited to the Fund's Assets; and
- (b) Beneficiaries are not liable (in their capacity as Beneficiaries):
  - (i) to indemnify the Trustee in respect of any deficiency in the Fund; or
  - (ii) in connection with claims by any of the Trustee's creditors relating to the Fund.

9.7.3 The rights of Beneficiaries to receive benefits are those set out in this Deed.

9.8 Member's account

9.8.1 The Trustee will maintain a Member's Account in respect of each Member for the purpose of recording benefit entitlements under this Deed.

9.8.2 The Member's Account Balance at any time is determined by adding or deducting as appropriate:

- (a) contributions in respect of the Member and amounts transferred to the Fund in respect of the Member under Clause 13.1;
- (b) investment earnings determined having regard to Clause 7.5 and Clause 9.9, the requirements of the Act, and any Investment Options applicable to the Member;
- (c) proceeds of any Policy in respect of the Member;
- (d) benefits paid from the Member's Account or transferred to another Benefit Arrangement in accordance with Clause 13.2;
- (e) premiums on any Policy in respect of the Member;
- (f) amounts in respect of Tax paid out or payable by the Fund;
- (g) amounts transferred to or from a Reserve Account established in accordance with Clause 15;
- (h) amounts transferred to or from a Forfeited Benefits Account established in accordance with Clause 12.9;
- (i) amounts transferred to or from the Member's Account in accordance with an order or agreement made pursuant to the Family Law Act or such equivalent legislation applicable to de facto or same sex relationships; and
- (j) any other amount that the Trustee considers applicable to the Member's Account.

9.8.3 More than one Member's Account may be maintained in respect of a

Member if a Member participates in the Fund in more than one capacity. If so, provisions dealing with a Member's Account will be applied separately to the separate Member's Accounts.

9.8.4 A Member may notify the Trustee where he is already in excess of his applicable Reasonable Benefits Limit (RBL) or where the allocation of Investment Earnings in respect of that Member would result in him exceeding his applicable RBL. Subject to the Act, upon receipt of such notification the Trustee shall not allocate any further Investment Earnings to the Member unless that member subsequently advises otherwise.

## 9.9 Separate Investments

9.9.1 Subject to the Act, the Trustee may (but is not obliged to) provide Members with the ability to request that a separate investment be made in respect of that Member being:

- (a) a separate investment option or investment strategy; and/or
- (b) a specific investment.

9.9.2 Subject to the Act, if a separate investment is made for a Member under Clause 9.9.1 it is made for the sole benefit of and at the sole risk of the Member, and any income, gains, losses or expenses incurred in respect of that investment must be attributed to the relevant Member Account prior to calculating the Funds Investment earnings in accordance with Clause 7.5.

9.9.3 The Trustee is not liable for the performance of or for any loss attributable to any separate investment referred to in Clause 9.9.1.

## 10. Actuarial Requirements

The Trustee shall engage an actuary where required under the Act and shall cause the Fund to otherwise comply with the actuarial requirements of the Act, if applicable.

## 11. Contributions

### 11.1 Powers

The Trustee may accept contributions from:

- (a) Members or prospective Members;
- (b) Employers;
- (c) A Spouse of a Member or prospective Member.
- (d) Any related person or entity as defined in the Act; or
- (e) Other persons or entities permitted to make contributions under the Act.

Without limiting this Clause 11, the Trustee may accept a shortfall component, as defined in the Superannuation Guarantee (Administration) Act 1992 (Cth), in respect of a Member.

### 11.2 Defective contributions

11.2.1 Notwithstanding any other provision of this Deed the Trustee shall

not accept contributions by or in respect of a Member if receipt of the contributions would be inconsistent with the Act;

11.2.2 If the Trustee finds after accepting contributions that it should have not done so, it will, if the Act permits, repay an appropriate amount to the person making the contribution. That amount must be calculated on a fair and reasonable basis after allowing for reasonable administrative charges incurred in relation to the contribution.

11.2.3 If an amount is initially recorded as having been contributed or transferred to the Fund but that amount is not actually received (for example where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made.

11.3 A person permitted to make contributions may make contributions by way of:

- (a) money;
- (b) securities listed on a stock exchange in Australia
- (c) other property
- (d) payment of fund expenses or liabilities

to the Fund on behalf of one or more Members with the consent of the Trustee subject to compliance with the Act.

11.4 Subject to the Act, the Trustee, at the direction of a Member, may split a contribution made on behalf of that Member amongst other members.

## 12. Benefits: General Provisions

12.1 Schedules

Particulars regarding calculation of benefits and the circumstances in which they are payable appear in the Benefit Schedule.

12.2 Conditions

The Trustee may impose any reasonable conditions regarding payment of a benefit.

12.3 Policy

If a benefit would ordinarily include an insured component under a Policy but:

- (a) no amount is paid under that Policy; or
- (b) the amount paid under the Policy is less than the amount that would ordinarily be payable;

the amount payable to the Member may be adjusted accordingly.

12.4 Method

Benefits may be paid by any method that the Trustee considers appropriate.

12.5 Circumstances and amounts — general

12.5.1 Benefits:

- (a) may, in addition to any specific circumstance described in the Benefit Schedules, be paid in any other circumstance permitted by the Act;
- (b) must be paid in the form and in the circumstances in which the Act compels benefits to be paid;
- (c) may be paid in any form and in any circumstances in which the Act permits benefits to be paid;
- (d) may, where payable in lump sum form, be paid in more than one instalment;
- (e) must not be paid if payment of the Benefit would result in the Fund not complying with the Act.

12.5.2 Except where this Deed provides otherwise or the Trustee otherwise determines, the amount of any benefit will be an amount not:

- (a) exceeding the Member's Account Balance; or
- (b) less than any amount required under the Act.

## 12.6

### Death benefits

12.6.1 This Clause 12.6 applies to Death Benefits.

12.6.2 A Death Benefit to which this Clause applies must, subject to the remaining provisions of this Clause 12.6, be paid in proportions decided by the Trustee to one or more of the following:

- (a) one or more of the Member's Dependants; and
- (b) the Member's legal personal representative.

The Trustee must consider any Death Benefit Nomination made in accordance with Clause 12.6.4, but unless Clause 12.6.5 applies may not treat the Death Benefit Nomination as binding.

12.6.3 Subject to the Act, if after making enquiries that it considers reasonable the Trustee cannot locate any Dependants or the legal personal representative, the benefit may be paid to any other person that the Trustee chooses or in any other manner.

12.6.4 For the purposes of this Clause 12.6, the following provisions apply:

- (a) Members may give the Trustee a Death Benefit Nomination;
- (b) A Death Benefit Nomination may be an Indicative Death Benefit Nomination, or, alternatively, but subject to the Act, a Binding Death Benefit Nomination as to payment of the Death Benefit payable in respect of the Member;
- (c) Subject to any requirements of the Act, members may vary Death Benefit Nominations at any time;
- (d) Death Benefit Nominations must be in the form included in the Member application forms contained in Schedule 3 or in another form acceptable to the Trustee;
- (e) The Trustee may disregard an Indicative Death Benefit

Nomination if it does not comply with any formal requirements set by the Trustee; and

- (f) Subject to the Act, the Trustee must disregard a Binding Death Benefit Nomination if it does not comply with the formal requirements of the Act.

12.6.5 The Trustee will treat a Binding Death Benefit Nomination as a binding direction and nomination and effect payments in accordance with the Death Benefit Nomination, provided it is given in accordance with the requirements of the Act and is current and valid at the date of the Member's death.

12.6.6 The Trustee may in its absolute discretion increase the amount of the Death Benefit by an amount equal to such amount (if any) which is available as a deduction to the Fund under s279D of the Income Tax Assessment Act 1936.

12.6.7 Subject to Clause 12.6.5 the Trustee may pay a Death Benefit in any manner permitted by the Act, including as a lump sum, pension or combination of both.

## 12.7 Transfer of assets

Subject to the Act (including any requirement for approval by the Regulator) where the Trustee is obliged to pay a benefit, it may at the request of the Beneficiary meet that obligation wholly or partly by transferring one or more Assets of equivalent value to the Beneficiary.

## 12.8 Form of Benefits

12.8.1 If the Trustee is not a Constitutional Corporation any benefit payable under this Deed, other than a Death Benefit, is payable in the form of one or more pensions.

12.8.2 If the Trustee is a Constitutional Corporation any Benefit payable under this Deed, other than a Death Benefit, is, subject to the Act, payable in the form of:

- (a) one or more lump sums; or
- (b) one or more pensions; or
- (c) a combination of one or more pensions and one or more lump sums.

## 12.9 Forfeited benefits

12.9.1 Subject to the Act a Beneficiary forfeits a contingent or prospective or current entitlement to an interest if:

- (a) the Trustee determines that a Beneficiary has attempted to assign, alienate or charge all or part of their interest under this Deed;
- (b) the Beneficiary is declared mentally ill or the Beneficiary's affairs are liable to be dealt with under the laws relating to mental health;
- (c) the Beneficiary's whereabouts cannot be traced by the Trustee for a period of 5 years after making reasonable



enquiries; or

- (d) any other event occurs that results in a person other than the Beneficiary becoming entitled to that interest (except an event that produces that result because of a provision of this Deed).

Subject to the Act, the amount representing any interest that is forfeited in accordance with this Clause may be applied in proportions decided by the Trustee for the benefit of one or more of the Beneficiary, former Beneficiary or Beneficiary's Dependants as the Trustee considers appropriate.

12.9.2 The Trustees may credit to a Forfeited Benefits Account the amount of any forfeited interest or other interest or benefits which are not dealt with under this Deed and may debit amounts applied under this Deed.

12.9.3 The Trustees may apply amounts in the Forfeited Benefits Account:

- (a) to supplement benefits that all or some of the Beneficiaries or their Dependants have rights to receive from the Fund; or
- (b) to provide additional benefits for all or some of the Beneficiaries or their Dependants; or
- (c) for any other purpose the Trustee determines.

12.9.4 Amounts to the Forfeited Benefits Account must be applied in a manner and within a period which satisfies the Act.

12.10 Minor beneficiaries or those without legal capacity

If:

- (a) a Beneficiary is a minor;
- (b) the Trustee believes that a Beneficiary is unable to manage their financial affairs because of legal incapacity; or
- (c) the Trustee otherwise considers it appropriate for any reason;

the Trustee may, subject to the Act, pay some or all of the amount payable in respect of the Beneficiary to another person including the guardian or legal personal representative of that person to be applied for the benefit of the Beneficiary. The receipt of the person to whom the benefit is paid is a complete discharge to the Trustee in respect of that benefit.

12.11 Discharge

The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full. The Trustee has no obligation to see how the payment is applied.

12.12 Deductions

Subject to the Act, the Trustee may deduct fees and amounts in respect of Liabilities and Tax from any benefit payment.

12.13 Excessive benefits

If a Member's benefits exceed the Member's RBL the Trustee may with the consent of the Member and subject to the requirements of the Act:

- (a) Upon the Member satisfying a condition of release in accordance with the Act reduce the Member's benefit to the relevant RBL and the remainder shall be forfeited and thereafter applied in accordance with Clauses 12.8 and 12.9.
- (b) Reduce the Member's benefit to the relevant RBL and transfer the balance to a Fund Reserve established for the payment of future liabilities or contingencies including future pension obligations.

#### 12.14 Repayment

If a Benefit is paid to a Member and the Trustee subsequently determines that the Benefit should not have been paid the Member shall, upon demand by the Trustee, repay to the Trustee the full amount of the Benefit.

### 13. Transfers

#### 13.1 Transfers in

Subject to the Act, the Trustee may accept into the Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Benefit Arrangement, Employer or other person or entity permitted to do so under the Act.

#### 13.2 Transfers out

13.2.1 The Trustee may transfer the whole or part of any amount held in the Fund in respect of a Member to another Benefit Arrangement.

13.2.2 The Trustee may make such a transfer without the Member's consent where the Act permits (including to a Successor Fund or an Eligible Rollover Fund).

13.2.3 The Trustee may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the Act (or in the case of a retirement savings account, the *Retirement Savings Account Act 1997 (Cwlth)*) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the Act.

13.2.4 A transfer of an amount under this Clause 13.2 is a complete discharge to the Trustee in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred.

### 14. Investment Options

#### 14.1 Investment options

14.1.1 The Trustee may offer Investment Options in accordance with this Clause 14.1.

14.1.2 The Trustee may offer a new Investment Option at any time.

14.1.3 On establishing an Investment Option, the Trustee will decide its name and other specifications relating to it (including the kinds of Asset or Assets to be held, the investment objectives and strategy