

# **Alleycat Superannuation Fund**

**SMSF Trust Deed**

Prepared for  
**BDO (QLD) Pty Ltd**

# **Alleycat Superannuation Fund**

**SMSF Trust Deed**

Prepared by:

**hunt&hunt**

Gateway  
1 Macquarie Place  
Sydney NSW 2000

# Trust Deed

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**THIS DEED** is made on the date specified in the Schedule by the person or persons named in the Schedule to this Deed.

## **RECITALS**

The Trustees wish to establish a self-managed superannuation fund for the benefit of those people who become Members of the Fund on the terms and conditions set out in this Deed.

### **A. Establishment**

The Trustee by this Deed establishes the Fund as a Self Managed Superannuation Fund. The Fund will be vested in the Trustees and will at all times be held, controlled and managed by the Trustees subject to the trusts, powers and provisions of this Deed and the Rules.

The Fund was established on the date specified in the Schedule.

### **B. Trustee**

The Trustee consent to act as trustees of the Fund with effect from the date specified in the Schedule and acknowledge by execution of this Deed that they have read and agree to be bound by this Deed and the Rules.

### **C. Fund Details**

The Fund will be in existence from the date specified in the Schedule and will be known by the name in the Schedule or such other name as the Trustees might in writing determine.

### **D. Fund Deed and Rules**

This Deed includes the Rules. The Rules are those attached to this Deed as amended from time to time.

### **E. Purpose of the Fund**

The Fund is to be maintained for the sole purpose of providing superannuation benefits for its Members and their Dependants.

### **F. Compliance**

The Trustee must ensure that the Fund, from the date of creation, continues its status as a Complying Self Managed Superannuation Fund as defined by and for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

# Schedule

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**Creation Date:**

30.09.2011

**Fund Name:**

Alleycat Superannuation Fund

**Meeting Address:**

1705/128 Charlotte Street Brisbane QLD 4000

**Trustee:**

Alleycat Superannuation Pty Ltd ACN 153512791

**Members:**

Brooke Rebecca Elizabeth Hepburn-Rogers

**EXECUTED AS A DEED** by **Alleycat  
Superannuation Pty Ltd ACN 153512791** as  
Trustee in accordance with *section 127* of the  
*Corporations Act 2001*, by the Sole Director:



.....  
Signature

# Rules of the Fund

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## 1. DEFINITIONS

In this Deed the following words or expressions have the meaning thereafter ascribed to them:

<b>Act</b>	The <i>SIS Act 1993</i> , the <i>Tax Act</i> , the <i>Corporations Act 2001</i> (Cth), the <i>Family Law Act 1975</i> (Part VIII B), the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
<b>Ancillary Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.
<b>Application Form</b>	An application form provided by the Trustees for prospective members to complete and submit to the Trustees.
<b>Associate</b>	Has the meaning given by the <i>Act</i> .
<b>Auditor</b>	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor <i>Act</i> or otherwise determined by the Regulator.
<b>Asset</b>	Means any asset that the Trustees hold for the purposes of the Fund.
<b>Benefit</b>	An entitlement payable or distributable by the Fund which may include a Pension or lump sum payment.
<b>Benefit Arrangement</b>	Means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Special Account established under the <i>Small Superannuation Accounts Act 1995</i> (Cth).
<b>Beneficiary</b>	Includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the <i>Act</i> .
<b>Binding Death Benefit Nomination</b>	A direction given to the Trustees by a Member in accordance with and subject to Rule 19 in such form and manner as the Trustees may from time to time specify which is a binding direction for the purposes of the <i>Act</i> as to payment of the Member's Death Benefit in the event of the Member's death.
<b>Child</b>	Includes an adopted child, a step child, an ex-nuptial child, a child of the Spouse of the Member and a child of the Member within the meaning of the <i>Family Law Act 1975</i> (Cth).
<b>Complying Superannuation Fund</b>	A Self Managed Superannuation Fund which is compliant with Section 42A of the <i>SIS Act</i> .
<b>Constitutional Corporation</b>	A body corporate which is a trading or non-trading entity or financial corporation which is formed within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i> and to include a company incorporated under the provisions of the <i>Corporations Act 2001</i> .

<b>Member</b>	Any person accepted by the Trustees as a member of the Fund and who has not ceased to be a Member and includes a person in receipt of a pension from the Fund.
<b>Member's Account</b>	An account established and maintained by the Trustees on behalf of a Member in accordance with Rule 17.
<b>Member's Accumulation Account</b>	A Member's Account established by the Trustees, to accumulate the investments and earnings of the Member.
<b>Member's Pension Account</b>	A Member's Account established by the Trustees from which the payment of a Pension will be debited.
<b>Non-Binding Death Benefit Nomination</b>	A nomination given to the Trustees by a Member in such form and manner as the Trustees may from time to time specify the direction of which the Trustees can but are not bound to follow in the event of the Member's death.
<b>Old age pensions</b>	Has the meaning given by the Act.
<b>Payment Split</b>	Has the meaning given to that term in Part VIII B of the <i>Family Law Act 1975</i> (Cth).
<b>Pension</b>	Means a benefit taken to be a pension payable by the Fund in accordance with the <i>SIS Act</i> .
<b>Pension Dependants</b>	Those entitled recipients specified in reg 6.21 (2A) and (2B) of the SIS Regulations.
<b>Permanent Incapacity</b>	In relation to a Member means ill health (whether physical or mental) where the Trustees are is reasonably satisfied that the Member is unlikely, because of the ill health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience.
<b>Policy</b>	Means an insurance policy arranged by the Trustees in accordance with Rule 24.
<b>Product Disclosure Statement (PDS)</b>	A statement which provides a description of the features and benefits of the Fund.
<b>Preserved Benefits</b>	Means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits.
<b>Regulated Superannuation Fund</b>	A superannuation fund that is regulated as defined within section 19 of the <i>SIS Act</i> .
<b>Regulator</b>	The Commissioner of Taxation or any person or entity appointed to regulate the Fund as defined in section 10(1) of the <i>SIS Act</i> .
<b>Relative</b>	Has the meaning given by s17A(9) of the SIS Act.
<b>Reserve Account</b>	Means the Account referred to in Rule 23.



- (h) any other present, future or proposed legal requirements with which the Trustees:
  - (1) are legally obliged to comply; or
  - (2) must comply to obtain the maximum Tax concessions available to the Fund.

<b>Tax</b>	Includes all actual or anticipated tax, Surcharge, levy or impost on income, capital gains and superannuation contributions, stamp, financial institutions, registration and other duties, bank accounts debits tax, goods and services tax and other taxes, levies, imposts, deductions and charges together with interest, fines and penalties (if any) and charges, fees or other amounts made or payable in respect of them
<b>Tax Act</b>	Either or both of the <i>Income Tax Assessment Act 1936</i> and the <i>Income Tax Assessment Act 1997</i> (as the case may be including any replacement, modification of supplement to those Acts).
<b>Taxable Component</b>	Has the meaning given by section 995-1(1) of the <i>Tax Act</i> .
<b>Temporary Incapacity</b>	In relation to a Member, who has ceased to be gainfully employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be gainfully employed) means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity)
<b>Termination Date</b>	The date on which the Fund terminates.
<b>Trustee</b>	A person or company that has been appointed a trustee of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund. The expression also includes replacement or additional trustees.

## **2. PURPOSE OF THE FUND**

- 2.1. The Trustees must ensure that the Fund is maintained for one or more of the Core Purposes or for one or more of the Core Purposes and for one or more of the Ancillary Purposes permitted under the *S/S Act* and for no other purpose.
- 2.2. If the Trustee is not a company the sole or primary purpose of the Fund is the provision of old age pensions.
- 2.3. The Trustees must cause the Fund at all times to be a Regulated Superannuation Fund.

## **3. TRUSTEES**

### **Who may be a Trustee**

- 3.1. A Trustee may be a natural person or a company.
- 3.2. An individual may only be a Trustee if the individual is a Member or a LPR of a Member or a parent or guardian of a Member who is under a legal disability because of age and does not have a LPR.

- 3.11. If a Member of the Fund is a person who is under a legal disability because of age and does not have a LPR and a parent or guardian of that Member is a Trustee in place of the Member, then the Trustee of the Fund cannot be a body corporate.

#### **4. COMPLIANCE WITH SUPERANNUATION LAW**

##### **4.1. The provisions of this clause 4 override any other provisions of this Deed**

The Trustees must comply with the requirements of the Superannuation Law and are fully empowered (without being obliged) to comply with any provision or standard of the Superannuation Law which is not a requirement.

##### **4.2. Power to comply with the Superannuation Law**

- (a) The Trustees may:
- (1) do anything that the Trustees are required to do or that the Trustees consider necessary, expedient or desirable to comply with any requirement of the Superannuation Law (including expending monies of the Fund); and
  - (2) refrain from doing anything (including, without limitation, delaying or refusing any request or transaction in connection with a Beneficiary's interest in the Fund) that would result in a breach of, or the Trustees breaching, a requirement of the Superannuation Law.
- (b) The Trustees may rely on anything (including any statutory presumptions available to it) in the Superannuation Law, to the extent that the Trustees are entitled to do so in their capacity as trustee of the Fund.
- (c) The Trustees are entitled to be indemnified out of the assets of the Fund for any Liabilities that the Trustees properly incur pursuant to this clause.

##### **4.3. Deemed compliance**

The Trustees are deemed to comply with the Superannuation Law and this Deed if the Regulator:

- (a) is satisfied that the Trustees have complied with the Superannuation Law;
- (b) determines that the Fund will be treated as if it had complied with the Superannuation Law; or
- (c) has advised the Trustees that it will not take action against the Trustees or the Fund in respect of a failure to comply with the Superannuation Law.

##### **4.4. Conflict with the Superannuation Law**

- (a) To the extent that any provision, or part of a provision, of this Deed conflicts with the Superannuation Law or is invalid for any other reason whatsoever:
- (1) that provision, or part, must be read down, changed, construed or severed to avoid such conflict or invalidity; and
  - (2) to the extent that such conflict or invalidity cannot be avoided, the provision or part of the Superannuation Law shall prevail to the extent of the conflict or invalidity only and the provision, or part, will be of no effect and will not affect the remainder of this Deed.

- 5.4.** On retirement of a Trustee one of the following is appointed Trustee in place of the Trustee who has retired (provided the person or company is not already a Trustee):
- (a) if the retiring Trustee is a person, another person who is a Member or a LPR of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a LPR or a company of which that Member or LPR of that member is a director; and
  - (b) if the retiring Trustee is a company, a company all the directors of which are Members or are the LPR's of Members.

## **6. TRUSTEE REMOVAL**

- 6.1.** A Trustee will hold office until:
- (a) the Trustee retires in accordance with this Rule
  - (b) being a Constitutional Corporation, it goes into liquidation or has a receiver appointed or enters into administration;
  - (c) the Trustee is removed, or ceases to be eligible to act as Trustee under the Act; or
  - (d) being a natural person, the Trustee dies
- 6.2.** A Trustee may retire at any time.
- 6.3.** If the Fund has only one Member, a person who is not a Member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an employer of the Member is appointed as a Trustee.
- 6.4.** A company may retire as a Trustee provided:
- (a) all the directors of that company are appointed as Trustees; or
  - (b) another company is appointed as a Trustee where all directors of the resigning company are also directors of the company being appointed as Trustee.
- 6.5.** A Trustee may retire as Trustee of the Fund so long as a new Trustee has first been appointed as a Trustee of the Fund.
- 6.6.** A person or company is removed as Trustee:
- (a) if a Member is the Trustee, when that person ceases to be a Member;
  - (b) if a Member is the Trustee, when that person is incapable of acting as Trustee unless a LPR of the Member is appointed as Trustee in place of the Member;
  - (c) if the Trustee is a company, on the date four months from the time one or all directors of the company cease to be Members or the LPRs of the Members;
  - (d) on the date the Trustee is prohibited from being a Trustee under the Rules or the Act;
  - (e) if the continued appointment of the Trustee will result in the Fund losing its status as a Complying Superannuation Fund; and
  - (f) when the Member is no longer under a legal disability because of age where the person is Trustee as parent or guardian of and in place of that Member.

8.4. At any meeting of Trustees a quorum will be formed with the presence of those Trustees who represent Members, the balance of whose Member's Accounts in aggregation exceeds one half of the aggregated amount of all Member's Account balances.

8.5.

(a) The Trustees will determine by majority approval at the first meeting of Trustees one of the following as the method by which Trustees will be entitled to cast votes at all meetings of Trustees:

(1) each Trustee being entitled to cast the number of votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each; or

(2) each Trustee being entitled to cast one vote each.

(b) If the Trustees fail to make a determination in accordance with clause 8.5(a), clause 8.5(a)(2) will apply.

(c) If clause 8.5(a)(2) applies and there is a deadlock in making any Trustee decision, the deadlock shall be resolved by weighting each Trustee's votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each

8.6. A resolution will be passed by a majority of votes of those who are present at the meeting and who are entitled to vote.

8.7. A person may appoint, in writing, another person to act as that person's proxy at any Trustee meeting.

8.8. If a written resolution has been signed by all persons entitled to attend a Trustee meeting, the resolution in the terms stated will be deemed as passed at the time and date which the document was last signed by any such person. More than one identical written resolution, each of which has been signed by one or more persons, will constitute one document.

## 9. TRUSTEE RECORDS AND REGISTERS

The Trustee must create and keep such records and registers of the Fund and decisions made as are required by this Deed and the *Act*.

## 10. TRUSTEE POWERS

10.1. In addition to those powers, authorities and discretions conferred on the Trustees by this Deed, the Rules, the Superannuation Law or the *Act*, the Trustee will have the following additional powers:

**Assets:** to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;

**Delegation:** the Trustees may delegate to any one or more persons, firms or companies on such terms as the Trustees may think fit any of the authorities, powers and discretions conferred upon the Trustees. Without limiting this general power the Trustees may:

- (a) appoint from time to time any one or more persons, firms or companies as the Trustees may think fit to act as Manager, custodian or investment manager subject to such conditions as the Trustees may from time to time determine;
- (b) delegate to and confer upon the Manager, custodian or investment manager such authorities, power or discretions, including the Trustees' power of delegation, as the Trustees may think fit;
- (c) pay out of the Fund to any Manager, custodian, investment manager or other delegate such remuneration for its services as the Trustees consider proper; and
- (d) remove from time to time any Manager, custodian or investment manager.

**Expenses:** to pay expenses from the assets, Reserves or income of the Fund, including:

- (a) Management expenses: including all costs, charges and expenses relating to management of the Fund, which may include acquiring the services of specialists or administrators;
- (b) General expenses: including all costs, charges and expenses in connection with any real or personal property, which may include insurance premiums, rates, taxes, rent, repairs and any other expense the Trustees may consider necessary;

**Franchises:** to acquire, sell or otherwise deal with franchises, franchise agreements, licences and related dealings;

**Futures contracts and options:** provided the Trustees maintains a risk management strategy, to engage brokers or commission agents, vary and determine terms of any such engagement directly or through a broker or agent in any market in any part of the world to:

- (a) buy, sell, open, close-out or otherwise deal in futures contracts of all kinds;
- (b) enter into, vary, exercise, abandon or sell any put or call option or rights;
- (c) place bids, make offers, hedge and effect orders including buy, sell, straddle, switch and stop-loss order;
- (d) tender and take delivery of commodities and currencies which are the subject of any futures contract or option; and
- (e) otherwise do and perform all things to operate on, utilise or deal with facilities of any stock or futures exchange.

**Gifts:** to receive property by gift or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the Fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;

**Incidental Powers:** to do all such other things as may be incidental to the exercise of the powers, rights, discretions otherwise provided by the Deed, the Rules or by law;

**Subdivision of Property:** to partition or to subdivide any property or interest in property which may be subject to these trusts and to pay moneys by way of equality or partition;

**Trustee's power to deal with itself:** notwithstanding any rule or law or equity to the contrary, and provided the in-house assets rules are complied with:

- (a) to acquire, as property of the Fund, the legal and beneficial interest in real or personal property which is, at the date of acquisition, the absolute property of the Trustee provided that any property so acquired is acquired for a consideration not greater than the current Market Value of the property and upon such acquisition the beneficial interest in the property will be held by the Trustee according to the Rules;
- (b) to dispose of any beneficial interest in property of the Fund to itself;
- (c) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee; and
- (d) to lease any property of the Fund to itself;

**Unit trust interests:** to acquire units or sub-units of any fixed or flexible unit trust whether by way of application or purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights and perform all obligations and receive all distributions as a holder of any units in such a trust.

- 10.2. These powers will be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules, or by Superannuation Law.
- 10.3. These powers will not be limited by, or be construed so as to be limited by any other powers, authorities and discretions otherwise provided by the Deed, the Rules, or by Superannuation Law.
- 10.4. In exercising these powers the Trustees must ensure at all times that the Fund remains a Complying Superannuation Fund.
- 10.5. A Trustee who is a natural person may be a director of any company in which any moneys forming part of the Fund are from time to time invested and may receive remuneration attached to such office without being liable to account for it unless that appointment would compromise or affect the Fund's status as a Complying Superannuation Fund.
- 10.6. Subject to the terms of these Rules the Trustees may exercise or concur in exercising all powers and discretions given under this Deed or by law, notwithstanding that it or any person who is a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee at the time is the sole Trustee.

## 11. THE TRUSTEE MAY BORROW AS PERMITTED BY THE ACT

- 11.1. In general circumstances and unless permitted by the Act and the Rules, the Trustees must not:
  - (a) borrow money;

- 14.2. The Trustees must admit any person as a Member where that person will be paid a Pension from the Fund.
- 14.3. If the Fund is a sole member Fund, the Member may give written notice to the Trustees stating that no other Member will be admitted to the Fund.
- 14.4. If a Member transfers a property to the Fund, the Member may give written notice to the Trustees stating that the property is to be held specifically for that Member with no other Member to obtain an interest in that property. The Trustees may decline to accept that transfer or may accept that transfer on terms and conditions at the discretion of the Trustees and any expenses of the Fund attributable to that property will be payable from the Member's Account.
- 14.5. A parent or guardian of a Member who is a Trustee of the Fund in place of that Member (because that Member is under a legal disability because of age and does not have a LPR), may exercise on behalf of that Member any rights or functions which that Member could exercise under the Rules (except those referred to in Rule 19.2) provided such exercise is permitted by the Act and will not affect or compromise the Fund's status as a Complying Superannuation Fund.

## **15. MEMBERS APPLICATION**

- 15.1. The Trustees will not admit any person as a Member of the Fund unless that person has submitted an Application Form. The Trustees are not required to admit a person who the Trustees do not believe has read or understood the Rules or the Deed or who has not agreed to be bound by the Deed and Rules of the Fund.
- 15.2. Upon death of a Member, any person who may be entitled to receive a Pension Benefit and does not wish to become a Member, or if the Trustees decides not to admit that person as a Member, then the Trustees must transfer the amount that would have funded the Pension to another Benefit Arrangement. The transfer of any amount must be in accordance with Rule 29. Once the Trustees have received all relevant documentation, including the Application Form and any other documentation the Trustees may require, the Trustees may in its absolute discretion admit or refuse to admit that person as a Member of the Fund.
- 15.3. The terms and conditions applicable to a Member's membership of the Fund, including the contributions and benefits payable to or in respect of the Member, may be varied by written agreement between the Trustees and the Member.
- 15.4. As soon as practicable after the admission of a person as a Member of the Fund the Trustees will give to that Member any information required by the Act.

## **16. TERMINATION OF MEMBERSHIP**

- 16.1. The Trustees have absolute discretion to expel any Member of the Fund. That if a Member ceases to be a Member of the Fund, he or she must retire as a Trustee of the Fund or a director of a corporate trustee of the Fund.
- 16.2. The Trustees must give notice to the Member of the member's expulsion from the Fund. Where a Member is expelled from or ceases to be a Member of the Fund the balance of the Member's account must be transferred to a Benefit Arrangement in accordance with Rule 29 or as nominated by the Member within 60 days of the date of the Trustee's Member expulsion notice and if a nomination is not made within that period, to an Eligible Rollover Fund at the discretion of the Trustee.

- (c) Benefit payments paid to that Member or persons entitled to receive them or transferred to another Benefit Arrangement;
- (d) Tax payable;
- (e) Excess Contributions Tax liability;
- (f) Splittable Contributions;
- (g) Payment Split; and
- (h) Any other amount including an amount to be transferred to a Reserve Account which the Trustees with the consent of the Member, determine will be debited to the Member's Account.

## **18. CONTRIBUTIONS**

- 18.1.** The Trustees may accept any Contributions made on behalf of a Member or a Spouse of a Member by any person, entity or government body so long as the acceptance by the Fund of that contribution:
- (a) will not compromise or affect the Fund's status as a Complying Superannuation Fund; or
  - (b) is permitted by the *Act*.
- 18.2.** The Trustees are required to comply with the provisions of the *Act* concerning any Excess Contributions Tax imposed on a Member.
- 18.3.** The Trustees, at the request of a Member, will allot, transfer or rollover, within the period required by the *Act*, of all or part of a Member's Account to another Superannuation Entity or another Member's Account, if
- (a) the Trustees are satisfied that any such action will not compromise or affect the Fund's status as a Complying Superannuation Fund, or
  - (b) the Trustees are required by order or agreement under the provisions of the *Family Law Act 1975* to perform such an action.
- 18.4.** The Trustees will not transfer or rollover a Member's Account to a Superannuation Entity or another Member's Account if prohibited by the *Act*, if it will cause a breach of the minimum benefit provisions of Division 5.3 of the SIS Regulations or if it will compromise or affect the Fund's status as a Complying Superannuation Fund.
- 18.5.** The Trustees have absolute discretion as to whether the transfer will be in the form of cash or assets, with or without conditions.
- 18.6.** The Trustees have absolute discretion and may accept transfers or rollovers from another Superannuation Entity, whether conditionally or not, provided it does not breach the *Act* or compromise or affect the Fund's status as a Complying Superannuation Fund.

## **19. ESTATE PLANNING**

### **19.1. Non-binding Death Benefit Nominations**

- (a) A Member may provide a written Non-Binding Death Benefit Nomination to the Trustees, by which the Trustees may, in their discretion, provide benefits to the beneficiaries listed in that nomination. Subject to the *Act*, the Trustees must accept a Non-Binding Death Benefit Nomination, but it is not binding on the Trustees.



### **19.3. Death Benefit Request**

- (a) A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to establish a Death Benefit Rule that requires the Trustee to pay Benefits in the event of the death of the Member in a manner and form that the Member or the Legal Personal Representative of the Member so chooses; including whether the Benefit is to be a Lump Sum Benefit, a Pension Benefit or combination of both.
- (b) The Trustee may accept or reject any notice referred to at Rule 19.3 (a) and must reject if the Trustee holds a Binding Death Benefit Nomination from that Member. If the Trustee accepts the notice, the Trustee shall be bound to act in accordance with that Death Benefit Rule that would be established as a consequence of accepting the notice.
- (c) A Member, or the Legal Personal Representative of the Member, may provide the Trustee with a notice in writing requesting the Trustee to delete or amend a Death Benefit Rule that was previously established at the request of the Member and, if amended, the Trustee shall act in accordance with that amended Death Benefit Rule.
- (d) The Trustee shall not accept any notice referred to at Rule 19.3 (a) or (c) if that would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

## **20. BENEFITS**

**20.1.** A Member or any other person permitted to receive a Member's Benefit by the *Act*, may be entitled to receive one or more of:

- (a) a lump sum Benefit;
- (b) a Pension Benefit;
- (c) a Temporary Incapacity Benefit;
- (d) a Permanent Incapacity Benefit; and
- (e) such other Benefit including the proceeds of any Policy that may be permitted to be paid to a Member under the *Act*, including in situations of Severe Financial Hardship or on Compassionate Grounds, as the Trustees might determine;

provided that the payment of any such Benefit would not breach the minimum Benefit provisions of Division 5.3 of the SIS Regulations or compromise or affect the Fund's status as a Complying Superannuation Fund or be in breach of the *Act*.

**20.2.** A Benefit will be payable to a Member, Dependant of a Member, LPR of a Member or to some other person provided it is required to be paid by the Rules or the *Act*.

**20.3.** A Member or the LPR of a Member may request that a lump sum Benefit be paid, and the Trustees at their discretion may pay the Benefit provided it is permitted by the *Act* and will not compromise or affect the Fund's status as a Complying Superannuation Fund.

**20.4.** A Trustee may pay a lump sum Benefit to a Member that will not exceed the balance of that Member's Accumulation Account although, in addition, the Trustee at its discretion may pay the whole or part of any Reserves to the Member.

- 20.13. The Trustees in their sole discretion may allocate any amount from any Reserve Account held in the Fund to pay the Benefit on the Member's Permanent Incapacity.

#### **Death of a Member**

- 20.14. On the death of a Member:
- (a) if the member was a Trustee or a director of the corporate Trustee, the Member's LPR will be appointed as a replacement Trustee or a director of the corporate Trustee until the date Benefits payable on the death of the Member commence to be payable provided that the LPR is eligible to act as Trustee and has consented to act as Trustee; and
  - (b) the Trustees may transfer or continue to pay any Pension previously payable to a Member to such Pension Dependents of the Member as are permitted by the Act to receive the Pension.

#### **Payment of a Death Benefit**

- 20.15. In the event of a Member's death, the Trustees at their sole discretion, but subject to Rule 20.17, will pay a Death Benefit any one or more of the Member's Dependents or the Member's LPR or another person as permitted by the Act.
- 20.16. If the Trustees hold a Non-Binding Death Benefit Nomination by the deceased Member, the Trustees in their sole discretion may choose but is not obliged to pay such Benefits to persons nominated in that Non-Binding Death Benefit Nomination, provided the payment is permitted by the Act.
- 20.17. If the Trustees hold a Binding Death Benefit Nomination by the deceased Member the Trustees must pay such Benefits in the manner and form as requested in that Binding Death Benefit Nomination provided the payment is permitted by the Act.
- 20.18. Provided it is permitted by the Act, the Trustees may pay additional amounts to the deceased Member's Dependents or LPR including from a Reserve Account but these amounts would not form part of the deceased Member's Benefit.

#### **Conversion of a Lump Sum Benefit into a Pension**

- 20.19. Should a Member, or a deceased Member's LPR or a deceased Member's Dependents so request, the Trustees in their sole discretion may convert any lump sum Benefit payable to or in respect of a Member either in whole or in part to a Pension payable to the Member, or the deceased Member's Pension Dependents as permitted by the Act.
- 20.20. A Member or a deceased Member's LPR or a deceased Member's Dependents must notify the Trustees of the Pension required and the Trustees are to use the Member's lump sum Benefit to fund any Pension.

#### **Commutation of a Pension**

- 20.21. By written request of a Member or in the event of a Member's death, the Member's Pension Dependents and provided it is permitted by the Act, the Trustees, in their absolute discretion, may commute the whole or any part of any Pension payable to the Member in accordance with the Rules below.
- 20.22. Any amount resulting from the commutation may be applied by the Trustees:
- (a) to pay a lump sum Benefit to a Member, or in the event of the death of the Member, to any one or more of the Member's Pension Dependents; or

### **Authorised investments**

- 21.10.** The Trustee may invest the assets of the Fund as if it were the absolute and beneficial owner of those assets and will exercise such diligence and prudence that an ordinary person would exercise in conducting their own affairs.
- 21.11.** The Trustees may invest in investments both within and outside Australia. The Trustees have the power to apply or invest any moneys required to be invested either alone or in partnership or co-ownership with any other person or persons.
- 21.12.** The Trustees may invest in:
- (a) **Authorised investments:** in any one or more investments as sanctioned by law in any State or Territory of Australia relating to the investment of trust moneys;
  - (b) **Real and Personal property:** in the acquisition of real or personal property or any interest in it including intellectual property rights or privileges in Australia or any other country;
  - (c) **Shares:** in the acquisition of fully or partly paid shares including redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
  - (d) **Option and rights:** in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (c) of this sub-clause;
  - (e) **Deposit:** on fixed deposit or at-call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
  - (f) **Insurance:** in the acquisition of any policy of assurance or insurance of any kind whatsoever and wherever made;
  - (g) **Loans:** in making loans to any person or company, except to Members or a relative of a Member;
  - (h) **Precious objects:** in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques, or any other similar objects;
  - (i) **Commodity contracts:** in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or futures contracts of any other kind quoted on a recognised stock exchange;
  - (j) **Permanent building society:** in the lodgement of moneys with a permanent building society wherever situated, by taking up shares in or depositing funds with;
  - (k) **Deferred property:** in the acquisition of any reversionary or deferred property or rights of any description;

### **Fund Insolvency**

- 22.2.** If the Trustees are notified by the Auditor or the Fund's actuary or becomes aware the Fund is or may become insolvent, the Trustees must:
- (a) liaise with the actuary or Auditor to determine a solvency plan to ensure the Fund's solvency, including but not limited to reducing any Members' Accounts or Members' Benefits;
  - (b) notify Members of any action required under the solvency plan; and
  - (c) take such action as is required under the solvency plan prior to the lodgement of the Fund's next regulatory return.

### **Earnings**

- 22.3.** The Trustees will determine the amount of the Fund's Earnings for all or part of a Financial Year.
- 22.4.** The Trustees have sole discretion as to where to allocate Earnings including allocating Earnings to a Member's Accumulation Account, a Member's Pension Account, or a reserve and using Earnings to pay a Benefit or expense of the Fund or any tax imposed upon the Fund.

### **Taxation**

- 22.5.** The Trustees must pay all Tax properly assessed to the Trustees.
- 22.6.** The Trustees may in their sole discretion deduct from a Member's Account Tax paid or payable by the Trustees:
- (a) as a consequence of the receipt by the Trustee of a Contribution for the Benefit of a Member,
  - (b) payable on any income which may be added to a Member's Account, and
  - (c) any Tax which the Trustee believes may be payable as a consequence of a payment given to a Member.
- 22.7.** The Trustee may in their discretion deduct from any account, including a Reserve Account, Tax paid or payable by the Trustee provided that any such deduction will not affect or compromise the Fund's status as a Complying Superannuation Fund.
- 22.8.** If the Trustees receive a refund of Tax the Trustee may allocate the refund to any Member's Account or a Reserve Account as it sees fit provided that this would not affect or compromise the Fund's status as a Complying Superannuation Fund.

### **Annual Accounts**

- 22.9.** The Trustees must keep annual accounting records as required by the *Act*.
- 22.10.** Accounting records are to be kept in such form and supported by any documentation as to enable them to be properly audited.

### **The Trustee has discretion as to the application of any insurance proceeds**

- 24.3.** The Trustees have absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the insurance proceeds to any Member's Account or to Reserves held in the Fund.
- 24.4.** No Member nor their LPR nor any other person has any interest in any insurance proceeds that might be received by the Fund.
- 24.5.** If a Benefit would ordinarily include an insured component under a Policy (for example a benefit payable on the Member's death or disablement) but:
- (a) no amount is paid under that Policy; or
  - (b) the amount paid under the Policy is less than the amount that would ordinarily be payable;
- the amount payable to the Member may be adjusted accordingly.
- 24.6.** This clause is:
- (a) for the protection of the Trustees and the Fund; and
  - (b) not to be taken as conferring any rights on Beneficiaries in respect of benefits additional to those conferred under other provisions of this Deed.

## **25. CHANGES**

### **Amendment of the Deed or the Rules**

- 25.1.** The Trustees may in their absolute discretion amend vary or alter any provision of this Deed or the Rules (in whole or in part) by way of written resolution provided:
- (a) any change to the Deed will not affect or compromise the Fund's status as a Complying Superannuation Fund and is not in breach of the Act;
  - (b) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment unless the Member or the LPR of the Member has in writing consented to any such amendment;
  - (c) the amendment does not amend the term of a Pension unless the Member or the LPR of the Member who accepted the term of the Pension has in writing consented to any such amendment;
  - (d) the amendment does not allow a person other than a Constitutional Corporation to be eligible for appointment as a Trustee unless the Rules provide and will continue to provide after the amendment is made that the Fund has as its sole or primary purpose the provision of old age pensions, and
  - (e) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide after the amendment is made that the Trustee must be a Constitutional Corporation.

## **26. GOVERNING LAW**

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia where the Trustee resides.

- (b) The Trustees may make such a transfer without the Member's consent where the *Act* permits (including to a Successor Fund or an Eligible Rollover Fund).
- (c) The Trustees may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the *Act* (or in the case of a retirement savings account, the *Retirement Savings Account Act 1997* (Cth)) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the *Act*.

A transfer of an amount under this clause 29 is a complete discharge to the Trustees in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred

### **30. INTERPRETATION**

**30.1.** In the Deed and the Rules unless the contrary intention appears or can be reasonably implied from the context:

- (a) The singular includes the plural and vice versa.
- (b) A reference to one gender includes a reference to all other genders.
- (c) Headings of clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate.
- (d) References to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute.
- (e) The words "including", "includes", "such as" and "for example" should be read as if followed by the words "without limitation".
- (f) The word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not.
- (g) A reference to 'interest', 'earnings' or 'investment returns' or such other similar term can refer to either positive or negative 'interest', 'earnings' or 'investment returns'.
- (h) If an expression is defined in the *Act*, but is not defined in this Deed, then that expression will have the meaning given to it in the *Act*.
- (i) The Deed will bind each party's legal personal representatives, successors and assigns.
- (j) When a party comprises two or more person the rights and obligations of such persons pursuant to this Deed will enure for the benefit of and bind all of them jointly and each of them severally.