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**MALIBU SUPERANNUATION FUND**

**2008 AMENDING DEED  
INCORPORATING CHANGE OF TRUSTEE**

**Rossmead Holdings Pty Ltd**  
ACN 009 309 335  
("Old Trustee")

**Blue Invest Pty Ltd**  
ACN 129 592 445  
("New Trustee")

I hereby certify this to be a true and  
correct copy of the original document.

*Glenn Mitchell CPA.*

 **SuperGeneration**

**Superannuation Lawyers**

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Department of Treasury and Finance  
Office of State Revenue  
Government of Western Australia



# Certificate of Stamp Duty

## Deed - Amendment to Super Fund Incorp Change of Trustee

Stamp Duty - Under Taxation Administration Act 2003 (WA), Section 49

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Certificate Number:	1017735509	Certificate Issue Date:	05-03-2008
Document Reference:	10267-8-1	Client Reference:	Malibu Super Fund
Instrument Date:	13-02-2008		
<b>Duplicate:</b>	<b>\$5.00</b>	Original Stamp Duty:	\$20.00
Penalty Tax:	\$0.00		

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Party names: BLUE INVEST PTY LTD  
MALONEY, BRUCE SCOTT  
MALONEY, PERRI GAI

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### Related Certificate Summary

Certificate Number	Certificate Date	Instrument Date	Doc Reference	Dutiable Amount	Stamp Duty
1017735494	05-03-2008	13-02-2008	10267-8-1	\$0.00	\$20.00

I hereby certify this to be a true and correct copy of the original document.

**2008 AMENDING DEED  
INCORPORATING CHANGE OF TRUSTEE**

Made on

*13 February*

2008

Between: **Rossmead Holdings Pty Ltd** ACN 009 309 335  
("Old Trustee")

And: **Blue Invest Pty Ltd** ACN 129 592 445  
("New Trustee")

**Recital:**

- A. The parties wish to amend the trust deed and rules regulating the Malibu Superannuation Fund ("Fund").
- B. The New Trustee's directors include all of the members of the fund, who agree to the amendments.
- C. The Old Trustee is the current trustee of the Fund and wishes to retire as trustee.
- D. The parties wish to appoint the New Trustee as the trustee of the Fund.
- E. The New Trustee has agreed to accept that appointment.

**Operative provisions:**

- 1. With effect from the date of this deed:
  - (a) the Old Trustee retires as Trustee of the Fund;
  - (b) the parties appoint the New Trustee to act as Trustee of the Fund in place of the Old Trustee;
  - (c) the New Trustee assumes the role of Trustee of the Fund and is bound by the covenants on the part of the Trustee contained in the Trust Deed and must exercise all the powers and rights of the Trustee under the Trust Deed in accordance with the provisions of the Trust Deed;

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*Clara H. Smith CPA*

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- (d) the Old Trustee is released from all covenants on the part of the Trustee contained in the Trust Deed except for any breach of those covenants that arose under the Trust Deed before the date of this deed;
  - (e) the assets of the Fund that previously vested in the Old Trustee as Trustee vest in the New Trustee and all rights powers obligations and entitlements in relation to those assets attach to the New Trustee;
  - (f) the Old Trustee must do all things necessary to vest all Fund assets in the New Trustee; and
  - (g) the Old Trustee must indemnify the New Trustee against any claim, cost, loss, expenses, damage or other liability arising out of its acts or omissions (or both) in connection with the trusteeship of the Fund before the date of this deed and acknowledges sole responsibility for any breaches which may have occurred under the Trust Deed and for any breaches of any laws relevant to the conduct of superannuation funds before the date of this deed.
2. Nothing in the Trust Deed operates to confer any right of indemnity from the Old Trustee to the New Trustee.
  3. With effect from the date of this deed, the current provisions of the trust deed and rules regulating the Fund are replaced with:
    - “1. The Fund is to be known as **Malibu Superannuation Fund**.
    2. This deed includes the rules attached to it ("**Rules**").
    3. The Trustee must hold the assets of the Fund on trust to apply them in the manner set out in the Rules.
    4. This deed may be amended in the manner set out in the Rules. The Rules may be amended or replaced by Trustee resolution.”
  4. The Rules regulating the Fund are those attached to this amending deed.
  5. Despite anything in the Fund’s governing rules, nothing in this deed amends any provision of those governing rules that provides for the payment of a defined benefit pension except a pension that is already being paid.
  6. For clause 3 the terms “governing rules” and “defined benefit pension” have the same meaning as in the Superannuation Industry (Supervision) Regulations.
  7. The parties acknowledge that although the Rules provide for different types of pensions, the payment of some types of pensions from the Fund may amount to a breach of the Superannuation Industry (Supervision) Act or Regulations. Accordingly, the Trustee undertakes to seek advice before paying any pension.
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## 8. TRUSTEE DECLARATION

Each new Trustee or Director of the New Trustee declares as follows:

I understand that as an individual Trustee or Director of the Corporate Trustee of the **Malibu Superannuation Fund** I am responsible for ensuring that the fund complies with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. The Commissioner of Taxation ("**Commissioner**") has the authority and responsibility for administering the legislation and enforcing the fund's compliance with the law.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me;
- enter into agreements with me to rectify any contraventions of the legislation;
- disqualify me from being a Trustee or Director of a Corporate Trustee of any superannuation fund in the future;
- remove the fund's complying status resulting in a significant tax penalty on the fund; and
- prosecute me under the law, resulting in fines or imprisonment.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

### **Sole Purpose**

I understand it is my responsibility to ensure the Fund is maintained for the purpose of providing benefits to its members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies.

### **Trustee Duties**

I understand that by law I must:

- act honestly in all matters concerning the Fund;
- exercise skill, care and diligence in managing the Fund;
- act in the best interests of all the members of the Fund;
- ensure that my money and other assets are kept separate from the money and other assets of the Fund;
- take appropriate action to protect the Fund's assets (for example, have sufficient evidence of the ownership of Fund assets);
- not enter into any contract, or do anything, that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the Fund;
- prepare and implement an investment strategy that takes the whole of the Fund's circumstances into account, which includes, but is not limited to:
  - the risks associated with the Fund's investments
  - the likely return from investments, taking into account the Fund's objectives and expected cash flow requirements
  - investment diversity and the Fund's exposure to risk due to inadequate diversification, and
  - the liquidity of the Fund's investments having regard to the Fund's expected cash flow requirements in discharging its existing and prospective liabilities; and
- allow all members of the Fund to have access to information and documents as required, including details about

- the financial situation of the Fund;
- the investments of the fund; and
- the members' benefit entitlements.

#### **Investment Restrictions**

I understand that, as a Trustee or Director of the Corporate Trustee of the Fund, subject to certain limited exceptions specified in the law, I am prohibited from the following:

- lending money of the Fund to, or providing financial assistance to, a Member of the Fund or a Member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly including the provision of credit);
- acquiring assets (other than listed securities, business real property or managed funds) for the Fund from Members or associates or other related parties of the Fund;
- borrowing money (or maintaining an existing borrowing) on behalf of the Fund;
- having more than 5% of the Fund's total assets at any time of the year as loans to, or investments in, related parties of the fund (including trusts) and assets subject to a lease or lease arrangement between the Trustee and a Member, relative or other related party (these assets are in-house assets); and
- entering into investments on behalf of the Fund that are not made or maintained on an arm's length (commercial) basis, ensuring that the purchase or sale price of the fund's assets reflect market value.

#### **Accepting Contributions and Paying a Benefit**

I understand that I can only accept contributions and pay benefits (pensions or lump sums) to Members or their beneficiaries when the conditions specified in the law and the Fund's governing rules (including its trust deed) have been met.

#### **Administration**

I understand that the Trustees of the fund must:

- keep and retain for at least 10 years
  - minutes of all Trustee meetings at which matters affecting the Fund were considered (this includes investment decisions and decisions to appoint members and trustees);
  - records of all changes of Trustees, including Directors of the Corporate Trustee;
  - each Trustee's consent to be appointed as a Trustee of the fund or a Director of the Corporate Trustee; and
  - all trustee declarations
- ensure that the following are prepared and retained for at least 5 years
  - a statement of financial position;
  - an operating statement; and
  - accounts and statements that correctly record and explain the transactions and financial position of the fund
- notify the tax office within 28 days of any changes in
  - Trustees, Directors of the Corporate Trustee or Members of the Fund
  - Fund name
  - details of the contact person, contact phone and facsimile numbers, and the postal address, registered address, or address for service of notices for the Fund
- notify the tax office in writing as soon as practicable (not later than 28 days) after becoming aware that the Fund has ceased to be a self managed superannuation fund or ceased to exist
- ensure that an approved auditor is appointed to audit the fund for each income year and provide that auditor with documents as requested, and



- lodge the Fund's annual return by the due date.

**Declaration**

By signing this declaration I acknowledge that I understand my duties and responsibilities as a Trustee or Director of the Corporate Trustee of the **Malibu Superannuation Fund**.

I understand that I must ensure this document is retained for at least 10 years or while I remain a Trustee or Director of the Corporate Trustee (whichever is longer) and if I fail to do this, penalties may apply, and that I may have to make this document available for inspection by a member of staff of the tax office and if I fail to do this, penalties may apply.


Executed as a deed

Executed by the **Old Trustee**  
**Rossmead Holdings Pty Ltd**  
 ACN 009 309 335  
 In accordance with Section 127(1) of the  
 Corporations Act 2001

*Perri Maloney*  
 .....  
 Signature of Director  
*PERRI MALONEY*  
 .....  
 Name (BLOCK LETTERS)

*B.O. Maloney*  
 .....  
 Signature of Director/Secretary  
*Bruce Maloney*  
 .....  
 Name (BLOCK LETTERS)

I hereby certify this to be a true and correct copy of the original document.

*Glenn Walsh - CA*  


Executed by the **New Trustee**  
**Blue Invest Pty Ltd**  
 ACN 129 592 445  
 In accordance with Section 127(1) of the  
 Corporations Act 2001

*Perri Maloney*  
 .....  
 Signature of Director  
*PERRI MALONEY*  
 .....  
 Name (BLOCK LETTERS)

*B.O. Maloney*  
 .....  
 Signature of Director/Secretary  
*Bruce Maloney*  
 .....  
 Name (BLOCK LETTERS)

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## 1 INTERPRETATION

Unless the contrary intention appears:

- A reference to the Deed or the Rules or any other document includes any variation or replacement.
- A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- The singular includes the plural and vice versa.
- A power to appoint includes a power to vary or cancel the appointment.
- When the word **including** introduces a list of items, it does not exclude a reference to other items of the same class.
- A reference to a person includes a firm, a body corporate, an unincorporated association or any authority.

**Account Balance** means the aggregate balance of all Member Accounts of a Member other than the Non-Vested Member Account, plus any proportion of that account that the Trustee determines (or if the individual Trustees or the corporate Trustee's directors do not agree on a proportion, the whole of that account).

**Benefit Direction** means a written notice that:

- directs the Trustee to pay the whole or part of a benefit payable under rule 5.4 to one or more Dependants or the legal personal representative in specific proportions; and
- may include instructions as to the manner of payment (eg lump sum or pension).

**Benefit Nomination** means a written notice that:

- nominates one or more Dependants or the legal personal representative to receive a benefit payable under rule 5.4; and
- may, in respect of each, nominate a specific proportion of the benefit.

**Child** includes an adopted child, a step-child or an ex-nuptial child.

**Co-contribution Act** means the Superannuation (Government Co-contribution for Low Income Earners) Act.

**Constitutional Corporation** has the same meaning as in Government Requirements.

**Crediting Rate** means a rate declared under rule 8.13 or 8.14.

**Deed** means the deed establishing the Fund.

**Dependant** of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person the Trustee believes is, or was at the date of death, dependent on the Member or otherwise meets the definition of dependant under Government Requirements.

**Fund** means the superannuation fund constituted by the Deed and the Rules.

**Government Requirements** means any requirements under laws relating to superannuation funds:

- (a) imposed on the Trustee; or
- (b) that the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds.

**Member** means anyone whom the Trustee has admitted to membership and who is still entitled to benefits from the Fund.

**Member Account** means an account kept for a Member under rule 8.7.

**Non-Member Spouse** has the same meaning as in Government Requirements.

**Non-Vested Member Account** means a Member Account kept to record amounts mentioned in rule 8.7(a) and (b) that are not the Member's "minimum benefits" as defined in Government Requirements.

**Permanent Incapacity** means ill-health (whether physical or mental), where the Trustee is reasonably satisfied (and 2 legally qualified medical practitioners have certified) that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**Rules** means these rules.

**Shortfall Component** has the same meaning as in the Superannuation Guarantee (Administration) Act.

**SIS Regulation** means Superannuation Industry (Supervision) Regulation.

**Spouse** includes a person who, although not legally married to a Member, lives (or lived at the time of the Member's death) with the Member on a bona fide domestic basis as the Member's husband or wife.

**Tax** includes any duty or government impost.

**Temporary Incapacity** means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity.

**Trustee** means the Trustee for the time being under rule 7.

## 2 MEMBERSHIP

### Admission

- 2.1 Anyone may apply to the Trustee for admission as a Member or for the admission of a person for whom the applicant intends to contribute.
- 2.2 The Trustee may reject an application.
- 2.3 Before admitting a person as a Member the Trustee must ensure that the Trustee structure of the Fund meets Government Requirements and may require the person:
- (a) to be examined by a registered medical practitioner approved by the Trustee; or

- (b) to give the Trustee any document or information it considers relevant to the administration of the Fund; or
- (c) to enter into a written agreement with the Trustee, imposing special conditions in respect of the applicant's membership; or
- (d) any combination of (a), (b) and (c).

2.4 If the Trustee admits a person as a Member, membership commences only when the Trustee has approved the application and either:

- (a) the person has become a Trustee or (if the Trustee is a Constitutional Corporation) a director of the Trustee; or
- (b) the Trustee has satisfied itself that when the membership commences, the Fund will meet the definition of self managed superannuation fund in Government Requirements.

### Terms

- 2.5 Each Member is bound by the Deed and Rules.
- 2.6 The Trustee is the Member's attorney to do anything the Trustee considers appropriate to administer the Fund.

### Non-Member Spouse

- 2.7 Subject to rule 2.4 the Trustee may admit a Non-Member Spouse as a Member if:
- (a) Government Requirements require the Trustee to create an interest in the Fund for the Non-Member Spouse; or
  - (b) Government Requirements permit the Trustee to do so and the Trustee elects to do so.
- 2.8 The Trustee must do so in a manner that is consistent with Government Requirements.

### Membership ends

- 2.9 A Member's membership of the Fund ends when the Member is no longer entitled to benefits from the Fund and either:
- (a) the Member has resigned as a Trustee or a director of the Trustee; or
  - (b) the Trustee has satisfied itself that when the membership ends, the Fund will meet the definition of **self managed superannuation fund** in Government Requirements.

## 3 TRANSFERS

### Transfer in

- 3.1 The Trustee may:
- (a) accept a transfer of assets to the Fund in respect of a Member; and
  - (b) provide benefits in respect of the Member
- on terms that the Trustee agrees with the Member and in a manner that complies with Government Requirements.

### Transfer out

- 3.2 The Trustee may transfer assets out of the Fund in respect of a Member (with or without the Member's consent) up to the Member's Account Balance. However, the transfer must comply with Government Requirements.
- 3.3 The Trustee is not responsible for the manner in which the transferee deals with the amount transferred.
- 3.4 If the Member's total Account Balance is transferred, the Member is no longer entitled to benefits from the Fund.

## 4 CONTRIBUTIONS

### Members

- 4.1 A Member may make contributions if the Trustee agrees.

### SGC shortfalls and Co-contributions

- 4.2 The Trustee may accept a Shortfall Component or a payment under the Co-contribution Act transferred to the Fund for a Member and must treat it as a contribution for the Member.

### Employers and others

- 4.3 The Trustee may:
- (a) accept contributions for a Member from any other person;
  - (b) at its discretion, refuse to accept all or part of a contribution.
- 4.4 The Trustee must not accept contributions contrary to Government Requirements. However, if it does and if Government Requirements permit, the Trustee:
- (a) must repay the contributions to the contributor; but
  - (b) may first make deductions for any liabilities or expenses incurred (and provisions for liabilities and expenses) in relation to the contributions.

### Splitting of contributions

- 4.5 A Member may apply to the Trustee to transfer to the Account of the Member's Spouse some or all of the Member's Account Balance representing contributions made by, for, or on behalf of the Member. The application may include a request to transfer the relevant amount out of the Fund in respect of the Member's Spouse.
- 4.6 If the Trustee agrees to make the transfer, it must do so within 90 days after receiving the request, but only if the application complies with Government Requirements.

## 5 BENEFITS - ENTITLEMENT

Rule 5 sets out the circumstances in which a benefit becomes payable from the Fund. Rule 6 deals with when and how the benefit is actually paid.

### Request - age 65

- 5.1 If a Member (who has not otherwise become entitled to a benefit under the Rules) requests a benefit at or after age 65, the Member becomes entitled to a benefit equal to the Member's Account Balance.

### Death

- 5.2 A Member may give the Trustee a Benefit Nomination or a Benefit Direction. When the Trustee accepts a Benefit Nomination or a Benefit Direction from a Member, any previous Benefit Nomination or Benefit Direction from the Member is taken to have been revoked.

- 5.3 The Trustee may refuse to accept Benefit Directions (or a particular Benefit Direction) without giving any reason.

- 5.4 If a Member dies the Trustee must pay a benefit equal to the Member's Account Balance.

- 5.5 If, in relation to any part of the benefit, the Trustee holds a Benefit Direction in relation to any part of the benefit, the Trustee must follow the Benefit Direction in relation to that part of the benefit if:
- the Trustee has accepted the Benefit Direction;
  - it has not been revoked; and
  - it can be followed under Government Requirements.

- 5.6 If the Trustee does not hold a current Benefit Direction in relation to any part of the benefit or if the relevant Benefit Direction cannot be followed for any reason, the Trustee must pay that part of the benefit to any or all of the Member's Dependants and legal personal representative in the proportions that the Trustee decides.

- 5.7 If there is no Dependant or legal personal representative then, if Government Requirements permit, the Trustee may pay that part of the benefit to any other people in proportions the Trustee decides.

- 5.8 A Benefit Nomination is given for information only and does not affect the Trustee's discretion in distributing the benefit.

- 5.9 Subject to the instructions in a Benefit Direction as to the manner of payment, the Trustee may pay any part of the benefit as a lump sum or as a pension or in any other form as it considers appropriate including the settlement of a trust for the benefit of any Dependant.

- 5.10 No pension is payable to a person under rule 5 until the person is a Member. However, the Trustee (and not the payee) may determine which provisions of rule 6 apply.

### Required payment age

- 5.11 If a Member (who has not otherwise become entitled to a benefit under the Rules) reaches the age when Government Requirements require the Trustee to pay or start paying a benefit, the Member becomes entitled to a benefit equal to the Member's Account Balance.

### Retirement or leaving employment

- 5.12 If a Member (who has not otherwise become entitled to a benefit under the Rules):
- (a) leaves any business, trade, profession, vocation, calling, occupation or employment because of Permanent or Temporary Incapacity; or
  - (b) retires or retired (before or after joining the Fund) from any business, trade, profession, vocation, calling, occupation or employment; or
  - (c) ceases any employment (at any time and for any reason except death) and the employer has contributed to the Fund for the Member; or

- (d) having reached age 60, ceases any arrangement under which the Member was employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment; or
- (c) leaves Australia in circumstances where Government Requirements permit the Trustee to pay a benefit

the Member becomes entitled to a benefit equal to the Member's Account Balance.

#### **Request - rollovers and Spouse benefits etc**

- 5.13 If a Member requests payment of a benefit, the Trustee must pay the benefit to the extent that the payment complies with Government Requirements.

#### **Financial incapacity**

- 5.14 If the Trustee believes a person entitled to a benefit cannot manage the person's financial affairs, the Trustee may pay the benefit to another person to be used for the first person's advantage. The Trustee is not responsible for the application of the benefit by the payee. However, the payment must comply with Government Requirements.

#### **Hardship and compassionate grounds**

- 5.15 The Trustee may at any time pay to a Member a benefit up to the Member's Account Balance if the payment complies with Government Requirements in relation to financial hardship or compassionate grounds.

#### **Excessive benefits**

- 5.16 If the Trustee believes that:
- (a) a Member's benefit will be excessive for the purposes of the Income Tax Assessment Act; or
  - (b) payment of a benefit will result in the Trustee or an employer contravening a law relating to corporations
- the Trustee may, if Government Requirements permit:

- (i) reduce the contributions payable for the Member; or
- (ii) reduce the benefit to the extent necessary to avoid (a) or (b) and transfer the amount of the reduction to the Fund's reserves; or
- (iii) apply a combination of (i) and (ii) as it considers appropriate. However, the Trustee need not investigate whether (a) or (b) applies to a benefit.

#### **No assignments**

- 5.17 The Trustee must not recognise any assignment or charge of a benefit (or any other interest in the Fund) that is contrary to Government Requirements.

#### **Interest on benefits**

- 5.18 The Trustee must credit or debit interest at the Crediting Rate to a benefit paid after the date it becomes payable.

#### **Deductions for Tax**

- 5.19 The Trustee must comply with Government Requirements regarding deductions of Tax from benefits and other payments from the Fund.

#### **Trustee's discharge**

- 5.20 The Trustee's only obligation in respect of a benefit is to pay it in good faith to or on behalf of a person the Trustee believes is entitled to the benefit. Otherwise, the Trustee is completely discharged by that payment.

#### **Forfeited benefits**

- 5.21 A Member forfeits the part of a benefit not attributable to Member contributions if:
- (a) the Member purports to assign, alienate or charge; or
  - (b) any other event occurs that results in another person becoming entitled to
- all or part of the benefit. However, this rule has no effect to the extent that it is inconsistent with Government Requirements or the Bankruptcy Act.

- 5.22 The Trustee must, if Government Requirements permit, apply a forfeited benefit for the Member and the Member's Dependents in proportions that the Trustee decides.

#### Splitting of benefits

- 5.23 The Trustee must reduce a Member's Account Balance or the amount of any pension payment to the Member if:
- (a) Government Requirements require the Trustee to do so; or
  - (b) Government Requirements permit the Trustee to do so and the Trustee elects to do so.

- 5.24 If the Trustee makes a reduction under rule 5.23, the Trustee must apply the amount of the reduction (in the manner required or permitted by, and adjusted as required by, Government Requirements) for the benefit of the relevant Non-Member Spouse.

- 5.25 To the extent that Government Requirements allow the Trustee any discretion in any of the matters mentioned in rule 5.23 or 5.24, the Trustee may exercise that discretion as it sees fit without regard to the interests of the Non-Member Spouse.

- 5.26 The Trustee may charge fees in respect of those matters to the extent permitted under Government Requirements.

## 6 BENEFITS - PAYMENT

Rule 5 sets out the circumstances in which a benefit becomes payable from the Fund. Rule 6 deals with when and how the benefit is actually paid. A pension is not payable to anyone (including a reversionary beneficiary) until the person is a Member.

- 6.1 If the Trustee is not a Constitutional Corporation, then the Fund's primary purpose is to provide old-age pensions and the Trustee must pay benefits due to a Member as pensions except to the extent that the Member requests otherwise.

## Account based and allocated pensions

- 6.2 The Trustee must pay all or part of a benefit as an allocated pension or an account based pension if the Member requests and (for an allocated pension) the pension commences before 20 September 2007.

- 6.3 The Trustee must pay the pension from a Member Account of the Member on terms that the Trustee and Member agree as to the level and frequency of payment. However, the level of the pension must be within the minimum and maximum levels (if any) prescribed by Government Requirements for such a pension and the Trustee must pay the pension at least annually.

- 6.4 The pension entitlement must not be transferred or used as security for a borrowing unless Government Requirements permit.

- 6.5 The Member may elect to commute all or part of the pension by notifying the Trustee in writing. However, if the Trustee and Member agree that the pension is a "non-commutable allocated pension" or a "transition to retirement income stream" then the Trustee must not pay any part of the benefit unless the Trustee is satisfied that the payment is consistent with Government Requirements in relation to such a pension.

- 6.6 The Trustee must comply with the Member's election if it approves the election and the election complies with Government Requirements (including Government Requirements in relation to the minimum level of pension for the financial year when the commutation takes place).

- 6.7 If the Member dies while entitled to the pension, the Trustee may either pay a benefit under rules 5.4 to 5.10 or continue the pension under rule 6.18.



6.8 The pension commences when the Trustee and Member agree (but no later than required by Government Requirements) and ends when the balance of the relevant Member Account is nil.

**Market linked pensions**

6.9 The Trustee must pay all or part of a benefit as a market linked pension if the Member requests and either:

(a) the pension commences before 20 September 2007; or

(b) the pension is purchased with a rollover superannuation benefit from the commutation of:

- an annuity provided under a contract that meets SIS Regulation 1.05(2), (9) or (10); or
- a pension provided under rules that meet SIS Regulation 1.06(2), (7) or (8); or
- a pension provided under terms and conditions that meet Retirement Savings Accounts Regulation 1.07(3A).

6.10 On receipt of the request, the Trustee must pay from a Member Account of the Member a pension for the term set out in SIS Regulation 1.06(8).

6.11 The level of the pension must be determined in the manner prescribed by Government Requirements and the Trustee must pay the pension at least annually.

6.12 The pension has no residual capital value and may not be commuted except:

(a) within 6 months after commencement (unless the pension was funded from the commutation of an annuity or another pension and commutation of the pension would therefore be inconsistent with Government Requirements); or

(b) in favour of one or more Dependants of either the Member or a reversionary beneficiary; or

- (c) as a lump sum in favour of the legal personal representative of either the Member or a reversionary beneficiary; or
- (d) as a lump sum in favour of another person if the Trustee after making reasonable enquiries is unable to find a person mentioned in (b) or (c); or
- (e) if the lump sum resulting from the commutation is applied directly to the purchase of another pension in a manner that is consistent with Government Requirements for market linked pensions; or
- (f) to pay an assessment under the Superannuation Contributions Tax (Imposition) Act; or
- (g) to give effect to an entitlement of a Non-Member Spouse in relation to a payment split under the Family Law Act; or
- (h) to give effect to a release authority under Government Requirements in respect of the Member.

However, if the Trustee and Member agree that the pension is a "non-commutable pension" then the Trustee must not pay any part of the benefit under (a) unless:

- (i) the purpose of the commutation is:
- to cash an unrestricted non-preserved benefit; or
  - to pay a superannuation contributions surcharge; or
  - to give effect to an entitlement of a Non-Member Spouse; or
  - to give effect to a release authority under Government Requirements in respect of the Member; or
- (j) the Trustee is satisfied that the payment is consistent with Government Requirements in relation to such a pension.

For (b), (c) and (d), if the Member has chosen a term related to the life expectancy of the Member's Spouse, the pension may not be commuted until the death of both the Member and the Spouse.

- 6.13 If the pension reverts or is commuted, the reversionary component or commuted amount must not be greater than the benefit that was payable before the reversion or commutation or the amount permitted under Government Requirements.
- 6.14 The pension must not be used as security for a borrowing or transferred except to a reversionary beneficiary on the death of the Member or of another reversionary beneficiary.
- 6.15 The Trustee must continue to keep the relevant Member Account and must debit pension payments and commutations to those Member Accounts.
- Market linked (ATE) pensions**
- 6.16 From 20 September 2004 a person entitled to a benefit may make a written request to the Trustee for a market linked (asset test exempt) pension. The request must specify whether the pension is intended to comply with the Social Security Act or the Veterans' Entitlements Act.
- 6.17 Depending on the Act with which the pension is intended to comply, the requirements of this section also apply, unless inconsistent with rules 6.9 to 6.15:
- Social Security Act - sec 9BA
  - Veterans' Entitlements Act - sec 5JBA.
- Reversionary pension**
- 6.18 Unless inconsistent with Government Requirements or the terms of the relevant pension, a Member who requests a pension may nominate one or more of the Member's Dependants as reversionary beneficiaries (either successive or concurrent) in relation to the pension. If reversionary beneficiaries are nominated as concurrent, the request must nominate the respective portions of the pension that revert to them. If no reversionary beneficiary is nominated then on the Member's death, the Trustee may nevertheless continue paying the relevant pension to any or all of the Member's Dependants and legal personal representative (unless inconsistent with Government Requirements) in proportions the Trustee decides after considering any relevant Benefit Nomination.
- Lump sum**
- 6.19 If a person entitled to a benefit requests, the Trustee may pay the benefit as a lump sum.
- Rollover or annuity**
- 6.20 A person entitled to a benefit may direct the Trustee to:
- (a) pay all or part of the benefit to another fund; or
  - (b) apply all or part of the benefit to purchase an annuity in the name of the person or, if the person is a Member, in the name of the Member or one or more of the Member's Dependants.
- 6.21 The Trustee must comply with the direction if the payment complies with Government Requirements.
- Compulsory rollover**
- 6.22 The Trustee may, if Government Requirements permit, pay all or part of a benefit to another fund without the consent of the person entitled to the benefit.
- Benefits in specie**
- 6.23 If a person entitled to a benefit requests, the Trustee may pay all or part of the benefit by transferring assets to the person or the person's nominee. The transfer must comply with Government Requirements.
- Deferral, preservation and flagging**
- 6.24 If a person entitled to a benefit requests, the Trustee may defer payment of all or part of the benefit. The deferral must comply with Government Requirements. If the Trustee believes that the payment of any part of a Member's benefit will contravene the Family Law Act, the Trustee must not pay that part.

- 6.25 If Government Requirements require part of a benefit to be preserved, the Trustee must:
- (a) keep that part in the Fund until Government Requirements permit it to be paid; or
  - (b) with the Member's written consent (if required by Government Requirements) pay that part to another fund that the Trustee believes will comply with Government Requirements regarding preservation of benefits.
- 6.26 If part of a benefit is kept in the Fund and the Member dies before it is paid, the Trustee must pay it under rules 5.4 to 5.10.
- Unclaimed benefits**
- 6.27 The Trustee must comply with Government Requirements as to unclaimed benefits and the transfer of benefits to other funds.
- Types of benefit**
- 6.28 If a Member requests, the Trustee may pay a benefit as one or more pensions or lump sums under rule 6. However, the manner of payment must be consistent with Government Requirements and the Trustee must establish one or more separate Member Accounts as the source of each type of benefit in respect of the Member.
- 7 TRUSTEE**
- Nature and number**
- 7.1 The Trustee must be either a sole Constitutional Corporation or (if Government Requirements permit) one or more individuals.
- Retirement**
- 7.2 The Trustee may retire if the Trustee gives prior written notice to the Members (or their legal personal representatives).
- 7.3 The Trustee must retire when the Members or Government Requirements so require.
- 7.4 The retiring Trustee must vest all the Fund's property in the new Trustee or its custodian.
- Appointment**
- 7.5 The Members (or their legal personal representatives) may make a written appointment of an additional or replacement Trustee. The appointment may be prospective or retrospective but must comply with Government Requirements.
- Vacancy on Trustee's board**
- 7.6 The Trustee must ensure that any vacancy on its board of directors is filled as and when required by Government Requirements.
- Powers**
- 7.7 The Trustee may do anything it considers appropriate to administer the Fund and to comply with Government Requirements. However, the Trustee must administer the Fund in a manner consistent with Government Requirements.
- 7.8 In dealing with Members, the Trustee may treat any communication as given by a Member if it purports to have been given by or on behalf of the Member.
- Delegation**
- 7.9 The Trustee may delegate any of its powers, duties and discretions to anyone if the delegation complies with Government Requirements.
- Administrators and investment managers**
- 7.10 In particular, the Trustee may appoint anyone to administer the Fund or to manage the Fund's investments or to perform both functions. However, the appointment must be written and must comply with Government Requirements.

**Discretions**

- 7.11 The Trustee is completely unrestricted in the exercise of its powers and discretions.
- 7.12 The Trustee and any of its directors, employees, delegates or agents may be involved in the exercise of the Trustee's powers and discretions even if they have a conflict of interest or duty.

**Remuneration**

- 7.13 The Members may agree a rate of remuneration that the Trustee may receive from the Fund if that would be consistent with Government Requirements.

**Liability**

- 7.14 The Trustee's liability is limited to its own dishonest acts or omissions and its own intentional or reckless failures to exercise the degree of care and diligence that it is required to exercise.

**Indemnity**

- 7.15 The Trustee, former Trustees, and any of their directors or employees are indemnified in respect of any Tax, loss or expenditure that they incur in relation to the Fund or the administration of the Trustee or a former Trustee unless it results from the person's dishonesty or intentional or reckless failure to exercise the degree of care and diligence which the person was required to exercise.
- 7.16 Rule 7.15 does not apply to the extent that its application is inconsistent with Government Requirements.
- 7.17 A Member must indemnify the Trustee for any loss or liability incurred because (or partly because) the Trustee relies on information which the Member gives to the Trustee.

**8****ADMINISTRATION****Information to Trustee**

- 8.1 Every Member and any other person who claims a benefit must give the Trustee any information or documents it reasonably requires to administer the Fund.
- 8.2 The Trustee may require a Member to be examined by a registered medical practitioner approved by the Trustee.
- 8.3 The Trustee must treat any information it acquires in relation to Members and their Dependants as confidential and may use that information only in the administration of the Fund.

**Information to Members and others**

- 8.4 The Trustee must give information and documents to others as and when required by Government Requirements. For this purpose, the Trustee may determine that a particular group of Members comprise a sub-plan.

**Notices**

- 8.5 Any written communication by or on behalf of the Trustee relating to the Fund is taken to be given to a person if it is:
- (a) handed to the person; or
  - (b) delivered to the person's address last known to the Trustee; or
  - (c) posted by ordinary post from within Australia to the person's address last known to the Trustee.
- In the case of posting, the communication is taken to have been received on the second business day after the day it is posted.

**Records**

- 8.6 The Trustee must keep records for the Fund as and when required by Government Requirements.

### Member Accounts

- 8.7 The Trustee must keep one or more Member Accounts for each Member to record:
- (a) contributions and other amounts received for the Member (including, subject to rules 8.18 and 8.22, proceeds of insurance policies);
  - (b) earnings or losses in respect of those amounts and amounts paid in respect of the Member; and
  - (c) a fair proportion of the Fund's Tax and expenses (including insurance premiums) and provisions for Tax and expenses.

### Asset portfolios

- 8.8 The Trustee may maintain separate asset portfolios to keep particular assets of the Fund.
- 8.9 To establish an asset portfolio, the Trustee must name it and specify the assets to be kept in it.
- 8.10 A Member may:
- (a) elect the asset portfolios to which (and the proportions in which) the Trustee allocates Member Account balances and future contributions for the Member; and
  - (b) elect to switch asset portfolios, or proportions, or both.
- 8.11 The Trustee must comply with the Member's election if:
- (a) the Trustee approves the election; and
  - (b) the allocation or switch complies with Government Requirements.

### Fund expenses

- 8.12 The Trustee must pay from the Fund all Tax and expenses relating to the Fund unless another person pays them. If another person pays Fund Tax or expenses, the Trustee must, if the person requires, reimburse the person from the Fund unless Government Requirements do not permit reimbursement.

### Crediting Rates

- 8.13 After each 30 June, the Trustee must declare a Crediting Rate for each asset portfolio (or if there are none, for the Fund) to be applied as at 30 June to all Member Accounts remaining when the Trustee makes the declaration.
- 8.14 Whenever it considers appropriate, the Trustee may declare interim Crediting Rates to be applied to a Member's Member Accounts, as at the date when a benefit or transfer becomes payable from them, for the period since the Fund's establishment or since the last 30 June (if later).
- 8.15 The Trustee may apply a Crediting Rate to Member Accounts on the basis of daily, monthly or average balances.
- 8.16 When declaring Crediting Rates, the Trustee must take into account:
- (a) the realised and unrealised earnings or losses of asset portfolios (or if there are none, the Fund), including realised and unrealised capital gains or losses;
  - (b) expenses and Tax not debited to Member Accounts;
  - (c) the level of the Fund's reserve accounts; and
  - (d) the appropriateness of averaging earnings, losses and expenses over several years.
- 8.17 The Trustee must not declare a Crediting Rate that takes any of the Fund's reserve accounts into debit.

### Reserves

- 8.18 The Trustee must set up one or more reserve accounts to record earnings or losses of the Fund that are not recorded in Member Accounts, amounts no longer required to pay benefits for Members and any insurance proceeds that the Trustee decides not to credit to a Member Account.

8.19 The Trustee may use amounts held in the Fund's reserve accounts for any purposes including:

- (a) averaging earnings, losses and expenses over several years;
- (b) replacing contributions otherwise payable to the Fund; and
- (c) providing additional benefits.

However, the Trustee may apply those amounts only as and when the Members approve and Government Requirements permit.

#### **Audit**

8.20 The Trustee must appoint an auditor (who meets Government Requirements) to audit the Fund's accounts and records and to give the Trustee a written report each year when Government Requirements so require.

#### **Inquiries and complaints**

8.21 If Government Requirements so require, the Trustee must take reasonable steps to ensure that arrangements are in force under which:

- (a) any person entitled to a benefit from the Fund may inquire into or complain about, the operation or management of the Fund in relation to that person; and
- (b) the inquiry or complaint will be considered and properly dealt with within 90 days after it is made.

#### **Insurance proceeds**

8.22 Despite rule 8.7 the Trustee may credit proceeds of insurance policies to the Fund's reserves.

## **9 INVESTMENT**

### **Powers**

9.1 The Trustee may invest the Fund assets in any manner, as if it were investing its own property.

### **Custodian**

9.2 The Trustee may appoint a person to perform custodial functions in relation to any of the Fund's assets on terms the Trustee considers appropriate, if the appointment complies with Government Requirements.

### **Restrictions**

9.3 The Trustee must comply with Government Requirements when investing the Fund's assets.

9.4 The Trustee must comply with Government Requirements in relation to:

- (a) making loans; and
- (b) borrowing.

9.5 The Trustee may charge the Fund's assets only if Government Requirements permit.

## **10 AMENDMENT**

### **Power**

10.1 The Trustee may by deed or written resolution amend, delete or replace the Deed or Rules including rule 10. An amendment may be retrospective.

### **Restrictions**

10.2 An amendment may not alter a beneficiary's right or claim to an accrued benefit adversely to the beneficiary or reduce the amount of that benefit unless Government Requirements permit.

10.3 An amendment may not permit an individual to be appointed Trustee unless Government Requirements permit.



**Notice**

- 10.4 If Government Requirements so require, the Trustee must notify Members of an amendment. However, the amendment is effective even if the Trustee fails to notify Members.

**11 WINDING UP**

- 11.1 The Trustee may wind up the Fund.
- 11.2 The Trustee must wind up the Fund if the Members direct it to do so.

**Notice**

- 11.3 If the Fund is to be wound up, the Trustee must as soon as practicable notify each Member in writing. However, if the Trustee fails to notify any Member, the winding up is still effective.
- 11.4 As from the date of the Trustee's notice to Members, the Trustee must take reasonable steps to recover contributions then due, but must stop accepting other contributions.

**Winding up procedure**

- 11.5 The Trustee must declare interim Crediting Rates for each asset portfolio (or if there are none, for the Fund) to be applied to Member Accounts as at the date of the notice to Members. The Trustee must then apply the Fund assets towards:
- (a) satisfying actual and contingent liabilities (except benefits); then
  - (b) providing pro rata for each Member in respect of the benefits then payable for the Member or, if a benefit is not then payable, a benefit equal to the Member's Account Balance; then
  - (c) increasing those benefits with the consent of the Members.
- 11.6 The Trustee must comply with rules 5.4 to 5.10 and 6 regarding benefits payable for Members on winding up.

**12 GUARDIAN**

- 12.1 The Members may appoint a Guardian of the Fund. The appointment terminates only if the Guardian dies, resigns or becomes incapable of managing financial affairs. The Guardian may appoint a successor Guardian to take office in any of those events.
- 12.2 An appointment of a Guardian must be in writing.
- 12.3 If there is a Guardian then despite anything else in the Deed or Rules:
- (a) in acting as trustee of the Fund, the Trustee must comply with any direction of the Guardian;
  - (b) rules 7.3, 7.5 and 11.2 have no effect; and
  - (c) the Guardian may replace the Trustee if the replacement Trustee meets Government Requirements and the Members may not dismiss the Trustee.