

# **Superannuation Trust Deed**

for

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## **GOLDSHAFT SUPERANNUATION FUND NO. 1**

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# Table of contents

<b>Overview</b>	<b>1</b>
<b>A Establishment of the fund</b>	<b>2</b>
The establishment of the fund.....	2
Purpose of the fund	2
Trustees of the fund	2
Method of decision by trustees under this deed .....	2
Deed subject to superannuation law .....	2
Trustees must comply with law .....	2
<b>B Membership</b>	<b>3</b>
Initial members of the fund.....	3
Trustees may appoint additional members .....	3
Beneficiaries as additional members .....	3
Applicant to provide information to Trustees.....	3
Conditions must be met .....	3
Effect of becoming member .....	4
Date of commencement of membership of additional member .....	4
Date of additional member's commencement as trustees .....	4
Back-dating of membership .....	4
Conditions on membership .....	4
Trustees must notify new member .....	4
Trustees must disclose and report.....	4
Trustees must notify exiting member .....	4
Limit on disclosure	5
Members must inform trustees of change affecting fund compliance.....	5
Members and trustees must ensure fund compliance .....	5
Trustees and members must rectify non-compliance .....	5
Types of compliance arrangement.....	5
Ceasing to be a member.....	5
Minor as a member	6
<b>C Accounts of the fund</b>	<b>6</b>
Trustees must establish certain types of account.....	6
Credits to accumulation accounts .....	6
Debits to accumulation accounts .....	7
Contributions-split requests.....	8
Credits to the income account.....	8
Debits to the income account.....	8
Tax on income	9
Distribution from income account.....	9
Trustees may establish equalisation account .....	9
Credits to equalisation account .....	9
Trustees may establish or maintain other accounts or reserves .....	10
Valuation of fund	10
Interim fund earning rate .....	10

## **D Contributions 10**

Member to keep trustees informed .....	10
Member contributions .....	10
Employer contributions .....	10
Other contributions 10	
Participating employers .....	11
How contributions to be made .....	11
Interest on contributions .....	11
Failure to contribute 11	
Contributions etc not accepted .....	11
Breach of clause headed 'Contributions etc not accepted' .....	11
Allocation of contributions .....	12
Reduction of contributions by employer .....	12
Tax on contributions and shortfall components .....	12
Surcharge 13	
Termination of employer's contributions .....	13
Effect of termination on member's contributions .....	13
Employer-sponsor's powers .....	13
No termination on transfer of business to another employer .....	13

## **E Investment 13**

Authorised investments .....	13
Forbidden investments .....	14
Strategy 14	
Power to deal with investments .....	14
Investment choice by members .....	14
Member or beneficiary may choose strategy .....	15
Member or beneficiary may not choose particular investments within strategy .....	15
Chosen strategies to be monitored .....	15
Sub-accounts etc for investment choice .....	15
Power to deal with investment choice investments .....	15

## **F Benefits: general 16**

Limit on payment of preserved payment benefits .....	16
When payment of preserved payment benefits allowed .....	16
Payment of non-preserved amount .....	16
Vesting and compulsory payment .....	16
Possible addition to entitlement when member ceases to be member .....	16
Anti-detriment payments (section 295-485 of the Income Assessment Act 1997) .....	16
Trustees may retain benefit in fund .....	17
Transfer of insurance policy .....	17
Information to be provided to trustees .....	17
Trustees may adjust benefits for wrong information .....	17

## **G Pensions: general 17**

Trustee's power to pay pension .....	17
Member or beneficiary may choose type of pension .....	18
Actuarial certificate 18	
Funding pension through annuity .....	18

Trustees may allocate benefit between 2 or more spouses .....	18
Trustees must establish pension account.....	18
Credits to pension account.....	18
Debits to pension account.....	19
Adjustment based on fund earning rate .....	19
Segregation of assets and valuation .....	19
Pensions: residue in account .....	20
Qualification of pensions as asset test exempt income streams .....	20
<b>H Death, disability and retirement benefits .....</b>	<b>20</b>
Death benefit payments .....	20
Death benefit agreement payment arrangements .....	21
Binding death benefit notice payment arrangements.....	21
Non-binding death benefit notice payment arrangements .....	21
Death of member or former member.....	22
Discharge of trustees .....	22
Total and permanent disablement benefit.....	22
Temporary total disablement benefit.....	22
Period of payment: temporary total disablement .....	23
Method of payment: temporary total disablement.....	23
Member contributions may be suspended: temporary total disablement .....	23
Membership not affected by temporary total disablement .....	23
Retirement benefit	23
Early retirement	24
<b>I Payment of benefit</b>	<b>24</b>
Trustees must notify that benefit is payable.....	24
Method of notice	24
Claim out of time	24
Unclaimed benefit	24
Tax on benefit	25
Where benefit is payable.....	25
Trustees may send benefit to person entitled .....	25
Notification of address etc.....	25
Receipt to be given	25
Person under legal disability .....	25
Discharge of trustees .....	25
Transfer of assets	25
<b>J Forfeiture of benefit entitlements .....</b>	<b>26</b>
Forfeiture account	26
Circumstances of forfeiture .....	26
Forfeiture of residue	26
Application of forfeiture account.....	26
Limit in relation to payments to member or dependants .....	27
Possible adjustment to entitlements.....	27
<b>K Provisions relating to the Family Law Act.....</b>	<b>27</b>
Payment splits	27
Rules for payment splits .....	27

Deferred payment splits .....	27
Flagging agreements .....	28
Transfer of non-member spouse interests .....	28
Refusal to admit as member .....	28
<b>L Trustee's powers 28</b>	
All the powers of an individual.....	28
Trustee's discretion 28	
Delegation of power 29	
Trustees not subject to direction .....	29
Specific powers 29	
Limit on borrowing 29	
Trustees may grant security over asset.....	29
When borrowing is allowed (including "limited recourse borrowing arrangements") .....	29
Trustee's power to effect insurance .....	30
Trustees bound to exercise power in limited cases .....	30
Inconsistent conditions in policy.....	30
Powers not affected by conflict of interests.....	30
Disclosure of conflict of interest .....	31
Trustee's power to effect transfer on written request.....	31
Form and effect of transfer.....	31
Trustee's power to transfer to successor fund .....	31
Trustee's power to transfer to eligible roll over fund .....	31
Transfer of assets 31	
The Trustee's power to receive transfer .....	32
<b>M Administration of fund 32</b>	
Dealing with money received .....	32
Effect of receipts 32	
Employers to provide information to trustees.....	32
Compliance 32	
Trustees may not charge fees.....	32
Trustees entitled to be reimbursed for expenses.....	33
Trustees to keep records and accounts.....	33
Trustees to collect money owing to the fund.....	33
Trustees to keep records, accounts, books etc .....	33
Documents to be prepared.....	33
Annual return 33	
Audit 33	
Disclosure requirements .....	33
Availability of books and records.....	34
Availability of deed and documents.....	34
Appointment of auditor .....	34
Appointment of actuary .....	34
Appointment of administration manager .....	34
Appointment of investment manager .....	34
Appointment of custodian.....	34
Superannuation law to be observed.....	35
Trustees may remove person from office .....	35

Trustees not bound by advice .....	35
Liability of the trustees is limited .....	35
Indemnity	35
Other persons who may act .....	35
Appointment of members as trustee .....	36
Appointment of replacement corporate trustee .....	36
Continuity of office	36
Appointment and resignation of trustees .....	36
<b>N Miscellaneous</b>	<b>36</b>
Trustees may elect to wind up fund .....	36
Notice of winding up	37
Payment etc on winding up .....	37
Employment relationship not affected by this deed .....	37
Legal rights of member not affected by this deed .....	37
Effect of reconstruction or amalgamation of employer sponsor .....	37
Variation	38
Limits on effect of variation .....	38
Limits on power to vary .....	38
Notice of variation	38
Dispute resolution	39
Interpretation	39
Proper law	39
<b>Schedule 1 to this deed</b>	<b>40</b>
Name of the Fund	40
Date deed established .....	40
Name and address of trustees .....	40
Name and address of members .....	40
<b>Schedule 2 to this deed</b>	<b>41</b>
Application to become a Member .....	41
<b>Schedule 2 to this deed</b>	<b>46</b>
Application to become a Member .....	46
<b>Schedule 3 to this deed</b>	<b>50</b>
Application to become Participating Employer .....	50
<b>Schedule 4 to this deed</b>	<b>51</b>
Application to become an Employer-Sponsor .....	51
<b>Schedule 5 to this deed</b>	<b>52</b>
Application to become a member (if member is a minor) .....	52
<b>Schedule 6 to this deed</b>	<b>53</b>
Form of Product Disclosure Statement .....	53
<b>Schedule 7 to this deed</b>	<b>66</b>
Death Benefit Agreement – GOLDSHAFT SUPERANNUATION FUND NO. 1(Fund).....	66
<b>Schedule 7 to this deed</b>	<b>69</b>
Death Benefit Agreement – GOLDSHAFT SUPERANNUATION FUND NO. 1(Fund).....	69
<b>Execution</b>	<b>78</b>

## **Overview**

For the convenience of users, this superannuation trust deed is written in plain language. It contains only those clauses that are appropriate for the particular form of self-managed superannuation fund that you have chosen. It is therefore suitable for a self managed superannuation trust whose trustee is a corporation of which the members of the fund are the only directors.

## **A Establishment of the fund**

### **The establishment of the fund**

- 1 The trustee(s) named in Schedule 1 establishes the GOLDSHAFT SUPERANNUATION FUND NO. 1 (the "Fund") as a self-managed superannuation fund under the SIS. It is an indefinitely continuing superannuation fund.

### **Purpose of the fund**

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

### **Trustees of the fund**

- 3 The initial trustees are named in Schedule 1 of this deed. The trustees accept the appointment. The fund is vested in the trustees. No other person (including a member) has any legal or beneficial interest in any asset of the fund except to the extent expressly stated elsewhere in this deed. The trustees must manage the fund in accordance with this deed.

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

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

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

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

### **Trustees must comply with law**

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



## **B Membership**

### **Initial members of the fund**

- 7 The initial members of the fund are named in Schedule 1. Each of them has completed and signed the 'Application to become a Member' in a form that is equivalent to the form set out in Schedule 2.

### **Trustees may appoint additional members**

- 8 The trustees may appoint a person as an additional member of the fund if he or she:
- has been nominated for membership by the employer-sponsor; and
  - if the trustees requires, has completed and signed an 'Application to become a Member' in a form that is equivalent to the form set out in Schedule 2, or on another form approved by the trustees.

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

### **Beneficiaries as additional members**

- 9 Subject to clause 13, a person who is to receive a death benefit from the fund in the form of a pension becomes a member of the fund when:
- the trustee has accepted that person as an additional member; and
  - that person has received a pension payment from the fund.

### **Applicant to provide information to trustees**

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

### **Conditions must be met**

- 13 Subject to clause 28, a person does not become an additional member of the fund, and the trustees must not accept a person as an additional member of the fund, unless each of the following conditions is met:
- the total number of members would be no more than 4;
  - the person is not disqualified from being a director of the trustee of the fund;
  - the person is not in an employment relationship with another member of the fund except another member who is also a relative of that person;
  - the trustees are satisfied that the person will become a director of the trustee of

the fund on being accepted as a member of the fund.

### **Effect of becoming member**

- 14 An additional member becomes bound by this deed on being accepted as an additional member.

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

- 15 An additional member's membership commences on the date the trustees specifies, when accepting the person as a member. If the trustees do not specify a date, then the additional member's membership commences on the date the trustees received his or her application or the date referred to in clause 9 (if applicable).

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

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

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

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

### **Conditions on membership**

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

### **Trustees must notify new member**

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

### **Trustees must disclose and report**

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

### **Trustees must notify exiting member**

- 21 As soon as practicable after a person ceases to be a member of the fund, the trustees must ensure that that person (or his or her legal personal representative) is given a written

statement of the information the superannuation law requires to be given to persons who cease to be members of the fund.

### **Limit on disclosure**

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

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

- 23 A member must immediately inform the trustees if the member becomes aware that either of the following may happen:

- the member may enter into an employment relationship with another member who is not also a relative of the member; or
- the member may be disqualified from being a director of the trustee of the fund.

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

- 24 A member and the trustees must ensure that the member ceases to be a member of the fund within 6 months after either of the following happens:

- the member enters into an employment relationship with another member who is not also a relative of the member; or
- the member is disqualified from being a director of the trustee of the fund.

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

- 25 If a member of the fund enters into an employment relationship with another member who is not also a relative of the member, or becomes disqualified from being a director of the trustee of the fund, the trustees and the members must do whatever is necessary to ensure that, within 6 months after the member entered into the employment relationship or became disqualified:

- no member of the fund is in an employment relationship with another member who is not also a relative of the member; and
- no member of the fund is disqualified from being a director of the trustee of the fund.

### **Types of compliance arrangement**

- 26 The types of things that may be done to ensure compliance include each of the following:

- a member may request the member's benefits or entitlement in the fund to be paid in accordance with this deed or to be transferred or rolled over to an approved benefit arrangement under clause 152.
- the trustees may transfer a member's benefits or entitlement in the fund to an eligible roll over fund under clause 153.

## **Ceasing to be a member**

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

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

## **Minor as a member**

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

## **C Accounts of the fund**

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

- 29 The trustees must establish:
- an accumulation account or a pension account, or a combination of both, in respect of each member or beneficiary for each class; and
  - an income account.

### **Credits to accumulation accounts**

- 30 The trustees may credit (and in the case of clause 30.11, allot and credit) each of the following to the accumulation account of a member according to the class to which they are relevant:

- 30.1 Contributions made by a member.

- 30.2 Contributions made in respect of the member or a beneficiary of that member by an employer.
- 30.3 Other contributions allowed under this deed and superannuation law that are made in respect of the member.
- 30.4 Positive earnings transferred from the income account.
- 30.5 A shortfall component paid in respect of that member after any tax that is payable in relation to it has been deducted from it.
- 30.6 An amount paid to the trustees as a transfer or roll over payment in respect of that member which the trustees thinks it appropriate to credit to the account.
- 30.7 A forfeited amount allocated to the member or beneficiary under clause 127.
- 30.8 An amount transferred from the pension account of a beneficiary of the member.
- 30.9 The proceeds of an annuity or insurance policy effected by the trustees in respect of the member or a beneficiary of the member which the trustees thinks it appropriate to credit to the account.
- 30.10 Financial assistance under part 23 of the SIS Act which the trustees thinks it appropriate to credit to the account.
- 30.11 An amount deducted from the accumulation account of another member pursuant to a contributions-split request made by that other member and accepted by the trustees.
- 30.12 Any other amount the trustees thinks it appropriate to credit to the account.

### **Debits to accumulation accounts**

- 31 The trustees may debit each of the following from the accumulation account of a member according to the class to which they are relevant:
  - 31.1 The proportion that the trustees thinks appropriate of the expenses of the fund.
  - 31.2 The proportion that the trustees thinks appropriate of either of the following:
    - tax payable in respect of contributions or any shortfall component that are paid to the fund; or
    - any earnings of the fund credited to the accumulation account or arising as a result of a roll over payment.
  - 31.3 A payment of a benefit to or in respect of the member or a beneficiary of the member except a payment from a pension account.
  - 31.4 An amount paid out of the fund in respect of the member or a beneficiary of the member as a transfer or roll over payment.
  - 31.5 The cost of any annuity or policy of insurance effected by the trustees in respect of the member or a beneficiary of the member; and the proportion that the trustees thinks equitable of any group policy effected by the trustees in respect of the member or beneficiary and another member or beneficiary.
  - 31.6 The amount of a lien in respect of an indemnity exercised by the trustees in accordance with this deed.
  - 31.7 An amount forfeited in accordance with this deed.

- 31.8 The proportion that the trustees thinks appropriate of any negative earnings of the fund determined in accordance with this deed.
- 31.9 An amount paid to indemnify the trustees in accordance with this deed.
- 31.10 An amount credited to the pension account of a beneficiary.
- 31.11 The proportion that the trustees thinks appropriate of a levy.
- 31.12 The amount of tax attributable to the member or a beneficiary of the member.
- 31.13 An amount to be allotted and credited to the accumulation account of another member pursuant to a contributions-split request made by the member whose accumulation account is to be debited and accepted by the trustees.
- 31.14 Any other amount the trustees thinks it appropriate to debit.

### **Contributions-split requests**

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

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

- 34 The trustees may credit each of the following to the income account of the fund:
  - 34.1 Income and profits of the fund.
  - 34.2 Adjustment credits made in accordance with clause 37.
  - 34.3 The proceeds of an insurance policy which the trustees decides not to credit to a member's or beneficiary's accumulation or pension account.
  - 34.4 A surplus resulting from a valuation under clause 41.
  - 34.5 Financial assistance received by the fund under part 23 of the SIS Act which the trustees decides not to credit to a member's or beneficiary's accumulation or pension account.

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

- 35 The trustees may debit each of the following to the income account of the fund:
- 35.1 The expenses of the fund, except those the trustees debits from a member's or beneficiary's accumulation or pension account.
  - 35.2 Tax payable or likely to become payable in respect of contributions, shortfall components, or income and profits of the fund, except tax the trustees debits from a member's or beneficiary's accumulation or pension account.
  - 35.3 Adjustment debits made in accordance with clause 37.
  - 35.4 The cost of an insurance policy which the trustees decides not to debit from a member's or beneficiary's accumulation or pension account.
  - 35.5 A deficiency resulting from a valuation under clause 41.
  - 35.6 The amount of a levy, except an amount the trustees debits from a member's or beneficiary's accumulation or pension account.
  - 35.7 Any loss on the disposal of an investment of the fund.

### **Tax on income**

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

### **Distribution from income account**

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

### **Trustees may establish equalisation account**

- 38 The trustees may establish an equalisation account which the trustees may use for any of the following purposes:
- 38.1 To give effect to the reserving strategy the trustees establishes to smooth the investment earnings of the fund.
  - 38.2 To increase the fund earning rate.
  - 38.3 To pay tax payable by the fund.
  - 38.4 To pay the expenses of the fund.
  - 38.5 To provide for any contingencies the trustees decides to provide for.
  - 38.6 To provide an amount to or for a member, former member, pensioner, beneficiary, including adding to an accumulation or pension account, provided there is no breach of superannuation law.

- 38.7 To do anything else the trustees decides to do, provided there is no breach of trust or superannuation law.

### **Credits to equalisation account**

- 39 The trustees may credit the equalisation account with any of the following:
- the portion the trustees thinks fit of an amount paid into the fund as a transfer or roll over payment.
  - an amount transferred from the forfeiture account under clause 127.
  - an amount transferred from a pension account under clause 90.

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

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

### **Valuation of fund**

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

### **Interim fund earning rate**

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

## **D Contributions**

### **Member to keep trustees informed**

- 43 A member must tell the trustees as soon as practicable if they are aged 65 or older and cease gainful employment.

### **Member contributions**

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



## **Employer contributions**

- 45 The employer-sponsor or a participating employer of a member may make any contributions to the fund in respect of that member that the trustees and the employer agree to.

## **Other contributions**

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

## **Participating employers**

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

## **How contributions to be made**

- 48 A contribution to the fund must be made in the way the trustees directs. It must be made within the time specified by superannuation law. It may be made in cash, or by the transfer of assets in accordance with superannuation law. The only assets that may be transferred are those that are authorised investments under clause 63.

## **Interest on contributions**

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

## **Failure to contribute**

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

## **Contributions etc not accepted**

- 51 The trustees must not accept any of the following:

- a contribution that is not permitted by superannuation law;
- a contribution or shortfall component the acceptance of which would prevent the fund from qualifying as a complying superannuation fund; and
- an employer contribution or shortfall component which the regulator lawfully directs the trustees not to accept.

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

52 If the trustees becomes aware that a contribution or shortfall component has been accepted in breach of clause 51, the trustees must refund the amount within any time specified by, and only as permitted by, superannuation law. However, the trustees may deduct each of the following from that amount:

- any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
- reasonable administration charges; and
- any other amount the trustees considers appropriate, acting reasonably.

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

### **Other contributions not accepted**

53 The trustees may refuse to accept:

- a contribution that the trustees has determined not to accept because the trustees has not been informed of the relevant member's tax file number;
- excess contributions.

### **Permissible actions if excess contributions accepted**

54 If excess contributions are made to the fund by or in respect of a member, then the trustees may:

- release funds to the member if the trustees has received a member release authority;
- release funds to the Commissioner of Taxation where the trustees has received an ATO release authority.

### **Allocation of contributions**

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

- within 28 days after the end of the month, or any other period as required by superannuation law (**relevant period**); or

- if it is not reasonably practicable to allocate the contribution to the relevant member of the fund within the relevant period – within any longer period as is reasonable in the circumstances.

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

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

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

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

### **Surcharge**

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

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

- 59 A fund employer ceases being a fund employer and may cease making contributions to the fund if any of the following occurs to that employer:
- a deed of appointment is executed under which the employer is placed in receivership or under official management;
  - a resolution of its members is passed for it to be liquidated or a court order places it in liquidation;
  - in relation to an employer-sponsor, any of the events contemplated in clause 191;
  - the employer gives the trustees written notice that it is permanently terminating its contributions to the fund.

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

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

### **Employer-sponsor's powers**

- 61 If the employer-sponsor ceases to be a fund employer under clause 59, it ceases to be able to exercise any of the powers or discretions of an employer-sponsor under this deed. Those powers and discretions may only be exercised by the trustees, or by a participating employer nominated by the trustees.

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

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

## **E Investment**

### **Authorised investments**

- 63 The trustees must invest any assets of the fund that are not required for payment of benefits or other amounts under this deed. The trustees must do so in accordance with the current investment strategy or strategies. The following are the types of investment in which the assets may be invested:
- 63.1 Investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia.
  - 63.2 Securities in any company incorporated anywhere, whether carrying on business in Australia or not.
  - 63.3 Deposit (whether secured or not) with a bank, friendly society, building society, credit co-operative, trustee company, or other registered financial institution.
  - 63.4 Real or personal property, including an improvement to that property.
  - 63.5 Units (including sub-units) in a unit trust established or situated anywhere in the world by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant.
  - 63.6 Futures, options or any other synthetic investment.
  - 63.7 Hedging, swapping or any similar arrangement, even though it is not linked to any property of the fund.
  - 63.8 Deposit (whether secured or not) with, or loan (whether secured or not) to, any person (including an employer) on any terms the trustees thinks reasonable. The fact that the trustees has a direct or indirect interest in the deposit or borrowing or may benefit directly or indirectly from it is irrelevant.
  - 63.9 A policy or annuity with an insurer, whether by proposal or purchase.
  - 63.10 Instalment warrants or receipts.
  - 63.11 By way of a limited recourse borrowing arrangement in accordance with clause 143.
  - 63.12 Any other investment allowed by superannuation law that the trustees thinks appropriate.

### **Forbidden investments**

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

## **Strategy**

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

## **Power to deal with investments**

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

## **Investment choice by members**

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

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

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

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

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

## **Chosen strategies to be monitored**

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

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

- 71 If a member adopts a strategy for investment choice, the trustees may do each of the following:

- 71.1 Establish a sub-account of the income account in respect of that strategy.
- 71.2 Credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the income account itself.
- 71.3 Allocate earnings attributable to that strategy to the member's or beneficiary's accumulation account or pension account in a way that the trustees think equitable.
- 71.4 Determine a fund earning rate for that sub-account.

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

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

## **F Benefits: general**

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

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

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

- 74 The trustees may pay a member or, if applicable, a dependant of a member, a preserved payment benefit in any of the following circumstances:
  - 74.1 The member reaches the relevant preservation age and takes a transition to retirement pension in accordance with Part G.
  - 74.2 The member retires from gainful employment on or after reaching the relevant preservation age.
  - 74.3 The member becomes totally and permanently disabled.
  - 74.4 The member becomes totally and temporarily disabled.
  - 74.5 The member reaches age 65.
  - 74.6 The member dies.
  - 74.7 Any other circumstance allowed by superannuation law.

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

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

## **Vesting and compulsory payment**

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

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

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

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

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

## **Trustees may retain benefit in fund**

- 79 If a member or beneficiary requests it, the trustees may retain any part of a benefit in the fund. The trustees may do so until one of the following occurs:
- 79.1 The member or beneficiary decides otherwise.
  - 79.2 The member or beneficiary dies.
  - 79.3 The amount has to be paid under this deed or superannuation law.
  - 79.4 The trustees decides otherwise.

Subject to Part H, the payment the trustees then makes must be the amount standing to the credit of the member's or beneficiary's accumulation and pension account at that time.

## **Transfer of insurance policy**

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

## **Information to be provided to trustees**

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

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

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

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

## **G Pensions: general**

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

- 83 When any part of a benefit becomes payable to a member under this deed or in accordance with superannuation law, the trustees has a discretion to decide whether to pay one or more pensions to the member or to use the benefit payable to acquire one or more annuities in the name of the member. The pensions or annuities may be of any type permitted by superannuation law (including, without limitation, an account-based pension) and will be in substitution for the relevant part of any lump sum benefit that was payable to the member for the amounts credited to the member's pension account as a transfer of a roll over payment under clause 89.2.

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

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

### **Actuarial certificate**

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

### **Funding pension through annuity**

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

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

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



### **Trustees must establish pension account**

- 88 If the trustees decide to pay a pension to a person in accordance with this deed, the trustees must establish a pension account in the name of that person.

### **Credits to pension account**

- 89 The trustees may credit each of the following amounts to the person's pension account, subject to superannuation law:
- 89.1 The amount the trustees believes necessary to fund the pension.
  - 89.2 The amount paid into the fund in respect of the pensioner as a transfer or roll over payment which the trustees thinks it appropriate to credit to that account.
  - 89.3 Earnings of the fund which the trustees thinks it appropriate to credit to that account.
  - 89.4 A shortfall component paid in respect of the pensioner.
  - 89.5 Contributions lawfully paid in respect of the relevant member.
  - 89.6 Adjustment credits made in accordance with clause 37.
  - 89.7 The proceeds of an annuity or insurance policy effected by the trustees in respect of the pensioner which the trustees thinks it appropriate to credit to the account.
  - 89.8 Financial assistance under part 23 of the SIS Act which the trustees thinks it appropriate to credit to the account.
  - 89.9 Any other amount the trustees thinks it appropriate to credit to the account.

### **Debits to pension account**

- 90 The trustees may debit each of the following amounts to the person's pension account, subject to superannuation law:
- 90.1 The proportion that the trustees thinks appropriate of the expenses of the fund.
  - 90.2 The proportion that the trustees thinks equitable of any negative earnings of the fund determined in accordance with clauses 37, 71 or 91.
  - 90.3 The proportion of the loss on the disposal of investments of the fund that the trustees think equitable.
  - 90.4 Amounts transferred from the fund in respect of the pensioner as a transfer of a roll over payment which the trustees thinks it appropriate to debit to the account.
  - 90.5 Payments made to or in respect of the pensioner or a reversionary beneficiary under this deed.
  - 90.6 The cost of an insurance policy or annuity effected by the trustees in respect of the pensioner which are not debited from the member's accumulation account.
  - 90.7 The proportion of an amount payable as taxation in respect of the earnings of the fund that are credited to the pensioner's account or arise from a roll over payment that the trustees thinks equitable.

- 90.8 The proportion of an amount paid in respect of an indemnity to the trustees or other person under this deed that the trustees thinks equitable.
- 90.9 The amount of a levy that the trustees thinks equitable.
- 90.10 An amount transferred to the accumulation account of a beneficiary.
- 90.11 Any other amount that the trustees thinks it appropriate to debit from the account.

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

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

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

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

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

- 93 On the death of a pensioner being paid a pension the trustees must, subject to superannuation law:
- act in accordance with the terms on which the relevant pension is paid, including as to the payment of the pension to a reversionary beneficiary; and
  - then, if there is no reversionary beneficiary, or if there is any residue in the pension account for any other reason, pay that residue as a death benefit in accordance with Part H of this deed.

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

- 94 On written request by a pensioner, or in accordance with superannuation law or this deed, the trustees may commute any part of a pension to a lump sum, and pay it to the relevant person or his or her estate. The following general conditions apply in respect of all types of pension:
- The commutation must be allowed by, and be in accordance with, superannuation law.
  - The commutation must not disadvantage the fund, an employer, a member, a pensioner or a reversionary beneficiary.

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

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

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

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

### **Death benefit payments**

- 96 The trustees may pay the death benefit on the death of a current member of the fund. The trustees can do that under:
- 96.1 a death benefit agreement, clause 98;
  - 96.2 a binding death benefit notice, clause 100; or
  - 96.3 a non-binding death benefit notice, clause 101.
- 97 In the ways set out in this Part H, the trustees must pay the full amount standing to the credit of the accumulation account, and any pension account residue referred to in clause 93, either as a lump sum, or as one or more pensions or annuities, or both.

### **Death benefit agreement payment arrangements**

- 98 On the death of a member or beneficiary who has a death benefit agreement:
- 98.1 the death benefit agreement prevails over clause 100 and over any binding death benefit notice or non-binding nomination form;
  - 98.2 the trustees must pay, or apply, the relevant benefit in accordance with the rules set out in the death benefit agreement; and
  - 98.3 Part I of this deed applies to the payment of the relevant benefit.
- 99 A death benefit agreement need be executed only by the trustees and the relevant member or beneficiary. On execution, the terms of any death benefit agreement form part of this deed. They are to be read together with this deed and in accordance with the following rules:
- 99.1 a death benefit agreement replaces any previous death benefit agreement;
  - 99.2 if there is a death benefit agreement, then any binding death benefit notice is to be treated as not in effect for the purposes of this deed and of regulation 6.17A(4) of the SIS Regulations (but see also clause 99.4 which can overrule this clause);
  - 99.3 if there is any inconsistency between the death benefit agreement and the remaining provisions of this deed, then the terms of the death benefit agreement

prevail to the extent of that inconsistency — except that clause 5 of this deed prevails over the agreement; and

- 99.4 if part of the death benefit agreement is invalid because it directs the trustees to pay part, or all, of the benefits to a person to whom those benefits may not be paid in accordance with superannuation law (**disallowed benefits**) then:
- clause 99.2 does not apply in respect of the disallowed benefits;
  - clauses 98 and 99.1 to 99.3 apply to any part of the death benefit agreement which remains valid (and to the payment of death benefits other than disallowed benefits); and
  - clauses 99.1 to 99.3 apply for the purpose of determining the disallowed benefits, and the disallowed benefits must be paid in accordance with the remainder of this Part H.

### **Binding death benefit notice payment arrangements**

- 100 After the death of a member or beneficiary who has given the trustees a binding death benefit notice, the trustees must comply with that notice subject to clauses 98 and 99.

### **Non-binding death benefit notice payment arrangements**

- 101 If after the death of a member or beneficiary, not all death benefits have been paid or applied in accordance with a death benefit agreement or binding death benefit notice, then the trustees must pay or apply the relevant benefit in the way the trustees thinks fit in accordance with the following rules:
- 101.1 If the member or beneficiary has left dependants, then the trustees must pay or apply the benefit to or for the benefit of any one or more of the dependants of the member or beneficiary and the legal personal representatives of the member or beneficiary. The trustees may do so in any proportions the trustees thinks fit and may take into account a member's wishes contained in a non-binding nomination form.
- 101.2 If the member or beneficiary has not left any dependants but does have a legal personal representative, then the trustees must pay the benefit to the legal personal representatives of the member or beneficiary.
- 101.3 If the member or beneficiary has not left any dependants and has no legal personal representative, then the trustees may pay or apply the benefit to or for the benefit of any individual at the trustee's discretion. The trustees may do so in any proportions the trustees thinks fit.
- 101.4 If the trustees has not paid or applied the benefit to or for the benefit of any person under the preceding sub-clauses 101.1 to 101.3, then the trustees must treat the benefit as a forfeited benefit entitlement.

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

- 102 If a member or former member who has become entitled to a lump sum benefit dies before the payment is made, then the trustees must pay the amount in accordance with clauses 98 to 101.

### **Discharge of trustees**

- 103 If a dependant, legal personal representative, relative or other person receives any part of a benefit in accordance with clauses 98 to 102, then that discharges the trustees from liability in relation to the benefit. The trustees are not responsible for seeing how the benefit is applied.

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

- 104 The trustees must pay a benefit to a member whom the trustees believes to be totally and permanently disabled unless requested otherwise by the member. The benefit may be either of the following:
- A lump sum equal to the full amount standing to the credit of the accumulation account of the member; or
  - One or more pensions or annuities representing that amount.

### **Temporary total disablement benefit**

- 105 The trustees must pay a benefit to a member whom the trustees believes to be temporarily totally disabled unless requested otherwise by the member. The benefit must be in the form of a pension or annuity that represent the following amounts:
- In the case where the trustees is entitled to a benefit under an insurance policy in relation to the member's temporary total disablement, the amount payable to the trustees.
  - In any other case, the amount decided by the trustees, provided it does not reduce the minimum withdrawal benefit of the member under superannuation law.

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

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

- 106 The trustees must cease paying the benefit for temporary total disablement:
- In a case where the trustees are entitled to benefit under an insurance policy in relation to the member's temporary total disablement, when the trustees ceases to be entitled to that benefit.
  - In any other case, when the member ceases to be temporarily totally disabled, or reaches normal retirement age, or becomes entitled to another benefit under this deed or requests that the benefit ceases to be paid.

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

107 The trustees must pay the benefit in respect of temporary total disablement in the following way:

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

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

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

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

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

### **Retirement benefit**

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

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

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

### **Early retirement**

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

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

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

## **I Payment of benefit**

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

- 112 The trustees must give notice that a benefit is payable to the following persons:
- If the benefit is payable to a member, to that member.
  - If the benefit is payable on the death of a member, to the nominated beneficiary, the reversionary beneficiary, the legal representatives of the member, known dependants of the member and any other person the trustees reasonably believe may have an entitlement or interest in the benefit.
  - In any other case, any persons the trustees reasonably believe may have an entitlement or interest in the benefit.

### **Method of notice**

- 113 The trustees must give a person written notice of the time within which that person may claim an entitlement to the benefit and of how to make that claim. If the person satisfies the trustees that he or she is entitled to a benefit, the trustees must notify any persons to whom a notice was required to be sent under clause 112 to enable them to object to a payment to that person. If no objection is received or the specified period for objecting has passed, the trustees must pay the relevant part of the benefit to that person.

### **Claim out of time**

- 114 If a person makes a claim out of time to an entitlement to a benefit, the trustees are not bound to make any payment to that person.

### **Unclaimed benefit**

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

### **Tax on benefit**

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

### **Where benefit is payable**

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

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

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

### **Notification of address etc**

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

### **Receipt to be given**

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

### **Person under legal disability**

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

- To or for the maintenance, education, advancement, support or benefit of the person on any conditions.
- To, and for the benefit of, another person who appears to the trustees to be any of the following: the trustees, spouse, child, parent or guardian of the person, or a person having custody of that person.

### **Discharge of trustees**

- 122 The receipt by a person of a payment in accordance with clause 121 discharges the trustees from liability in relation to it. The trustees are not responsible for seeing to its application.

### **Transfer of assets**

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

## **J Forfeiture of benefit entitlements**

### **Forfeiture account**

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

### **Circumstances of forfeiture**

- 125 All benefit entitlements of a person are forfeited in each the events in 125.1-125.6 — unless the trustees has determined otherwise within six months after the relevant event.



The trustee's determination has effect from the date specified by the trustees which may be a date before the date of the event.

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

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

### **Forfeiture of residue**

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

### **Application of forfeiture account**

- 127 The trustees may pay or apply forfeited money held in the forfeiture account in any one or more of the following ways in accordance with superannuation law:
  - 127.1 To or for the benefit of the relevant person or the dependants of the relevant member in any proportions the trustees decides on.
  - 127.2 To the trustees of the relevant member's estate.
  - 127.3 To or for the benefit of other members or their dependants who have rights to receive benefits under this deed.
  - 127.4 To provide additional benefits to other members or their dependants in accordance with superannuation law.
  - 127.5 To the equalisation account (if any).
  - 127.6 To any employees of the member or former member the trustees thinks appropriate.
  - 127.7 To any other person or entity the Regulator approves in writing.

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

- 128 The trustees must not make a payment under clause 127 to a member who is still being employed by an employer, except for the purpose of relieving the hardship of that member or his or her dependants.

## **Possible adjustment to entitlements**

- 129 If the event that gave rise to forfeiture of an entitlement in respect of a member ceases to affect that member, the trustees, with the employer-sponsor's consent, may re-establish any rights in the member that the trustees thinks fit. They must not be greater than they were before the forfeiture.

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

### **Payment splits**

- 130 If the trustees receives a splitting agreement or court order under Part VIIIB of the *Family Law Act*, then provided the agreement or court order has been properly served and subject to superannuation law, the trustees may:
- vary the relevant member's benefit or benefit entitlement on such bases (including by commutation of any pension having regard to the advice of an actuary) and at any time the trustees determines from time to time, to the extent permitted by superannuation law; and
  - make a payment to the non-member spouse or a transfer in respect of the non-member spouse in accordance with clause 134.

### **Rules for payment splits**

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

### **Deferred payment splits**

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

### **Flagging agreements**

- 133 If the trustees receives a flagging agreement or court order under Part VIIIB of the *Family Law Act*, then provided the agreement or court order has been properly served, the trustees must:

- record the existence of the agreement or court order; and
- defer payment of the benefit to or in respect of the relevant member until the agreement or court order is lifted.

### **Transfer of non-member spouse interests**

134 If the trustees receives a splitting agreement or court order under Part VIII B of the *Family Law Act*, the agreement or court order has been validly served, then if any amount becomes payable in respect of the non-member spouse under that agreement or order:

- the trustees must pay that amount to the non-member spouse – if the non-member asks for that payment in writing; or
- the trustees must transfer that amount to another fund (including an eligible rollover fund) in respect of that non-member spouse if the non-member asks for that transfer in writing.

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

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

135 Provided that the trustees act in accordance with superannuation law, the trustees may refuse to admit a non-member spouse as a member of the fund.

## **L Trustee's powers**

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

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

### **Trustee's discretion**

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

### **Delegation of power**

138 The trustees may delegate to another person, including one or more directors of the trustee, any power or duty on any terms the trustees thinks fit, including by appointing an attorney under a power of attorney. The trustees may alter or revoke any delegation including any power of attorney.

### **Trustees not subject to direction**

- 139 The trustees are not subject to direction in exercising any power under this deed or at law, except to the extent indicated under superannuation law.

### **Specific powers**

- 140 To exclude any possible doubt, the trustees has the power to do any of the following to the extent allowed by superannuation law:
- 140.1 To underwrite or sub-underwrite risks, contingencies or liabilities under a superannuation arrangement conducted by an employer under an agreement for the transfer of employees to the fund.
  - 140.2 To indemnify a person.
  - 140.3 To open and operate bank accounts in the usual way, and to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities.
  - 140.4 To do anything the trustees considers necessary or desirable in connection with performing its obligations under this deed.

### **Limit on borrowing**

- 141 The trustees must not (except as provided by this deed in clause 143 and superannuation law):
- 141.1 borrow money; or
  - 141.2 maintain an existing borrowing of money.

### **Trustees may grant security over asset.**

- 142 The trustees may, to the extent allowed by superannuation law, mortgage, pledge, charge, assign or otherwise provide as security, any asset of the fund for the purpose of the trustees borrowing or maintaining a borrowing of money including (without limitation) for the purpose of a "limited recourse borrowing arrangement" referred to in clause 143.3.

**Note:** *There are strict requirements which must be met for a borrowing, and any associated mortgaging or charging of assets, to be lawful (see Part 7 of SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act).*

### **When borrowing is allowed (including "limited recourse borrowing arrangements")**

- 143 The trustees may borrow or maintain a borrowing of money in any one or more of the following cases:
- 143.1 to enable the trustees to pay a surcharge or advance instalment which the trustees are required to pay under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* — as long as the borrowing complies with section 67(2A) of the SIS Act;

- 143.2 to enable the trustees to settle a transaction to acquire any one or more of the securities listed in section 67(3)(a) of the SIS Act — as long as the borrowing complies with all of the requirements of section 67(3) of the SIS Act;
- 143.3 under an arrangement (a "limited recourse borrowing arrangement") which the trustees enters, or has entered into, in which the money borrowed is, or has been, used to acquire an asset that superannuation law allows the trustees to acquire — as long the borrowing complies with Part 7 of the SIS Act.
- 144 Clause 143 does not limit the circumstances in which the trustees may borrow or maintain a borrowing of money.

*Note: There are strict requirements which must be met for a borrowing to be lawful (see Part 7 of the SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act).*

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

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

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

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

Even so, the trustees are not bound to arrange a policy that the trustees is unable to arrange.

### **Inconsistent conditions in policy**

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

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

- 148 The trustees may exercise any power under this deed or at law despite the fact that the trustees, or a director of the trustee, has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise. An indirect interest or benefit includes, without limitation, where the trustees, or a director of the trustee, obtains or may obtain an interest or benefit as a director, officer, shareholder, partner, unit holder or beneficiary of a third party with whom the trustees enters into a transaction or arrangement.

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

- 149 The trustees and any director of the trustees must disclose conflict of interests of the type described in clause 148 in accordance with superannuation law.

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

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

- The member or beneficiary is eligible to join or has joined the arrangement.
- The trustees are satisfied that the transfer complies with superannuation law.
- The amount the trustees transfers must not exceed the amount in the member's or beneficiary's accumulation account, except to the extent of any amount that the trustees decides to add to that account from the equalisation account (if any) under clause 38.

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

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

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

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

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

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

### **Transfer of assets**

154 With the consent of a member or beneficiary to whom or in respect of whom a transfer is to be made under clauses 152 or 153, the trustees may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

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

155 The trustees may take over or acquire by transfer from an approved benefit arrangement any part of the assets of that arrangement that represent the interest of a participant in that

arrangement who has become or is to become a member or beneficiary of the fund. The trustees will hold the amount on trust for that person in the relevant accumulation or pension account. The person will have rights in respect of that amount that are equivalent to the rights he or she had under the approved benefit arrangement. The trustees may decide that the person is to be treated as having been a member of the fund from the time he or she became a member of the approved benefit arrangement.

## **M Administration of fund**

### **Dealing with money received**

156 The trustees must ensure that any money received by the fund is dealt with as soon as practicable in one of the following ways:

- Deposited to the credit of the fund in an account kept with a bank, friendly society, building society, or other similar body chosen by the trustees.
- Paid to the credit of an insurer for the payment of premiums in relation to a policy of insurance effected by the trustees for the purposes of the fund.
- Paid into the trust account of a lawyer, accountant or investment manager appointed in accordance with this deed.

### **Effect of receipts**

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

### **Employers to provide information to trustees**

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

### **Compliance**

159 The trustees must comply with superannuation law and with any directions of the Regulator in relation to the fund.

### **Trustees may not charge fees**

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

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

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

### **Trustees to keep records and accounts**

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

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

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

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

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

### **Documents to be prepared**

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

### **Annual return**

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

### **Audit**

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

### **Disclosure requirements**

- 168 The trustees must ensure that information and documents are provided to each of the following persons if required by, and in accordance with the requirements of, superannuation law:
- employers.
  - the Regulator.
  - the actuary (if one is appointed).
  - the auditor.
  - any other person.



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

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

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

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

### **Appointment of auditor**

- 171 The trustees may appoint a suitably qualified person as auditor of the fund.

### **Appointment of actuary**

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

### **Appointment of administration manager**

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

### **Appointment of investment manager**

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

### **Appointment of custodian**

- 175 The trustees may appoint one or more suitably qualified persons to act as custodian of the fund or a specified part of the fund, including (without limitation) as part of a limited recourse borrowing arrangement referred to in clause 143.3.

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

- 176 Any appointment by the trustees must be in accordance with superannuation law.

### **Trustees may remove person from office**

- 177 The trustees may remove from office a person the trustees has appointed to an office.

### **Trustees not bound by advice**

- 178 Except to the extent required by superannuation law, the trustees are not bound to follow the advice of a person the trustees has appointed.

### **Liability of the trustees is limited**

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

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

### **Indemnity**

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

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

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

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

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

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

- 183 The trustees may appoint as a replacement trustee a corporation of which the members of the fund are the only directors. The trustees must do everything necessary to vest the

fund in the replacement trustee and must deliver all records and other books to the replacement trustee.

### **Continuity of office**

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

### **Appointment and resignation of trustee**

185 The trustees will determine who acts as trustee in accordance with this deed and superannuation law for the fund to continue as a self managed superannuation fund and will take the necessary steps to appoint or remove the persons or body to or from the office of trustee. The trustees may accept the trustee's resignation in writing for this purpose.

- The appointment or removal of a trustee must be in writing and must immediately be advised to any other trustee.
- Where the trustees are unable or unwilling to determine who will act as trustee then the majority of members of the fund will determine who will act as trustee. If there are no members in the fund, the former members of the fund (or their legal personal representatives) will determine who acts as trustee of the fund.
- To the extent permitted by law, these provisions apply to the exclusion of any statutory provisions relating to the appointment of new trustees, including statutory provisions which may otherwise require registration of the relevant deed or instrument.

## **N Miscellaneous**

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

186 The trustees may elect to wind up the fund on a specified date in any of the following cases:

- 186.1 The trustees decide to wind up the fund.
- 186.2 The employer-sponsor gives the trustees written notice that it has decided to wind up the fund.
- 186.3 There are no longer any members of the fund.

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

### **Notice of winding up**

187 The trustees must give notice to each fund employer and member that the fund is to be wound up on the specified date.

## **Payment etc on winding up**

- 188 After deducting from the assets of the fund the costs of administering and winding up the fund, the trustees must pay the benefits in the following order to the extent that the assets of the fund are sufficient to do so:
- Benefits to which members, former members or their dependants are entitled but which they have not been paid on the day before the termination date.
  - Additional benefits to members, former members or their dependants as the trustees thinks appropriate.
  - Payment to the fund employers that have made contributions in respect of members or former members as the trustees thinks appropriate.

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

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

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

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

## **Effect of reconstruction or amalgamation of employer sponsor**

- 191 The trustees may deal with the interests of members in any one or more of the following ways if an employer sponsor is reconstructed, goes into liquidation for the purposes of reconstruction, is merged or amalgamated with another employer that is not an employer sponsor or ceases or disposes of all or the majority of its undertaking:
- 191.1 The trustees may execute a deed of adoption with the successor body as an employer-sponsor either under this deed or another deed on terms that the trustees believes reasonable and adequately protective of the interests of members.
- 191.2 The trustees may transfer to another complying superannuation fund conducted by the new employer any of the assets of the fund that represent assets applicable to the members of the former employer sponsor who become employees of the new employer.
- 191.3 The trustees may continue the fund for the benefit of members of the fund, in which case clause 61 will apply.
- 191.4 The trustees may terminate the fund in accordance with clause 186.

## **Variation**

- 192 The trustees may vary this deed either prospectively or retrospectively with the written consent of the employer-sponsor. The trustees may do so by oral declaration, written

resolution or deed. If superannuation law requires it, the trustees must promptly give a certified copy of the minutes of the meeting or a copy of the deed to the Regulator.

### **Limits on effect of variation**

- 193 If one or more death benefit agreements are in place under this deed, then any variation of the deed does not vary any death benefit agreement or clauses 98 or 99 – unless that variation expressly states that it does vary any one or more of those things. Instead, those agreements and clauses continue to apply in respect of the fund.
- 194 If one or more agreements or arrangements are in place in respect of the fund relating to payment of a pension, then any variation of the deed does not vary those agreements or arrangements – unless that variation expressly states that it does vary one or more of those things. Instead, those agreements and arrangements continue to apply in respect of the fund.

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

- 195 The trustees does not have power to vary this deed so as to do either of the following:
- Reduce or adversely affect the rights of a member to accrued entitlements that arise before the variation is effected.
  - Reduce the amount of any other entitlement that is or may become payable in relation to a time before the date of the variation.

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

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

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

### **Notice of variation**

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

### **Dispute resolution**

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

## **Interpretation**

198 A reference in this deed to:

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

## **Proper law**

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

## **Schedule 1 to this deed**

### **Name of the Fund**

GOLDSHAFT SUPERANNUATION FUND NO. 1

### **Date deed established**

21<sup>st</sup> of JUNE 2010

### **Name and address of trustees**

PETER GOLDSHAFT  
UNIT 6 / 67 OCEAN AVENUE  
DOUBLE BAY NSW 2028

RICHELLE GOLDSHAFT  
UNIT 6 / 67 OCEAN AVENUE  
DOUBLE BAY NSW 2028

### **Name and address of members**

PETER GOLDSHAFT  
UNIT 6 / 67 OCEAN AVENUE  
DOUBLE BAY NSW 2028

RICHELLE GOLDSHAFT  
UNIT 6 / 67 OCEAN AVENUE  
DOUBLE BAY NSW 2028

## Schedule 2 to this deed

### Application to become a Member

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

### Part 1 Application and Undertakings

I apply to become an initial member of this fund under the trust deed.

I make each of the following undertakings:

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

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



Applicant name RICHELLE GOLDSHAFT  
 Applicant address UNIT 6 / 67 OCEAN AVENUE, DOUBLE BAY NSW 2028  
 Applicant occupation SECRETARY  
 Date of birth 03/01/1951  
 Applicant place of birth SYDNEY, AUSTRALIA

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

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

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

Person	Relationship to member	Proportion of death benefit
PETER GOLDSHAFT	HUSBAND	100%

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

Signed by the applicant:

R. Goldshaft

Date:

21 / 6 / 10

RICHELLE GOLDSHAFT

[If the death benefit is not binding]

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

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

Or

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

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

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

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

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

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

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

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

**First Notice: The types of death benefit arrangements and the order in which they take effect**

The Deed provides for:

- **death benefit agreements** (which bind the trustees and which do not expire, see clauses 98 and 99);
- **binding death benefit notices** (which binds the trustees but which expire after 3 years or earlier if replaced or revoked); and
- **non-binding nomination forms** (which do not bind the trustees but which do not expire until replaced or revoked).

**Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.**

## **What you need to consider**

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustees must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustees (as required by the fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

### **Second Notice: Consider consistency with pension terms**

Consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be consistent. If the member wants a reversionary pension to be paid to someone different than the person nominated in a death benefit nomination or death benefit agreement, then careful drafting is required and the parties should seek professional advice.

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

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

## Schedule 2 to this deed

### Application to become a Member

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

### Part 1 Application and Undertakings

I apply to become an initial member of this fund under the trust deed.

I make each of the following undertakings:

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

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

Applicant name PETER GOLDSHAFT  
 Applicant address UNIT 6 / 67 OCEAN AVENUE DOUBLE BAY NSW 2028  
 Applicant occupation GENERAL MANAGER  
 Date of birth 11/05/1945  
 Applicant place of birth SYDNEY, AUSTRALIA

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

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

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

Person	Relationship to member	Proportion of death benefit
RICHELLE GOLDSHAFT	WIFE	100%

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

Signed by the applicant:

  
\_\_\_\_\_

Date:

21/6/10  
\_\_\_\_\_

PETER GOLDSHAFT

*[If the death benefit is not binding]*

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

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

Or

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

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

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

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

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

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

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

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

**First Notice: The types of death benefit arrangements and the order in which they take effect**

The Deed provides for:

- **death benefit agreements** (which bind the trustees and which do not expire, see clauses 98 and 99);
- **binding death benefit notices** (which binds the trustees but which expire after 3 years or earlier if replaced or revoked); and
- **non-binding nomination forms** (which do not bind the trustees but which do not expire until replaced or revoked).

**Death benefit agreements** take priority over binding death benefit notices and non-binding nomination forms.

## **What you need to consider**

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustees must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustees (as required by the fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

### **Second Notice: Consider consistency with pension terms**

Consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be consistent. If the member wants a reversionary pension to be paid to someone different than the person nominated in a death benefit nomination or death benefit agreement, then careful drafting is required and the parties should seek professional advice.



**Schedule 3 to this deed**

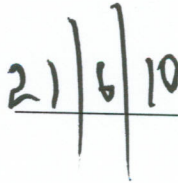
**Application to become Participating Employer**

*Pty Limited ACN* applies to become a participating employer in the GOLDSHAFT SUPERANNUATION FUND NO. 1. The applicant agrees to comply with the trust deed.

Signed by the applicant's authorised officer

  
\_\_\_\_\_  
*PETER GOLDSHAFT*

Date:

  
\_\_\_\_\_

**Annexure A to Application to become Participating Employer**

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

## Schedule 4 to this deed

### Application to become an Employer-Sponsor

COMPANY NAME

ADDRESS

ACN

applies to become an employer sponsor of the GOLDSHAFT SUPERANNUATION FUND NO. 1.

The applicant agrees to comply with the trust deed.

**Schedule 5 to this deed**

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

## Schedule 6 to this deed

### Form of Product Disclosure Statement

## Product Disclosure Statement

### GOLDSHAFT SUPERANNUATION FUND NO. 1

21<sup>ST</sup> JUNE 2010

PETER GOLDSHAFT

UNIT 6 / 67 OCEAN AVENUE DOUBLE BAY NSW 2028

RICHELLE GOLDSHAFT

UNIT 6 / 67 OCEAN AVENUE DOUBLE BAY NSW 2028

### Introduction

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

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

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

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

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

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

## Information about your potential benefits

### 1 Details of potential lump sum benefits

#### 1.1 On your retirement

On your retirement, you will become entitled to a lump sum benefit, equal to the amount in your Accumulation Account on your retirement. As the definition of retirement in Schedule 1 suggests, there will be some circumstances in which you will become entitled to payment of a retirement benefit while you are still employed or when you retire and have reached the relevant Preservation Age. Your trustees will be able to advise you further in this regard at the relevant time.

#### 1.2 Total and permanent disability

If you become totally and permanently disabled, you may become entitled to a lump sum benefit from your Accumulation Account. Your trustees will be able to advise you further in this regard at the relevant time.

#### 1.3 Temporary total disability

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

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

## 1.4 On death

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

To overcome the requirement to renew binding nominations every 3 years, you can also choose to implement a 'death benefit agreement' under the fund's deed. The form of death benefit agreement is set out in Schedule 7 to the fund's deed.

Your death benefits will also include any residue in a pension account previously established for you, unless the arrangements in respect of that pension are that the pension will revert on your death to a Pension Dependant.

Generally speaking, you should seek professional advice concerning what plans need to be made in respect of your death benefits and what options are available to you.

The Deed provides for:

- **death benefit agreements** (which bind the trustees and which do not expire, see clauses 98 and 99);
- **binding death benefit notices** (which binds the trustees but which expire after 3 years or earlier if replaced or revoked); and
- **non-binding nomination forms** (which do not bind the trustees but which do not expire until replaced or revoked).

*Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.*

### What you need to consider

When you, as a member, are considering signing a death benefit agreement, a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustees must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustees (as required by the fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

## 1.5 Other circumstances

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

## 2 Details of potential income benefits

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

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

The rules for a 'simple pension' include:

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

### **Existing pensions**

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

- the pension will be deemed to meet the current rules provided that it was commenced before 20 September 2007 in accordance with the rules that applied at that time;
- if the pension is a complying pension (such as a life pension) then it will only be able to be terminated pursuant to the rules as they were in force before 1 July 2007; and
- if the pension is an allocated pension then it may be transferred to a simple or 'account-based' pension without having to first be commuted.

### **Social Security Eligibility**

Your eligibility for a government age pension is means tested

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

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

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

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

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

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

### **3 Taxation of benefits**

#### **3.1 Seek advice**

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

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

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

- **Lump sum benefits** have two components: an exempt component and a taxed component. The exempt component is tax free (it includes amounts such as pre-1983 contributions and undeducted contributions). The taxed component is tax free up to a low rate threshold (initially in 2008-2009 \$145,000, and in 2012-13 \$175,000). After that threshold, it is taxed at 16.5% (incl Medicare levy) — except where the recipient is aged less than 55, in which case the whole taxed component is taxed at 21.5% (incl Medicare levy).
- **Pension benefits** are taxed in a similar manner to lump sums at the moment, though overall tax can be less in some circumstances. Once the recipient turns 60, the pension is tax free.
- **Proportional drawdown:** In both cases, payments are deemed to include both exempt and taxable components, paid in proportion to the amount these components constitute of the recipient's total benefit.

#### **3.3 Death benefits**

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



- **Lump sum benefits** to a member's dependant are tax free, as long as they are also a death benefits dependant as defined in section 302-195 of the ITAA97. Lump sum benefits paid to a dependant (who is not a death benefits dependant for ITAA97 purposes) have the taxable component taxed at 16.5% (incl Medicare levy).
- **Reversionary pensions** are taxed according to the age of the primary and reversionary beneficiaries. If the primary beneficiary was aged 60 or over at the time of death, then the payments to the reversionary will be tax free. If the primary beneficiary was aged less than 60, then the payments will be taxed at the reversionary beneficiary's marginal tax rate until the reversionary turns 60 (then it will be tax-free). However, a reversionary pension will only be payable to a Pension Dependant. Also a pension paid to a Pension Dependant who is a child will have to be cashed to a lump sum when the child turns 25 (unless they're permanently disabled).
- Pensions can only revert to a Pension Dependant: simply being a dependant is not sufficient. Therefore, these benefits must be paid as a lump sum to a dependant or the member's estate.

## Information about risks associated with the fund

### 4 Details of risks: General

The assets of the fund must be invested in accordance with an appropriate investment strategy as devised by the trustees. Although the trustees decides on an investment strategy aimed at increasing the value of the fund's assets, this value can be reduced by movements in the underlying value of the funds assets, for instances movement in share or property prices. This may mean the value of the assets held in the fund for your benefit, or to pay you a pension, may be reduced. Indeed, if the performance of the fund's assets is very poor, the value of the assets held in the fund for your benefit, or to pay you a pension, may be less than the value of the contributions made to the fund on your behalf. Poor investment performance may also affect the trustee's capacity to make payments to you or to sustain the level of payments made to you. More information about risks associated with the fund borrowing in order to invest are set out under "Investment of fund assets" at paragraph 10 below.

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

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

- an annuity from a third party (such as a life assurance company), then you will have a regular income stream and the associated risk will be born by the third party; or
- a simple or 'account-based' pension from a third party (such as a life assurance company), then the situation is the same as for a simple pension from the

trustees and you effectively bear the risk associated with the variations in the value of the assets which fund the pension.

## 5 **Regulatory Risk**

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

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

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

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

### 6 **Contributions**

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

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

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

#### **Superannuation co-contributions**

You will be eligible to receive a co-contribution from the Federal Government if you satisfy the following criteria:

- you make a personal super contribution by 30 June of a financial year;
- your total income is less than the prescribed amount (\$46,920 for the 2012-2013 financial year);
- 10% of your income is from employment sources, such as an employer or running your own business;
- you are 71 years or younger; and
- you lodge your income tax return.

If you are eligible, the Federal Government will match the value of your personal super contributions up to certain thresholds, which can be found at <http://www.ato.gov.au/individuals/content.asp?doc=content/42616.htm>.

**Caps on concessional contributions:** This paragraph sets out the cap for the 2012-2013

financial year. You may make, or have made on your behalf, up to \$25,000 in concessional contributions (they used to be referred to as 'deductible contributions') in a year across all of your superannuation accounts. Concessional contributions are taxed at 15%. Members aged 50 years or over in the 5 years from 1 July 2007 (and who are eligible to contribute to super) may make, or have made on their behalf, up to \$50,000 per annum in concessional contributions for the 2009-2010, 2010-2011 and 2011-2012 financial years. Generally, concessional contributions can only be made by employers or persons who are self-employed.

**Caps on non-concessional contributions:** This paragraph sets out the cap for the 2012-2013 financial year and the cap may then be indexed from year to year (you will need to check this at the relevant time). You are entitled to make up to \$150,000 in non-concessional contributions (they used to be referred to as 'non-deductible contributions' and are contributions that are made from money on which you have already paid applicable income tax) in a year across all of your superannuation accounts.

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

### **Contributions-splitting**

Spouses may split superannuation contributions between them. Contributions-splitting allows members to ask the trustees to transfer certain contributions made after 1 January 2006 (**Splittable contributions**) made in respect of the member to the superannuation fund, or account of that member's spouse.

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

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

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

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

### **8 Other application of income**

The trustees also:

- maintains an income account: This is a general account of the fund and does not relate to a specific member. Amounts such as the income and profits of the fund or proceeds of insurance policies (which the trustees decides not to pay to a member or beneficiary) are paid into this account. From this income account the trustees can make payments to your Accumulation Account, but it may also make deductions from the income account to:
  - pay the expenses of the fund;
  - pay taxes due and payable, or likely to become due and payable;
  - pay costs of insurance policies;
  - meet losses suffered on disposal of an asset of the fund and so on.

- may maintain an Equalisation Account: This is also a general account of the fund. The trustees may decide to pay amounts into this account to:
  - smooth the investment earnings of the fund (that is, to even out years of good growth and performance with years of poor growth and performance);
  - provide for tax liabilities;
  - pay fund expenses;
  - otherwise provide for contingencies of the fund.

The trustees are not permitted to charge fees in relation to the services it provides to the fund.

## Other significant information about the fund

### 9 Preservation Age

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

- for a person born before 1 July 1960 – 55 years
- for a person born during the year 1 July 1960 to 30 June 1961 – 56 years
- for a person born during the year 1 July 1961 to 30 June 1962 – 57 years
- for a person born during the year 1 July 1962 to 30 June 1963 – 58 years
- for a person born during the year 1 July 1963 to 30 June 1964 – 59 years
- for a person born after 30 June 1964 – 60 years.

### 10 Investment of fund assets

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

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

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

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

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

## 11 Taxation

### 11.1 Income of the fund

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

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

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

### 11.2 Contributions

Contributions to the fund (made by your employer, yourself, your spouse, etc) are generally treated as contributions of capital and will not be included in the fund's Income. However, if the person making a contribution is entitled to a tax deduction in relation to that contribution, then the contribution will usually be treated as fund Income and will be taxed as outlined in paragraph 11.1 above.

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

### 11.3 Surcharge on High Income Earners

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

### 11.4 Low Income Spouse Rebate

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

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

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

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

[http://  
www.ato.gov.au/super/content.asp?doc=/content/60489.htm&mnu=26961&mfp=001/006](http://www.ato.gov.au/super/content.asp?doc=/content/60489.htm&mnu=26961&mfp=001/006)  
; and

<http://www.ato.gov.au/individuals/content.asp?doc=/content/19144.htm>.

**12 The fund deed**

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

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

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

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

**14 Contacting the trustees for additional information**

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

# Product Disclosure Statement – Schedule 1

## Definitions

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

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

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

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

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

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

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

**Pension Dependant** means a dependant of a member to whom a pension may be paid on the member's death, as defined by regulation 6.21(2A) of the SIS Regulations.

**Preservation Age** means what it means under superannuation law. Essentially it is the minimum age after which your benefit arising from a preserved payment may be paid to you. Those ages are set out in paragraph 9above.

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

**Retirement** occurs:

- if you have reached a Preservation Age less than 60, and
  - an arrangement under which you were gainfully employed comes to an end; and
  - the trustees are reasonably satisfied that you never intend to become gainfully employed (either full time or part time); or

- if you have reached age 60 and an arrangement under which you were gainfully employed has come to an end and either of the following circumstances apply;
  - you have attained that age on or before ending employment; or
  - the trustee are reasonably satisfied that you never intend to become gainfully employed (either full time or part time).

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



## Schedule 7 to this deed

### Death Benefit Agreement – GOLDSHAFT SUPERANNUATION FUND NO. 1 (Fund)

- 1 This Agreement, executed as a deed, is between the Fund's trustees listed below and the Fund's member listed below.
- 2 This Agreement is an addition to the "Superannuation Trust Deed for a Self-Managed Fund" for the Fund (**Deed**). It has effect in the way described in Part H of that Deed. This Agreement is not a binding death benefit notice given in accordance with regulation 6.17A of the *Superannuation Industry (Supervision) Regulations*. Therefore:
- 2.1 it continues in force until amended or terminated; and
- 2.2 it does not end after 3 years as binding death benefit notices are required to do by the law.

3 On execution, this Agreement forms part of the Deed.

4 The member directs the trustees that, on the member's death, the persons named in the following table are to receive the proportion specified in that table of any benefit that is payable:

Person	Relationship to member	Proportion of death benefit
PETER GOLDSHAFT	HUSBAND	100%
Total (which must total to 100%)		100%

- 5 The trustees consents to acting on this direction as evidenced by it executing this Agreement.
- 6 If compliance with superannuation law prevents any part of the benefit being paid to the named person, then that part of the benefit will be dealt with under Part H of the Deed.
- 7 The parties agree that:
- 7.1 the member may terminate this Agreement by serving a notice terminating the Agreement on the trustees; and
- 7.2 this Agreement may be replaced by the trustees and the member executing a later death benefit agreement at which time this Agreement terminates.

- 8 The details of the trustees are:
- 8.1 Trustee Name: RICHELLE GOLDSHAFT
  - 8.2 Trustee Address: UNIT 6 / 67 OCEAN AVENUE DOUBLE BAY NSW 2028
  - 8.3 Trustee Name: PETER GOLDSHAFT
  - 8.4 Trustee Address: UNIT 6 / 67 OCEAN AVENUE DOUBLE BAY NSW 2028

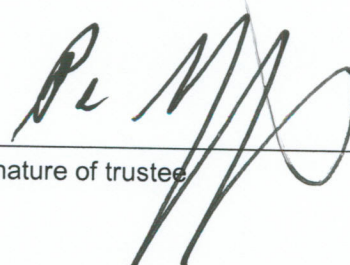
9 The member is:

- 9.1 Member's name and address: RICHELLE GOLDSHAFT .....
- UNIT 6 / 67 OCEAN AVENUE
- DOUBLE BAY NSW 2028.....

Executed by  
RICHELLE GOLDSHAFT  
in her capacity as trustee

  
Signature of trustee

Executed by  
PETER GOLDSHAFT  
In his capacity as trustee

  
Signature of trustee

### **First Notice: The types of death benefit arrangements and the order in which they take effect**

The Fund's Deed allows three types of death benefit payment arrangements. They, and the order in which they take effect, are as follows:

- the above form of **death benefit agreement** — which binds the trustees and which does not expire, see Part H of the Deed;
- **binding death benefit notices** — which bind the trustees but which expire after 3 years or earlier if replaced or revoked; and
- **non-binding nomination forms** — which do not bind the trustees but which do not expire until replaced or revoked.

*Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.*

### **What you need to consider**

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustees must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustees (as required by the Fund's Deed) will pay or apply the "invalid" part of the death benefit in accordance with any **binding death benefit notice**, or by reference to any non-binding nomination form, you have signed.

### **Second Notice: Consider consistency with pension terms**

Consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be consistent. If the member wants a reversionary pension to be paid to someone different than the person nominated in a death benefit nomination or death benefit agreement, then careful drafting is required and the parties should seek professional advice.

## Schedule 7 to this deed

### Death Benefit Agreement – GOLDSHAFT SUPERANNUATION FUND NO. 1 (Fund)

1 This Agreement, executed as a deed, is between the Fund's trustees listed below and the Fund's member listed below.

2 This Agreement is an addition to the "Superannuation Trust Deed for a Self-Managed Fund" for the Fund (**Deed**). It has effect in the way described in Part H of that Deed. This Agreement is not a binding death benefit notice given in accordance with regulation 6.17A of the *Superannuation Industry (Supervision) Regulations*. Therefore:

2.1 it continues in force until amended or terminated; and

2.2 it does not end after 3 years as binding death benefit notices are required to do by the law.

3 On execution, this Agreement forms part of the Deed.

4 The member directs the trustees that, on the member's death, the persons named in the following table are to receive the proportion specified in that table of any benefit that is payable:

Person	Relationship to member	Proportion of death benefit
RICHELLE GOLDSHAFT	WIFE	100%
Total (which must total to 100%)		100%

5 The trustees consents to acting on this direction as evidenced by it executing this Agreement.

6 If compliance with superannuation law prevents any part of the benefit being paid to the named person, then that part of the benefit will be dealt with under Part H of the Deed.

7 The parties agree that:

7.1 the member may terminate this Agreement by serving a notice terminating the Agreement on the trustees; and

7.2 this Agreement may be replaced by the trustees and the member executing a later death benefit agreement at which time this Agreement terminates.

8 The details of the trustees are:

8.1 Trustee Name: PETER GOLDSHAFT

8.2 Trustee Address: UNIT 6 / 67 OCEAN AVENUE DOUBLE BAY NSW 2028

8.3 Trustee Name: RICHELLE GOLDSHAFT

8.4 Trustee Address: UNIT 6 / 67 OCEAN AVENUE DOUBLE BAY NSW 2028

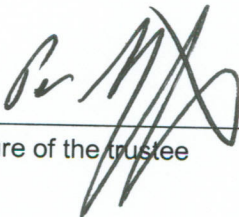
9 The member is:

9.1 Member's name and address: PETER GOLDSHAFT .....

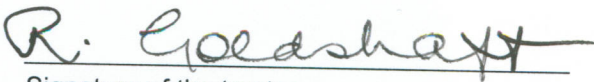
UNIT 6 / 67 OCEAN AVENUE

DOUBLE BAY NSW 2028.....

Executed by  
PETER GOLDSHAFT  
in his capacity as trustee

  
\_\_\_\_\_  
Signature of the trustee

Executed by  
RICHELLE GOLDSHAFT  
in her capacity as trustee

  
\_\_\_\_\_  
Signature of the trustee

### **First Notice: The types of death benefit arrangements and the order in which they take effect**

The Fund's Deed allows three types of death benefit payment arrangements. They, and the order in which they take effect, are as follows:

- the above form of **death benefit agreement** — which binds the trustees and which does not expire, see Part H of the Deed;
- **binding death benefit notices** — which bind the trustees but which expire after 3 years or earlier if replaced or revoked; and
- **non-binding nomination forms** — which do not bind the trustees but which do not expire until replaced or revoked.

*Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.*

### **What you need to consider**

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustees must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustees (as required by the Fund's Deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

### **Second Notice: Consider consistency with pension terms**

Consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be consistent. If the member wants a reversionary pension to be paid to someone different than the person nominated in a death benefit nomination or death benefit agreement, then careful drafting is required and the parties should seek professional advice.

## Superannuation Trust Deed Definitions

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

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

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

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

**Assets** means the cash, investments and other property of the fund held by the trustees (or by a nominee or custodian for the trustees) on the trusts established by or under this deed, including:

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

**ATO release authority** means a written authority given by the Commissioner of Taxation to the trustees to release funds in accordance with section 292-410 of the *Tax Act*.

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

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

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

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

**Business day** means Monday to Friday excluding public holidays in the state or territory identified in clause 199.

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

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

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

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

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

**Death Benefit Agreement** means all, or that part of, an agreement (in the form set out in Schedule 7 to this deed) describing the trustee's obligations concerning the payment of benefits on a member's death which:

- directs the trustees to pay the benefits to a person to whom those benefits may be paid in accordance with superannuation law;
- has been executed by the trustees and the member; and
- has not later been:
- terminated by the member; or
- replaced by a separate death benefit agreement with the agreement of the trustees and the member.

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

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

**Doctor** means a registered medical practitioner.

**Eligible roll over fund** means what it means in Part 24 of the SIS Act.

**Employee** means a person who is an eligible person under superannuation law. However, it also includes a person whom the employer-sponsor decides is to be treated as an employee, for a period and on terms decided by the employer-sponsor, for the purpose of an employer making contributions in order to avoid a liability for the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992*.

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

**Employer-sponsor** is the employer named as such in Schedule 1, or the employer that is carrying on business in succession to or in amalgamation with that employer, and has elected to assume the obligations of that employer in accordance with this deed.

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

- one person is an employee of the other within the ordinary meaning of that term, or within the meaning of section 15A of the SIS Act, or is taken to be an employee under superannuation law.
- one person is an employee of the employer-sponsor of the fund, and that employer is any of the following:



- a relative of that person;
- a body corporate of which the other person, or a relative of the other person, is a director;
- a body corporate related to that body corporate.
- one person is the trustee of a trust of which the other person, or a relative of the other person, is a beneficiary.
- one person is a member of a partnership in which the other person, or a relative of the other person, is either a partner or a director of a body corporate that is a partner.
- one person is a member of a partnership in which the other person, or a relative of the other person, is a beneficiary of a trust, the trustee of which is a partner.

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

**Excess contributions** means contributions by or on behalf of a fund member which exceed the annual cap amounts for concessional contributions and non-concessional contributions as defined in sections 292-20 and 292-85 respectively of the Tax Act.

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

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

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

**Fund employer** means the employer-sponsor or a participating employer.

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

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

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

**Interdependency relationship** has the same meaning as in the SIS Act.

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

**Life expectancy** means the period which a person is expected to live in addition to their age, calculated in accordance with the life expectancy table published by the Australian Government Actuary.

**Member release authority** means a written authority given by a member to the trustees to release funds in accordance with section 292-410 of the Tax Act.

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

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

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

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

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

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

**Participating employer** means an employer the trustees admits as a participating employer under clause 47 including the participating employer specified in schedule 1.

**Payment flag** means an agreement or court order referred to in clause 133.

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

**Pension account** means a pension account established under clause 88.

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

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

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

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

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

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

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

- a parent, grandparent, child, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin or second cousin of the person;
- another person who has any such relationship to the person by reason of adoption or re-marriage;
- the spouse or former spouse of the person or of any of the persons listed in the previous bullet points.

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

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

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

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

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

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

**Self managed superannuation fund** means what it means under the SIS Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN THE GOLDSPART

in the capacity of trustee in the presence of

*[Signature]*

Signature of witness

*[Signature]*

Signature of trustee

*[Name]*

Name of witness (please print)

Signed sealed and delivered by

RICHELLE GOLDSPART

in the capacity trustee in the presence of

*[Signature]*

Signature of witness

*[Signature]*

Signature of trustee

*[Name]*

Name of witness (please print)