

**SUPERANNUATION FUND  
TRUST DEED**

**Kemanevic  
Superannuation Fund**

Date of Deed: *3 September 2003*

Our ref: 1856:30602

THIS TRUST DEED is made on *3 September 2003*

BY: **KEMANEVIC PTY. LTD.**, A.C.N. 086 638 262 of 44 Kingsford Smith Parade,  
Maroochydore, Queensland, 4558 ('the Trustee')

**RECITALS:**

- A. The Trustee established the Kemanevic Superannuation Fund ("the Fund") on the date shown above, in accordance with this trust deed as a Self Managed Superannuation Fund as defined under the *Superannuation Industry (Supervision) Act 1993 (C'th)* with the flexibility of becoming another type of superannuation fund under that legislation.
- B. The Trustee has agreed to act as trustee of the Fund in accordance with the Trust Deed incorporating the attached detailed provisions in clauses 1 to 27 of Part A and Forms 1 to 3 in Part B (the "Trust Deed").
- C. The Trustee desires to maintain the Fund as a complying superannuation fund under the *Income Tax Assessment Act*.
- D. The purpose of the Fund is:
- (1) to provide superannuation benefits to Members, and in the event of their death, for their dependants; and
  - (2) while the trustees of the Fund are natural persons, to provide these superannuation benefits by way of old-age pensions;

and to act for any other purposes as permitted from time to time by the *Superannuation Industry (Supervision) Act 1993 (C'th)* and the *Superannuation Industry (Supervision) Regulations*.

**PROVISIONS:-**

1. The Fund shall be administered in accordance with the Trust Deed.
2. The Trustee confirms that it will act as the initial Trustee of the Fund in accordance with the Trust Deed.
3. The Trust Deed shall be varied in accordance with clause 25 of Part A of the Trust Deed including variations due to the deemed inclusion of the Standards in accordance with clause 3 of Part A of the Trust Deed.
4. The Trust Deed shall be subject to the definitions set out in clause 2 of Part A of the Trust Deed.
5. The Trust Deed shall be construed in accordance with the laws of the State of Queensland and the Commonwealth of Australia and the courts and tribunals of that jurisdiction and the Commonwealth and, to the extent courts and tribunals of that jurisdiction and the Commonwealth have application to the Trust Deed, their jurisdictions shall be exclusive except to the extent that all of the parties to a proceeding unanimously agree that the courts and tribunals of another state or territory shall have jurisdiction.



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This documentation has been prepared by DBA Butler Pty Ltd, Lawyers (DBA) on its instructions contained in the order form. DBA provides no advice to the parties establishing the Fund or the person ordering the Fund unless it is requested to do so in writing. Taxation and superannuation laws are subject to continual change and substantial penalties can be imposed for any breach of these laws. Accordingly, expert advice should be obtained wherever in doubt. Except to the extent required by law, DBA disclaims all and any liability arising in any manner that does not relate to the documentation prepared on its specific instructions. Copyright – DBA.

## DETAILED PROVISIONS TO THE FUND'S TRUST DEED

### INTERPRETATION

1. In this Deed, unless the context otherwise requires:
  - 1.1. a reference to any person or body shall include references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators;
  - 1.2. references to any provision of the Deed, law, regulation, temporary modification order, ruling, circular or guideline are references to same as amended, consolidated, supplemented or replaced from time to time;
  - 1.3. words importing any one gender include all genders and words importing the singular include the plural and vice versa;
  - 1.4. a reference to a clause can be a reference to a distinct clause, sub-clause, paragraph, sub-paragraph or the like to simplify references throughout this Deed;
  - 1.5. the table of contents shall not be taken into account in the interpretation of this Deed;
  - 1.6. a reference to this Deed means this Deed as modified from time to time under clauses 3 and 25; and
  - 1.7. where any question or dispute arises in respect of the Fund or in respect of the interpretation of the Deed, the Trustee's decision on the matter shall be final and binding.

### DEFINITIONS

2. The following words shall, unless the Trustee determines otherwise or the context requires otherwise, have the meanings shown below:
  - 2.1. "Acceptable Contributor" means:
    - (a) a Member or an Associate of a Member;
    - (b) an Employer or an Associate of an Employer; or
    - (c) some other contributor who is permitted, under the Standards, to make contributions to the Fund;
  - 2.2. "Account" means an account in the books of account of the Fund;
  - 2.3. "Accumulation Reserve Account" means the Account described in clauses 21.5 and 21.11;
  - 2.4. "Actuary" means a practising member of the Institute of Actuaries of Australia or any other actuary approved by the Standards;
  - 2.5. "Allocated Pension" means a Pension or any component of it:
    - (a)
      - (i) which cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a primary beneficiary or of another Reversionary Beneficiary;

- (ii) where neither the capital value nor the income from the Pension can be used as security for a borrowing;
  - (iii) that is paid at least annually;
  - (iv) which need not be fixed in amount but where the Pension payments in a year (excluding payments by way of commutation but including any payments made under a Payment Split) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the SISR; and
  - (v) which otherwise complies with Regulations 1.06(4) and (5) of the SISR and the Standards; or
- (b) which otherwise complies with such parts of the Standards as govern allocated pensions;
- 2.6. "Ancillary Benefit" means a Benefit arising in the circumstances described in clause 14.7;
- 2.7. "Applicable Authority" means the Australian Taxation Office, the APRA (formerly the ISC), the Commissioner, the Australian Securities and Investment Commission, the Department of Family and Community Services (formerly the Department of Social Security) or, alternatively, some other body or official empowered under the law referred to in clause 27 dealing with the administration of Self Managed Funds or, if the Trustee determines, some other type of superannuation fund;
- 2.8. "Approved Fund" means a superannuation fund (including a Self Managed Fund, a Small APRA Fund and a standard employer-sponsored fund), approved deposit fund, eligible roll-over fund, retirement savings account, small accounts holding reserve or other approved fund including a pension fund or annuity arrangement which, amongst other things, can accept a transfer from the Fund of a Member's Benefit or is authorised to transfer a Member's Benefit to the Fund in accordance with the Standards;
- 2.9. "Approved Trustee" has the same meaning as that term is defined in the Standards;
- 2.10. "APRA" means the Australian Prudential Regulation Authority and prior to July 1, 1998 includes a reference to the ISC, and their authorised officers;
- 2.11. "ARC" means the amount standing to the credit of an Accumulation Retirement Account of a Member under clause 21.8;
- 2.12. "Asset-test Exempt Pension" means a Pension Benefit that is exempt or excluded from the assets test under the *Social Security Act 1991 (C'th)* or the *Veterans Entitlement Act 1986 (C'th)* and any applicable regulation made pursuant thereto, as relevant;
- 2.13. "Associate" means a related person or entity as defined in SIS or, if the Trustee so determines, such other meaning given to that term in the Standards;
- 2.14. "Auditor" means an auditor who is:
- (a) registered under the *Corporations Act 2001 (C'th)*;
  - (b) a member or, if the Standards require, a fellow of:
    - (i) the Australian Society of Certified Practising Accountants;
    - (ii) the Institute of Chartered Accountants in Australia;
    - (iii) the National Tax and Accountants Association Ltd.;

- (iv) the National Institute of Accountants; or
  - (v) the Association of Taxation and Management Accountants;
  - (c) an Auditor-General of the Commonwealth, a State or Territory; or
  - (d) otherwise qualified to act as an auditor under the Standards;
- 2.15. "Beneficiary" means a Dependant, a trustee for a Dependant, a Member's legal personal representative, a Reversionary Beneficiary or other beneficiary who is entitled to Benefits accruing due to a Member's participation in the Fund under clause 14.11, 14.12 or otherwise and "Beneficiaries" shall have a corresponding meaning;
- 2.16. "Benefit" means any amount paid or payable by the Fund to or in respect of a Member as a Pension Benefit, a Lump-Sum Benefit or an Ancillary Benefit (if not paid as a Pension Benefit or a Lump-Sum Benefit) under the provisions of this Deed;
- 2.17. "Binding Nomination" means a written direction binding the Trustee as to the payment of all or part of a Benefit on or after the death of a Member that complies with clause 14.12;
- 2.18. "Commissioner" means the Federal Commissioner of Taxation authorised under the *Taxation Administration Act 1953 (C'li)* or any other Commonwealth law;
- 2.19. "Complying Pension" means a Pension:
- (a)
    - (i) that is paid at least annually for the life of a Member and, if reversionary, for such time as the pension must be paid to comply with the Standards or for such period as the Trustee determines;
    - (ii) the size of the Pension in a year is fixed, allowing for variation only:
      - (1) as specified in this Deed;
      - (2) to allow commutation to pay a superannuation contributions surcharge; or
      - (3) to allow an amount to be paid under a Payment Split and reasonable fees in respect of the Payment Split to be charged;
    - (iii) which, if indexed, is indexed in accordance with the Standards;
    - (iv) which does not have a residual capital value;
    - (v) which cannot be commuted except where the Pension is not restricted by virtue of clause 17.1(b) and then, subject to the Standards, only:
      - (1) within 6 months of the commencement day of the Pension;
      - (2) within 10 years of the commencement day of the Pension on the death of a Member for payment to a Reversionary Beneficiary of an amount no greater than the sum of the Pension Benefits the Member would have received had the Member survived for the balance of the 10 year period or as otherwise prescribed by the Standards;

- (3) where the Pension Benefit on commutation is transferred directly to the purchase of another complying pension or annuity under the Standards;
  - (4) to pay a superannuation contributions surcharge; or
  - (5) to give effect to an entitlement of a Non-Member Spouse under a Payment Split;
  - (vi) which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;
  - (vii) which cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Member or of another Reversionary Beneficiary;
  - (viii) where neither the capital value nor the income from the Pension can be used as security for a borrowing; and
  - (ix) which otherwise complies with Regulation 1.06(2) and (3) of the SISR and the Standards; or
- (b)
- (i) that commences after September 20, 1998;
  - (ii) where the Member became entitled to be paid the pension on or after his or her Pension Age or otherwise becomes eligible to be paid this type of Complying Pension under the Standards;
  - (iii) that is paid at least annually to the Member or to a Reversionary Beneficiary:
    - (1) if the life expectancy of the Member on the commencement day is less than 15 years – throughout a period equal to the Member’s life expectancy or such other period permitted by the Standards; or
    - (2) if the life expectancy of the Member on the commencement day is 15 years or more – throughout a period that is not less than 15 years but not more than the Member’s life expectancy or such other period permitted by the Standards;
  - (iv) where the total amount of the payment made ignoring any commuted amounts:
    - (1) in the first year after the commencement day is fixed and that payment relates to the period commencing on the day when the Member became entitled to the pension under this Deed; and
    - (2) in a subsequent year does not fall below the total amount of the payment made in the immediately preceding year (the “previous total”) and does not exceed the previous total which, if indexed, is indexed in accordance with the Standards;
  - (v) the total amount of the payments to be made in a year in accordance with subparagraphs 2.19(b)(iv)(1) and 2.19(b)(iv)(2) may be varied only to allow commutation to pay a superannuation contributions surcharge;



- (vi) which does not have a residual capital value;
- (vii) which cannot be commuted except:
  - (1) within 6 months of the commencement day of the Pension;
  - (2) by payment, on the death of the Member, to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to the estate of the Member;
  - (3) by payment, on the death of a Reversionary Beneficiary, to the benefit of another Reversionary Beneficiary, or, if there is no other Reversionary Beneficiary, to the estate of the Reversionary Beneficiary;
  - (4) where the Pension Benefit on commutation is transferred directly to the purchase of another complying pension or annuity that satisfy the applicable rules under the Standards;
  - (5) to pay a superannuation contributions surcharge; or
  - (6) to give effect to an entitlement of a Non-Member Spouse under a Payment Split;
- (viii) which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;
- (ix) which cannot be transferred to a person except:
  - (1) on the death of the Member, to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to the estate of the Member; or
  - (2) on the death of a Reversionary Beneficiary, to another Reversionary Beneficiary or, if there is no other Reversionary Beneficiary, to the estate of the Reversionary Beneficiary;
- (x) where neither the capital value nor the income from the Pension can be used as security for a borrowing; and
- (xi) which otherwise complies with Regulation 1.06(7) of the SISR and the Standards; or
- (c) which otherwise complies with such parts of the Standards as govern complying pensions,

provided that where the relevant Pension is an Asset-test Exempt Pension, the applicable provisions of the *Social Security Act 1991 (C'th)* or the *Veterans Entitlement Act 1986 (C'th)* (and any applicable regulation made pursuant thereto), as relevant, apply to the extent of any inconsistency in preference to any applicable provision of SIS and SISR relating to the provision of that Pension to ensure the Pension qualifies as an Asset-test Exempt Pension;

2.20. "Complying Pension Amount" means in relation to a complying pension paid pursuant to clause 2.19(a), unless the Trustee determines otherwise based on the advice of an Actuary, the Member's share of the Pension Reserve Account divided by the Factor (pro-rated for the number of days the pension is payable in relation to that Financial Year) assuming that no

Reversionary Pension is to be provided and that a fixed rate of indexation of no greater than 5% per annum is applicable;

2.21. "Conditional Preservation Age" means the Preservation Age when payment of all or part of a Member's Benefit from the Fund in relation to Retirement can occur;

2.22. "Contributing Employer" means, unless the Trustee determines otherwise, an employer:

- (a) who has been notified in writing by the Trustee:
  - (i) that:
    - (1) the Fund is a resident regulated superannuation fund under the Standards;
    - (2) the Trustee is not subject to a direction from the Applicable Authority that would prevent the Trustee accepting employer or other contributions; and
    - (3) the Trustee has not been subject to such a direction before or since the date of the application by the employer; or
  - (ii) of such matters as the Trustee determines or, as the Trustee is required to notify an employer contributing to the Fund pursuant to the Standards; and
- (b) who or whose Associate employs a Member but only for so long as the employer or whose Associate can contribute in respect of that employment or for so long as the Member remains a Member,

where the "Notification to Contributing Employers" Form can be used by the Trustee to notify the employer of any of these items;

2.23. "Corporate Trustee" means a trading or financial corporation formed within the limits of the Commonwealth under the jurisdiction of the Commonwealth under sub-paragraph 51(xx) of the *Commonwealth Constitution 1901 (C'th)* eligible to act as a trustee of a regulated superannuation fund in accordance with the Standards;

2.24. "Deed" means this deed which forms part of the Trust Deed establishing the Fund as amended from time to time;

2.25. "Dependant" includes any one or more of the following:

- (a) the Spouse of the Member;
- (b) any child of the Member including any step-child, any ex-nuptial child, any adopted child and any child of the Member born after the death of the Member;
- (c) any other person who, in the opinion of the Trustee, is at the relevant date (or in the case of a deceased Member was at or after the time of his or her death) wholly or partially financially dependent upon the Member; and
- (d) any person who would be regarded as a Dependant under the Standards at the relevant date;

2.26. "Disbursements" means, unless the Trustee determines otherwise:

- (a) the direct costs of establishing, administering, managing, operating and terminating the Fund; and

- (b) any administrative, insurance or Taxation costs which are or which relate to those direct costs;
- 2.27. "Earnings" means the positive or negative amount which the Trustee determines to be the income of the Fund less Disbursements (or any part thereof) either:
- (a) for a Financial Year; or
- (b) for any other period which the Trustee may declare Earnings, which may exclude amounts ("excluded amounts") determined by the Trustee to be treated as capital and include amounts ("included amounts") which the Trustee has determined to be income which but for that determination would not be included in Earnings where excluded amounts and included amounts may be positive or negative and may be due to timing or permanent differences and Earnings may also reflect unrealised gains or losses;
- 2.28. "Eligible Spouse" means the spouse of whichever of:
- (a) a Member;
- (b) a person who is Gainfully Employed as an Employee or who is self-employed; or
- (c) some other person, if permitted by the Standards, on whose behalf contributions can be made to the Fund in accordance with the Standards and "Relevant Spouse" means that Member, Gainfully Employed person or other person as the case may be;
- 2.29. "Employee" means a person who is Gainfully Employed by an Employer;
- 2.30. "Employer" means a Contributing Employer or such other employer authorised by the Trustee;
- 2.31. "Excluded Superannuation Fund" means a Self Managed Fund or Small APRA Fund and prior to October 8, 1999 referred to an excluded superannuation fund as defined in the Standards where the trustee of such a fund was excluded from certain obligations imposed on the trustees of other kinds of superannuation funds under the Standards;
- 2.32. "Factor" means the present value as calculated by an Actuary of a notional Complying Pension where the pension payable in the first year of the Complying Pension is one dollar;
- 2.33. "Family Law Act" means the *Family Law Act 1975 (C'th)* and any applicable regulations relating thereto;
- 2.34. "Financial Year" means a year ended on 30th June unless the Trustee is permitted to adopt a different Financial Year end by the Standards;
- 2.35. "Flexi-Pension" means a Pension or any component of it:
- (a)
- (i) the size of the Pension in a year is fixed, allowing for variation only as specified in this Deed or to allow payments to be made under a Payment Split;
- (ii) that commences on or after July 1, 1994;
- (iii) which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;

- (iv) where the Pension cannot be transferred to another person other than to a Reversionary Beneficiary on the death of the Member or of another Reversionary Beneficiary;
  - (v) where neither the capital value nor the income from the Pension can be used as security for a borrowing;
  - (vi) except in relation to payments, by way of commutation, for superannuation contributions surcharge:
    - (1) variation in payment from year to year does not exceed, in any year, indexation in accordance with the Standards; and
    - (2) where any commutation to a lump sum in accordance with clause 16.5 is limited by the amount calculated using the pension valuation factors prescribed in Schedule 1B of the SISR;
  - (vii) payments in accordance with the contracted size are paid at least annually;
  - (viii) which may, subject to the Standards, have a residual capital value; and
  - (ix) which otherwise complies with Regulation 1.06(6) of the SISR and the Standards; or
- (b) which otherwise complies with such parts of the Standards as govern such pensions;
- 2.36. "Form" means the appropriate form in Part B of this Deed. However, the Trustee may accept any document providing similar information or waive the requirement of requiring a form to be completed;
- 2.37. "Full-time" means at least 30 hours each week or such time or conditions as are set by the Standards;
- 2.38. "Fund" means the fund constituted in this Deed;
- 2.39. "Funding Member" means a Member in respect of whom the Trustee permits contributions to fund, or allows a Member to obtain, a Complying Pension;
- 2.40. "Gainfully Employed" means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment within the meaning of the term gainfully employed in the Standards, and "Gainful Employment" has a corresponding meaning;
- 2.41. "Insured Benefit" means the Benefit described in clause 18;
- 2.42. "ISC" means the Insurance and Superannuation Commission prior to June 30, 1998, APRA on or after July 1, 1998, the Australian Taxation Office on or after 30 March 2000 for Self Managed Funds, the Commissioner or, alternatively, some other official or body empowered under the law referred to in clause 27 with the administration of superannuation funds and any of their authorised officers;
- 2.43. "ITAA36" means the *Income Tax Assessment Act 1936 (C'th)* and any applicable regulations relating thereto;
- 2.44. "ITAA97" means the *Income Tax Assessment Act 1997 (C'th)* and any applicable regulations relating thereto;
- 2.45. "Lease" means a "lease" or "lease arrangement" as those terms are defined in the Standards;

- 2.46. "Lump-Sum Benefit" means a Benefit or any component of it paid otherwise than as a Pension in accordance with this Deed;
- 2.47. "Mandated Employer Contribution" means any contribution made pursuant to the *Superannuation Guarantee (Administration) Act 1992 (C'th)*, any shortfall component, any contribution made under an industrial award or prescribed agreement or any other contribution requiring similar treatment under the Standards;
- 2.48. "Member" means a person who has been admitted by the Trustee as a member of the Fund in accordance with the provisions of this Deed and, if the Trustee determines includes a reference to a former Member or a reference to a Beneficiary and "Membership" shall have a corresponding meaning and the Trustee may, subject to the Standards, determine that a person is not a Member for all or certain circumstances even though he or she may be entitled to a Pension Benefit or some other interest in the Fund;
- 2.49. "Minimum Benefit" means the Member's minimum Benefit which is required to be maintained in the Fund or another Approved Fund in accordance with the Standards;
- 2.50. "Non-Member Spouse" has the same meaning as that term has under the Family Law Act;
- 2.51. "Old-Age Pension" means an old-age pension for the purposes of paragraph 51(xxiii) of the *Commonwealth Constitution 1901 (C'th)*;
- 2.52. "Part-time" means at least 10 hours and less than 30 hours each week or such time or conditions as are set by the Standards which does not amount to Full-time;
- 2.53. "Payment Split" has the same meaning as that term has under the Family Law Act or as agreed to by the parties in an agreement contemplated by that Act;
- 2.54. "Pension" means an annuity or pension contemplated by the Standards and shall, except where this Deed states otherwise, mean an annuity or pension which is not a Reversionary Pension unless the Trustee has agreed in writing with the Member that the Pension is a Reversionary Pension and where "Pensioner" and "Reversionary Pensioner" shall have corresponding meanings;
- 2.55. "Pension Age" has the same meaning given to that term in the *Social Security Act 1991 (C'th)* and the *Veterans' Entitlement Act 1986 (C'th)*, as relevant, or such other age acceptable to the Trustee so long as it is permitted under the Standards;
- 2.56. "Pension Benefit" means a Pension or any component of it which can be paid or provided from the Fund to a Member in compliance with the Standards;
- 2.57. "Pension RBL" means a pension reasonable benefit limit referred to in clause 2.63;
- 2.58. "Pension Reserve" means the Account referred to in clauses 21.5(c) and 21.7;
- 2.59. "Penultimate Cashing Age" means the age of 65 years or any other age prescribed by the Standards for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed either on a Full-time or a Part-time basis;
- 2.60. "Preferred Dependant" means a Dependant nominated by a Member to receive his or her Death Benefit in the Member's "Application for Membership" Form or in a subsequent written notification to the Trustee which has not since been revoked or amended and which does not bind the Trustee's discretion;
- 2.61. "Preservation Age" means, in relation to the Member's date of birth, the following age:

| Date of Birth                               | Preservation Age |
|---|------------------|
| Before 1 July 1960                          | 55 years         |
| During the year 1 July 1960 to 30 June 1961 | 56 years         |
| During the year 1 July 1961 to 30 June 1962 | 57 years         |
| During the year 1 July 1962 to 30 June 1963 | 58 years         |
| During the year 1 July 1963 to 30 June 1964 | 59 years         |
| After 30 June 1964                          | 60 years         |

or some other age prescribed as the preservation age by the Standards for the payment of all or part of a Member's Benefit from the Fund on Retirement where the Trustee must be satisfied that the Member has ceased Gainful Employment and intends to never again become Gainfully Employed;

2.62. "Qualified Person" means, subject to the Standards:

- (a) an individual who has not died, has not lost his or her legal capacity and is not an 'insolvent under administration' (as that term is defined in SIS);
- (b) an individual who has not been the subject of a civil penalty order made under the Standards;
- (c) an individual who has not been convicted of an offence involving dishonest conduct anywhere in the world;
- (d) a company which has not lost legal capacity, gone into liquidation, administration, receivership, bankruptcy or has not otherwise become insolvent under administration;
- (e) a Corporate Trustee which is permitted by the Standards to act as trustee of the Fund; or
- (f) an Approved Trustee which is permitted by the Standards to act as trustee of the Fund,

and a Corporate Trustee is a Qualified Person only if all of its directors are also Qualified Persons;

2.63. "RBL" means a reasonable benefit limit prescribed in the Standards to determine the maximum amount of concessional taxed superannuation benefits a Member can receive which will be one of:

- (a) a transitional lump sum or transitional pension reasonable benefit limit determined in accordance with the Standards, where applicable;
- (b) the pension reasonable benefit limit prescribed by the Standards where the Member receives at least 50% of the Member's pension reasonable benefit limit as a Benefit in the form of a Complying Pension or a complying annuity in accordance with the Standards;
- (c) the lump-sum reasonable benefit limit; or
- (d) such other reasonable benefit limit permitted by the Standards;

- 2.64. "Retirement" is taken to occur:
- (a) if an arrangement under which the Member was Gainfully Employed has come to an end; or
  - (b) upon the happening of such other event as prescribed by the Standards, excluding circumstances where such an arrangement under which the Member was Gainfully Employed has come to an end due to death or to Total and Permanent Disablement, and "Retires" and "Retired" have corresponding meanings;
- 2.65. "Reversionary Pension" means a Pension payable to a Beneficiary who succeeds a Member to the entitlement of the Member to Pension Benefits, and "Reversionary Beneficiary" and "Reversionary Pensioner" have corresponding meanings;
- 2.66. "Securities" means securities as defined in section 92 of the *Corporations Act* and securities approved by the Trustee in any foreign country;
- 2.67. "Self Managed Fund" has the same meaning as the term 'Self Managed Superannuation Fund' in the Standards and, where applicable, prior to 8 October 1999 included a reference to an Excluded Superannuation Fund;
- 2.68. "SIS" means the *Superannuation Industry (Supervision) Act 1993 (C'th)*;
- 2.69. "SISR" means the *Superannuation Industry (Supervision) Regulations 1994*;
- 2.70. "Small APRA Fund" means a fund with fewer than 5 members with an Approved Trustee and, where applicable, prior to 8 October 1999 included a reference to an Excluded Superannuation Fund with an Approved Trustee;
- 2.71. "Spouse" in relation to a Member means, subject to the Standards, a person married to the Member or a person who, although not legally married to the Member:
- (a) lives with the Member, or
  - (b) had lived with the Member immediately prior to the Member's death, on a bona fide domestic basis as husband or wife and if there is more than one spouse the Trustee shall determine which spouse shall be entitled to be treated as the spouse exclusively or, alternatively, how they are to share the entitlement of a spouse between them;
- 2.72. "Standards" means, in relation to the status of the Fund at the time (whether a Self Managed Fund, a Small APRA Fund or a standard employer-sponsored fund) any relevant requirements in the following provisions as the context requires:
- (a) any applicable provisions in the SIS and the SISR with which the Fund must comply;
  - (b) any applicable provisions in the *Occupational Superannuation Standards Act 1987 (C'th)*, the *Superannuation Entities (Taxation) Act 1987 (C'th)*, the *Occupational Superannuation Standards Regulations*, the *Superannuation Entities Regulations*, the ITAA36, the ITAA97 and the *Fringe Benefits Tax Assessment Act 1986 (C'th)* which must be complied with so that:
    - (i) the Fund obtains concessional tax treatment;
    - (ii) an Employer and/or Member retains any entitlement to a tax deduction unless the Employer and/or Member, as the case may be, elects or chooses not to take a tax deduction; and

- (iii) no dealing with or concerning the Fund gives rise to a fringe benefit which is taxable to an Employer unless the Employer elects or chooses to incur the fringe benefits tax liability;
  - (c) any applicable provisions in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997 (C'th)*, the *Bankruptcy Act 1966 (C'th)*, the *Corporations Act 2001 (C'th)* and the Family Law Act with which the Fund must comply;
  - (d) any applicable Trustee Law which may impact on the Fund but excluding any Trustee Law which imposes any obligation on the Trustee to have regard to any matters aside from the obligations contained in this Deed in either:
    - (i) exercising powers of investment granted under this Deed;
    - (ii) exercising any other power granted under this Deed; or
    - (iii) complying with an obligation contained in this Deed,
 unless the Trustee Law cannot lawfully be so excluded; and
  - (e) where the Trustee considers it appropriate, any other applicable requirement regulating superannuation funds including any proposed change thereto which must be complied with to ensure:
    - (i) the Fund remains entitled to concessional tax treatment;
    - (ii) the Fund remains a regulated superannuation fund; and
    - (iii) no penalty is imposed on the Trustee or the directors of the Trustee under or by virtue of the Standards;
  - (f) where a Pension provided by this Fund is an Asset-test Exempt Pension the Trustee shall comply with any applicable provisions in the *Social Security Act 1991 (C'th)* or the *Veterans' Entitlement Act 1986 (C'th)* and any applicable regulation, ruling or guideline made pursuant thereto, as relevant, during any period the Pension has that status;
- 2.73. "Taxes" includes any liability or provision for a liability for a tax, surcharge, duty, excise, levy, goods and services tax including any additional tax or penalty or, where the Trustee determines, any similar liability or provision, and "Taxation" has a corresponding meaning;
- 2.74. "Temporary Disablement" means physical or mental ill-health that has caused the Member to cease Gainful Employment or which otherwise qualifies as temporary disablement (or its equivalent) under the Standards which does not qualify as Total and Permanent Disablement;
- 2.75. "Total and Permanent Disablement" in relation to a Member means:
- (a) the definition of "total and permanent disablement" in the insurance policy effected by the Trustee (if any); or
  - (b) where there is no insurance policy, the physical or mental ill-health of the Member as certified by two medical practitioners who certify that, in their opinion, the Member is unlikely to be capable of being employed again in any position for which he or she is reasonably qualified by education, training or experience; or
  - (c) any other circumstances which are acceptable to the Trustee and which are acceptable under the Standards,
- and "Totally and Permanently Disabled" shall have a corresponding meaning;



- 2.76. "Trustee" can mean the Trustee, other natural person, Corporate Trustee or Approved Trustee who holds office as the trustee of the Fund including any substitute, successor or replacement trustee from time to time;
- 2.77. "Trust Deed" means the trust deed establishing the Fund including this deed as amended from time to time;
- 2.78. "Trustee Law" means whichever of the *Trustee Act 1958 (Vic)*, the *Trustee Act 1925 (NSW)*, the *Trusts Act 1973 (Qld)*, the *Trustee Act 1936 (SA)*, the *Trustees Act 1962 (WA)*, the *Trustee Act 1898 (Tas)*, the *Trustee Act (1957) (ACT)* and the *Trustee Act 1907 (NT)* apply or any other Commonwealth, State or Territory legislation of like effect that may apply;
- 2.79. "Ultimate Cashing Age" means the age of 75 years or any other age prescribed by the Standards for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed on a Full-time basis; and
- 2.80. "Unconditional Preservation Age" means the age of 65 years or any other age prescribed as a condition of release by the Standards.

### **SUPERANNUATION STANDARDS**

3. In this Deed:
- 3.1. The Standards override the provisions of this Deed and, to the extent the most logical provision conceivable not expressed in this Deed is necessary to enable compliance by the Fund with the Standards having regard to the Fund's status (e.g., as a Self Managed Fund, a Small APRA Fund, a standard employer-sponsored fund, accumulation, defined benefit, pension or any other type of fund), the most logical provision shall be implied as a provision of this Deed and shall prevail over provisions expressed in this Deed.
- 3.2. This clause 3 shall have a paramount effect and shall be taken to prevail and have priority over the express provisions of this Deed to the extent of any inconsistency to ensure this Deed and the Fund complies with the Standards provided that where clause 3.1 no longer requires a provision referred to in clause 3.1 to override the provisions of this Deed, then that provision shall cease to have effect.
- 3.3. Despite clause 3.1 the Trustee may, after taking the advice of a lawyer experienced in superannuation, by resolution declare that any provision which would be implied by clause 3.1 shall not be so implied.
- 3.4. The Trustee is not to be taken to be in breach of this Deed where the Trustee is in breach of a provision implied by clause 3.1 where the contravention of the Standards is waived by the Applicable Authority or any competent jurisdiction referred to in clause 27.
- 3.5. Clause 3.1 shall apply on a prospective basis from the date of establishment of the Fund or, for any standard that applies after that time, the date the relevant standard commences to operate, as the case may be. However, the Trustee may decide that the Standards shall apply on a retrospective basis or in an amended way, either in whole or in part.
- 3.6. Unless the Trustee determines otherwise, to the extent that any requirements in the Standards are less onerous than those expressed in this Deed, the requirements in those Standards shall prevail to the extent of any inconsistency with those expressed in this Deed.

## FUND PROPERTY

- 4.
- 4.1. The property of the Fund shall consist of all the cash, investments, insurances and other property held on trust under the provisions of this Deed and shall include:
- (a) any money or other property or assets transferred into the Fund;
  - (b) any contribution (in money or kind) made to the Fund; and
  - (c) all profits, accumulations and Earnings of the Fund net of any Disbursements.
- 4.2. Nothing in this Deed shall entitle any Member to any specific property belonging to the Fund and the Trustee shall have an absolute discretion in determining which property shall be applied to provide funds for any amount which becomes payable in respect of a particular Member.
- 4.3. Every outgoing Trustee, including a Trustee whose departure gives rise to a vacancy in the office of Trustee as contemplated in clause 6.5(a), shall use its best endeavours at the request of an incoming Trustee to assist an incoming Trustee to own and to gain control of the Fund.

## FUND PURPOSE

- 5.
- 5.1. While the Trustee is not a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Old-Age Pensions to Members.
- 5.2. While the Trustee is a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Benefits to Members.

## TRUSTEE

- 6.
- 6.1. **Trustee to hold property**
- The Fund shall be vested in the Trustee and the Trustee shall hold the Fund property subject to the provisions of this Deed.
- 6.2. **Decisions - Individual Trustees**
- Where the Trustee comprises:
- (a) two individuals, trustee decisions shall require unanimous approval; or
  - (b) more than two individuals, trustee decisions shall require majority approval, and where there is any deadlock in making any decision, each trustee's vote shall be weighted in relation to the value of each of their respective Benefit entitlements in the Fund unless the Standards prescribe otherwise and the Trustees may communicate with each other and meet together for the dispatch of business and adjourn and otherwise regulate their business as they think fit and, unless the Standards prescribe otherwise:
  - (c) the Trustees may confer or communicate via any means as the Trustees by resolution approve including any electronic means, and a resolution passed by such

a conference or communication method shall, notwithstanding that the Trustees are not present together in the same place at the same time, be deemed to have been passed at a Trustees' meeting held on the day on which and the time at which the conference or communication was last held;

- (d) if there is any interruption to a conference of Trustees using any of the means set out in clause 6.2(c), the Trustees have a discretion to determine that the interruption constitutes an adjournment of the conference until the time communications are reconnected or the Trustees determine;
- (e) minutes of any conference or Trustees' meeting may be confirmed by facsimile, email or by such other means as the Trustees by resolution approve; and
- (f) if all the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees in the terms set out in the document, a resolution in those terms shall be taken to have been passed at a Trustees' meeting held at the time at which the document was signed by the last Trustee required to sign that document.

### 6.3. Decisions - Corporate Trustees

Where the Trustee comprises a Corporate Trustee, Trustee decisions shall be in accordance with the Articles of Association, constitution or governing rules of the Corporate Trustee unless the Standards prescribe otherwise.

### 6.4. Appointment

- (a) Subject to the Standards and this clause, Members who either individually or aggregately have Account balances that are not less than two-thirds of the total Fund balance may, by deed or written resolution, appoint a Qualified Person as Trustee so long as the Qualified Person has consented to that appointment in writing. Subject to paragraph (b), the legal personal representative of a deceased Member may exercise the decision making in relation to the appointment of a Qualified Person which may include him or herself.
- (b) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period which the Fund is a Self Managed Fund (including any period that it can continue to be recognised as such a fund despite any permissible breach of the rules relating to the definition of a Self Managed Fund) each individual trustee and/or each director of a Corporate Trustee shall:
  - (i) satisfy any eligibility criteria prescribed by the Standards; or
  - (ii) satisfy such alternative test that is permitted by the Standards covering such situations as:
    - (1) single Member Self Managed Funds;
    - (2) if a Member has died;
    - (3) if a Member is a minor, a parent or guardian can represent the Member;
    - (4) if a Member suffers from a legal disability (including a person under a legal disability due to age); or

- (5) if a Member has appointed a legal personal representative under a power of attorney or other instrument or legal authority recognised by the Standards; or
- (iii) satisfy such other requirements permitted by the Standards or an Applicable Authority.
- (c) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period in which the Fund is a Small APRA Fund (including any period during which it can continue to be recognised as such a fund despite any permissible breach of the rules relating to a Small APRA Fund) the Trustee shall:
  - (i) be an Approved Trustee authorised to act as trustee of the Fund; or
  - (ii) satisfy such other requirements permitted by the Standards or an Applicable Authority.
- (d) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period in which the Fund is not a Self Managed Fund or Small APRA Fund (including any period during which it can continue to be recognised as such a fund despite any permissible breach of the rules relating to that relevant type of Fund) the Trustee shall satisfy such of the requirements prescribed by the Standards or an Applicable Authority in relation to the Trustee and the decision making of the Trustee.

#### 6.5. Vacancy

Subject to the Standards, the office of a Trustee shall:

- (a) become vacant where:
  - (i) the Trustee resigns as trustee by executing a deed or written resolution or in some other manner authorised by the Standards;
  - (ii) an individual, or a director of a Corporate Trustee, is no longer a Qualified Person unless that person can continue in office by compliance with guidelines of an Applicable Authority or otherwise in accordance with the Standards;
  - (iii) Members who either individually or aggregately have Account balances that are not less than two-thirds of the total Fund balance, by deed or written resolution, remove an individual trustee, Corporate Trustee or Approved Trustee from office;
  - (iv) if the Fund is a Self Managed Fund, an individual trustee or a Corporate Trustee can no longer comply with the requirements of being a trustee of such a fund (unless that person or company can continue in office by compliance with guidelines of an Applicable Authority or otherwise in accordance with the Standards for any extended period); or
  - (v) if the Fund is a Small APRA Fund, the Approved Trustee can no longer satisfy the requirements of being a trustee of a Small APRA Fund unless the Trustee can continue in office by compliance with guidelines of an Applicable Authority or otherwise in accordance with the Standards.
- (b) if necessary to comply with the Standards, be filled as soon as practicable on any vacancy.

## 6.6. Trustee Remuneration

Subject to clause 10 and the Standards:

- (a) the Trustee shall not be entitled to receive remuneration from the Fund for its services unless remuneration is permitted under the Standards;
- (b) subject to paragraph (a), any trustee engaged in any profession or business may, notwithstanding his or her office of Trustee, act in a professional capacity, and shall be entitled to charge and be paid all professional and other charges for any business or work or act done by him or her, his or her firm, or his or her company, in connection with the Fund including acts which a trustee could have done personally; and
- (c) subject to paragraph (a), a Trustee shall not be required to make an election between professional charges and any commission or fees otherwise authorised by the Members, statute or Court of Law and an Approved Trustee shall be entitled to its normal fees, charges and commissions including any amounts authorised by legislation.

## COVENANTS

### 7. The Trustee must:

- 7.1. act honestly in relation to all matters concerning the Fund;
- 7.2. exercise, in relation to all matters concerning the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom that person felt morally bound to provide;
- 7.3. ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- 7.4. keep the money and other property of the Fund separate from any money and property, respectively:
  - (a) that is held by the Trustee personally;
  - (b) that is money or property of an Employer or an Associate; or
  - (c) that is otherwise not part of the Fund;
- 7.5. not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising its functions and powers;
- 7.6. formulate and give effect to one or more investment strategies that have regard to the whole of the circumstances of the Fund and the circumstances of particular Members including, but not limited to the following:
  - (a) the risk involved in making, holding and realising, and the likely return from, the investments of the Fund having regard to the purposes of the Fund as set out in clause 5 and expected cash flow requirements;
  - (b) the composition of the investments of the Fund as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;

- (c) the liquidity of the Fund's investments having regard to the Fund's expected cash flow requirements; and
  - (d) the ability of the Fund to discharge its existing and prospective cash flow requirements;
- 7.7. formulate and give effect to one or more strategies for the prudential management of any reserves held by the Fund consistent with the Fund's investment strategies and its capacity to discharge its liabilities, whether actual or contingent, as and when they fall due; and
- 7.8. provide Members with access to any prescribed information and prescribed documents in accordance with the Standards.

## POWERS

- 8.
- 8.1. The Trustee has an absolute discretion in carrying out any acts, matters and things it deems expedient for the purposes of the Fund. In the exercise of its powers, authorities and discretions conferred on the Trustee by law and the provisions of this Deed, the Trustee shall have an absolute and uncontrolled discretion to exercise or refrain from exercising all powers, authorities and discretions.
- 8.2. Unless otherwise required under this Deed or under the Standards, the Trustee is not obliged to give reasons for its actions or omissions.
- 8.3. The Trustee shall have power to:
- (a) settle, compromise, commence, carry on or defend proceedings or submit to arbitration any claims, matters or things relating to the provisions of this Deed or the rights of any Member;
  - (b) purchase an interest in an Approved Fund to provide all or part of a pension or annuity or to provide all or a part of the Pension payable in respect of a Member and the pension or annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the Member in accordance with the Standards;
  - (c) pay all Disbursements;
  - (d) sell, vary, improve, renovate or repair any investment and may exchange any investment for another investment;
  - (e) acquire and maintain any specific investments or money for the purposes of paying Lump-Sum Benefits, Pension Benefits, Ancillary Benefits or acquiring annuities for any Members;
  - (f) establish any sub-fund, segment or partition within the Fund with separately identifiable assets, Members and liabilities with such Members only having an interest in that sub-fund which is separately accounted for in accordance with this Deed;
  - (g) set aside out of the Fund from time to time such amount of money as is sufficient, in the Trustee's opinion, to meet any debt or obligation due or accruing;
  - (h) pay calls on shares or stock or units forming part of the Fund and to accept transfers of shares or Securities;

- (i) assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures or other Securities modifying any rights, privileges or interest in relation to the Fund and to agree to and concur in any scheme of arrangement for the increase or reduction of the value or amount of the same in the capital of any company in which any shares, stock or debentures forming any part of the Fund for the time being may be invested or agree to or concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose;
- (j) subject to clause 9.1, lend money and to provide similar financial assistance and to secure the repayment of it in any manner and upon such terms and conditions, including with or without security or with or without interest, as the Trustee determines;
- (k) subject to clause 9.1, borrow money and obtain similar financial assistance to pay Benefits or to settle Securities or for any other purposes permitted under the Standards;
- (l) indemnify or undertake to indemnify anyone or any body in respect of any claims, matters or things relating to the Fund or to the rights of Members in respect of the Fund;
- (m) insure or re-insure any risks contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, re-insurance company, any other entity willing to accept or underwrite the risk or other fund as the Trustee determines;
- (n) underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by an Employer where there exists the possibility of transfers of Employees to the Fund;
- (o) procure the Trustee or the Fund to be registered or recognised in any country or place outside the jurisdiction of its place of incorporation;
- (p) complete any election or perform any act as required by the Standards including changing the status of the Fund from a Self Managed Fund to a Small APRA Fund or other type of Approved Fund (or vice versa), accumulation, defined benefit, pension or any other type of fund approved by the Standards; or
- (q) generally do any other act or thing as the Trustee considers necessary or expedient in respect of the management and administration of the Fund and to further the interests of the Fund.

8.4. The Trustee may exercise any of its powers or rights even where the Trustee is an Employer or a Member, an Associate of an Employer or a Member or has a direct or personal interest in or benefit in the exercise of the power or right so long as the power or right is exercised in a bona fide prudential manner in accordance with the Standards.

8.5. The Trustee may:

- (a) take or apply, without obtaining any of the consents required by Trustee Law, any part of the Fund in its actual condition or state of investment in or toward satisfaction of any entitlement in the Fund or in the Benefits as the Trustee thinks fit; and
- (b) ascertain and fix the value of the property of the Fund and the liabilities to which the Fund is committed in accordance with the Standards, and every taking or application made under this clause shall bind all persons who are or may become

interested in the Fund including persons who do not have legal capacity and persons who are not yet ascertained.

- 8.6. The Trustee may:
- (a) take out and maintain insurance over risks to the Fund including:
    - (i) insurance on the lives, disability and working capacity of Members; and
    - (ii) insurance in respect of the Fund's assets and/or trustee liabilities;
  - (b) transfer any insurance policy, annuity contract or other similar entitlement in the Fund to a Member in respect of any Benefit entitlement under the provisions of this Deed and the Trustee may determine the value, if any, that is attributable to the entitlement transferred; and
  - (c) meet the cost of insurance out of the Fund unless otherwise agreed between interested parties.
- 8.7. The Trustee may withhold Tax from any benefit, contributions, earnings, gains, property or other payment received, receivable or paid or payable by the Fund and obtain and furnish any information and deal in or pay any Tax.
- 8.8. The Trustee may obtain and act (or refrain from acting) on any professional advice or obtain any professional assistance as it considers appropriate.
- 8.9. Subject to the Standards and this Deed, the Trustee may pay an amount or transfer property to or for the benefit of a Member and the Trustee may accept an amount or property directly from a Member or any other party or indirectly (where an amount or property is paid to another party) provided its consent is obtained in respect of any such indirect payment or transfer.
- 8.10. Subject to the Standards, the Trustee may delegate any functions, duties, discretions or obligations to any person, entity, custodian or organisation by power of attorney, resolution or otherwise for any purposes and with any powers, authorities or discretions as it thinks fit, so long as any custodian or investment manager is appointed in writing; and the Trustee may similarly remove, replace or suspend any person or organisation as it considers appropriate.
- 8.11. Subject to the Standards, the Trustee may comply with orders, agreements or arrangements (whether formal or informal), including but not limited to splitting orders, Payment Split, flagging orders, superannuation agreements, binding financial agreements, flag-lifting agreements and similar orders or agreements, made pursuant to the Family Law Act or such equivalent legislation for de facto relationships or of any recognised foreign jurisdiction.
- 8.12. Subject to the Standards, the Trustee may adjust such Accounts, flag or split any amount or share of a Member's interest in the Fund, give effect to a Payment Split, admit as a Member a spouse of an existing Member (including a Non-Member Spouse), transfer a Member to another Approved Fund, prepare and send such notifications and do or refrain from doing any other such thing as is necessary in order to comply with such orders, agreements or arrangements made pursuant to the Family Law Act or such equivalent legislation for de facto relationships or of any recognised foreign jurisdiction and the Trustee shall, subject to the Standards, be entitled to charge reasonable fees and charges for such acts, matters and things.
- 8.13. Subject to the Standards, in the event that any Member of the Fund makes any claim, assertion, complaint, demand, request or otherwise in relation to the Fund and/or the Trustee that, in the Trustee's discretion, is frivolous, vexatious, fanciful or of little or no substance, even if the matter does not involve any legal action or third party, the Trustee can recover any expense or cost in relation to the administration, dispute resolution or any dealing in



relation to that Member from his/her Account or interest in the Fund and shall not be under any obligation to notify that Member or any other Member of the Fund or person in relation thereto.

## LIMITATIONS

9.

9.1. The Trustee shall not be empowered or authorised to:

- (a) make loans to a Member or an Associate;
  - (b) borrow money on behalf of the Fund;
  - (c) acquire property, including any insurance policy, from a Member or an Associate;  
or
  - (d) make loans, Leases or investments to or in an Employer, Member or an Associate,
- unless and only to the extent authorised by the Standards.

9.2. The Trustee shall not discriminate against any person on the grounds of that person's sex or marital status or in any other manner that would infringe the *Sex Discrimination Act 1984 (C'th)* or any other Australian law concerned with discrimination.

## TRUSTEE'S INDEMNITY

10.

10.1. Subject to the Standards, the Trustee and its directors or officers, shall not be liable or responsible for any loss:

- (a) arising from a breach of trust or otherwise, unless the loss was caused by the Trustee's own fraud or dishonesty;
  - (b) suffered as a result of relying on any professional advice or assistance provided the Trustee was acting in good faith;
  - (c) suffered as a result of the delegation in good faith of any function, duty or obligation;
  - (d) resulting from the Trustee complying with the Standards notwithstanding that the act or omission may constitute a breach of trust or non-compliance with the express provisions of this Deed; or
  - (e) suffered by the Fund or any Member as a result of no, insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not,
- unless the Standards require that the Trustee and its directors or officers must remain liable or responsible for the act or omission resulting in the loss if the act or omission gave rise to a monetary penalty under the civil penalty order provisions of the Standards or otherwise.

- 10.2. The Trustee shall:
- (a) be fully indemnified out of the Fund for the costs of managing and administering the Fund and all other liabilities incurred by or on behalf of the Fund as required by the Standards; and
  - (b) have a lien on and may use the property of the Fund to satisfy this indemnity unless prohibited by Regulation 13.13, 13.14 or Part 5 of the SISR or otherwise by the Standards.
- 10.3. Unless otherwise agreed between interested parties, the Trustee's costs of obtaining advice, including legal, accounting or actuarial advice and all related assistance and information shall be met by the Fund.

## INVESTMENT

11. Subject to the Standards, the Trustee shall ensure that all of the property of the Fund is invested in such appropriate investments, in Australia or elsewhere, as the Trustee thinks fit including, without limitation:
- 11.1. any investment taken to be prudent under Trustee Law;
  - 11.2. any mortgage or other security on freehold or leasehold property even though the amount of the loan may exceed two-thirds of the value of the property and whether or not a report or valuation has been obtained on the value of the property;
  - 11.3. on deposit or on loan, with or without security, at such rate of interest and upon such terms as the Trustee may consider reasonable;
  - 11.4. the purchase or acquisition of any real or personal property and in particular (but not limited to) any chattels, machinery, plant, stock-in-trade, patents, trade marks, registered designs and copyrights or any interest in them;
  - 11.5. the giving or taking of leases, licences or options over real or personal property or any interest in respect of them;
  - 11.6. the discounting of loans, mortgages, contracts, hire purchase agreements or leases;
  - 11.7. 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 a company or other entity, whether listed or unlisted and whether the shares or Securities are fully or partly paid up and whether secured or unsecured, registered or unregistered;
  - 11.8. on deposit with or on loan to any bank, building society, credit co-operative or other financial institution and in any type of account, whether secured or not and the Trustee is empowered to open and operate accounts accordingly;
  - 11.9. in financial instruments and the Trustee may draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument;
  - 11.10. any policy or annuity whether by proposal, purchase or otherwise, and any choses in action, and any interests for life or any lesser term or in reversion;
  - 11.11. the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust, whether listed or unlisted, whether individually or jointly and whether the units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;

11.12. any business (including a business of primary production) including any direct or indirect interest in any business and where a Trustee has invested in a business the Trustee may, to the extent permitted by the Standards, carry on the business or employ persons to carry on the business on behalf of the Trustee; or

11.13. any other investments which are acceptable under the Standards.

## MEMBERSHIP

12.

### 12.1. Eligibility

Subject to the Standards, the Trustee may admit any one or more of the following applicants to Membership:

- (a) an Employee or a self-employed person;
- (b) an Eligible Spouse or a Spouse who 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 for de facto relationships or of any recognised foreign jurisdiction; or
- (c) any other person including a person who is not gainfully employed, a child under 18 years or someone who does not have legal capacity,

so long as:

- (d) subject to clause 12.3, the applicant for membership has provided an "Application for Membership" Form to the Trustee; and
- (e) if the Fund is a Self Managed Fund - the applicant or, if relevant, someone else on the applicant's behalf is eligible to be appointed as an individual trustee or a director of a Corporate Trustee under clause 6.4(b); or
- (f) the applicant satisfies such other requirements permitted by the Standards or an Applicable Authority.

### 12.2. Evidence

Each applicant for membership and each Member shall give to the Trustee the information and produce the documents and other evidence, including submitting to the health and medical checks and tests, as the Trustee may reasonably and lawfully require from time to time in connection with his or her membership of the Fund.

### 12.3. Discretion without formal application

The Trustee may admit a person as a Member even though he or she has not completed a formal application or complied with clauses 12.1 and 12.2.

### 12.4. Conditional admission

The Trustee may admit an applicant as a Member of the Fund and attach special conditions attaching to his or her membership or Benefit in the Fund.

**12.5. Misrepresentation or omission**

Where a Member has or is likely to obtain, by reason of any misrepresentation or omission, a greater Benefit than he or she would otherwise have been entitled to, the Trustee may, subject to the Standards, reduce the Member's Benefit to the amount he or she would have been entitled to had it not been for the misrepresentation or omission.

**12.6. Cessation**

Subject to the Standards and the Trustee's discretion to determine otherwise, a Member shall cease to be a Member of the Fund upon the earliest to occur of the following:

- (a) when the Trustee determines that he or she has been paid all his or her Benefit from the Fund;
- (b) in relation to that Member's death - when the Trustee determines that all of the deceased Member's Benefit has been paid or otherwise applied by the Fund towards the deceased Beneficiaries but if the Standards require an earlier cessation of membership, that earlier date;
- (c) when the Trustee determines that his or her continued membership may cause the Fund to become another type of fund with more onerous requirements including a public offer superannuation fund;
- (d) when the Trustee requires that a Member cease his or her membership of the Fund to comply with the Standards;
- (e) when the Trustee determines that a Member or Beneficiary who is entitled to a Pension Benefit is no longer required to be recognised as a Member of the Fund;
- (f) when the Member is required to cease his or her membership of the Fund to comply with the Family Law Act or an agreement made pursuant to that Act; or
- (g) when the Trustee shall otherwise reasonably determine.

**12.7. Age notification**

A Member shall notify the Trustee when he or she reaches the Penultimate Cashing Age, the Ultimate Cashing Age, when he or she ceases to be Gainfully Employed or whenever the Member considers he or she has satisfied a condition of release under the Standards.

**12.8. Members bound**

Members shall be bound by the provisions of this Deed even though they have not read or obtained a copy of same upon becoming a Member of the Fund.

## **CONTRIBUTIONS**

**13.**

**13.1. An Acceptable Contributor may make contributions of:**

- (a) money;
- (b) securities listed on a prescribed stock exchange in Australia or elsewhere that are authorised by the Standards subject to clause 9.1(c); or
- (c) other property subject to clause 9.1(c),

to the Fund on behalf of one or more Members with the consent of the Trustee so long as the contributions are permitted under the Standards.

- 13.2. An Acceptable Contributor is not bound to make any contribution to the Fund unless the Acceptable Contributor is bound to make the contribution in accordance with clause 13.10 or in accordance with a separate contribution agreement between the Trustee and the Acceptable Contributor.
- 13.3. Contributions by an Acceptable Contributor shall be paid or made to the Fund in the amount and times convenient to the Trustee.
- 13.4. The Trustee is authorised:
- (a) to reject any amount, in full or in part, tendered as a contribution to the Fund and, to return to the contributor, any part of the contribution which, in the Trustee's opinion, could prejudice the Fund's ability to comply with the Standards relevant to the type of fund in question (e.g., a Self Managed Fund, a Small APRA Fund, an accumulation, defined benefit, pension or any other type of fund) including any contribution which exceeds the relevant maximum deductible contribution limit applicable to the Member as prescribed in respect of the relevant Financial Year by the Standards or for any other reason without being bound to give any reason for its rejection; and
  - (b) to request information or documentary evidence to ensure the contributor is eligible to contribute to the Fund where the information provided in the application for membership of a Member is, in the Trustee's opinion, insufficient for these purposes.
- 13.5. Contributions shall be rejected by the Trustee if:
- (a) the Trustee considers the contributions may cause the Fund to become another type of fund with more onerous requirements including a public offer superannuation fund; and/or
  - (b) they would result in a breach of the Standards.
- 13.6. Subject to the Standards, the Trustee may hold rejected contributions and other amounts which do not form part of the Fund as a bare trustee for the contributor or the person otherwise entitled to the amounts.
- 13.7. Subject to the Standards, the Trustee may accept contributions made by or on behalf of a Member who has not reached the Penultimate Cashing Age if:
- (a) the contributions are Mandated Employer Contributions;
  - (b) the Member has, in the 2 years prior to the time of acceptance of the contributions by the Trustee, been Gainfully Employed;
  - (c) the Member suffers from ill-health at the time of acceptance of the contributions which prevents the Member from being Gainfully Employed and where the onset of that ill-health prevented the Member from continuing in that kind of Gainful Employment;
  - (d) the Member has been on genuine maternity or paternity leave from Gainful Employment authorised by the Employer for less than 7 years consecutively where the Member has a statutory or contractual right to resume that Gainful Employment

at the conclusion of the leave and such leave otherwise complies with the Standards;

- (e) the Member is an Eligible Spouse and the contributions are made by the relevant Spouse or any other person (including an employer or an Associate of either Spouse) who may make contributions on behalf of an Eligible Spouse under the Standards; or
- (f) it is otherwise permitted by the Standards (including without limitation child contributions and first child tax offset contributions).

13.8. The Trustee may, subject to the Standards, accept contributions made on behalf of a Member who has not reached the Ultimate Cashing Age if:

- (a) the contributions are Mandated Employer Contributions;
- (b) the Member is Gainfully Employed on at least a Part-time basis at the time of acceptance of the contributions by the Trustee; or
- (c) it is otherwise permitted by the Standards.

13.9. The Trustee may accept contributions made on behalf of a Member who has reached the Ultimate Cashing Age if:

- (a) the contributions are Mandated Employer Contributions; or
- (b) the contributions are otherwise permissible under the Standards.

13.10. Despite clauses 13.1 to 13.9, the Acceptable Contributor shall make and the Trustee shall, after making the determination referred to in clause 21.7, accept contributions to the Fund for the benefit of Funding Members in accordance with the determination of an Actuary in accordance with the Pension RBL and other Standards relevant to the provision of a Complying Pension under clause 17.

## BENEFITS

14.

### 14.1. Benefit election

Where a Member becomes entitled to a Benefit from the Fund, the Member may, subject to the Standards, elect to receive his or her Benefit by one or more of the following forms:

- (a) one or more Lump-Sums;
- (b) one or more Pension Benefits by way of either Allocated Pension, Flexi-Pension or Complying Pension or a mixture of them;
- (c) one or more annuities acquired from one or more Approved Funds; or
- (d) in any other manner contemplated in clause 14.3,

unless the Benefit must be provided in some other manner under the Standards so long as the sum of all Benefits does not exceed the sum of balances of the Member's ARC, the Member's entitlement to be paid out of Pension Reserves and any Insured Benefit to which the Member is entitled as the case may require.

**14.2. Requirements of election**

Unless the Trustee determines otherwise, an election under clause 14.1 shall be in writing and indicate the desired amount or extent that a Lump-Sum Benefit, Pension Benefit or any other Benefit contemplated in clause 14.1, as the case may be, is sought to be received and must be provided to the Trustee before the Benefit commences to be paid or within such further period as the Trustee permits. A Member may specify in any election relating to a Pension Benefit whether or not it is intended to be a Reversionary Pension and, if so, to whom and under what other terms or conditions the Member would wish the Pension to be subject to.

**14.3. Benefit type**

The Trustee may, where permitted by the Standards, and having regard to the Member's election but without being bound by it, provide a Benefit payable to a Member:

- (a) as an Allocated Pension or Flexi-Pension (where commutation of the pension is subject to any applicable limitations in the Standards where the Trustee is not a Corporate Trustee);
- (b) as a Complying Pension;
- (c) as a Lump-Sum Benefit (subject to any applicable limitations in the Standards where the Trustee is not a Corporate Trustee);
- (d) by acquiring an annuity from an Approved Fund;
- (e) as an Ancillary Benefit to the extent the Benefit is not one of the above; or
- (f) as a mixture of the above which may include more than one of each.

**14.4. Retention of Benefits**

Subject to the Standards and clause 14.5, the Trustee may, with the Member's consent:

- (a) retain a Member's Lump-Sum Benefit in the Fund for such period as the Trustee shall determine, even though a Member's entitlement to be paid that Benefit has arisen; and
- (b) retain a Member's Pension Benefit in the Fund for such period as the Trustee shall determine, so long as the Pension commences prior to or on the last day permitted by the Standards.

**14.5. Mandatory commencement of Benefit**

- (a) Where required by the Standards, the Trustee shall pay, commence to pay or transfer to an Approved Fund for the purposes of payment, Benefits as soon as is practicable where:
  - (i) the Member reaches the Penultimate Cashing Age and the Member is not Gainfully Employed on at least a Part-time basis; or
  - (ii) the Member reaches the Ultimate Cashing Age and the Member is not Gainfully Employed on a Full-time basis,

and the Benefits are not "post 65 employer-financed benefits" under the Standards where Mandated Employer Contributions may, in the Trustee's opinion, still be made in respect of the Member.

- (b) Where the amount is a post 65 employer-financed benefit, the Trustee shall, as and when required by the Standards, pay, commence to pay or transfer to an Approved Fund for the purposes of payment of such Benefit, as soon as is practicable, when Mandated Employer Contributions to the Fund or any other Approved Fund cease to be made in respect of the Member or as otherwise required by the Standards.

**14.6. Preservation of Benefits**

The Trustee shall ensure, to the extent that a Benefit is required to be preserved under the Standards, that:

- (a) the Benefit is preserved in the Fund; or
- (b) the Benefit is transferred to an Approved Fund,

in accordance with the Standards and the Trustee may make all determinations, notifications and elections in relation to the components or amounts of such Benefits and may treat all or part of a Member's Benefit as preserved even though such amount is not required to be preserved by the Standards.

**14.7. Ancillary Benefits**

The Trustee may provide a Member with a Benefit in accordance with minimum conditions of release and/or cashing restrictions to the fullest extent permitted by the Standards including:

- (a) on compassionate grounds to the extent approved by the Trustee or the Standards;
- (b) on termination by the Member of Gainful Employment with an Employer before the Unconditional Preservation Age;
- (c) on the Temporary Disablement of a Member so long as the Benefit is provided only to replace the income of a Member as a non-commutable income stream with no residual capital value over a period not to exceed the period of Temporary Disablement which may be indexed and paid at least monthly or in such other period and upon such other terms as is in accordance with the Standards;
- (d) a Benefit provided for other ancillary purposes approved by the Applicable Authority in writing or otherwise approved by the Standards; or
- (e) any other type of Benefit approved under the Standards which is not referred to in this clause or in clause 14.3.

**14.8. Form of benefits**

A Benefit may be paid to a Member either in money or in any other form of property so long as the Benefit is paid in accordance with the Standards.

**14.9. Member's debt**

Where a Member owes money to the Trustee or to a Contributing Employer and/or Associate, the Trustee may, subject to the Standards, reduce the Member's Benefit by the Member's outstanding debt.



#### 14.10. Discharge

- (a) The payment of all Benefits to or on behalf of a Member or a transfer to an Approved Fund of all Benefits shall be in full and final satisfaction and discharge of the Trustee's and the Fund's obligations in respect of that Member and all of his or her (or their) rights, entitlements and interests in the Fund.
- (b) Where any Member is not a Qualified Person, the Trustee may, subject to the Standards, pay a Benefit to the Member's parent, guardian, legal personal representative, authorised attorney or establish a trust, for the Member, with a suitable trustee ("the Payee") and pay a benefit to the Member's trust, and subject to such terms and provisions as the Trustee determines, for the benefit of the Member, the costs of same being payable out of any Benefit, and:
  - (i) where the Payee is a professional person or carrying on a business, the Payee shall be entitled, subject to clause 6.6, to act as Payee and to charge fees accordingly;
  - (ii) the Payee shall be entitled to pay or apply the Benefit or any part of it at any time for the advancement, maintenance, education or general well-being of the Member until the Member becomes a Qualified Person again; and
  - (iii) the receipt by the Payee shall be a complete and final discharge to the Trustee for the application or payment.

#### 14.11. Dependants & Succession

Subject to clause 14.12, the Trustee may on or after the death of a Member:

- (a) make any determination relating to the type, amount and proportions of different components in any Benefit and whether a Lump-Sum Benefit and/or a Pension Benefit is provided and, if a Pension Benefit is provided, the type of Pension Benefit, whether it is commutable or not, whether it is reversionary or not, and the Trustee may attach such other conditions to such Pension Benefit as the Trustee determines, and the Trustee shall:
  - (i) have regard to but shall not be bound by any nomination of Preferred Dependant by the Member; and
  - (ii) pay:
    - (1) a Member's Benefit to the Preferred Dependant;
    - (2) a Member's Benefit to any other Dependant;
    - (3) a Member's Benefit to the Member's legal personal representative; or
    - (4) a mixture of (1) to (3) which may include two or more Dependants and/or the legal personal representative in the proportions of the Member's Benefit and/or the value and/or particular assets and/or reserves in the Fund that will fund the Benefit that the Trustee may, in its absolute discretion, determine; or
- (b) where the Trustee has not, after the Trustee has made reasonable enquiries, found either a legal personal representative, or a Dependant, pay the Member's Benefit to an individual(s) selected by the Trustee who, unless the Standards require

otherwise, is such person or persons entitled under the laws of intestacy to the estate of the Member at the date of his or her death had he or she died intestate and not married at the date of such failure and in such shares and proportions as he/she/they would have been so entitled; or

- (c) deal with the Benefit either:
  - (i) in accordance with clause 20.4 to the extent required by the Standards; or
  - (ii) by cancelling the Benefit and crediting the value of it to the Accumulation Reserve Account in accordance with clause 21.11 to the extent permitted by the Standards,if clauses 14.11(a), 14.11(b) or 14.12 do not apply.

#### 14.12. Binding Death Benefit Nominations

- (a) A Member may, prior to his or her death, provide the Trustee with a binding written direction as to the payment of all or part of his or her Benefit, on or after the death of that Member ("Binding Nomination"), to one or more of that Member's Dependants and/or legal personal representative, in accordance with this clause 14.12. The Member may specify in such Binding Nomination:
  - (i) that all or a specified part, proportion or amount of his or her Benefit is to be paid on his or her death to one or more of that Member's Dependants and/or legal personal representative, to the exclusion of any other Dependant and/or legal personal representative;
  - (ii) the proportion of the Member's Benefit and/or the value and/or particular assets, accounts and/or reserves in the Fund that will fund the Benefit payable to the persons in sub-paragraph (i);
  - (iii) whether the amount is to be paid to each person in sub-paragraph (i) as a Lump Sum Benefit and/or as a Pension Benefit and, if a Pension Benefit is provided, the type of Pension Benefit, whether it is commutable or not and whether it is reversionary or not; and
  - (iv) any matter, other than what is covered in sub-paragraphs (i) to (iii) above, to which the Trustee may consent.
- (b) A Binding Nomination must:
  - (i) be in writing;
  - (ii) be signed, and dated, by the Member in the presence of two adult witnesses, neither of whom is mentioned as a Dependant or legal personal representative in the Binding Nomination; and
  - (iii) must contain a declaration signed and dated by both the witnesses stating that the Binding Nomination was signed by the Member in their presence.
- (c) Subject to this clause 14.12 and clause 14.13, the Trustee shall be bound, on or after the death of a Member, to comply with the instructions set out in the Binding Nomination (or a copy thereof) that has been received by the Trustee from that Member.
- (d) A Member may revoke a Binding Nomination made at any time prior to that Member's death by:

- (i) preparing a new Binding Nomination in accordance with this clause 14.12 and providing it to the Trustee, and this shall have the effect of revoking in its entirety and rendering completely inoperative any prior dated Binding Nomination of that Member; or
- (ii) notifying the Trustee in writing that that Member revokes a Binding Nomination, and this shall have the effect of revoking in its entirety and rendering completely inoperative any prior dated Binding Nomination of that Member.

- (c) If the Fund is a Self Managed Fund, a Binding Nomination shall, subject to any terms and conditions contained in the Binding Nomination which may otherwise render it void or inoperative, continue in full force and effect until it is revoked in accordance with paragraph (d), regardless of the time period that has elapsed since the execution date of that Binding Nomination despite the maximum duration of three years being specified in sub-regulation 6.17A(7) of the SISR (which is applicable to Binding Nominations in relation to superannuation funds that are not Self Managed Funds).

14.13. Notwithstanding any other provision in this Deed, the Trustee shall not be bound to comply with a Binding Nomination to the extent that to do so would:

- (a) result in a breach of the Standards that would cause the Trustee and/or the Fund to suffer a penalty or commit an offence; and/or
- (b) result in a Member's Benefit or any part thereof being paid to a person who is, in the Trustee's reasonable opinion, neither a Dependant nor a legal personal representative of that Member,

and such Binding Nomination will be rendered invalid to the extent it causes such penalty or offence, or results in a Member's Benefit being paid to a person who is neither a Dependant nor the legal personal representative of that Member, as the case may be.

## LUMP-SUMS

15.

15.1. Regular Benefits

Subject to the limitation in clause 14.3(c), where:

- (a) a Member Retires on or after attaining the Preservation Age but before attaining the Conditional Preservation Age and where the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed, either on a Full-time or Part-time basis; or
- (b) a Member Retires on or after attaining the Conditional Preservation Age; or
- (c) a Member attains the Unconditional Preservation Age; or
- (d) a Member is otherwise entitled to a Lump Sum Benefit in accordance with the Standards,

the Member is entitled to a Lump-Sum Benefit from the Member's ARC. The amount and timing of any Lump Sum Benefit shall be determined by the Trustee.

15.2. **Ancillary Benefits**

A Member who is eligible for an Ancillary Benefit referred to in clause 14.7 may be paid that Benefit drawn from the Member's ARC, subject to the limitation in clause 14.3(c) as a Lump-Sum Benefit of an amount determined by the Trustee unless the Benefit is of a type that must be paid in some other manner under the Standards.

15.3. **Death Benefits**

Where a Member dies, the Beneficiary is entitled, subject to the limitation in clause 14.3(c), to receive a Lump-Sum Benefit of an amount determined by the Trustee which is to be drawn from the Member's ARC and any Insured Benefit that arises under clause 18.

15.4. **Total & Permanent Disablement Benefits**

Where a Member becomes Totally and Permanently Disabled, the Member shall be entitled, subject to the limitation in clause 14.3(c), to receive a Lump-Sum Benefit of an amount determined by the Trustee which is to be drawn from the Member's ARC and any Insured Benefit that arises under clause 18.

15.5. **Variation**

Subject to the limitation in clause 14.3(c), the Trustee's consent and the Standards, a Member's Lump-Sum Benefit may be varied by the Trustee utilising an amount in any other Account or Reserve to fund such a Pension.

**ALLOCATED PENSIONS & FLEXI-PENSIONS**

16.

16.1. **Regular Benefits**

Where:

- (a) a Member Retires on or after attaining the Preservation Age but before attaining the Conditional Preservation Age and the Trustee is reasonably satisfied that the Member intends to never again become Gainfully Employed, either on a Full-time or Part-time basis; or
- (b) a Member Retires on or after attaining the Conditional Preservation Age; or
- (c) a Member attains the Unconditional Preservation Age; or
- (d) a Member is otherwise entitled to draw an Allocated Pension or Flexi-Pension in accordance with the Standards; and
- (e) the Trustee is prepared to pay such a Pension from the Fund,

the Member is entitled to an Allocated Pension or Flexi-Pension of an amount determined by the Trustee which is to be drawn from the Member's ARC. The amount and timing of such pension shall be determined by the Trustee.

16.2. **Ancillary Benefits**

A Member who is eligible for an Ancillary Benefit referred to in clause 14.7 and the Trustee is prepared to pay an Allocated Pension or a Flexi-Pension from the Fund, that Member may be paid such a Pension of an amount determined by the Trustee drawn from the Member's ARC

and any Insured Benefit under clause 18 unless the Benefit is of a type that must be paid in some other manner under the Standards.

**16.3. Death Benefits**

Where a Member dies and the Trustee is prepared to pay an Allocated Pension or a Flexi-Pension from the Fund, the Beneficiary is entitled to receive such a Pension of an amount determined by the Trustee which is to be drawn from the Member's ARC and any Insured Benefit under clause 18.

**16.4. Total & Permanent Disablement Benefits**

Where a Member becomes Totally and Permanently Disabled and the Trustee is prepared to pay an Allocated Pension or a Flexi-Pension from the Fund, the Member is entitled to receive such a Pension of an amount determined by the Trustee which is to be drawn from the Member's ARC and any Insured Benefit under clause 18.

**16.5. Commutation & Variation**

Subject to clause 16.6 and the limitation in clause 14.3(c), the Trustee's consent and the Standards:

- (a) a Member may commute the whole or any part of an Allocated Pension Benefit or Flexi-Pension Benefit to a Lump-Sum Benefit or any other Benefit permitted by this Deed at any time; and
- (b) an Allocated Pension or a Flexi-Pension may be varied by the Trustee utilising an amount in any other Account or Reserve to fund such a Pension.

**16.6. Assets-Test Exempt Pensions**

During any period an Allocated Pension or a Flexi-Pension is provided as an Asset-test Exempt Pension, the annual rate of indexation, if any, of that pension shall be limited by the maximum rate set by the Standards and shall be fixed for the duration of the pension and shall not be varied unless variation is authorised by the Standards or the Applicable Authority.

## **COMPLYING PENSIONS**

**17.**

**17.1. Regular Benefits**

- (a) Where:
  - (i) a Funding Member Retires on or after attaining the Preservation Age but before attaining the Conditional Preservation Age and the Trustee is reasonably satisfied that the Member intends to never again become Gainfully Employed, either on a Full-time or Part-time basis; or
  - (ii) a Funding Member Retires on or after attaining the Conditional Preservation Age; or
  - (iii) a Funding Member attains the Unconditional Preservation Age; and
  - (iv) provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to clause 2.19(b)) to the Member in accordance with the Standards,

the Member is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account.

(b) Where:

- (i) a Funding Member Retires permanently from Gainful Employment with an Employer or otherwise before the Unconditional Preservation Age; and
- (ii) provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to clause 2.19(b)) to the Member in accordance with the Standards,

the Member is entitled to a restricted Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account which shall be restricted in that it cannot be commuted as contemplated in clause 2.19(a)(v).

(c) Where:

- (i) a Funding Member attains the Pension Age or otherwise becomes eligible to be paid a Complying Pension under the Standards; and
- (ii) provision has been made for the payment of a Complying Pension (including a Complying Pension pursuant to clause 2.19(b)) to the Member in accordance with the Standards; and

(iii) the Trustee has consented to the payment of a Complying Pension, the Member is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account.

(d) A Member (including a Funding Member) to whom clauses 17.1(a) to 17.1(c) do not apply is not entitled to draw a Complying Pension from the Pension Reserve Account unless it is permitted by the Trustee and the Standards. The amount and timing of any Pension pursuant to this paragraph shall be determined by the Trustee.

## 17.2. Ancillary Benefits

A Member who is eligible for an Ancillary Benefit referred to in clause 14.7 and the Trustee is prepared to pay a Complying Pension from the Fund, that Member may be paid a Complying Pension of an amount determined by the Trustee drawn from the Pension Reserve Account including any Insured Benefit under clause 18 unless the Benefit is of a type that must be paid in some other manner under the Standards.

## 17.3. Death Benefits

Where a Funding Member dies and subject to clause 14.3(b), provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to clause 2.19(b) unless the Funding Member has attained Pension Age or is otherwise eligible to be paid a Complying Pension pursuant to clause 2.19(b)) to the Member in accordance with the Standards, the Beneficiary is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account including any Insured Benefit under clause 18.

17.4. **Total & Permanent Disablement Benefits**

Where a Funding Member becomes Totally and Permanently Disabled and subject to clause 14.3(b), provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to clause 2.19(b) unless the Funding Member has attained Pension Age or is otherwise eligible to be paid a Complying Pension pursuant to clause 2.19(b)) to the Member in accordance with the Standards the Member is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account including any Insured Benefit under clause 18.

17.5. **Initial default Pension**

The first annual amount of a Complying Pension Benefit paid pursuant to clause 2.19(a) shall be the Complying Pension Amount unless the Trustee determines otherwise based on the advice of an Actuary. The first annual amount of a Complying Pension Benefit paid pursuant to clause 2.19(b) shall be the amount determined by the Trustee based on the advice of an Actuary.

17.6. **Variation of Pension**

Subject to clause 17.7 and the Standards and the Trustee's consent, a Complying Pension may be varied or commuted by the Trustee on the advice of an Actuary and the Trustee may utilise an amount in any other Account or Reserve to fund the Pension.

17.7. **Assets-Test Exempt Pensions**

During any period a Complying Pension is provided as an Asset-test Exempt Pension, the annual rate of indexation, if any, of that pension shall be limited by the maximum rate set by the Standards and shall be fixed for the duration of the pension and shall not be varied unless variation is authorised by the Standards or the Applicable Authority. Further, a Complying Pension which is provided as an Asset-test Exempt Pension shall comply with any other special requirement of the Standards to retain its status as an Asset-test Exempt Pension during any period it is provided as an Asset-test Exempt Pension.

### **INSURED BENEFITS**

18.

18.1. The Insured Benefit in respect of the death or Total and Permanent Disablement of a Member or for any other purposes in relation to a member shall, subject to the Standards, be equal to the amount (if any) paid or obtained by the Trustee in respect of any insurance policy effected to provide the Insured Benefit or any other amount including any taxation benefit or saving which the Trustee is entitled to less any amount credited from that amount to the Accumulation Reserve Account, the Pension Reserve Account or to any other Account that the Trustee may decide.

18.2. The Trustee or the Fund shall not be liable for any loss suffered by the Fund or any Member as a result of:

- (a) no or insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not; or
- (b) an insurer failing to pay out on an insurance policy, in whole or in part, for whatever reason,

and the Trustee shall be at liberty to reduce or abandon insurance cover in relation to Members whose age, ill health or other circumstances would lead to premium costs that are out of proportion to costs that are incurred on behalf of other Members.

## VESTING

### 19.

19.1. Subject to the Standards and clause 19.2, no Benefit in respect of a Member shall vest in a Member or a Dependant after the happening of any of the following events:

- (a) the Member committing an act of bankruptcy or becoming an insolvent person under administration;
- (b) the Member assigning, securing or charging his or her Benefit in the Fund (or attempting to do so); or
- (c) the Member's Benefit whether by his or her own act, operation of law, an order of any court or otherwise becoming payable to or vested in any other person, company, government or other organisation,

and the Trustee shall be empowered to pay or apply any amount in any manner as the Trustee determines in its absolute discretion from time to time so long as the payment or application is in accordance with the Standards.

19.2. Clause 19.1 shall not apply to any Benefit that has already vested in a Member or that must vest in the Member as a Minimum Benefit or otherwise under the Standards.

## BENEFITS TRANSFERS

### 20.

#### 20.1. Transfers to the Fund

Subject to clause 9.1(c), the Trustee may, upon the written request of an Acceptable Contributor, accept the transfer into the Fund of property (including money) from another Approved Fund or from another Benefit in the Fund (including the commutation or roll-over of a Pension) in respect of a Member or such other property (or amount) that the Trustee agrees to accept into the Fund's reserves provided the transfer complies with the Standards.

#### 20.2. Benefits transferred to the Fund

Where the value of property (or money) accepted under clause 20.1:

- (a) represents different components (such as employer and employee contributions and preserved, restricted non-preserved and unrestricted non-preserved amounts) the Trustee shall ensure the Member's ARC, the Pension Reserve Account in the Fund and any other account in the Fund, as the case may require, appropriately reflect and record those different components; and
- (b) is to be credited to the Pension Reserve Account in anticipation of any entitlement to a Complying Pension, the Trustee, the Member, the Contributing Employer, as applicable, and such other person acceptable to the Trustee as the case may be, shall first agree on the effect of the credit and necessary assumptions.



20.3. **Transfer to other funds**

The Trustee may:

- (a) upon receiving a written request from a Member or a resolution of the Trustee to transfer a Member's Benefit, transfer the whole or part of the Member's Benefit to another Approved Fund so long as the Trustee is satisfied that the amount transferred to that Approved Fund complies with the Standards;
- (b) transfer a Benefit which has become payable to a Member of the Fund to an Approved Fund selected by the Trustee where a Member has failed to provide instructions in relation to the payment or transfer within a reasonable time period of the Benefit first becoming payable; and
- (c) transfer any other property or amount in the Fund that it approves including any reserves, surplus or unallocated amounts in the Fund to another account or reserve in the Fund or to another Approved Fund.

20.4. **Unclaimed money**

Where required by the Standards, the Trustee shall:

- (a) comply with the requirements relating to unclaimed money which becomes payable by the Fund to a Member who the Trustee is unable to trace after making reasonable efforts and inquiries;
- (b) pay any unclaimed money in accordance with any applicable unclaimed money law referred to in clause 27 or, in the event that no such law is applicable, to the Applicable Authority; and
- (c) complete any statements or returns in respect of unclaimed money required by any applicable unclaimed money law or the Standards.

20.5. **Discharge on transfer**

The receipt by an Approved Fund of the amount or property transferred or the lodgement of a statement with the requisite amount of unclaimed money under clause 20.4 shall be a complete and final discharge to the Trustee and the Fund in respect of any liability to that Member in relation to his or her Benefit or the amount or value of the property transferred.

## **ACCOUNTS**

**21.**

21.1. **Trustee to keep**

The Trustee shall keep the Accounts and ensure these are properly maintained.

21.2. **Financial Statements**

The Trustee shall cause a profit and loss Account and any other required financial statements to be prepared as soon as practicable after the end of each Financial Year and at any other times where necessary.

21.3. **Provisions**

- (a) The Trustee may make provision or adjustment in the Accounts, including the Members' Accounts, for all Disbursements (including Taxes on unrealised gains,

advance tax instalments and notional surcharge amounts), liabilities, tax credits, rebates, depreciation, amortisation or revaluations as the Trustee considers appropriate.

- (b) The Trustee may alter, exchange and segregate current pension assets from non-current pension assets and deal with the Fund as different sub-funds, segments or partitions and account for same in accordance with this Deed.
- (c) The Trustee may adjust a Member's Benefit or any Account, including Reserves, in the Fund for any tax deductions, rebates, credits or other entitlements in relation to a Member including, without limitation, any deduction entitlements under section 279B and section 279D of the ITAA36 in respect of the death or disablement of a Member. The Trustee may make any estimate or adjustment it deems appropriate in valuing any such amount.

#### 21.4. Earnings

- (a) Earnings may be credited or debited to the Members' Accounts, the Pension Reserve Account, the Accumulation Reserve Account or other Accounts so long as these credits shall not sum to an amount greater than Earnings in a period as ascertained in the Accounts and so long as these debits shall not sum to an amount greater than Earnings in the event Earnings are negative unless the Trustee determines otherwise.
- (b) The Trustee shall have regard to:
  - (i) the ARC of Members;
  - (ii) any property held on behalf of a Member and any income earned from that property;
  - (iii) Pension Reserve Account balances, if any;
  - (iv) other reserve Account balances, if any;
  - (v) length of membership;
  - (vi) investment strategies;
  - (vii) actuarial advice, if any; and
  - (viii) the exchange and segregation of the assets of the Fund, if any, as assets set aside to meet current pension liabilities of the Fund or for other purposes of the Fund and the extent to which Earnings are attributable to those assets,in the exercise of its discretion in determining allocations of Earnings to each Member under this clause.
- (c) Earnings may be debited or credited, as the case may require, annually or at other times in the Trustee's absolute discretion.
- (d) The Trustee may make a reasonable estimate in crediting or debiting any Earnings, as the case may be, before final Accounts or financial statements are available to the Trustee after the end of a Financial Year.

#### 21.5. Reserves

The Trustee shall establish and maintain in its own name or otherwise under its control and subject to such rules and procedures it specifies from time to time the following Accounts:

- (a) the Accumulation Reserve Account which may receive credits in the circumstances outlined in clause 21.11;
- (b) such reserve Accounts or liability Accounts as may assist the Trustee to identify the value of assets that may have been exchanged or segregated as either current pension assets, non-current pension assets or that are dealt with as a different sub-fund, segment or partition; and
- (c) such other Accounts, including a Pension Reserve Account and such other reserves as the Trustee considers appropriate from time to time including, without limitation, one or more contributions, miscellaneous and investment reserve accounts.

**21.6. Calculations relating to current pension liabilities**

In:

- (a) determining income earned from property under clause 21.4(b)(ii);
- (b) attributing Earnings to assets set aside to meet current pension liabilities of the Fund or for other purposes of the Fund for the purposes of clause 21.4(b)(viii); or
- (c) identifying value to be credited to reserve Accounts or liability Accounts set up in accordance with clause 21.5(b),

the Trustee may determine that any debit to an Account, credit to an Account or other adjustment that impacts on the Accounts, Disbursements or financial position of the Fund is to be included or excluded, as the case may be in the absolute discretion of the Trustee, from such determination, attribution or identification and the Trustee shall not be bound to either explain or give reasons for its determination, attribution or identification unless required to do so by the Standards.

**21.7. Pension Reserve Account**

Based on the advice of an Actuary, the Trustee may credit the Pension Reserve Account with:

- (a) contributions (if any) by or on behalf of a Funding Member to the Fund including any contribution which exceeds the relevant Funding Member's maximum contribution limit as prescribed in any Financial Year by the Standards;
- (b) sums received on trust and held in accordance with clauses 20.1 and 20.2;
- (c) allocations of Earnings;
- (d) allocations which may be made from time to time in the Trustee's absolute discretion from the Accumulation Reserve Account or such other account or reserves as the Trustee determines;
- (e) Insured Benefits received in respect of a Funding Member;
- (f) such other amounts as may in the opinion of the Trustee properly be credited to the Pension Reserve Account in respect of a Funding Member; and
- (g) subject to the Standards, any credit to a Funding Member's ARC or any credit to the Accumulation Reserve Account or any other account or reserve that can be transferred to the credit of the Pension Reserve Account in accordance with the Standards where a Complying Pension is to be paid to the Member and the Trustee determines, based on the advice of an Actuary, that an anticipated Member's Complying Pension Benefit requires further funding.

and the Trustee may debit this Account to pay or provide for any amounts, which, in the opinion of the Trustee, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts so long as the payment or provision is in accordance with Standards and is in accordance with actuarial advice. Further, subject to the Standards, any amount in the Pension Reserve Account can be transferred to a Member's ARC or to the credit of the Accumulation Reserve Account where the Trustee determines, based on the advice of an Actuary, that an anticipated Member's Complying Pension Benefit is over-funded.

#### **21.8. Members' Accounts**

The Trustee may establish and maintain in the name of each Member:

- (a) an Accumulation Retirement Account to which, unless the Trustee determines otherwise, shall be credited:
  - (i) contributions (if any) by or on behalf of the Member to the Fund including any contribution which exceeds the relevant Member's maximum contribution limit as prescribed in any Financial Year by the Standards;
  - (ii) sums received on trust and held in accordance with clauses 20.1 and 20.2;
  - (iii) allocations of Earnings;
  - (iv) allocations which may be made from time to time in the Trustee's absolute discretion from the Accumulation Reserve Account or such other account or reserves as the Trustee determines; and
  - (v) such other amounts as may in the opinion of the Trustee properly be credited to the Member's Account(s) in respect of the Member,so long as the amounts have not already been credited to the Pension Reserve Account in accordance with clause 21.7; and
- (b) such other Accounts, including Allocated Pension Accounts or Flexi-Pension Accounts, as the Trustee considers appropriate from time to time,

and the Trustee may debit these Accounts to pay or provide for any amounts, which, in the opinion of the Trustee, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts so long as the payment or provision is in accordance with the Standards including the Standards that apply to small account balances.

#### **21.9. Treatment of property contributions**

Where specific property is contributed by or in respect of a Member, the value of the property shall be credited to the Member's ARC or such other account or reserve as the Trustee determines subject to clause 4.2.

#### **21.10. Members' credit Accounts**

Subject to the Standards, the Trustee may open a Member's credit Account on a temporary basis where a Benefit has accrued to a Member but has not been paid or applied to the Member such as in circumstances contemplated under clause 14.4 or otherwise. Unless the Trustee otherwise determines, once a Benefit has accrued to a Member then it can no longer be posted to the Member's ARC or the Accumulation Reserve Account.

**21.11. Credits to Accumulation Reserve Account**

Any Account of a Member established and maintained in accordance with clause 21.8 or the Insured Benefit of a Member may be reduced with the amount of the reduction then credited to the Accumulation Reserve Account in the Trustee's absolute discretion including in circumstances where:

- (a) the Trustee considers that it is in the interests of the Members that the credit should take place;
- (b) a Benefit is paid to a Member or is otherwise satisfied in full and any residual balance (which does not form part of the Benefit) remains in the Member's Accumulation Retirement Account;
- (c) the amount is subject to clause 14.11; or
- (d) the amount is subject to clause 19.1,

so long as the reduction concerned does not form a Minimum Benefit or contravene the Standards.

**21.12. Other Accounts**

The Trustee may credit other Accounts, including reserve accounts, created by the Trustee pursuant to clause 21.5, with:

- (a) contributions (if any) by or on behalf of a Member to the Fund including any contribution which exceeds the relevant Member's maximum contribution limit as prescribed in any Financial Year by the Standards;
- (b) sums received on trust and held in accordance with clauses 20.1 and 20.2;
- (c) allocations of Earnings;
- (d) allocations which may be made from time to time in the Trustee's absolute discretion from the Accumulation Reserve Account or such other account or reserves as the Trustee determines;
- (e) Insured Benefits received in respect of a Member; and
- (f) such other amounts as may in the opinion of the Trustee properly be credited to the relevant Account in respect of a Member,

and the Trustee may debit this Account to pay or provide for any amounts, which, in the opinion of the Trustee, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts, including any payment to an Employer of a Member, so long as the payment or provision is in accordance with the Standards.

## **RECORDS**

**22.**

**22.1. The Trustee shall:**

- (a) cause proper records to be maintained, and shall cause the relevant notifications and annual or other returns to be lodged with the Applicable Authority, the Members and any other relevant authority in accordance with the Standards;
- (b) keep a record of all Trustee minutes and decisions relating to the Fund for a period of at least 10 years; and

- (c) keep a record of the Fund's Accounts, financial statements and returns for a period of at least 5 years.

22.2. The Trustee must appoint an Auditor for each Financial Year or as required under the Standards to:

- (a) audit the financial statements and the records of the Fund requiring audit; and
  - (b) report in writing to the Trustees,
- within the time required by the Standards.

### DISCLOSURE

23. The Trustee shall cause any information and notifications to be provided by or in respect of the Fund, as required from time to time by the Standards, including the following where necessary:

- (a) an appropriate notification upon a person becoming or ceasing to be a Member;
- (b) annual disclosures at the end of each Financial Year (or relevant period) in respect of a Member, the Fund or other person;
- (c) changes to the provisions of this Deed;
- (d) a copy of this Deed which shall be available for inspection by each Member; and
- (e) the information specified by the Standards which may be requested by a Member at least once a year.

### WINDING-UP

24.

24.1. The Trustee shall wind-up and terminate the Fund in the manner provided by this clause when the first of the following events occurs:

- (a) all Members agree to wind-up the Fund;
- (b) the Trustee decides that the continuation of the Fund is not reasonably justified;
- (c) the Fund is required to be wound-up to comply with the Standards; or
- (d) the last remaining Member ceases to be a Member of the Fund,

and the date when the first of the above events occurs, shall be referred to as the "Wind-up Date".

24.2. The Trustee shall close the membership of the Fund on the Wind-up Date and determine the amount or value of property available, subject to clause 21.8, for satisfying the amount credited to the Accounts of each Member after taking into account and making necessary provisions for the Disbursements and losses related to winding-up and finalising the Fund.

24.3. The Trustee shall pay (or transfer to an Approved Fund, as the case requires) the Benefit that can be satisfied by the amount determined under clause 24.2 in respect of each Member and any applicable reserve or surplus in relation thereto and make any adjustment to each

Member's Benefit on account of any surplus or deficiency arising during the course of and before finalising the winding-up of the Fund provided that:

- (a) the Trustee shall not pay or transfer a Member's Benefit (or a part of it) where payment or transfer would be inconsistent with the Standards; and
  - (b) the Trustee may maintain any Benefit in respect of a Member after the Fund is wound-up subject to similar trusts as contained in this Deed or transfer the Member's Benefit to an Approved Fund until the Member is entitled to be paid his or her Benefit.
- 24.4. Where any amount remains after the winding-up and payment or transfer of Benefits (as contemplated in clause 24.3), the amount so remaining shall, subject to the Standards, be paid to any person who has ever been a Member or to any other person or entity that the Trustee chooses in the proportions the Trustee considers reasonable and equitable.
- 24.5. The Fund shall be administered and its property distributed or paid upon a winding-up so that the Fund does not infringe the Standards.
- 24.6. The payment or transfer of a Member's Benefit or other amount in accordance with this clause shall, subject to the Standards, be a complete and final discharge of the Trustee and the Fund in respect of that Member.

## VARIATION

25. The Trustee may at any time, by deed or written resolution, vary this Deed on a prospective or retrospective basis (including any provisions deemed to be included under clause 3) subject to the following:
- 25.1. no amendment shall permit:
- (a) an individual to be appointed as Trustee unless the Fund has and continues to have the sole or primary purpose of providing Old-Age Pensions; or
  - (b) the Fund to have a sole or primary purpose other than the provision of Old-Age Pensions unless the Trustee is a constitutional corporation,
- where the Standards prohibit such amendments;
- 25.2. no amendment shall reduce a Member's Benefit accrued before the date of the amendment unless the Trustee has the written consent of any Member whose Benefit would be reduced or adversely affected; and
- 25.3. despite clause 25.2, an amendment may reduce a Member's Benefit accrued before the date of the amendment without obtaining the Member's consent where:
- (a) the reduction in Benefits is required because of, and does not exceed the value of, any additional Tax payable on the Fund's income due to such things as changes in Taxation laws; or
  - (b) the reduction is required to enable the Fund to comply with the Standards or the Applicable Authority provides its written approval to the reduction; or
  - (c) the amendment is otherwise authorised by the Standards,
- and the Trustee need not observe any of the conditions in Trustee Law which may otherwise apply to the amendment or to the process of making the amendment.

**SEVERANCE**

26. The provisions of this Deed are and shall be construed as severable and so if any provision or any part of the provision shall, at any time, be found or declared void or invalid then the remaining part of the provision, if any, and all other provisions of this Deed shall remain valid, binding and enforceable.

**APPLICABLE LAW**

27. This Deed shall be construed in accordance with the laws of the State or Territory specified in the Trust Deed and the Commonwealth of Australia.

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# PART B (Schedule)

FORM 1

## Application for Membership

To the Trustee of the Fund.

|            |  |               |  |
|------------|--|---------------|--|
| FULL NAME  |  | TAX FILE No.  |  |
| ADDRESS    |  |               |  |
| OCCUPATION |  | DATE OF BIRTH |  |

I apply for admission as a Member of the Fund and, in consideration of my admission as a Member:

1. I consent to being a trustee or director of a corporate trustee unless I am specifically excepted from this requirement under the Standards (e.g., due to a legal disability such as under 18 years or being of unsound mind). I accept the responsibilities and liabilities of being a trustee or a director of a corporate trustee to a superannuation fund.
2. I agree to abide by and to be bound by the provisions of the trust deed governing the Fund. I acknowledge that the expressions and meanings in this Application are identical to those used in the trust deed.
3. I undertake to provide any relevant information or documentary evidence and agree to submit to health and medical tests as requested from time to time by the Trustee related to my membership of the Fund.
4. I acknowledge receipt of written notice of the existence of the nature of the rights that I will have in the Fund, if I am admitted as a Member.
5. I nominate the following Dependants (eg, spouse or children) to be entitled to any benefit that I may have in the Fund upon my death:

| Name | Relationship | % of benefit |
|------|--------------|--------------|
|      |              |              |
|      |              |              |
|      |              |              |

6. I will notify the Trustee as soon as I cease to be Gainfully Employed or reach the age of 65 years.
7. I acknowledge that the Trustee can collect my tax file number ("TFN") under the Standards.
8. I understand that the Trustee will only use the TFN for legal purposes. This includes finding or identifying my superannuation benefits where other information is insufficient, and calculating tax on any eligible termination payment I may be entitled to.
9. I understand that it is not an offence to omit my TFN from this application. But if I do omit to provide it now or later, I may pay more tax on my benefits than I would otherwise have to pay (but which may be later credited to a later assessment of tax) and I may lose benefits which are more difficult to find or to amalgamate with other benefits I am entitled to.
10. I acknowledge that the Trustee may provide any TFN disclosed to the Trustee to the trustee of any other superannuation fund to which my benefits are transferred in the future or to the Australian Taxation Office. However, I understand that my TFN will not be passed on in the event I direct the Trustee in writing not to disclose my TFN and, in any event, my TFN will be treated as confidential in accordance with the *Privacy Act 1988 (C'th)*.
11. I authorise the Trustee to retain and store information on my behalf despite any contrary provision in any privacy legislation.
12. I declare that the information I provide to the Trustee will be true and correct. I acknowledge that it is my responsibility to inform the trustee of any error or changes regarding these matters.

|           |      |
|-----------|------|
| SIGNATURE | DATE |
|           |      |

## FORM 2

### Notice to New Members (Product Disclosure Statement "PDS")

Members can become entitled to benefits in certain circumstances and have certain obligations to the Fund in the trust deed (the "Deed").

The Fund is established as a Self Managed Fund under the *Superannuation Industry (Supervision) Act 1993 (C'th)* and the *Superannuation Industry (Supervision) Regulations ("SIS")*. Broadly, this means that each member must be a trustee and is not an employee of another member or any related entity unless they are covered by a prescribed family relationship. However, the fund can appoint an independent Approved Trustee or convert to another type of SIS fund (however expert advice should first be obtained).

The fund has dynamic provisions which, broadly, imply these measures (as "the Standards" including SIS) as they change from time to time. So long as the Fund continues to comply with the Standards, the Fund should continue to be entitled to concessional taxation treatment. A member has a primary obligation to comply with the Deed and the Standards. In particular, a member must provide information or evidence as is required by the Trustee from time to time.

The Deed specifies when entitlements to benefits arise. Entitlements generally arise on retirement, death or total and permanent disability. The main benefits arise in the following circumstances:

1. a retirement benefit is payable to a member when a member reaches the age 55 (or the relevant preservation age for persons born after July 1, 1960) and retires from work;
2. a death benefit is payable upon the death of a member to dependants (eg, a spouse and/or children). The Trustee will be guided by your nomination but will not be bound by the election of dependants notified by the member in Form 1 - Application for Membership unless a binding death benefit nomination ("BDBN") is made. Expert advice should be obtained prior to making a BDBN; and
3. a total and permanent disablement benefit ("TPD benefit") is payable if a member becomes totally and permanently disabled.

The Fund is conducted as an accumulation fund (where benefits accumulate in distinct accounts for members out of which entitlements arise on a lump-sum, allocated pension, flexi-pension or annuity basis). Alternatively, the Trustee may conduct all or some part of the Fund as a defined benefits fund (where the fund which is assisted by an actuary to pay pension benefits for life of a certain level out of a pension reserve [a complying pension]). Ordinarily, benefits are calculated on the basis set out in the following table (but only to the extent a part of a member's account balance is to be met by that type of benefit or funding is committed to the pension reserve as the case may be):

| Benefit type                       | Retirement benefit  | Death benefit  | TPD benefit   |
|------------------------------------|---|--|---|
| Lump-Sum Benefit                   | an amount equal to the member's account balance is payable                                  | an amount equal to the late member's account balance plus any insurance proceeds is payable        | an amount equal to the member's account balance plus any insurance proceeds is payable        |
| Allocated pension or Flexi-pension | an amount equal to the member's account balance funds the pension                           | an amount equal to the late member's account balance plus any insurance proceeds funds the pension | an amount equal to the member's account balance plus any insurance proceeds funds the pension |
| Complying pension                  | an amount is set aside in the pension reserve, based on actuarial advice, funds the pension | an amount is set aside in the pension reserve, based on actuarial advice, funds the pension        | an amount is set aside in the pension reserve, based on actuarial advice, funds the pension   |

The balance of member's accounts will depend on a range of factors including the amount contributed to the Fund by or on behalf of the member and the net earnings (after expenses and taxes) on those contributions. Usually, expenses will be allocated at least annually on a proportionate basis among members' accounts however the Trustee does have power to charge a particular member disproportionately if there is justification for so doing.

Members can lose entitlement to non-vested portions of benefits if they assign, secure or charge their interest in the Fund or if they become bankrupt. However a member cannot lose entitlement to a vested benefit in either case and, it is also noted, a vested benefit within "RBLs" under the *Income Tax Assessment Act* is protected from sequestration under current bankruptcy law.

The value of the Fund's investments may go up or down depending on the prevailing economic conditions and a range of other factors. Accordingly, there is no guarantee that contributions will ultimately be returned as benefits.

The Trustee is primarily responsible for managing and administering the Fund for the benefit of members. In particular, the Trustee will, amongst other things, be responsible for:

1. investing the Fund's assets – there are significant limits on investments (including loans and leases) involving members or related parties;
2. taking out insurance;
3. determining and paying benefits; and
4. ensuring appropriate records, accounts and reports are completed for the Fund.

The Trustee is entitled to delegate or appoint another person or organisation to handle these functions and obtain professional assistance or advice. The Trustee is also entitled to be indemnified by the Fund for any loss; unless the loss was caused by the Trustee's own fraud, wilful neglect or culpable negligence.

Members will be notified of their financial position in the Fund after the end of each financial year on request. In addition, members will be provided with information relating to any changes to the Deed and of such other matters required by the Standards.

You should discuss any query or complaint you may have in relation to the Fund with the Trustee. While the Trustee will generally attempt to accommodate your wishes and/or resolve your complaint, the Trustee is bound to act in accordance with the Deed, and the Trustee's decision will be final and binding.

Members should note that no "cooling-off" regime applies to the Fund; thus there is no easy way to cease to be a member, and have your initial contributions to the Fund returned. Members will be advised by the Trustee about any commission, or other similar payments, that may impact on the amount of member's accounts.

The documents supplied on establishment of the Fund especially the trust deed and SMSF Memo form part of this PDS and should be carefully reviewed.

Please contact the trustee at the address shown below if you require any further information:

|                          |  |
|--------------------------|--|
| NAME                     |  |
| ADDRESS                  |  |
| DATE                     |  |
| SIGNED BY<br>THE TRUSTEE |  |

FORM 3

**Notification to Contributing Employer**

From the Trustee, to an Employer:

|                    |  |
|--------------------|--|
| EMPLOYER'S NAME    |  |
| EMPLOYER'S ADDRESS |  |

The Trustee wishes to notify the Employer that:

1. the Fund is a resident regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* ("the Act");
2. the Trustee is not subject to a direction from the Australian Prudential Regulation Authority or the Australian Taxation Office pursuant to section 63 of the Act that would prevent the Trustee accepting employer or other contributions; and
3. the Trustee has not been subject to such a direction before or since the date of this application;

and the Employer will be registered as a Contributing Employer under the Fund.

|                       |  |
|-----------------------|--|
| DATE                  |  |
| SIGNED BY THE TRUSTEE |  |