

## **KEELA-WE SUPERANNUATION FUND**

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**THIS SUPERANNUATION FUND TRUST DEED** is made on the date specified in the schedule to this Deed (the 'Schedule'), by the parties named as Trustee in the Schedule.

**WHEREAS:-**

- A. The Trustee has agreed to act as the first Trustee of the Fund described in the Schedule, which is established and is to be maintained as an indefinitely continuing superannuation fund (the "Fund") for the purpose of providing superannuation benefits for Members in the event of their retirement or in other circumstances acceptable to the Regulator and specified in this Deed.
- B. The Trustee has agreed to accept the trusts constituted under this Deed and to undertake the liabilities, duties and obligations imposed upon the Trustee by this Deed and by the laws applicable from time to time, in the jurisdiction to which it is subject, either by residence or by activities conducted by the Trustee on behalf of the Fund.

**NOW THIS DEED WITNESSES AS FOLLOWS:-**

1. This Deed shall be governed and construed and shall take effect in accordance with the laws of the State, Territory or other place in which the Trustee is resident from time to time, and shall further be subject to the laws of the Commonwealth of Australia, where and to the extent that they are applicable (the 'Relevant Law').
2. The Fund shall come into operation from the 'Inception Date' specified in the Schedule.
3. Except to the extent that any interests of Members or beneficiaries of the Fund are otherwise affected or circumscribed by the Relevant Law or by this Deed, the Fund shall be vested in, controlled by and administered by the Trustee of the Fund from time to time.
4. Interpretation of this Deed shall be in accordance with the Rules forming part of this Deed, unless the context expressly or by necessary implication requires otherwise.
5. The trusts created by this Deed may be terminated at any time in accordance with the provisions of this Deed from time to time, provided that, in the event that the Relevant Law does not exclude the operation of the rule against perpetuities in relation to those trusts, those trusts shall terminate on the earlier of:
  - (a) the day immediately preceding the day which is 80 years from the date of execution of this Deed; or
  - (b) the day immediately preceding the day which is 21 years from the date of the death of the last survivor of the lineal descendants of Her Majesty Queen Elizabeth II living on the date of the execution of this Deed.
6. This Deed shall be subject to the requirement that the sole or primary purpose of the Fund must always be the provision of Old-Age Pensions.

# Table of Contents

<b>1. INTERPRETATION .....</b>	<b>1</b>
1.1 DEFINITIONS.....	1
1.2 INTERPRETATION .....	9
1.3 SELF MANAGED SUPERANNUATION FUNDS .....	10
<b>2. PEOPLE WHO MAY BECOME MEMBERS .....</b>	<b>12</b>
2.1 WHO CAN APPLY.....	12
2.2 HOW TO APPLY .....	12
2.3 CATEGORIES AND SUB-PLANS .....	12
2.4 BECOMING A MEMBER.....	12
2.5 SPECIAL RULES FOR CHILD ACCOUNTS .....	13
2.6 SOME EX-SPOUSES TREATED AS MEMBERS BY FAMILY COURT DIRECTION .....	14
<b>3. INFORMATION WHICH MEMBERS MUST BE GIVEN .....</b>	<b>14</b>
3.1 PRODUCT DISCLOSURE STATEMENTS .....	14
3.2 MEMBER INFORMATION - ALL FUNDS .....	14
3.3 MEMBER INFORMATION – FUNDS WITH MORE THAN 5 MEMBERS .....	17
3.4 MEMBER INFORMATION - SELF MANAGED SUPERANNUATION FUNDS ONLY.....	18
3.5 ADDITIONAL MEMBER INFORMATION - ALL FUNDS.....	19
3.6 GIVING INFORMATION IN RESPECT OF CHILD ACCOUNTS.....	19
3.7 GIVING INFORMATION PURSUANT TO FAMILY LAW ACT ORDERS (AND COST OF THAT INFORMATION).....	19
3.8 EXCEPTIONS TO THIS PART .....	20
<b>4. CONTRIBUTIONS TO THE FUND .....</b>	<b>20</b>
4.1 WHO MAY MAKE AND RECEIVE CONTRIBUTIONS.....	20
<b>5. MATTERS RELATING TO BENEFITS AND ENTITLEMENTS .....</b>	<b>21</b>
5.1 WHAT BENEFITS AND ENTITLEMENTS A MEMBER MAY RECEIVE .....	21
5.2 HOW TO CALCULATE BENEFITS AND ENTITLEMENTS AND WHO MAY RECEIVE THEM .....	22
5.3 MAKING BINDING DEATH BENEFIT NOMINATIONS.....	24
5.4 DEALING WITH LIFE INSURANCE .....	25
5.5 HOW TO PAY A PENSION AND HOW TO PAY A LUMP SUM BENEFIT .....	26
5.6 LEGAL RESTRICTIONS ON WHEN AND HOW BENEFITS AND ENTITLEMENTS MAY BE PAID (PRESERVATION) .....	27
5.7 OTHER MATTERS AFFECTING PAYMENT OF BENEFITS .....	31
<b>6. ROLLOVERS AND TRANSFERS OF BENEFITS .....</b>	<b>32</b>
6.1 ROLLOVERS AND TRANSFERS INTO THE FUND .....	32
6.2 ROLLOVERS AND TRANSFERS OUT OF THE FUND .....	33
6.3 TRUSTEE'S DUTIES UPON ROLLOVERS, TRANSFERS AND PAYMENTS OF BENEFITS OUT OF THE FUND.....	33
<b>7. EMPLOYERS WHO MAY CONTRIBUTE TO THE FUND .....</b>	<b>36</b>
7.1 DIFFERENCE BETWEEN STANDARD EMPLOYER SPONSORS AND OTHER EMPLOYER SPONSORS.....	36
7.2 CONDITIONS FOR ACCEPTING CONTRIBUTIONS FROM DIFFERENT TYPES OF EMPLOYER SPONSORS.....	36
7.3 AGREEMENTS BETWEEN THE TRUSTEE AND THE STANDARD EMPLOYER SPONSOR.....	36
7.4 TERMINATION OF EMPLOYER SPONSORS.....	36
<b>8. THE FUND'S TRUSTEE .....</b>	<b>36</b>
8.1 APPOINTMENT, RESIGNATION, DISMISSAL AND TERMINATION OF THE TRUSTEE .....	36
8.2 GENERAL TRUSTEE MATTERS .....	39
8.3 TRUSTEE'S COVENANTS, POWERS, AUTHORITIES AND RESTRICTIONS .....	39
8.4 IN-HOUSE ASSETS AND OTHER RESTRICTED AND PROHIBITED INVESTMENTS.....	43
8.5 WHO CAN/MUST BE A TRUSTEE OR DIRECTOR .....	46
8.6 OTHER MATTERS REGARDING BOARDS OF TRUSTEES AND DIRECTORS .....	48
<b>9. ACCOUNTS, AUDIT, RECORDS AND RETURNS.....</b>	<b>48</b>

9.1	ACCOUNTING FOR VOLUNTARY CONTRIBUTIONS .....	48
9.2	TRUSTEE TO ESTABLISH MEMBER ACCUMULATION ACCOUNTS .....	48
9.3	ESTABLISHMENT AND MAINTENANCE OF ACCOUNTS FOR NON-MEMBER SPOUSES (FAMILY LAW ACT ORDERS).....	49
9.4	INVESTMENT EARNINGS MAY BE CREDITED TO AN INVESTMENT RESERVE .....	50
9.5	PENSION LIABILITIES MAY BE TRANSFERRED TO A PENSION RESERVE .....	50
9.6	MISCELLANEOUS RESERVES .....	50
9.7	TRUSTEE TO MAKE ALLOCATIONS AT LEAST ANNUALLY .....	50
9.8	TRUSTEE TO KEEP RECORDS OF TYPES OF BENEFITS.....	51
9.9	TRUSTEE TO KEEP ACCOUNTING RECORDS .....	51
9.10	PREPARATION OF ACCOUNTS .....	51
9.11	ACCOUNTS REQUIRED WHERE BENEFITS SOLELY LIFE ASSURANCE .....	51
9.12	AUDIT OF THE ACCOUNTS .....	52
9.13	PREPARATION AND LODGMENT OF RETURNS.....	52
<b>10.</b>	<b>MEETINGS OF TRUSTEES AND MEMBERS .....</b>	<b>52</b>
10.1	RULES FOR MEETINGS OF TRUSTEES OR BOARD OF DIRECTORS .....	52
10.2	RULES FOR MEETINGS OF MEMBERS .....	54
<b>11.</b>	<b>RESOLUTION OF INQUIRIES AND COMPLAINTS.....</b>	<b>55</b>
11.1	MEMBERSHIP OF EXTERNAL DISPUTE RESOLUTION BODY (OTHER THAN SELF-MANAGED SUPERANNUATION FUNDS).....	55
11.2	IN THE FIRST INSTANCE .....	55
11.3	PROCEDURES IF NO RESOLUTION IN FIRST INSTANCE .....	55
<b>12.</b>	<b>ADMINISTRATION MATTERS .....</b>	<b>55</b>
12.1	INTERPRETATION OF THE DEED .....	55
12.2	HOW TO DESIGNATE A BENEFICIARY .....	55
12.3	LIMITS ON RIGHTS OF MEMBERS .....	56
12.4	MEMBERS' RIGHTS TO INSPECT DEED .....	56
12.5	SECRECY .....	56
12.6	RECEIPTS AND PAYMENTS WITH ASSETS RATHER THAN CASH.....	56
12.7	MEMBERS TO PROVIDE CERTAIN INFORMATION AT THE TRUSTEE'S REQUEST.....	57
12.8	VARIATION OF TRUSTS OR DEED .....	57
12.9	EFFECT OF CHANGES IN RELEVANT LEGISLATION .....	57
<b>13.</b>	<b>WINDING UP THE FUND.....</b>	<b>57</b>
13.1	CONDITIONS FOR TERMINATION .....	57
13.2	STEPS FOR THE TRUSTEE TO TAKE ON WIND-UP .....	58

## RULES

### 1. INTERPRETATION

#### 1.1 DEFINITIONS

**"Accumulation Account"**, in relation to a Member of the Fund, means the account established and maintained under rule 9.2 of this Deed;

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

**"Actuary"** means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia;

**"Adopted Child"**, in relation to a person, means a person adopted by the first-mentioned person:

- (a) under the law of a State or Territory relating to the adoption of children; or
- (b) under the law of any other place relating to the adoption of children, if the validity of the adoption would be recognised under the law of any State or Territory;

**"Annuity"** includes a benefit provided by a life insurance company or a registered organisation, if the benefit is taken, under the Regulations, to be an annuity for the purposes of the Act;

**"Approved Auditor"** means a person included in a class of persons specified in the Regulations, but does not include a person in respect of whom a disqualification order is in force under Section 131 of the Act.

**"Approved Bank"** means:

- (a) a body corporate authorised under Part II of the Banking Act 1959 to carry on banking business in Australia; or
- (b) the Commonwealth Bank of Australia, the Commonwealth Savings Bank of Australia or the Commonwealth Development Bank of Australia; or
- (c) a State Bank;

**"Approved Deposit Fund"** means a fund that:

- (a) is an indefinitely continuing fund;
- (b) is maintained by an Approved Trustee solely for Approved Purposes; and
- (c) has approved rules;

**"Approved Guarantee"** means a guarantee given by an Approved Bank by or on behalf of the Commonwealth, a State or a Territory;

**"Approved Purposes"**, in relation to the Fund, means the purposes of:

- (a) receiving on deposit:
  - (i) amounts that will be taken by Section 27D of the Tax Act to be expended out of Eligible Termination Payments within the meaning of that Section; and
  - (ii) amounts paid under Part 24 of the Act; and
  - (iii) amounts paid under Section 65 of the Superannuation Guarantee (Administration) Act 1992; and
- (b) dealing with such amounts, in accordance with the rules of the Fund, in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the Fund; and
- (c) subject to any contrary requirement in the Standards from time to time applicable to

the Fund under Section 32 of the Act, paying to Beneficiaries in accordance with the covenant referred to in Section 53 of the Act, or to the legal personal representatives of Beneficiaries, amounts deposited with the Fund together with accumulated earnings on those amounts;

**"Approved Trustee"** means a Constitutional Corporation in relation to which an approval under Section 26 of the Act is in force;

**"APRA"** means the Australian Prudential Regulation Authority;

**"ASIC"** means the Australian Securities and Investments Commission;

**"Associate"** has the meaning given by Section 12 of the Act;

**"Authorised Leave"**, in relation to a Member of a Fund, means leave that is:

- (a) approved by the Member's employer; or
- (b) authorised by:
  - (i) a law of the Commonwealth, a State or a Territory; or
  - (ii) an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the Commonwealth, a State or Territory.

**"Beneficiary"**, in relation to the Fund or to another fund, scheme or trust, means a person (whether described in the governing rules as a member, depositor or otherwise) who has a beneficial interest in the Fund, or a fund, scheme or trust;

**"Capital Gains Tax Exempt Component"** has the same meaning as 'CGT exempt component' in subsection 27A(1) of the Tax Act;

**"Child"**, in relation to a person, includes an Adopted Child, a step-child or an ex-nuptial child of the person;

**"Child Account"** means a Member's Accumulation Account established under sub-rule 2.5 for a Child under the age of 18 years issued as a result of the Fund accepting Child Contributions;

**"Child Contributions"** means contributions made to a Child Account established in the Fund;

**"Civil Penalty Provision"** has the meaning given by the Act.

**"Complying Superannuation Fund"**, in relation to a Superannuation Fund, has the meaning given by Section 267(1) of the Tax Act.

**"Concerned Person"** means a person who:

- (a) is, or was within the preceding 12 months, a member of the Responsible Person to which the request is made; or
- (b) is a beneficiary of the Responsible Person to which the request is made.

**"Constitutional Corporation"** means a body corporate that is:

- (a) a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
- (b) a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution);

**"Corporate Trustee"**, in relation to the Fund, means a body corporate that is a Trustee of the Fund;

**"Corporations Law"** means the Corporations Law set out in the Corporations Act 1989, the

Corporations Act 2001, or any regulations made pursuant to those acts;

**"Court"** means any court, when exercising jurisdiction under the Act;

**"Custodian"**, in relation to the Fund, means a person (other than the Trustee of the Fund) who, under a contract with the Trustee or an Investment Manager of the Fund, performs custodial functions in relation to any of the assets of the Fund;

**"Deed"** means the Deed and Rules constituting the Fund and any amendments, modifications, additions or deletions thereto;

**"Dependant"**, in relation to a person, includes the spouse and any Child of the person;

**"Designated Beneficiaries"**, in relation to a Member of the Fund, means any Dependant or Dependents of the Member specified as a Designated Beneficiary to the Trustee in such form as the Trustee may approve from time to time and, in the absence of an approved form, in a manner otherwise acceptable to the Trustee;

**"Director"**, in relation to a body corporate, has the same meaning as in the Corporations Law;

**"Eligibility Age"**, in relation to an age pension, means:

- (a) in the case of a man, 65 years or, if another age is prescribed by the Regulations in place of 65 years, the age so prescribed; or
- (b) in the case of a woman, 60 years or, if another age is prescribed by the Regulations in place of 60 years, the age so prescribed;

**"Eligible Person"** means:-

- (a) any person who is Gainfully Employed in a Year of Income, other than an Employee in respect of whom an Employer is making or intends to make contributions to this or any other Superannuation Fund in Australia in respect of that Year of Income;
- (b) a person in respect of whom Eligible Spouse Contributions may be made in respect of a Year of Income; and
- (c) any other person, other than a Child in respect of whom a Child Account may be established, who pursuant to the Law, from time to time, is eligible to apply for membership to a Regulated Superannuation Fund;

**"Eligible Spouse Contributions"**, in relation to a Member, means contributions made by the Member's Spouse in relation to the Member where, at the time those contributions are made, the Member's Spouse is not entitled to a deduction under section 82AAC (including a deduction under that section due to the operation of section 82AADA) in relation to the contributions and:

- (a) the Fund is a Complying Superannuation Fund in relation to the Year of Income of the Fund in which the contributions are made; and
- (b) the contributions are made to obtain superannuation benefits for the Spouse or, in the event of the death of the Spouse, for Dependents of the Spouse;

**"Eligible Termination Payment"** has the meaning as in Subdivision AA of Division 2 of Part III of the Tax Act.

**"Employee"** has its natural meaning and includes:

- (a) a member of an executive body of a body corporate (whether described as Directors or otherwise);
- (b) a person working under a contract that is wholly or principally for the labour of that person;

- (c) a member of the Parliament of the Commonwealth, or of a State;
- (d) a member of the Legislative Assembly of a Territory;
- (e) a member of a local government council;
- (f) a person who is paid to provide services in connection with the performance or presentation of, or the making of any film, tape or disc of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical, or other personal skills;

**"Employer"** has its natural meaning and includes:

- (a) in relation to a member of an executive body of a body corporate (whether described as Directors or otherwise), the body corporate;
- (b) in relation to a person working under a contract that is wholly or principally for the labour of that person, the other party to the contract;
- (c) in relation to a member of the Parliament of the Commonwealth, or of a State, the Commonwealth or the State;
- (d) in relation to a member of the Legislative Assembly of a Territory, that Territory;
- (e) in relation to a member of a local government council, that local government council;
- (f) in relation to a person who is paid to provide services in connection with the performance or presentation of, or the making of any film, tape or disc of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical, or other personal skills, the person liable to make the payment to the first-mentioned person;

**"Employer Representative"**, in relation to a group of Trustees of the Fund, a policy committee of the Fund or the board of Directors of a Corporate Trustee of the Fund, means a member of the group, committee or board, as the case may be, nominated by:

- (a) the Employer or Employers of the Members of the Fund; or
- (b) an organisation representing the interests of that Employer or those Employers;

**"Employer Sponsor"** means an Employer who:

- (a) contributes to the Fund; or
- (b) would, apart from a temporary cessation of contributions contribute to the Fund; for the benefit of:
  - (i) a Member of the Fund who is an Employee of:
    - A. the Employer; or
    - B. an Associate of the Employer; or
  - (ii) the Dependants of such a Member in the event of the death of the Member;

**"EPSSS"** or **"Exempt Public Sector Superannuation Scheme"** has the meaning given by the Regulations;

**"Executive Officer"**, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned, or takes part, in the management of the body;

**"Full-time"**, in relation to being Gainfully Employed, means Gainfully Employed for at least 30 hours each week;

**"Fund"** means the Superannuation Fund created upon the execution of this Deed;



**"Gainfully Employed"** or **"Gainful Employment"** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

**"Independent Director"**, in relation to a Corporate Trustee of the Fund, means a Director of the Corporate Trustee who:

- (a) is not a Member of the Fund; and
- (b) is neither an Employer Sponsor of the Fund nor an Associate of such an Employer Sponsor; and
- (c) is neither an Employee of an Employer Sponsor of the Fund nor an Employee of an Associate of such an Employer Sponsor; and
- (d) is not, in any capacity, a representative of a trade union, or other organisation representing the interests of one or more Members of the Fund; and
- (e) is not, in any capacity, a representative of an organisation representing the interests of one or more Employer Sponsors of the Fund;

**"Independent Trustee"**, in relation to the Fund, means a Trustee of the Fund who:

- (a) is not a Member of the Fund; and
- (b) is neither an Employer Sponsor of the Fund nor an Associate of such an Employer Sponsor; and
- (c) is neither an Employee of an Employer Sponsor of the Fund nor an Employee of an Associate of such an Employer Sponsor; and
- (d) is not, in any capacity, a representative of a trade union, or other organisation representing the interests of one or more Members of the Fund; and
- (e) is not, in any capacity, a representative of an organisation representing the interests of one or more Employer Sponsors of the Fund;

**"Indexed"** or **"Indexation"** have the meanings given in the Act.

**"Individual Trustee"**, in relation to the Fund, means a natural person who is a Trustee of the Fund;

**"Insolvent Under Administration"** means a person who:

- (a) under the Bankruptcy Act 1966 or the law of an external Territory or the law of a foreign country, is a bankrupt in respect of a bankruptcy from which the person has not been discharged;
- (b) and includes:
- (c) a person any of whose property is subject to control under Section 150 or 188 of the Bankruptcy Act 1966 or a corresponding provision of the law of an external Territory or the law of a foreign country; or
- (d) a person who has, at any time during the preceding 3 years, executed a deed of assignment or a deed of arrangement under, or whose creditors have, within the preceding 3 years, accepted a composition under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or the law of a foreign country;

**"Investment"** means any mode of application of money for the purpose of gaining interest, income or profit;

**"Investment Manager"** means a person appointed by the Trustee of the Fund to invest

money of the Fund;

**"Legal Disability"** means a person:

- (a) under age 18;
- (b) who is an intellectually disabled citizen, within the meaning of the Intellectually Disabled Citizens Act 1985; or
- (c) who is suffering from a mental illness, within the meaning of the Mental Health Services Act 1974;

**"Market Value"**, in relation to an asset, means the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;
- (b) that the sale occurred after proper marketing of the asset;
- (c) that the buyer and the seller acted knowledgeably and prudentially in relation to the sale;

**"Member"** means any person who has become a member of the Fund in accordance with sub-rule 2.4(a) of this Deed and who has not ceased to be a Member, and, where the Fund is a Self Managed Superannuation Fund or in all other cases unless the Trustee declares otherwise by resolution in writing, includes a person who receives a Pension from the Fund, or who has deferred his or her entitlement to receive a benefit from the Fund;

**"Member of Staff of the Regulator"** means, as the context requires, an "APRA staff member" as defined in Section 3 of the Australian Prudential Authority Act 1998, or a "staff member" as defined in Section 5(1) of the Australian Securities and Investments Commission Act 1989, or a "taxation officer" as defined in Section 10(1) of the Act;

**"Member Representative"**, in relation to a group of Trustees of the Fund, a policy committee of the Fund or the board of Directors of a Corporate Trustee of the Fund, means a member of the group, committee or board, as the case may be, nominated by:

- (a) the Members of the Fund; or
- (b) a trade union, or other organisation, representing the interests of those Members;

**"Non-commutable Income Stream"** means a benefit that:

- (a) cannot be commuted;
- (b) is paid at least monthly;
- (c) does not have a residual capital value; and
- (d) is such that the total amount paid each month is fixed or varies only:
  - (i) for the purpose of complying with the Act and Regulations; and
  - (ii) during any period of 12 months by a rate not exceeding either:
    - A. 5% per annum; or
    - B. the rate of increase in the last Consumer Price Index (All Capital Cities) for a quarter to be published by the Australian Statistician before the end of that period of 12 months compared with the Consumer Price Index (All Capital Cities) published for the same quarter in the preceding year;

**"Non-member Spouse"**, in relation to a Superannuation Interest that is subject to a Payment Split, means the person who is the non-member spouse in relation the the interest

under Part VIII B of the Family Law Act 1975;

**"Normal Retirement Date"**, in relation to a Member of the Fund, means the earlier of the date on which a Member attains the age 65, or ceases to be Gainfully Employed for the purposes of the Act and Regulations, but, in any case, no earlier than the date on which the Member attains age 55.

**"Old-age Pensions"** shall have the same meaning as that expression is used in paragraph 51(xxiii) of the Constitution;

**"Operative Time"**, in relation to a Payment Split, has the meaning given by Part VIII B of the Family Law Act 1975;

**"Part-time"**, in relation to being Gainfully Employed, means Gainfully Employed for at least 10 hours, and less than 30 hours, each week;

**"Payment Split"**, means a payment split under Part VIII B of the Family Law Act 1975;

**"Pension"**, except in the expression "Old-age Pension", includes a benefit provided by the Fund, if the benefit is taken, under the Regulations, to be a pension for the purposes of the Act;

**"Policy Committee"**, in relation to the Fund, means a board, committee or other body that:

- (a) advises the Trustee of the Fund about such matters as are specified in the Regulations; and
- (b) is established by or under this Deed;

**"Premises"** includes a structure, building, aircraft, vehicle or vessel, any land or place (whether enclosed or built on or not) and any part of a structure, building, aircraft, vehicle or vessel, or part of any such land or place;

**"Prescribed Document"** means a document prescribed for the purposes of Section 1017C of the Corporations Act 2001;

**"Prescribed Information"** means information prescribed for the purposes of Section 1017C of the Corporations Act 2001;

**"Product Disclosure Statement"** has the meaning given by the Corporations Act 2001;

**"Public Offer Superannuation Fund"** has the meaning given in Section 18 of the Act;

**"Regulated Document"**, in relation to a Public Offer Superannuation Fund, means a document:

- (a) issued, or authorised to be issued, by the Trustee of the Fund; and
- (b) that the Trustee knows, or ought reasonably to know (having regard to the Trustee's abilities, experience, qualifications and other attributes), may influence a person's decision:
  - (i) whether to apply to have a superannuation interest in the Fund issued to a person; or
  - (ii) whether to apply to become an Employer Sponsor of the Fund;

**"Regulated Superannuation Fund"**, in relation to a Superannuation Fund means a Superannuation Fund:

- (a) which has a trustee;
- (b) in respect of which either of the following applies:
  - (i) the trustee of the fund is a Constitutional Corporation pursuant to a requirement contained in the deed or governing rules;

- (ii) the deed or governing rules provide that the sole or primary purpose of the fund is the provision of Old-age Pensions; and
- (c) the trustee or trustees of which have given to the Regulator a written notice, in the form approved by the Regulator for the purpose, signed by the trustee or each trustee:
  - (i) in the case of a trustee which is a body corporate, under its common or official seal; or
  - (ii) in the case of a natural person - by him or her,

electing that the Act is to apply to the Fund.

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

**"Regulator"** means APRA, ASIC or the Taxation Commissioner, whichever has the responsibility, under the Act or such other legislation in force from time to time, for administering the provisions to which the act, obligation, prohibition, restriction or other thing relates;

**"Relevant Person"**, in relation to the Fund, means:

- (a) if the Trustee or an Investment Manager of the Fund is or includes a natural person - that natural person;
- (b) if the Trustee or an Investment Manager of the Fund is or includes a body corporate - a responsible officer of that body corporate;
- (c) an Auditor of the Fund; or
- (d) an Actuary of the Fund;

**"Responsible Officer"**, in relation to a body corporate, means:

- (a) a Director of that body corporate;
- (b) a secretary of that body corporate; or
- (c) an Executive Officer of that body corporate;

**"Responsible Person"** means the person who, or on whose behalf, a product disclosure statement for a financial product is required to be prepared pursuant to Part 7.9 of the Corporations Act 2001, and includes the Fund;

**"RSA" or "Retirement Savings Account"** has the meaning given by the Act;

**"Self Managed Superannuation Fund"**, has the meaning given by sub-rule 1.3;

**"Service"**, in relation to a person, means Gainful Employment, as an Employee, or otherwise, either on a Full-time or Part-time basis.

**"Spouse"**, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person;

**"Standard Employer Sponsor"** means, an Employer Sponsor of the Fund who contributes, or would contribute, wholly or partly pursuant to an arrangement between the Employer Sponsor and the Trustee of the Fund;

**"Superannuation Complaints Tribunal"** means the Superannuation Complaints Tribunal established by the Superannuation (Resolution of Complaints) Act 1993;

**"Superannuation Fund"** means:

- (a) a fund that:

- (i) is an indefinitely continuing fund; and
  - (ii) is a provident, benefit, superannuation or retirement fund; or
- (b) a public sector superannuation scheme;

**"Superannuation Interest"** means a beneficial interest in the Fund;

**"Tax Act"** means, as the case may require, the Income Tax Assessment Act 1936, or the Income Tax Assessment Act 1997, as each of those enactments may be amended from time to time;

**"Taxation Commissioner"** means the Commissioner of Taxation appointed pursuant to the Taxation Administration Act 1953 or a person for the time being acting as Taxation Commissioner under that statutory enactment;

**"Temporary Incapacity"** 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 Total and Permanent Disablement;

**"Total and Permanent Disablement"** in relation to a Member who has ceased to be Gainfully Employed, means ill-health (whether physical or mental), where the trustee is reasonably satisfied 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;

**"Trustee"**, in relation to the Fund, means the first Trustee or Trustees of the Fund and any Trustee or Trustees for the time being and from time to time, whether original, additional, surviving, alternate or substituted and whether a natural person or persons, a body or bodies corporate or otherwise, or one or more classes of them severally;

**"Year of Income"**, in relation to the Fund, means the period from 1 July of a calendar year to 30 June of the following calendar year, unless any other period applicable to the Fund is, for the purposes of the Tax Act a year of income of the Fund.

## 1.2 INTERPRETATION

This Deed comprises a number of Parts, each of which contains a number of rules and, where applicable, sub-rules, paragraphs, sub-paragraphs and sub-sub-paragraphs.

In the interpretation of this Deed, unless the context requires otherwise:

- (a) the singular shall include the plural and vice versa;
- (b) words importing the masculine, the feminine or the neuter gender shall be read as importing such gender as the case may require;
- (c) references to any statutory enactments shall mean and be construed as references to the said enactments and regulations as amended, modified and re-enacted from time to time;
- (d) a requirement to give a person notice in writing shall be satisfied by posting the notice to that person's last known address;
- (e) references to writing includes any means of representing or reproducing words, figures, drawings or symbols in a visible, tangible form, in English;
- (f) references to months means calendar months;
- (g) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;

- (h) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Deed;
- (i) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (j) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it;
- (k) words and phrases not defined shall have the meaning, if any, ascribed in the Act or in other relevant legislation or statutory enactment.

### **1.3 SELF MANAGED SUPERANNUATION FUNDS**

- (a) **Meaning Of Self Managed Superannuation Fund.** Subject to the provisions of the Act and Regulations, from time to time, a **“Self Managed Superannuation Fund”** means:-

- (i) Where the Fund has more than one Member, the Fund:
  - A. has fewer than 5 Members:
    - I. if the Trustees of the Fund are individuals - each individual Trustee of the Fund is a Member of the Fund; or
    - II. if the Trustee of the Fund is a body corporate - each director of the body corporate is a Member of the Fund; and
  - B. each Member of the Fund:
    - (a) is a Trustee of the Fund; or
    - (b) if the Trustee of the Fund is a body corporate - is a director of the body corporate; and
  - C. no Member of the Fund is an Employee of another Member of the Fund, unless the Members concerned are Relatives; and
  - D. no Trustee of the Fund receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.
- (ii) Where the Fund has only one Member, the Fund:
  - A. it satisfies either of the following conditions:
    - I. the Trustee of the Fund is a body corporate of which the Member is the sole director, or a body corporate with 2 directors one of whom is the Member, and the Member is not an Employee of the other director; or
    - II. there are 2 individual Trustees of the Fund, one of whom is the Member of the Fund and the Member is not an Employee of the other Trustee; and
  - B. no Trustee of the Fund receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.
- (iii) A Fund which would satisfy either the conditions of paragraph (i) or (ii) of this sub-rule, except that:
  - A. a Member of the Fund has died and the legal personal representative of the Member is a Trustee of the Fund or a director of a body corporate that is the

Trustee of the Fund, in place of the Member, during the period:

- I. beginning when the Member of the Fund died; and
  - II. ending when death benefits commence to be payable in respect of the Member of the Fund; or
- B. the legal personal representative of a Member of the Fund is a Trustee of the Fund or a director of a body corporate that is the Trustee of the Fund, in place of the Member, during any period when:
- I. the Member of the Fund is under a legal disability; or
  - II. the legal personal representative has an enduring power of attorney in respect of the Member of the Fund; or
  - III. if a Member of the Fund is under a legal disability because of age and does not have a legal personal representative—the parent or guardian of the Member is a Trustee of the Fund in place of the Member; or
  - IV. an appointment under section 134 of the Act of an acting trustee of the Fund is in force.
- (b) **Meaning Of Employee.** Subject to the Act and Regulations from time to time, for the purposes of sub-rule 1.3, in addition to the meaning given by sub-rule 1.1, a Member of the Fund who is an “**Employee**” of an Employer Sponsor of the Fund is also taken to be an Employee of another person (the “**Other Person**”) if the Employer Sponsor is:
- (i) A Relative of the Other Person; or
  - (ii) Either of the following:
    - A. A body corporate of which the Other Person, or a Relative of the Other Person, is a director;
    - B. A body corporate related to that body corporate; or
  - (iii) The trustee of a trust of which the Other Person, or a Relative of the Other Person, is a beneficiary; or
  - (iv) A partnership, where:
    - A. The Other Person, or a Relative of the Other Person, is a partner in the partnership; or
    - B. The Other Person, or a Relative of the Other Person, is a director of a body corporate that is a partner in the partnership; or
    - C. The Other Person, or a Relative of the Other Person, is a beneficiary of a trust, if the trustee of the trust is a partner in the partnership.
- (c) **Meaning Of Relative.** Subject to the provisions of the Act and Regulations, from time to time, “Relative”, in relation to an individual, for the purpose of sub-rule 1.3(b), means:
- (i) a parent, child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the individual or of his or her spouse or former spouse; or
  - (ii) another individual having such a relationship to the individual or to his or her spouse or former spouse because of adoption or remarriage; or
  - (iii) the spouse or former spouse of the individual, or of an individual referred to in

paragraph (a) or (b).

- (d) **Compliance With Self Managed Superannuation Fund Rules.** Where the Fund is a Self Managed Superannuation Fund, it will, at all times, comply with the requirements set out in the Act and Regulations for a Self Managed Superannuation Fund.
- (e) **Funds Which Are Not Self Managed Superannuation Funds.** Where the Fund is not a Self Managed Superannuation Fund, if the Fund:-
- (i) Is a superannuation fund with less than 5 Members, which does not meet the requirements of a Self Managed Superannuation Fund, the Trustee must:-
    - A. comply with the requirements within the period allowed under the Act and Regulations; or
    - B. request that the Regulator extend the time for compliance and seek to comply with the requirements, or any alternative requirements of the Regulator, within the additional period, if any, allowed; or
    - C. appoint an Approved Trustee to the Fund, in accordance with the Act and Regulations.
  - (ii) Is a superannuation fund with more than 5 or more Members, it must comply with the provisions of the Deed and with the requirements of the Act and Regulations for a Fund with 5 or more Members.

## 2. PEOPLE WHO MAY BECOME MEMBERS

### 2.1 WHO CAN APPLY

Any person who is or has at any time been an Employee, an Eligible Person or a Child in respect of whom a Child Account may be established and any other person acceptable to the Regulator, from time to time, shall be entitled to apply to become a Member of the Fund.

### 2.2 HOW TO APPLY

- (a) **Apply Using The Approved Form.** An Employee or Eligible Person seeking to become a Member of the Fund will apply to the Trustee for membership in the approved form.

### 2.3 CATEGORIES AND SUB-PLANS

- (a) **How To Divide Members Into Categories.** The Trustee may, as and when it considers appropriate, divide the Members and beneficiaries of the Fund into different categories, for any purposes which it considers appropriate. The benefits and entitlements of each category, and the criteria for admission into each category shall be determined by the trustee in its absolute discretion, provided that the benefits and entitlements of any Members or beneficiaries affected are not reduced.
- (b) **How To Divide The Fund Into Sub-Plans.** The Trustee may, as and when it considers appropriate, divide the Fund into one or more sub-plans, for any purposes which it considers appropriate. The membership, contributions, assets, and liabilities for payment of benefits and entitlements or otherwise, in respect of each sub-plan shall be maintained discretely from the rest of the Fund. The criteria for admission into each sub-plan shall be determined by the Trustee in its absolute discretion, provided that the benefits and entitlements of any Members or beneficiaries admitted to a sub-plan are not reduced.

### 2.4 BECOMING A MEMBER

- (a) **The Trustee's Discretion.** Subject to the requirements concerning eligibility, the



Trustee shall admit Members to the Fund at its absolute and unfettered discretion.

- (b) **Applicant Agrees To Deed.** By making application for and being admitted as a Member of the Fund, the prospective Member is deemed to have agreed to be bound by the provisions of this Deed.
- (c) **Things Required In All Applications For Membership.** Any form of application approved by the Trustee for the purposes of admission of prospective Members to membership of the Fund shall contain a statement by the prospective Member confirming that they will be bound by the trust deed for the time being governing the Fund.

## 2.5 SPECIAL RULES FOR CHILD ACCOUNTS

- (a) **Entitlement to the Establishment of Child Accounts.** The Trustee is not obliged to establish a Child Account, nor to accept Child Contributions, however where the Trustee decides to admit a Member to the Fund in respect of Child Contributions, the Trustee shall have reference to the provisions of this sub-rule.
- (b) **How Applications Are to be Made For Child Accounts.** The Trustee may not accept applications for Child Accounts unless the information required to be given to an applicant under Part 3 of the Deed has been given to, and the application includes evidence that consent to the opening of the Account has been given by:
  - (i) the legal personal representative of the Child; or
  - (ii) if the Child does not have a legal personal representative, a parent of the Child or the Child's guardian,

and the application includes:

- (iii) the name and address of the legal personal representative, parent or guardian; and
- (iv) the name, address and date of birth of the Child.
- (c) **Who Can Make Child Contributions.** If the Trustee has decided to accept Child Contributions in respect of a Child, these contributions may be made by any person.
- (d) **Decisions About Child Accounts - Child Under 16 Years.** If a Child Account is issued in respect of a Child and the Child is under 16 years of age, decisions in relation to the account must be made by:
  - (i) the legal personal representative of the Child; or
  - (ii) if the Child does not have a legal personal representative, a parent of the Child or the Child's guardian.
- (e) **Decisions About Child Accounts - Child Between 16 Years and 18 Years.** If a Child Account is issued in respect of a Child and the Child is at least 16 years of age, but less than 18 years of age, the Child may make decisions in relation to the Child's Account if the Trustee has been notified that the Child will be making such decisions by:
  - (i) the legal personal representative of the Child; or
  - (ii) if the Child does not have a legal personal representative, a parent of the Child or the Child's guardian.
- (f) **When a Child Turns 18 Years.** When a Child, who has previously become a Member of the Fund because they have been issued with a Child Account, turns 18 years of age, the Account ceases to be a Child Account and becomes a normal Member's Accumulation Account and the former Child becomes a full Member of the Fund.

## **2.6 SOME EX-SPOUSES TREATED AS MEMBERS BY FAMILY COURT DIRECTION**

In addition to the provisions of this Rule, where:

- (a) a Superannuation Interest in the Fund is subject to a Payment Split; and
- (b) the Non-member Spouse in relation to the Superannuation Interest was not a Member of the Fund immediately before the Operative Time for the Payment Split,

an order given pursuant to the Family Law Act 1975 may require the Trustee to treat a Non-member Spouse as a Member of the Fund for the purposes of:-

- (c) Sub-rule 1.3, which deals with the requirements for a Fund to be a Self-Managed Superannuation Fund;
- (d) Sub-rule 8.4, which deals with In-house Assets and other restricted or prohibited investments of the Fund; and
- (e) any other provisions which the Act may, from time to time, require.

## **3. INFORMATION WHICH MEMBERS MUST BE GIVEN**

### **3.1 PRODUCT DISCLOSURE STATEMENTS**

In addition to the information required to be given by the Trustee to various parties under this rule, the Trustee must consider whether or not an obligation exists to prepare a Product Disclosure Statement and, where necessary, must comply with the provisions of Part 7.9 of the Corporations Act 2001 as to the preparation, content and giving of such a statement.

### **3.2 MEMBER INFORMATION - ALL FUNDS**

- (a) **Information to People Applying For Membership.** Where a Trustee is not required to prepare a Product Disclosure Statement or where any of the information set out below is not included in such a statement, at or before the time a new Member applies for membership of the Fund the Trustee shall give and provide to the new Member all materials and other information which are required to be given from time to time and any additional information which the Trustee may, in its absolute discretion, determine. As a minimum, the Trustee shall provide the new Member with the following:
  - (i) where the Fund is not a Self Managed Superannuation Fund:
    - A. the contact details of the fund, including the name of the Trustee and, where the Trustee is a Constitutional Corporation, the names of all of its directors and in respect of all individual Trustees or directors of the Trustee, details of how and by whom they were appointed;
    - B. all information that the Trustee reasonably believes a Member would reasonably need for the purpose of understanding the management and financial condition of the Fund or, where the new Member is to become a member of a sub-plan, of that sub-plan;
    - C. all information that the Trustee reasonably believes a Member would reasonably need for the purpose of understanding the investment performance of the Fund or, where the new Member is to become a member of a sub-plan, of that sub-plan;
    - D. in respect of financial benefits to which the new Member will or may become entitled, a statement concerning such of those benefits that the Trustee reasonably believes the new Member would reasonably need to be informed about;

- E. information concerning the circumstances in which the benefits mentioned in the preceding paragraph would become payable;
  - F. the manner of calculating the benefits referred to in paragraph C of this sub-rule;
  - G. a summary of the inquiries and complaints procedures as set out in Part 11 of this Deed;
  - H. notification of the existence and a summary of the functions of the Superannuation Complaints Tribunal;
  - I. a summary of the time at which and the manner in which fees charges, expenses and administrative or other operational costs, including the ultimate source from which payments in connection with superannuation contributions surcharges or advance instalments of surcharge will be drawn, are attributed to Members and, if they constitute fixed amounts or percentages, those amounts or percentages;
  - J. the names of investment managers appointed by the Trustee in respect of the Fund or, if the new Member is to become a member of a sub-plan, in respect of that sub-plan;
  - K. a statement as to whether or not any indemnity insurance has been taken out by the Trustee;
- (ii) in the case where the Fund is a Self Managed Superannuation Fund, all information which the Trustee reasonably believes that a new Member would reasonably require for the purpose of understanding:
- A. the main features of the Fund or, if the new Member is a member of a sub-plan, of that sub-plan;
  - B. the management and financial condition of the Fund and of the relevant sub-plan (if any);
  - C. the investment performance of the Fund or, if the new Member is a member of a sub-plan, of that sub-plan; and
  - D. the ultimate source from which payments in connection with superannuation contributions surcharges or advance instalments of surcharge will be drawn.
- (b) **Time For Providing Information To Applicants Who Are Employees.** In the case where a prospective Member is eligible for membership of the Fund by virtue of being an Employee or an Employer Sponsor of the Fund, it is sufficient if the notices, materials and other information required to be provided to prospective Members pursuant to sub-rule 3.1 are given as soon as practicable after the admission of the Member to membership of the Fund.
- (c) **Applicants Must Confirm Information Has Been Received.** In all cases where notices, material and other information is required to be provided to prospective Members or to new Members of the Fund under sub-rules 3.1 and 3.2(a)(i), the Trustee shall obtain from the prospective Member a written declaration that he or she has been given those notices, materials and other information.
- (d) **How To Provide Applicants With Information.** Where the Trustee is required to provide any information to a new Member and is also required to provide, or has, in fact, provided to the new or prospective Member the same information in another notice, material or document, the Trustee shall be deemed to have satisfied its obligations in respect of the providing that information.

- (e) **Information Which Concerned Persons and Employer Sponsors May Ask For.** Within 1 month of receiving a request from a person specified in this sub-rule, the Trustee of the Fund must give to that person, or make available for inspection at a suitable place during normal business hours by that person, information that the person requires as follows:
- (i) If the person is a Concerned Person, information for the purposes of:
    - A. understanding any benefit entitlements that the person may have, has, or used to have;
    - B. understanding the main features of the Fund or, where the Concerned Person is a member of a sub-plan, of that sub-plan;
    - C. making an informed judgment about the management and financial condition of the Fund or, where the Concerned Person is a member of a sub-plan, of that sub-plan;
    - D. making an informed judgment about the investment performance of the Fund or, where the Concerned Person is a member of a sub-plan, of that sub-plan;
    - E. understanding the particular investments of the Fund or, where the Concerned Person is a member of a sub-plan, of that sub-plan;
  - (ii) If the person is an Employer Sponsor, information for the purposes of:
    - A. understanding the kinds of benefits to which that person's Employees are entitled or will or may become entitled, and the main features of the Fund or, where that person's Employees are or are to be members of one or more sub-plans;
    - B. making an informed judgment about the management and financial condition of the Fund or, where that person's Employees are or are to be members of one or more sub-plans, of that or those sub-plans;
    - C. making an informed judgment about the investment performance of the Fund or, where that person's Employees are or are to be members of one or more sub-plans, of that or those sub-plans;
    - D. a matter related to the Superannuation Guarantee (Administration) Act 1992.
  - (iii) If the person is a Concerned Person and the Fund has 5 or more Members, in addition to the information specified in a sub-rule 3.2(e)(i), a copy of:
    - A. the governing rules of the Fund;
    - B. audited accounts of the Fund, together with (whether or not specifically requested) the auditor's report in relation to the accounts;
    - C. in the case where the Fund is a Regulated Superannuation Fund, the most recent information given to Concerned Person in accordance with sub-rule 3.3(b);
    - D. a copy of the latest actuarial report, if any, to the extent that it is relevant to the overall financial position of the Fund, or to the entitlements of the Concerned Person.
  - (iv) If the person is a Concerned Person or an Employer Sponsor:
    - A. a copy of a Prescribed Document (to the extent the responsible person has access to the document) specified in the request;
    - B. Prescribed Information (to the extent the Trustee has or has access to the

- information) specified in the request.
- (f) **Information Which Does Not Need To Be Given To Members.** Nothing in this Part shall require (or by implication authorise) the disclosure of:
- (i) internal working documents of the Fund;
  - (ii) information or documents that would disclose, or tend to disclose:
    - A. personal information of another person if, in the circumstances, the disclosure would be unreasonable; or
    - B. trade secrets or other information having a commercial value that would be reduced or destroyed by the disclosure; or
  - (iii) information or documents in relation to which the Trustee of the Fund owes to another person a duty of non-disclosure.
- (g) **Information To All People Ceasing Membership.** A Member whose membership has been terminated shall receive, within 1 month of the Trustee becoming aware of the Member ceasing to be a Member, the information required to be provided by sub-rule 3.3(a), insofar as that sub-rule requires information to be provided to the Member (called a "Report to Terminating Member") and, should a Member's membership be terminated in circumstances other than those specified in that sub-rule, the Member shall receive a Report to Members or a Report to Members - Self Managed Superannuation Fund (whichever is applicable) made from the end of the last preceding Year of Income to the date of the Member's membership being terminated. Should the information required to be provided by this sub-rule differ from that required to be provided by Subdivision 5.12 of Part 7.9 of the Corporations Regulations 2001 and such other information as the Corporations Law, or the Act and Regulations may, from time to time, require, the legislative requirements shall override the provisions of this sub-rule.

### 3.3 MEMBER INFORMATION – FUNDS WITH MORE THAN 5 MEMBERS

- (a) **Annual Information To Members.** Where the Fund has 5 or more Members at the end the of Year of Income, the Trustee shall provide, within 6 months after the end of such Year of Income (or within such further time as is allowed by the Regulator from time to time) to each person who was a Member on the last day of that Year of Income, the information required by Section 1017D of the Corporations Act 2001 and by Subdivision 5.2 of Part 7.9 of the Corporations Regulations 2001 (in particular, Regulations 7.9.19 to 7.9.21), and such other information as the Corporations Law, or the Act and Regulations may, from time to time, require.
- (b) **Information To Members on Significant Events (And What Counts As A Significant Event).** A significant event shall have occurred where:
- (i) the governing rules of the Fund are changed such that there would be an adverse effect:
    - A. on a Member's accumulated benefits;
    - B. on the benefits to which a Member may become entitled;
    - C. for the Member on the circumstances in which those benefits would become payable;
    - D. for the Member on the manner in which those benefits would be calculated; or
    - E. on the security of the Member's benefits;

- (ii) the Member's membership is transferred to a different fund;
- (iii) there is a change in the matters set out in the Product Disclosure Statement which was or should have been issued pursuant to sub-rule 3.1; or
- (iv) in any other circumstances, an event has occurred in relation to the Fund that the Trustee reasonably believes the Member would reasonably expect to be informed of,

and the Trustee of the Fund must then provide all affected Members information including contact details of the Fund, which the Trustee reasonably believes an affected Member would reasonably need:

- (v) where there is a nature or purpose to the event, to understand the nature or purpose; and
  - (vi) to make an informed judgement about the effect (generally and in respect of the Member's current and future entitlements) of the event.
- (c) **When To Give Information - Significant Events.** Where the Trustee is required to give information under sub-rule 3.3(b), the time for giving that information is:
- (i) before the expected occurrence, or as soon as practicable after the occurrence, of the significant event and, in any case, within 3 months after the occurrence of the event; or
  - (ii) at least 30 days before the expected occurrence if the event is a change in fees and charges.
- (d) **When To Give Information Where Trustee Causes Significant Event.** Notwithstanding the provisions of sub-rule 3.3(c), where the significant event constitutes either a decision of the Trustee, or the winding-up or termination of the Fund, and the Members affected would reasonably expect to be informed of the event before it occurs, the Trustee must give the information to the Member as soon as practicable after it becomes reasonable for the Trustees to expect that the significant event will happen (except that the information need not be given more than 3 months before the expected date of the event).
- (e) **Information To Give If Fund Becomes Non-Complying.** Should the Trustee of the Fund with 5 or more Members receive a notice of non-compliance issued under Section 40 of the Act, the Trustee must provide information to the Member in respect of that non-compliance which consists of:
- (i) a statement of the circumstances (including details of the non-compliance) that gave rise to the issue of the notice;
  - (ii) a statement of the effect on the Fund of the issue of the notice (including details of the effect on the Fund's taxation position);
  - (iii) details of what action the Trustee has taken, or proposes to take, to have the Fund become a complying fund; and
  - (iv) any information concerning the non-compliance that the Regulator requires to be given.

### 3.4 MEMBER INFORMATION - SELF MANAGED SUPERANNUATION FUNDS ONLY

- (a) **Annual Information To All Members.** Where the Fund is a Self Managed Superannuation Fund, the Trustee shall provide, within 6 months after the end of each

Year of Income, to each person who was a Member of the last day of that Year of Income, the following information as a minimum (a "Report to Members - Self Managed Superannuation Fund"):

- (i) the contact details of the Fund;
- (ii) the amount of the Member's withdrawal benefit at the start of each reporting period;
- (iii) the amount of the Member's withdrawal benefit at the end of the reporting period and the method by which it was calculated;
- (iv) the amount of the Member's withdrawal benefit at the end of the reporting period that must be preserved; and
- (v) the amount by which the Member's Accumulation Account has been reduced in connection with payment of the superannuation contributions surcharge and, should there be a difference between the surcharge debt and the amount of the reduction, an explanation of the discrepancy.

### **3.5 ADDITIONAL MEMBER INFORMATION - ALL FUNDS**

(a) **Annual Information To Members With Binding Beneficiary Notices In Force.** If at the time for providing the information required to be provided to the Members of the Fund in accordance with sub-rules 3.3(a) or 3.4(a) there is in force a Binding Beneficiary Notice (referred to in this sub-rule as the "Notice") made by the Member pursuant to sub-rule 5.2(a), the information provided must be accompanied by a statement calling the Member's attention to:

- (i) the person, persons or class, or classes, of persons mentioned in the Notice;
- (ii) the fact that, in accordance with the Notice, and presuming the Notice remains in effect, the Trustee will pay a benefit in respect of the Member, on or after the death of the Member, to the person, persons or class, or classes, of persons mentioned in the Notice if:
  - A. the person, or each person, mentioned in the Notice is the legal personal representative or a dependant of the Member; and
  - B. the proportions of the benefit to be paid to that person or persons is readily ascertainable;
- (iii) the Member's statement about the proportion of the benefit to be paid to each person, mentioned in the notice, or how such proportion is to be determined;
- (iv) the fact that the Member may confirm, amend, or revoke the Notice; and
- (v) the date when the Notice ceases to have effect,

and the Trustee must give to the Member a document which the Member may use to confirm, amend or revoke the Notice.

### **3.6 GIVING INFORMATION IN RESPECT OF CHILD ACCOUNTS**

A reference in this Part to giving information to a Member or to a Concerned Person shall be read, where the Member is a child who has had a Child Account opened on their behalf pursuant to Part 2.5, as a reference to the giving of information to the person who has opened the account on behalf of the child.

### **3.7 GIVING INFORMATION PURSUANT TO FAMILY LAW ACT ORDERS (AND COST OF THAT INFORMATION)**

(a) **What Information Is To Be Given.** If a Member's Superannuation Interest becomes

subject to a Payment Split, or other action or restriction pursuant to an order given under the Family Law Act 1975, the Trustee shall be required to give the information prescribed by the Act and Regulations and the Corporations Law to the Non-member Spouse and to the Member.

- (b) **Cost of Information Given.** Where the Trustee is obliged to give the information required under Sub-rule 3.7(a) to the Non-member Spouse, the Trustee may levy reasonable charges against the Non-member Spouse's Superannuation Interest in respect of the provision of such information, including the cost of obtaining professional advice in relation to the requirements under this Sub-rule.

### **3.8 EXCEPTIONS TO THIS PART**

- (a) **Members To Whom This Part Does Not Apply.** The Trustee of the Fund need not give a Report to Members or a Report to Members- Self Managed Superannuation Fund to a Member who:
- (i) in relation to any period is a life pensioner of the Fund;
  - (ii) is a pensioner of the Fund and has requested that the Report to Members or Report to Members - Self Managed Superannuation Fund not to be provided; or
  - (iii) has had their membership terminated prior to the issue of the Report to Members or Report to Members - Self Managed Superannuation Fund and has received or will receive from the Trustee a Report to Terminated Member.

## **4. CONTRIBUTIONS TO THE FUND**

### **4.1 WHO MAY MAKE AND RECEIVE CONTRIBUTIONS**

Upon becoming a Regulated Superannuation Fund, subject to Part 7 of the Regulations, the Fund may accept contributions that are made by or in respect of a Member who is:-

- (a) under age 65 only if:
- (i) the contributions are Mandated Employer Contributions;
  - (ii) the contributions are not Mandated Employer Contributions and the Member:
    - A. has, at any time in the period of 2 years immediately preceding the date of acceptance, engaged in Full-time or Part-time Gainful Employment;
    - B. ceased Full-time or Part-time Gainful Employment because of ill-health (whether physical or mental) that, at the date of acceptance, prevents the Member from engaging in employment of the kind that the Member was engaged in at the onset of the ill-health; or
    - C. is on Authorised Leave from his or her employer, and:
      - I. the leave is for the purposes of raising children of whom the Member is a parent, or for whom he or she has assumed responsibility of a parent; and
      - II. he or she has been on that leave of less than 7 years consecutively; and
      - III. he or she has a statutory or contractual right to resume employment at the end of the leave; and
      - IV. either:
        - (a) he or she was a member of the Fund immediately before going on leave; or



- (b) the Fund is a fund of which the employer is a Standard Employer-Sponsor; or
- (iii) the contributions are Eligible Spouse Contributions;
- (b) at least age 65 and less than age 75 - only if:
  - (i) the contributions are Mandated Employer contributions; or
  - (ii) the Member is employed on a part-time or full-time basis;
- (c) age 75 years or more, only if the contributions are Mandated Employer Contributions;
- (d) a Child in respect of whom a Child Account has been established in the Fund and where the contributions in respect of that Child are made:
  - (i) in respect of the Child by, or on behalf of, an Employer of the Child;
  - (ii) by a Child in respect of himself or herself; or
  - (iii) by or in respect of a person who is entitled to a first child tax offset under Subdivision 61-1 of the *Income Tax Assessment Act 1997*, within 1 year after the person was notified by the Commissioner that the person is entitled to the first child tax offset,

and the Child Contributions made in respect of that Child do not total more than \$3,000 in each period of 3 years beginning on the date that the first Child Contribution is made in respect of the Child and, additionally, the Trustee may accept contributions by or in respect of a Member if the Trustee is reasonably satisfied that the contributions are in respect of a period during which, under this sub-rule, the Fund may accept the contributions by or in respect of that Member, even though the contributions are actually made after that period, and, apart from this sub-rule, the Trustee may at its absolute discretion accept contributions in other circumstances acceptable to the Regulator.

## **5. MATTERS RELATING TO BENEFITS AND ENTITLEMENTS**

### **5.1 WHAT BENEFITS AND ENTITLEMENTS A MEMBER MAY RECEIVE**

- (a) **Benefits If A Member Retires At The Normal Time.** A Member who retires from Service at his or her Normal Retirement Date shall be entitled to receive a Normal Retirement Benefit.
- (b) **Benefits If A Member Retires After The Normal Time.** A Member who retires from Service after his or her Normal Retirement Date shall be entitled to receive a Postponed Retirement Benefit.
- (c) **Benefits If A Member Becomes Totally And Permanently Disabled.** A Member who retires from Service because of Total and Permanent Disablement shall be entitled to receive a Total and Permanent Disablement Benefit.
- (d) **Benefits Payable If A Member Dies.** Upon the death of:
  - (i) a Member, a Death Benefit shall become payable and shall be paid in accordance with sub-rule 5.2(e); or
  - (ii) a former Member who is in receipt of a pension from the Fund, a Death Benefit reduced by an amount determined by the Trustee as representing benefits or entitlements previously paid or applied in respect of the Member or that Member's Dependents, shall become payable and shall be paid in accordance with sub-rule 5.2(e).
- (e) **Benefits Payable If A Member Is Totally And Temporarily Disabled.** Upon the Total and Temporary Disablement of a Member, the Member will be entitled to receive

a Total and Temporary Disablement Benefit.

- (f) **Pension Benefit May Continue To Spouse If Member Dies.** If a Member dies while in receipt of a Pension from the Fund, the Member's Spouse may elect to receive a Spouse's Pension and the amount of that Pension shall be limited to an amount not exceeding the amount calculated in accordance with the Act and Regulations. A person shall, unless the Trustee otherwise determines, be entitled to a Spouse's Pension only if the person married the Member before the Member retired from Service.
- (g) **Benefits Payable In Other Cases.** A Member who ceases to be a Member of the Fund, otherwise than by the death of that Member, and who is not entitled to a:
- (i) Normal Retirement Benefit;
  - (ii) Postponed Retirement Benefit; or
  - (iii) Total and Permanent Disablement Benefit,
- shall be entitled to:
- (iv) receive the amount standing to the credit of his or her Member's Accumulation Account, subject to the restrictions imposed by sub-rules 5.6(b) to 5.7(b); or
  - (v) have the amount standing to the credit of his or her Member's Accumulation Account transferred to another Regulated Superannuation Fund, Approved Deposit Fund, EPSSS or RSA, in accordance with Part 6 of this Deed.
- (h) **Benefits Payable With Consent of The Regulator (Early Release).** Upon a Member's circumstances being such as to constitute grounds for early release of some or all of that Member's benefits and entitlements, in accordance with the exercise of the Regulator's discretion, the Trustee shall, upon receiving a written request from the Member and advice from the Regulator, release such benefits and entitlements to the Member, in such amounts and as directed by the Regulator, net of any taxes or reasonable charges applicable to the release of those benefits and entitlements, from time to time.
- (i) **Effect of Family Law Act on Benefit Entitlements.** Where, pursuant to an order under the Family Law Act 1975, a Superannuation Interest has been created in the Fund in favour of a Non-member Spouse, a reference in this Sub-rule 5.1 to a Member shall be read as including a Non-member Spouse.

## 5.2 HOW TO CALCULATE BENEFITS AND ENTITLEMENTS AND WHO MAY RECEIVE THEM

- (a) **Calculating A Normal Retirement Benefit.** A member's "Normal Retirement Benefit" shall be a Pension, the amount of such Pension being determined by the Trustee, having regard to:
- (i) the balance of the Member's Accumulation Account at the Member's Normal Retirement Date;
  - (ii) the period over which and the terms upon which the Pension is to be payable;
  - (iii) the expected investment earnings of the Fund which are anticipated to be attributable to the reducing balance of the Member's Accumulation Account, from time to time;
  - (iv) the costs of investing assets of the Fund, operation and, where applicable, termination of the Fund and any administrative, insurance and taxation costs relating to the operation and termination of the Fund, which are anticipated to be attributable to the reducing balance of the Member's Accumulation Account, from

time to time;

- (v) the cost of any annuities, Pensions and income streams purchased or to be purchased by the Trustee in respect of the Member or the Member's Beneficiaries;
- (vi) any restrictions placed upon the payment of annuities, Pensions and income streams by the Act and Regulations, from time to time; and
- (vii) any total or partial commutation in accordance with sub-rule 5.5,

and shall:

- A. be calculated so as to produce a nil balance in the Member's Accumulation Account after the terms under which the Pension is to be paid are met; and
- B. in any event, cease to be payable when the balance in the Member's Accumulation Account is nil.

(b) **Calculating A Postponed Retirement Benefit.** A Member's "**Postponed Retirement Benefit**" shall be a Pension, the amount of such Pension being determined by the Trustee, having regard to:

- (i) the balance of the Member's Accumulation Account at the date on which the Member retires;
- (ii) the period over which and the terms on which the Pension is to be payable;
- (iii) the expected investment earnings of the Fund projected to be attributable to the reducing balance of the Member's Accumulation Account, from time to time;
- (iv) the costs of investing, operating and, where applicable, terminating the Fund and any administrative, insurance and taxation costs relating to the operation and termination of the Fund, projected to be attributable to the reducing balance of the Member's Accumulation Account, from time to time;
- (v) the cost of any annuities, Pensions and income streams purchased or to be purchased by the Trustee in respect of the Member of the Member's beneficiaries;
- (vi) any restrictions placed upon the payment of annuities, Pensions and income streams by the Act and Regulations, from time to time; and
- (vii) any total or partial commutation of the Pension, in accordance with sub-rule 5.5 and shall:
  - A. be calculated so as to produce a nil balance in the Member's Accumulation Account after the terms under which the Pension is to be paid are met; and
  - B. in any event, cease to be payable when the balance in the Member's Accumulation Account is nil.

(c) **Calculating A Total And Permanent Disablement Benefit.** A Member's "**Total and Permanent Disablement Benefit**" shall be an amount equal to the amount standing to the credit of the Member's Accumulation Account, net of any taxes or reasonable charges determined by the Trustee to be applicable to the payment of such benefits, from time to time.

(d) **Calculating A Total And Temporary Disablement.** A Member's "**Total and Temporary Disablement Benefit**" shall, subject to any additional or lesser requirements or restrictions imposed by the Regulator on the payment of total and temporary disablement or similar benefits, from time to time, be a Non-commutable Income Stream cashed from the Fund for:

- (i) the purpose of continuing (in whole or in part) the gain or reward which the Member was receiving before the Temporary Incapacity; and
- (ii) a period not exceeding the period the incapacity from Employment of the kind engaged in immediately before the Temporary Incapacity,

but in any event shall not exceed an amount equal to the total of the Member's Accumulation Account in respect of the Member, net of any taxes or reasonable charges determined by the Trustee to be applicable to the payment of such benefits, from time to time.

(e) **Calculating A Death Benefit.** A Member's "**Death Benefit**" shall be an amount equal to:

- (i) the amount standing to the credit of the Member's Accumulation Account at the time of payment, net of any taxes or reasonable charges determined by the Trustee to be applicable to the payment of such benefits, from time to time,

less:

- (ii) the amount necessary to meet any obligations with respect to a Spouse's Pension or other payments required to be met from the Member's benefits and entitlements,

and shall be payable in such amounts and to such of the following persons as the Trustee reasonably considers to be appropriate in the circumstances:-

- A. The Member's Designated Beneficiary.
- B. The Member's Present Spouse.
- C. One or more of the Member's past Spouses.
- D. One or more of the Member's natural or adopted children, grandchildren or great-grandchildren.
- E. the Member's personal legal representative.

### **5.3 MAKING BINDING DEATH BENEFIT NOMINATIONS**

(a) **Binding Beneficiary Nomination For Death Benefits.** Despite anything contained in the Deed, the Trustee may, subject to the Trustee complying with Sub-rule 5.2(b), permit a Member of the Fund, by Binding Beneficiary Notice given to the Trustee in accordance with Sub-rule 5.2(c), to require the Trustee to provide any benefits or entitlements of the Member on or after the Member's death to a person or persons mentioned in the notice, being the legal personal representative or a dependant or dependants of the Member. A Binding Beneficiary Notice, unless sooner revoked by the Member, shall cease to have effect at the end of the period of 3 years after the day it was first signed, or last confirmed or amended, by the Member.

(b) **Information To Member - Binding Beneficiary Nomination.** Prior to accepting a Binding Beneficiary Notice from a Member of the Fund, the Trustee must give to the Member information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the right of that Member to require the Trustee to provide the benefits and, in particular, the Trustee shall inform the Member in writing that:-

- (i) the Trustee cannot alter the Member's properly made request, regardless of the consequences or circumstances which might arise subsequent to the Member making the request and so long as that request remains current;
- (ii) careful consideration should be given to the wording of the Member's request to ensure that the Member's intentions are clearly and legally binding and

executable;

- (iii) the Member is advised to seek further information and professional advice as to the manner and consequences of the request prior to its being made,

and, in addition to the information referred to above, the trustee shall give to the Member all other information required by the Act and Regulations from time to time.

- (c) **How To Make A Binding Beneficiary Nomination.** For the purposes of Sub-rules 5.2(a) and 5.2(b) and subject to the provisions of the Act and Regulations from time to time, the notice to be given by the Member to the Trustee, called a "**Binding Beneficiary Notice**":-

- (i) must be in writing;
- (ii) must be signed by, and dated, by the Member in the presence of 2 witnesses, being persons:-
- A. each of whom has turned 18; and
- B. neither of whom is a person mentioned in the notice;
- (iii) must contain a declaration signed, and dated, by the witnesses stating that the notice was signed by the Member in their presence.

#### 5.4 DEALING WITH LIFE INSURANCE

- (a) **Insurance Relating To Benefits And Entitlements.** The Trustee may effect one or more policies of insurance or assurance in respect of one or more Members of the Fund in relation to the provision of Total and Temporary Disablement Benefits, Total and Permanent Disablement Benefits or Death Benefits, which, in the event of payment being made under the policy, shall be agreed between the Trustee and the Member or Members concerned to be applied:

- (i) towards satisfaction of the Fund's liability to pay any one or more of those benefits - called "**Benefit Payment Insurance**"; or
- (ii) in addition to the Fund's liability to pay any one or more of those benefits - called "**Additional Insurance**",

and where there is reasonable uncertainty as to whether or not any insurance or assurance effected in accordance with this sub-rule is Benefit Payment Insurance or Additional Insurance, it shall be presumed that the insurance or assurance is Benefit Payment Insurance.

- (b) **Treatment Of Additional Insurance.** Where the Trustee has effected Additional Insurance in respect of a Member of the Fund and an amount becomes payable to the Trustee under the Additional Insurance policy in respect of that Member, the Trustee shall add the amount payable, net of any reasonable fees, charges and taxes, to the Member's Accumulation Account prior to calculating the amount of benefits or entitlements payable from that Account in accordance with this Deed.
- (c) **Treatment Of Benefit Payment Insurance.** Where the Trustee has effected Benefit Payment Insurance in respect of a Member of the Fund and an amount becomes payable to the Trustee under the Benefit Payment Insurance policy in respect of that Member, the Trustee shall first apply the amount towards satisfaction of the Fund's liability to pay benefits or entitlements to or in respect of that Member in accordance with this Deed and the Trustee shall reduce the Member's Accumulation Account by the amount so applied. The amount, if any, remaining, plus the balance of that Member's Accumulation Account shall be dealt with by the Trustee in its absolute and unfettered discretion in one or more of the following ways:-
- (i) Where an amount or amounts have previously been deducted from the

Member's Accumulation Account in relation to any premiums paid or payable in respect of the said insurance up to and including the date of payment under the policy, by paying or applying an amount or amounts to or on behalf of the Member up to the amount of the said premiums, in addition to the Fund's liability to pay benefits or entitlements in accordance with this Deed.

- (ii) By paying an amount or amounts to or on behalf of the Member in addition to the amount or amounts set out in paragraph (a) above and in addition to the Fund's liability to pay benefits or entitlements in accordance with this Deed.
- (iii) By reallocating an amount or amounts to a reserve to be dealt with as the Trustee sees fit.

## **5.5 HOW TO PAY A PENSION AND HOW TO PAY A LUMP SUM BENEFIT**

- (a) **How To Pay A Pension.** Where a Pension is payable from the Fund, the Trustee may determine the terms and conditions under which that Pension is paid, subject to the requirement that the Pension must comply with the minimum terms and conditions relating to that type of Pension, as specified by the Act and Regulations, from time to time. A copy of the terms and conditions of the Pension is to be given to the Member or beneficiary of that Pension at or before the commencement of that Pension.
- (b) **How To Pay A Lump Sum Benefit (Or Change A Pension To A Lump Sum).** In the case of any amounts to be paid, payable or having commenced to be paid from the Fund as a Pension, annuity or income stream, other than a Total and Temporary Disablement Benefit, the person or persons entitled to receive those amounts may, unless the terms and conditions relating to that type of Pension do not allow it, by written request addressed to the Trustee, have the amount paid as, or where a Pension has commenced commute the said amounts, or any part or parts thereof, to a lump sum, equivalent to the balance remaining in the Member's Accumulation Account in relation to which the said amount or amounts are being paid, less any taxes and other reasonable charges which the Trustee considers are reasonably applicable to the payment or commutation of the said amounts and to the payment of a lump sum, from time to time. Where the terms of the Pension enable partial commutation, or commutation in certain circumstances, or during a certain time only, the Pension may not be commuted other than in accordance with those terms.
- (c) **How To Reduce A Pension When Changing To A Lump Sum Benefit.** Where a person commutes part or all of a Pension, annuity or income stream in accordance with sub-rule 5.5(b):
  - (i) if the commutation represents a partial commutation only, the Trustee shall discount the Pension, annuity or income stream to which the person is entitled, to the extent which the Trustee considers reasonably necessary to take account of the commutation, and the Fund and the Trustee shall then be discharged and relieved of any further liability in respect of the amount of the discount; or
  - (ii) if the commutation represents a commutation of the whole of the Pension, annuity or income stream, the Fund and the Trustee shall then be discharged and relieved of any further liability in respect of that Pension, annuity or income stream.
- (d) **How To Pay Benefits To Minors And Certain Other People.** Where any beneficiary of the Fund is under a Legal Disability, the Trustee shall be entitled to:
  - (i) pay or apply the benefits or entitlements of the beneficiary; or
  - (ii) pay the benefits and entitlements of the beneficiary to another person for the sole purpose of that person paying or applying the benefits or entitlements of the

beneficiary,

for or on behalf of the beneficiary or the beneficiary's Dependants and such payment shall constitute a discharge of the Fund and the Trustee with respect to such payment, and the Trustee shall not be concerned nor liable to see to the application of those benefits or entitlements after the time of their payment.

- (e) **Effect of Family Law Act on Pensions and Lump Sums.** Where, pursuant to an order under the Family Law Act 1975, a Superannuation Interest has been created in the Fund in favour of a Non-member Spouse, a reference in this Sub-rule 5.5 to a Member shall be read as including a Non-member Spouse.
- (f) **Paying Pensions to Non-member Spouse Optional.** Where a Superannuation Interest has been created in the Fund in favour of a Non-member Spouse and the order directing the creation of that interest does not require the Non-member Spouse's benefits or entitlements to be paid as a Pension, the Trustee is not required to pay those benefits or entitlements as a Pension.

## 5.6 LEGAL RESTRICTIONS ON WHEN AND HOW BENEFITS AND ENTITLEMENTS MAY BE PAID (PRESERVATION)

Each sub-rule contained in this rule shall be read and construed as being subject to any amendments, modifications, re-enactments, or substitutions of the Act and Regulations, from time to time, which:

- (i) reduce the restrictions placed upon payments of benefits and entitlements in accordance with this rule; or
  - (ii) increase the restrictions placed upon payments of benefits and entitlements in accordance with this rule.
- (b) **Supplementary Definitions For This Part.** For the purposes of sub-rules 5.6(b) to 5.6(h), the following words (which are presented in logical, not alphabetical, order) have the following meanings:

**"Commencement Day"** means, in relation to the Fund, after the Fund becomes a Regulated Superannuation Fund, the day on which the Trustee makes an election to become a Regulated Superannuation Fund;

**"Member-financed Benefit"** means, in relation to a Member of a Regulated Superannuation Fund as at any time, benefits equal to the sum of:

- (i) the amount of the Member Contributions (if any) made to the Fund in relation to the Member to that time;
- (ii) the amount of the Member-financed Benefits (if any) paid into the Fund in relation to the Member to that time; and
- (iii) the amount of the investment earnings on those contributions to that time,

less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (i) to (iii) to that time;

**"Mandated Employer Contributions"** means, in relation to a Member of a Regulated Superannuation Fund, contributions by, or on behalf of, an Employer that are equal to the sum of:

- (i) the contributions made by, or on behalf of, the Employer to the Fund in relation to the Member, that:
  - A. reduce the Employer's potential liability for the superannuation guarantee

charge imposed by Section 5 of the Superannuation Guarantee Charge Act 1992; or

- B. are payments of shortfall components under the Superannuation Guarantee (Administration) Act 1992; and
- (ii) the contributions (other than contributions of the kind specified in paragraph (i)) made by, or on behalf of, the Employer to the Fund in relation to the Member in or towards satisfaction of the Employer's obligation to make contributions for the Member, being an obligation under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority;

**"Mandated Employer-financed benefit"** means, in relation to a Member of a Regulated Superannuation Fund at any time, benefits equal to the sum of:

- (i) the amount of the Mandated Employer Contributions made to the Fund in relation to the Member to that time;
- (ii) the amount of the mandated employer-financed benefits (if any) paid into the Fund in relation to the Member to that time; and
- (iii) the amount of the investment earnings on those contributions to that time, less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (a) to (c) to that time;

**"Minimum Benefit"** means, in relation to a Member of the Fund, an amount that is the sum of:

- (i) the Member-financed Benefits of the Member; and
- (ii) the Mandated Employer-financed Benefits of the Member;

**"Conditions of Release"** means, in relation to a Member, the satisfaction of a condition of release specified in Column 2 of Schedule 1 to the Regulations;

**"Cashing Restriction"** means, in relation to a Condition of Release, the corresponding cashing restriction specified in Column 3 of Schedule 1 to the Regulations;

**"Unrestricted Non-preserved Contributions"** means, in relation to a Member of the Fund, the amounts (other than an amount that is a Capital Gains Tax Exempt Component) that:

- (i) will be taken by section 27D of the Tax Act to have been expended out of eligible termination payments within the meaning of that section; and
- (ii) have been received from sources other than:
  - A. superannuation funds;
  - B. approved deposit funds within the meaning of:
    - I. the Act; or
    - II. the Occupational Superannuation Standards Act 1987 as in force immediately before the commencement of section 5 of the Occupational Superannuation Standards Amendment Act 1993; or
    - III. deferred annuities within the meaning of:
      - (a) this Part; or
      - (b) the Occupational Superannuation Standards Regulations; or



- (c) Retirement Savings Accounts established in accordance with the Retirement Savings Accounts Act 1997.

**"Unrestricted Non-preserved Benefits"** means, in relation to a Member of the Fund, the sum of:

- (i) the total of the Member's Unrestricted Non-preserved Contributions;
- (ii) the amount of the Member's Preserved Benefits and Restricted Non-preserved Benefits which, at a given time:
  - A. have met a Condition of Release; and
  - B. have a nil Cashing Restriction;
- (iii) the amount of unrestricted non-preserved benefits received by the Fund in respect of the Member on or after the Commencement Day; and
- (iv) the investment earnings on the amounts specified in paragraphs (i) and (iii) for the period before 1 July 1999,

less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (i) to (iv) to that time;

**"Restricted Non-preserved Benefits"** means, in relation to a Member of the Fund, the total of the amount of any restricted non-preserved benefits that are received from another Regulated Superannuation Fund, a Retirement Savings Account established under the Retirement Savings Account Act 1997, or an exempt public sector superannuation scheme;

**"Preserved Benefits"** means, in relation to a Member of the Fund, the total of all benefits and entitlements standing to the credit of the Member's Accumulation Account, less the sum of:

- (i) Restricted Non-preserved Benefits; and
- (ii) Unrestricted Non-preserved Benefits.

- (c) **Restrictions On How Benefits May Be Paid.** Subject to the provisions of Division 6.2 of the Regulations, from time to time, a Member's benefits and entitlements in the Fund:

- (i) may only be paid by:
  - A. being cashed in accordance with this Part; or
  - B. being rolled over or transferred in accordance with this Deed;
- (ii) must not be paid except when, and to the extent, that the Fund is required or permitted to pay them in accordance with this Deed; and
- (iii) must be paid when, and to the extent that, the Fund is required in accordance with this Deed.

- (d) **When And How Unrestricted Non-Preserved Benefits May Be Paid.** Subject to the provisions of this Deed and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, the whole or a part of a Member's Unrestricted Non-preserved Benefits may be cashed at any time in any one or any combination of the following forms:-

- (i) A lump sum or 2 or more lump sums.
- (ii) A Pension or 2 or more Pensions.

- (iii) The purchase of an annuity or 2 or more annuities.
- (e) **When And How Restricted Non-Preserved Benefits May Be Paid.** Subject to the provisions of this Deed, the whole or a part of a Member's Restricted Non-preserved Benefits may only be cashed on or after the satisfaction by the Member of a Condition of Release and must not exceed the Restricted Non-preserved Benefits of the Member that had accrued at the time when the Member satisfied the Condition of Release, less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the Restricted Non-preserved Benefits to that time. The form in which Restricted Non-preserved Benefits may be cashed is:
- (i) the form, if any, specified in the Cashing Restriction for Restricted Non-preserved Benefits in relation to the relevant Condition of Release; or
  - (ii) if the Cashing Restriction is "Nil" and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, in any one or any combination of the following forms:-
    - A. A lump sum or 2 or more lump sums.
    - B. A Pension or 2 or more Pensions.
    - C. The purchase of an annuity or 2 or more annuities.
- (f) **When And How Preserved Benefits May Be Paid.** Subject to the provisions of this Deed, the whole or any part of a Member's Preserved Benefits may only be cashed on or after the satisfaction by the Member of a Condition of Release and must not exceed the sum of:
- (i) the Preserved Benefits of the Member that had accrued at the time when the Member satisfied the Condition of Release; and
  - (ii) any investment earnings accruing on those benefits from that time, less the direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, applicable to the amounts mentioned in paragraphs (i) and (ii) to that time. The form in which Preserved Benefits may be cashed is:
  - (iii) the form, if any, specified in the Cashing Restriction for Preserved Benefits in relation to the relevant Condition of Release; or
  - (iv) if the Cashing Restriction is "Nil" and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, in any one or any combination of the following forms:-
    - A. A lump sum or 2 or more lump sums.
    - B. A Pension or 2 or more Pensions.
    - C. The purchase of an annuity or 2 or more annuities.
- (g) **When It Is Compulsory To Pay Benefits.** A Member's benefits and entitlements in a Regulated Superannuation Fund must be cashed as soon as practicable after the occurrence of any of the following events:-
- (i) The Member:
    - A. has attained age 65, but not age 75; and
    - B. is not Gainfully Employed on either a Full-time or Part-time basis.
  - (ii) The Member:

- A. has attained age 75; and
  - B. is not Gainfully Employed on a Full-time basis.
- (iii) The Member dies.
- (h) **How To Pay Compulsory Benefits.** Subject to the provisions of this Deed and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, the form in which benefits and entitlements may be cashed under sub-rule 5.6(g) is any one or any combination of the following forms:-
- (i) A single lump sum.
  - (ii) One or more Pensions.
  - (iii) The purchase of one or more annuities.
- (i) **Effect of Family Law Act on Benefit Entitlements.** Where, pursuant to an order under the Family Law Act 1975, a Superannuation Interest has been created in the Fund in favour of a Non-member Spouse, a reference in this Sub-rule 5.6 to a Member shall be read as including a Non-member Spouse.
- (j) **Paying Pensions to Non-member Spouse Optional.** Where a Superannuation Interest has been created in the Fund in favour of a Non-member Spouse and the order directing the creation of that interest does not require the Non-member Spouse's benefits or entitlements to be paid as a Pension, the Trustee is not required to pay those benefits or entitlements as a Pension.

## 5.7 OTHER MATTERS AFFECTING PAYMENT OF BENEFITS

- (a) **When Benefits Are Suspended Or Terminated.** Subject to the provisions of this Deed and to the provisions of the Act and Regulations, from time to time, the benefits payable out of the Fund to or in respect of a beneficiary shall be suspended or terminated if the beneficiary otherwise entitled thereto:
- (i) owing to Legal Disability or for any reason requires care, treatment or control for his or her own good or in the public interest and is, in the opinion of the Trustee, for the time being incapable of managing himself or herself, or his or her affairs;
  - (ii) in the opinion of the Trustee, commits any fraud or is guilty of dishonesty, defalcation, willfully causing significant damage to the property of his or her Employer or other serious misconduct;
  - (iii) commits an act of bankruptcy leading to that person being declared bankrupt; or
  - (iv) either by his own act, operation of law, order of any court or tribunal, or otherwise has had such benefits or entitlements vested in or made payable to any other person, company, government or other public authority.
- (b) **How Suspended Benefits Are Dealt With.** Where a beneficiary's benefits and entitlements have been suspended or terminated in accordance with sub-rule 5.7(a) and those benefits and entitlements or any part thereof have become at a time that, or do become payable whilst, the circumstances of the suspension or termination remain current, the Trustee may, in its absolute and unfettered discretion:
- (i) pay or apply the benefits or entitlements of the beneficiary; or
  - (ii) pay the benefits and entitlements of the beneficiary to another person for the sole purpose of that person paying or applying the benefits or entitlements of the beneficiary,
- for or on behalf of the beneficiary or the beneficiary's Dependants and such payment

shall constitute a discharge of the Fund and the Trustee, with respect to such payment, and the Trustee shall not being concerned nor liable to see to the application of those benefits or entitlements after the time of their payment.

- (c) **Some Benefits May Be Re-Allocated On Request.** Subject to the provisions of the Act and Regulations, from time to time, a Member may, by written notice signed by the Member and witnessed by an independent witness, request the Trustee to re-allocate part or all of the Member's benefits and entitlements to one or more other Members or to one or more reserves. The Trustee will give due consideration to any such request and will make its decision having regard to the wishes of the Member so making the request, and to the best interests of the Members of the Fund as a whole.

## 6. ROLLOVERS AND TRANSFERS OF BENEFITS

### 6.1 ROLLOVERS AND TRANSFERS INTO THE FUND

- (a) **Members May Request Rollover And Transfer of Benefits Into The Fund.** A Member may request that the Trustee accept a rollover or transfer into the Fund of any existing superannuation benefits or entitlements, including any eligible termination payments being held with another superannuation fund, Approved Deposit Fund, EPSSS, RSA or pooled superannuation trust and including any eligible termination payments from other sources which are able to be rolled over or transferred into the Fund under the Relevant Law.

- (b) **Trustee To Decide If Rollover/Transfer Should Be Accepted.** The Trustee shall consider a request made in accordance with the last preceding sub-rule and shall:

- (i) agree to accept a rollover or transfer into the Fund of the entire amount of the benefits or entitlements; or
- (ii) agree to accept a rollover or transfer into the Fund of part of the benefits or entitlements; or
- (iii) refuse to accept a rollover or transfer into the Fund of any part of the benefits or entitlements,

and in reaching such a decision, the Trustee shall have cause to consider the limits on benefits payable to the requesting Member, the balance of the Member's Accumulation Account before and after the proposed rollover or transfer in, the terms under which the benefits or entitlements the subject of the request are currently being held and any other matters which the Trustee considers relevant.

- (c) **Some Rollovers And Transfers Cannot Be Accepted.** The Trustee shall not agree to accept a rollover or transfer into the Fund of any benefits or entitlements which would cause or would be likely to cause the Fund to breach a Civil Penalty Provision or to commit an offence under the Act.
- (d) **Some Rollovers And Transfers May Be Accepted With Conditions.** Where the Trustee accepts a rollover or transfer into the Fund of benefits or entitlements under this rule, such benefits or entitlements shall be maintained and shall only be payable:
- (i) in accordance with the terms of the trust deed or governing rules, if any, of the transferring entity at the date of rollover or transfer, as advised to the Trustee; or
  - (ii) on such other terms as are approved by the Regulator.
- (e) **Most Benefits Rolled Over Or Transferred Into The Fund Retain The Same Status.** Except as otherwise provided by the Act and Regulations, from time to time, for the purpose of determining the status of benefits or entitlements under rule 5.6, any benefits or entitlements rolled over or transferred into the Fund shall retain the same character in the Fund as they had in the superannuation fund, Approved Deposit Fund,

EPSSS, RSA or pooled superannuation trust from which they were transferred.

## **6.2 ROLLOVERS AND TRANSFERS OUT OF THE FUND**

- (a) **Who May Request Rollovers And Transfers Out Of The Fund.** A request that any benefits or entitlements accrued in the Member's Accumulation Account be rolled over or transferred to another superannuation fund, Approved Deposit Fund, EPSSS, RSA or other entity acceptable to the Regulator for the purpose of receiving such benefits or entitlements may be received and considered by the Trustee from:
- (i) the Member;
  - (ii) in the case of a Member's death or Total and Permanent Disablement, the person or persons otherwise entitled to receive a benefit or entitlement; or
  - (iii) the Member's personal legal representative.
- (b) **Trustee Must Sometimes Notify Others Of Request.** Upon receiving a request to rollover or transfer benefits out of the Fund from a person mentioned in the last preceding rule, the Trustee shall give notice in writing of the proposed rollover or transfer to all other interested persons who at that time are entitled to make such a request.
- (c) **Trustee Not To Rollover Or Transfer Benefits Out In The Face Of Objections.** Should an interested person notified in accordance with the preceding sub-rule make objection and give reasons for the objection to the Trustee concerning the requested rollover or transfer out of the Fund, the Trustee shall not rollover or transfer those benefits and shall notify in writing the person or persons requesting the rollover or transfer of the objection and of the identity of the objector.
- (d) **Conditions To Be Met For Rollovers And Transfers Out.** Where no person is required to be notified of a request for rollover or transfer, no objection has been received from an interested person within 7 days of giving notice, or the Trustee is satisfied that any objection received has been removed, the Trustee shall rollover or transfer the benefits or entitlements requested.
- (e) **Non-member Spouse Benefits May Be Rolled Over or Transferred Out.** Where a Superannuation Interest has been created for a Non-member Spouse pursuant to an order of the Family Law Act 1975 and that order does not restrict the transfer or rollover of the Non-member Spouse's Superannuation Interest to another superannuation fund, Approved Deposit Fund, EPSSS or RSA, that interest may be rolled over or transferred out of the Fund under the following circumstances:-
- (i) Upon the request of the Non-member Spouse – subject to the request complying with the terms of this Sub-rule 6.2.
  - (ii) In all other cases, should the Trustee, in its absolute and unfettered discretion, decide that the Non-member Spouse's Superannuation Interest is to be rolled over or transferred out of the Fund - upon the Trustee complying with all notice and other requirements, conditions of orders in respect of that interest and after all reasonable costs of rolling over or transferring that interest out of the Fund have been deducted from the Non-member Spouse's Superannuation Interest.

## **6.3 TRUSTEE'S DUTIES UPON ROLLOVERS, TRANSFERS AND PAYMENTS OF BENEFITS OUT OF THE FUND**

- (a) **Duty To Ensure Transferee Entity Is Regulated.** Where a Member of the Fund requests that the Trustee rollover or transfer benefits or entitlements accrued in respect of that Member to another superannuation entity, the Trustee, before allowing any such rollover or transfer, shall be concerned to ensure that the entity accepting the

benefits or entitlements is:

- (i) a Regulated Superannuation Fund;
- (ii) an Approved Deposit Fund;
- (iii) a RSA; or
- (iv) a EPSSS,

and in this regard, it shall be sufficient for the Trustee to receive in writing from the entity accepting the benefits or entitlements confirmation in writing of its status.

- (b) **Duty To Ensure Proper Deductions Are Made.** Where a rollover, transfer or payment of benefits or entitlements out of the Fund is to be made to the Member, at the Member's direction, to the Member's dependants, or otherwise the Trustee shall be concerned to ensure that calculations of all taxes, expenses, accrued and actual liabilities required to be deducted from the Member's Accumulation Account, and all income, gains and accretions required to be credited to the Member's Accumulation Account have been made prior to determining the amount of benefits or entitlements available for rollover, transfer or payment to the Member.

- (c) **Information Which The Trustee Must Provide Upon Rollover, Transfer Or Payment Of Benefits Out Of The Fund.** At the time of:

- (i) paying benefits or entitlements at the direction of a Member;
- (ii) rolling over or transferring benefits or entitlements to another entity in accordance with this rule; or
- (iii) any combination of the preceding paragraphs,

the Trustee shall provide to the entity, if any, accepting the benefits or entitlements and to the Member who has requested the rollover or transfer information in the prescribed form in relation to the total benefits or entitlements transferred and the amount of the benefits which consist of:

- (iv) concessional components;
- (v) undeducted contributions;
- (vi) in the case of an immediate annuity eligible termination payment, the non-qualifying component;
- (vii) the excessive component;
- (viii) the pre-July 83 component;
- (ix) the post-June 83 component;
- (x) a CGT exempt component; and
- (xi) the post-June 1994 invalidity component,

as those terms are defined and described in Subdivision AA of Division 2 of Part III of the Tax Act, or any further matters or information required or prescribed to be disclosed by the Tax Act, from time to time.

- (d) **Additional Information Where Rollover, Transfer Or Payment Of Benefits Ends Member's Membership.** In addition to the information contained in sub-rule 6.3(c), at the time of:

- (i) paying benefits or entitlements at the direction of a Member;
- (ii) rolling over or transferring benefits or entitlements to another entity in accordance with this rule; or
- (iii) any combination of the preceding paragraphs,

the Trustee shall also provide:

- (iv) to the Member, where the Member's membership is terminated by or at the time of payment, information concerning:
  - A. the method of determining the Member's benefits or entitlements; and
  - B. if the Member ceases to be a Member otherwise than because of that Member's death:
    - I. the amount of or the method of calculating the amount of the Member's Death Benefit on the day before termination of membership; and
    - II. advice that the Member's Death Benefit may change as a result of that person ceasing to be a Member; and
    - III. the name and address of the person or body that holds or held the death cover of the Member with whom contact can be made during office hours to obtain more information about the Death Benefit; or
  - C. if the Member ceases to be a Member otherwise than because of that Member's death, disablement or retirement from the workforce, those matters in respect of which information is normally required to be provided to a Member annually, as described in Part 3 of this Deed and calculated from the beginning of the Fund's Year of Income to the time of payment of the benefits or entitlements; and
  - D. the Member's reasonable benefits multiple; and
- (v) to the entity, if any, to which the Member's benefits and entitlements or any part thereof are to be rolled over or transferred, information concerning:
  - A. the amount of the benefits and entitlements which are preserved; and
  - B. the amount of the benefits which are vested.
- (e) **Who To Provide Information To If A Member Has Died.** Where payment of a Member's benefits or entitlements and the termination of a Member's membership occurs as a result of the death of a Member, the requirements in this rule for notices and information to be provided to a Member shall be read as requirements for notices and information to be provided to the Member's personal legal representative.
- (f) **People To Be Notified If A Member Has Died.** Where the death of a Member results in benefits or entitlements being payable otherwise than to the Member's legal personal representative, whether because of the exercise of a discretion by the Trustee to pay benefits or entitlements to a Member's Designated Beneficiaries or otherwise, the Trustee shall notify each person to whom any benefits or entitlements are payable of the reasons why benefits or entitlements are payable to them, the amounts payable and the terms upon which they are to be paid.
- (g) **What To Do With Death Benefits If Beneficiaries Cannot Be Located.** Should the Trustee, after making all reasonable attempts, be unable to locate a person to whom any benefits or entitlements are payable in accordance with the preceding sub-rule, the Trustee shall have the discretion to pay that part of the benefits or entitlements of the Member otherwise payable to the person not able to be located, to the Member's legal personal representative, or to any one or more of the remaining Designated Beneficiaries, if any, in any proportions as the Trustee in its absolute discretion sees fit and neither the first-mentioned person, nor any other person shall have any claim or cause of action against the Trustee or the Fund as a result of the Trustee exercising its discretion in accordance with this sub-rule.

- (h) **Information To The Regulator Upon Payment, Rollover Or Transfer Of Benefits.** Upon paying all or any benefits or entitlements out of the Fund, where the entire amount of those benefits or entitlements are not rolled over or transferred into a Regulated Superannuation Fund, Approved Deposit Fund, EPSSS or RSA, the Trustee shall, within the prescribed time, provide to the Taxation Commissioner, in the form prescribed by the regulations to the Tax Act, information required by the Taxation Commissioner in relation to those benefits or entitlements and in relation to the recipients thereof.

## **7. EMPLOYERS WHO MAY CONTRIBUTE TO THE FUND**

### **7.1 DIFFERENCE BETWEEN STANDARD EMPLOYER SPONSORS AND OTHER EMPLOYER SPONSORS**

An Employer from whom the Trustee may accept contributions in accordance with rule 7.2 shall be categorised as:

- (a) a Standard Employer Sponsor (who is also an Employer Sponsor for the purposes of this Deed); or
- (b) an Employer Sponsor,

depending upon the circumstances of the arrangements, if any, between the Employer and the Trustee.

### **7.2 CONDITIONS FOR ACCEPTING CONTRIBUTIONS FROM DIFFERENT TYPES OF EMPLOYER SPONSORS**

The Trustee may accept contributions from an Employer Sponsor or past Employer Sponsor in respect of a Member who is or was an Employee of that Employer Sponsor and, where the Employer Sponsor is a Standard Employer Sponsor, only after the Standard Employer Sponsor has agreed to the terms and conditions of this Deed in writing.

### **7.3 AGREEMENTS BETWEEN THE TRUSTEE AND THE STANDARD EMPLOYER SPONSOR**

Where the Employer Sponsor is a Standard Employer Sponsor, subject to the Employer Sponsor accepting the terms of this Deed in accordance with sub-rule 7.2, the Trustee and the Employer Sponsor may agree upon such further terms and conditions as they shall decide, and each acceptance and agreement shall contain and shall not derogate from an implied term that the Employer Sponsor shall pay all contributions payable in respect of Members to the Fund within 1 month from the date they are due. Where an Employer Sponsor is to be admitted as a Standard Employer Sponsor, it must be specifically identified as being a Standard Employer Sponsor in any agreement between the Trustee and the Standard Employer Sponsor.

### **7.4 TERMINATION OF EMPLOYER SPONSORS**

Upon the Trustee becoming aware that an Employer Sponsor of one or more Members has ceased to be an Employer Sponsor of any Member, the Trustee shall take such steps as are necessary to record that Employer Sponsor's termination as an Employer Sponsor of the Fund.

## **8. THE FUND'S TRUSTEE**

### **8.1 APPOINTMENT, RESIGNATION, DISMISSAL AND TERMINATION OF THE TRUSTEE**

- (a) **Appointment Of Trustee – Fund With A Standard Employer Sponsor.** Subject to the representation rules contained in sub-rules 8.5(a) to 8.6(c) and to the other



provisions of this Deed, where the Fund is a Standard Employer Sponsored Fund, the Standard Employer Sponsor shall have the sole right and entitlement to appoint one or more Trustees and, where the Trustee is a Constitutional Corporation, to appoint one or more Directors of the Trustee, to the Fund, but no Trustee or Director shall be appointed in pursuance of this sub-rule in the face a resolution objecting to the proposed appointee, passed by more than 75% of the Members of the Fund, in a meeting called for the purpose of voting on such a resolution.

(b) **Appointment Of Trustee - All Other Funds.** Subject to the representation rules contained in sub-rules 8.5(a) to 8.6(c) and to the other provisions of this Deed, where the Fund is not a Standard Employer Sponsored Fund, the Members, by resolution passed by more than 50% of them present in a meeting called, for the purpose of appointing a Trustee and, where the Trustee is a Constitutional Corporation, for the purpose of appointing one or more Directors of the Trustee, shall have the sole right and entitlement to appoint one or more Trustees or Directors of Trustees to the Fund.

(c) **Acceptance Of Trusteeship Or Directorship To Be In Writing.** Any form of acceptance of Trusteeship and Directorship, in the case where the Fund is a Constitutional Corporation, shall be in writing and shall contain a statement in the following form:-

"I.....accept the appointment as Trustee/Director of the Trustee, of..... Superannuation Fund and in doing so, accept the terms, conditions, duties and obligations specified in the trust deed for the time being governing the Fund."

(d) **Unwritten Acceptance Of Trusteeship Not Invalid.** The acceptance and appointment to office of a Trustee and, where the Trustee is a Constitutional Corporation, of a Director of the Trustee, shall not be invalidated because it is not in writing, but any acceptance of appointment to office in a form other than that specified by sub-rule 8.1(c) shall be deemed to be on the same terms and conditions as set out in that sub-rule.

(e) **How The Trustee May Resign.** The Trustee of the Fund may resign from the office of Trustee at any time, by giving 1 month's notice in writing:

(i) in the case where the Fund is a Standard Employer Sponsored Fund, to the Standard Employer Sponsor; or

(ii) in the case where the Fund is not a Standard Employer Sponsored Fund, to the Members of the Fund,

and the outgoing Trustee shall execute all transfers and assignments, and do all other things reasonably necessary to facilitate the passing of the Fund and the duties and responsibilities of Trustee to the incoming Trustee.

(f) **How The Trustee May Be Dismissed.** The Trustee of the Fund may be dismissed from the office of Trustee at any time, by notice in writing given:

(i) in the case where the Fund is a Standard Employer Sponsored Fund, by the Standard Employer Sponsor; or

(ii) in the case where the Fund is not a Standard Employer Sponsored Fund, by any one of the Members, after a resolution to dismiss the Trustee, passed by more than 75% of the Members of the Fund, in a meeting called for the purpose of voting on such a resolution,

and the outgoing Trustee shall execute all transfers and assignments, and do all other things reasonably necessary to facilitate the passing of the Fund and the duties and responsibilities of Trustee to the incoming Trustee.

(g) **Removal Of The Trustee In Other Circumstances.** A Trustee of the Fund shall

cease to be a Trustee of the Fund (and the outgoing Trustee shall execute all transfers and assignments, and do all other things reasonably necessary to facilitate the passing of the Fund and the duties and responsibilities of Trustee to the incoming Trustee, if any) upon the happening of any one or more of the following events:-

- (i) Subject to paragraph (h) of this Sub-rule, where a Trustee of the Fund is an individual, that individual:
    - A. dies;
    - B. becomes incapable of dealing with his or her own affairs;
    - C. is convicted of an offence of dishonesty or otherwise becomes disqualified from office by operation of law;
    - D. commits an act of bankruptcy or threatens to call any meeting with a view to entering into a composition or agreement with creditors;
    - E. makes an assignment to or enters into a composition with his or her creditors, or seeks the protection of any statute for relief from creditors;
    - F. has any floating security given in favour of any security holder which becomes fixed in respect of the whole or part of the person's assets; or
    - G. is a person whose appointment as Trustee is referable to the representation rules or Independent Trustee requirements, and that person's circumstances become such that they no longer meet the representative or independence criteria of those rules or requirements, as the case may be.
  - (ii) Where a Trustee of the Fund is a corporation, that corporation:
    - A. has an application made, resolution passed or an order made for the liquidation or winding up of the corporation (except for the purposes of amalgamation or reconstruction);
    - B. is deemed to be insolvent, or any act or event constituting grounds for winding up by a court occurs;
    - C. is struck off, de-registered or otherwise ceases to exist or to have full capacity;
    - D. has a receiver or official manager appointed to the whole or any part of its undertaking;
    - E. becomes disqualified from office by operation of law; or
    - F. where the corporation's appointment as Trustee is referable to the Independent Trustee requirements, that corporation's circumstances become such that it no longer meet the independence criteria of those requirements.
- (h) **Trusteeship Where a Member Dies or Becomes Legally Disabled - Self-Managed Superannuation Funds Only**

Where the Fund is a Self-Managed Superannuation Fund and an individual Trustee of the Fund who is also a Member of the Fund either dies or becomes incapable of dealing with his or her own affairs, the person (if any) who is the Member's legal personal representative shall become a Trustee of the Fund during the period:

- (i) where the Member dies – beginning at the date of the Member's death and ending when death benefits commence to become payable in respect of the Member; or
- (ii) where the Member becomes incapable of dealing with his or her own affairs –

beginning at the date when the Member's legal personal representative assumes control of the Member's affairs and ending either when that person ceases to act in the capacity of legal personal representative for the Member, or in other circumstances allowed or required by this Deed or the Relevant Law.

## 8.2 GENERAL TRUSTEE MATTERS

- (a) **Directors Of A Corporate Trustee Are To Be Bound By This Deed.** Where a Constitutional Corporation is, or is to be, appointed Trustee of the Fund, each of its Directors and officers shall, by the corporation's appointment as Trustee, or, where a person is not a Director or an officer of the corporation at the time of its appointment as Trustee, at the time at which that person becomes a Director or officer, be deemed, as a condition of that appointment, to agree to be bound by the provisions of this Deed.
- (b) **The Trustee May Be A Member.** Where a Trustee is an individual, that person is not, by their status as a Member, excluded or otherwise restricted from being appointed as Trustee and may vote as a Member in all circumstances in which Members are entitled to vote, including resolutions for the appointment or dismissal of that person as Trustee.
- (c) **An Employer Sponsor May Be The Trustee.** Subject to the provisions of this Deed, an Employer Sponsor of the Fund may be appointed and, where applicable, may appoint itself as Trustee of the Fund.

## 8.3 TRUSTEE'S COVENANTS, POWERS, AUTHORITIES AND RESTRICTIONS

- (a) **Trustee's Covenants.** By accepting the appointment to the office of Trustee, the Trustee covenants as follows:
- (i) to act honestly in all matter concerning the Fund;
  - (ii) to exercise, in relation to all matters affecting the Fund, the same degree of diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
  - (iii) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;
  - (iv) to keep the money and other assets of the Fund separate from any money and assets respectively:
    - A. that are held by the Trustee personally; or
    - B. that are money or assets, as the case may be, of a Standard Employer Sponsor, or an Associate of a Standard Employer Sponsor of the Fund;
  - (v) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
  - (vi) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
    - A. the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
    - B. the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;

- C. the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - D. the ability of the Fund to discharge its existing and prospective liabilities;
  - (vii) if there are any reserves of the Fund, to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
  - (viii) to allow a beneficiary access to any prescribed information or any prescribed documents.
- (b) **Trustee May Engage Or Authorise Others To Act For It.** A covenant referred to in sub-rule 8.3(a) does not prevent the Trustee from engaging or authorising persons to do acts or things on behalf of the Trustee.
- (c) **Matters To Be Considered In Formulating Investment Strategy.** In formulating 1 or more investment strategies for the purposes of sub-rule 8.3(a), the Trustee shall ensure that each strategy formulated has regard to all circumstances of the Fund or sub-plan (as the case may be), including in particular:
- (i) the risk involved in making, holding and realising, and the likely return from, the investments, having regard to the Fund's or sub-plan's (as the case may be) objectives and expected cash flow requirements;
  - (ii) the composition of the investments as a whole, including the extent to which they are diverse or involve exposure of the Fund or sub-plan (as the case may be) to risks from inadequate diversification;
  - (iii) the liquidity of the investments, having regard to the Fund's or sub-plan's (as the case may be) expected cashflow requirements; and
  - (iv) the ability of the Fund or sub-plan (as the case may be) to discharge its existing and prospective liabilities.
- (d) **Beneficiaries May Direct Trustee On Investment Strategy.** An investment strategy is taken to be in accordance with sub-rule 8.3(a) even if it provides for a specified beneficiary or a specified class of beneficiaries to give directions to the Trustee, where:
- (i) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund; and
  - (ii) the directions are given in circumstances where:
    - A. the Trustee gives to the beneficiary, or to each member of a class of beneficiaries, a choice of 2 or more investment strategies from which the beneficiary, or class of beneficiaries, may choose a strategy or combination of strategies;
    - B. the beneficiary, or each member of the class of beneficiaries, is given:
      - I. the investment objectives of each of the strategies mentioned in sub-paragraph (i); and
      - II. all information the Trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of those strategies;
    - C. the beneficiary, or each member of the class of beneficiaries, is fully informed of the range of directions that can be given and the circumstances in which they can be changed;

- D. the Trustee clearly identifies, when the beneficiary, or each member of the class of beneficiaries, is given a choice of 2 or more investment strategies, the strategy the Trustee will adopt if no direction is given;
  - E. the direction from the beneficiary, or each member of the class of beneficiaries, to the Trustee is given after compliance with the above sub-paragraphs and the direction specifies:
    - I. which of the strategies or which combination of strategies referred to in sub-paragraph (i) is to be followed in relation to investments of the beneficiary's, or class of beneficiaries', interest in the Fund; and
    - II. any other matters applicable to the choice offered in accordance with the above sub- paragraphs; and
  - F. it conforms with any other matters prescribed, from time to time, by the Regulations for the purposes of Sub-section 54(4) of the Act.
- (e) **Powers Of Trustee (What The Trustee May Do).** Subject to the provisions of the Act and Regulations, but without prejudice to the powers vested in the Trustee and, where the Trustee is a Constitutional Corporation, in the Directors and officers of the Trustee, by this Deed, the Trustee shall have the powers of a natural person and, without limiting the generality thereof, shall have the power:
- (i) to purchase, acquire, hold, rent, lease, license, sell or otherwise dispose of investments in any property, rights or privileges which the Trustee is authorised by law to acquire or dispose of, on such terms and conditions as it shall think fit;
  - (ii) to appoint and at its discretion, to remove or suspend, the Auditor, or any accountants, custodians, managers, secretaries, clerks, agents and other servants or consultants, and may appoint any of them for permanent, temporary or special services and may determine the scope and extent of their powers and duties, on such terms as to their remuneration, salaries or emoluments as the Trustee, from time to time, thinks fit;
  - (iii) to institute, conduct, defend, compound, compromise or abandon any legal or other proceedings by or against the Fund or its officers or otherwise, concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands made by or against the Fund;
  - (iv) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands against the Fund and to pay expenses as it considers properly relate to the Fund, including any income tax liability which may attach to income of the Fund or contributions made to it;
  - (v) to open accounts and to retain on current or deposit account at any bank or financial institution, such moneys as it considers proper and to make regulations for the operation of those accounts, including the signing and endorsement of cheques in connection with them;
  - (vi) to borrow moneys, incur liabilities or pledge the assets of the Fund as security, but only to the extent allowed or allowable in accordance with the Act and Regulations, from time to time;
  - (vii) to purchase annuities, Pensions and income streams, and to effect policies of insurance or assurance on Members for the purpose of providing benefits pursuant to this Deed;
  - (viii) to revalue the assets of the Fund, from time to time, at its discretion and to

allocate the revaluation amount to the Members and beneficiaries of the Fund in a manner consistent with the terms of this Deed;

- (ix) to determine who shall be entitled to sign, on the Fund's behalf, receipts, acceptances, endorsements, releases, contracts and documents;
  - (x) to pay benefits and entitlements out of the Fund to persons entitled to them;
  - (xi) to decide, as and when required, who are Dependants for the purposes of this Deed;
  - (xii) in the case of mental or physical ill-health or incapacity of a person entitled, to pay or apply such benefits or entitlements, or any part of them, at its discretion to or for the benefit of that person and the Dependants of that person or any of them as the case may be without being responsible for seeing to the application of payments under this Deed or payments made in the exercise of any other powers vested in the Trustee by this Deed;
  - (xiii) to enter into any negotiations and contracts, to rescind and vary all contracts, to execute any deeds, and to do all or any things in the name of and on behalf of the Fund as it may consider expedient for or in relation to any of the matters referred to in this Deed or otherwise for the purposes of the Fund;
  - (xiv) to enter into an agreement with a Member or an Employer Sponsor varying the benefits or entitlements, or the contributions otherwise payable in respect of those Members, in any manner which it thinks fit, subject to the terms of this Deed and to the consent of affected Members and Employer Sponsors; and
  - (xv) to establish and maintain reserves for any reasonable purpose, for the benefit of all members of the Fund or, where there are one or more sub-plans and a reserve relates to a sub-plan, for the benefit of all the Members of that sub-plan.
- (f) **How The Trustee May Delegate Powers And Discretions.** Notwithstanding any other provision of this Deed, the Trustee may delegate any of its powers or discretions to one or more other persons, provided that:
- (i) the consent of the Trustee is required to the exercise of that discretion; or
  - (ii) if the Fund has an Employer Sponsor:
    - A. the exercise of the discretion relates to the contributions that an Employer Sponsor will, after the discretion is exercised, be required or permitted to pay to the Fund;
    - B. the exercise of the discretion relates solely to a decision to terminate the Fund; or
    - C. the circumstances in which the discretion would be exercised:
      - I. would not result in the Fund becoming technically insolvent; and
      - II. would not adversely affect the Members' rights to accrued benefits or entitlements in the Fund,
- and the discretion relates solely to one or more of:
- (iii) non-Mandated Employer Contributions;
  - (iv) benefits or entitlements related to non- Mandated Employer Contributions;
  - (v) the admission of new Members to the Fund;
  - (vi) the category of Members into which a new Member or existing Member is to be placed;

- (vii) allowing a person to become an Employer Sponsor of the Fund; or
- (viii) the appointment of a Trustee to the Fund, where the Fund does not have a Trustee.

(g) **Cases Where The Fund Indemnifies Trustees And Directors And Officers.** A Trustee and, where the Trustee is a Constitutional Corporation, a Director or officer of the Trustee, or any Custodian or Investment Manager, shall have a right of indemnity from the assets of the Fund in respect of any expenses incurred or liabilities resulting from any activities carried out by that person in the exercise or purported exercise of the powers, duties, responsibilities and discretions imposed or authorised by the trusts constituted by this Deed and shall not be liable for any loss or damage arising from any:

- (i) act or omission in the exercise of its powers, duties, responsibilities or discretions;
- (ii) contract entered into or document executed on the Fund's behalf by the Trustee and, where the Trustee is a Constitutional Corporation, by a Director or officer of the Trustee, or any Custodian or Investment Manager;
- (iii) error in judgment by the Trustee and, where the Trustee is a Constitutional Corporation, by a Director or officer of the Trustee, or any Custodian or Investment Manager;
- (iv) neglect, default, intent to defraud, wilful misconduct, defalcation, or act or omission of any manager, agent, professional adviser, banker, stockbroker, or other person not bound or deemed to be a bound by this Deed;
- (v) breach of duty or of trust, or any neglect or otherwise, unless such loss or damage arises from or as a result of:
- (vi) a liability for a breach of trust if the Trustee:
  - A. fails to act honestly in a matter concerning the Fund; or
  - B. intentionally or recklessly fails to exercise in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (vii) a liability for a monetary penalty under a civil penalty order.

#### 8.4 IN-HOUSE ASSETS AND OTHER RESTRICTED AND PROHIBITED INVESTMENTS

(a) **Supplementary Definitions For This Rule.** For the purposes of Rule 8.4, the following words have the following meanings:-

**"Business Real Property"**, in relation to an Entity, means:

- (i) any freehold or leasehold interest of the Entity in real property;
- (ii) any interest of the Entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or
- (iii) any other class of real property prescribed as Business Real Property by the Regulations, from time to time,

where the property is used wholly and exclusively in one or more businesses (whether carried on by the Entity or not), but does not include any interest held in the capacity of beneficiary of a trust estate. For the purposes of this definition, real property used in one or more Primary Production Businesses does not cease to be used wholly and

exclusively in that business or those businesses only because:

- (iv) an area of the real property, not exceeding 2 hectares, contains a dwelling used primarily for domestic or private purposes; and
- (v) the area is also used primarily for domestic or private purposes,

provided that the use for domestic or private purposes is not the predominant use of the real property.

**"Control"**, for the purpose of this Part has the meaning given in Section 70E of the Act.

**"Entity"** means an individual, a body corporate, a partnership, or a trust.

**"Excluded Instalment Trust"**, of a superannuation fund, means a trust:

- (i) that arises because the Trustee of investment manager of the Fund makes an investment under which a listed security is held in trust until the purchase price of that security is paid in full;
- (ii) where the underlying security, and property derived from the underlying security is fully paid; and
- (iii) where an investment in the underlying security held in trust would not be an In-house Asset of the Fund.

**"In-house Asset"**, in relation to an asset of the Fund, has the meaning given in Part 8 of the Act and, unless otherwise stated in Part 8, includes a Loan to, or an investment in a Related Party of the Fund, an investment in a Related Trust of the Fund, or an asset of the Fund subject to a lease or Lease Arrangement between the Trustee of the Fund and a Related Party of the Fund.

**"Lease Arrangement"** means any agreement, arrangement or understanding in the nature of a lease (other than a lease) between the Trustee of the Fund and another person, under which the other person is to use, or control the use of, property owned by the Fund, whether or not the agreement, arrangement or understanding is enforceable, or intended to be enforceable, by legal proceedings.

**"Loan"** includes the provision of credit or any other form of financial accommodation, whether or not enforceable, or intended to be enforceable, by legal proceedings.

**"Part 8 Associate"**, in relation to an Entity, where the Entity is:

- (i) an individual, has the meaning given by Section 70B of the Act;
- (ii) a company, has the meaning given by Section 70C of the Act; or
- (iii) a partnership, has the meaning given by Section 70D of the Act.

**"Primary Production Business"** has the meaning given by the *Income Tax Assessment Act 1997*, as amended.

**"Related Party"** of the Fund, means any of the following:-

- (i) A Member of the Fund.
- (ii) A Standard Employer Sponsor of the Fund.
- (iii) A Part 8 Associate of a person or entity referred to in paragraph (i) or (ii).
- (iv) A Non-member Spouse with a Superannuation Interest in the Fund.

**"Related Trust"**, of the Fund, means a trust that a Member or a Standard Employer Sponsor of the Fund Controls, other than an Excluded Instalment Trust.



**"Relative"**, in relation to an individual, means the following:-

(i) A parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that individual or of his or her spouse.

(ii) The spouse of that individual or of any other individual specified in paragraph (i).

(b) **Restricted And Prohibited Investments.** The Trustee or, where the Trustee is a Constitutional Corporation, its Directors and officers, and any Custodian of assets or Investment Manager appointed by the Trustee may, subject to paragraph (c) and to the provisions of this Deed and the Act and Regulations, from time to time, invest in such corporeal or incorporeal property, rights, currency, or other things of value as it shall think fit, but shall not make any investments and, to the extent necessary, shall divest the Fund of investments, in order that:

(i) the Market Value of In-house Assets of the Fund do not exceed, at the end of a Year of Income of the Fund after the 1998-1999 Year of Income, but before the 2000-2001 Year of Income, 10% of the Market Value of the total assets of the Fund;

(ii) the Market Value of In-house Assets of the Fund do not exceed, at the end of any Year of Income after the 1999-2000 Year of Income of the Fund, 5% of the Market Value of the total assets of the Fund;

(iii) where the Fund was:

A. established on or after 16 December 1985; or

B. established before 16 December 1985 and the Trustee of the Fund:

I. did not have, at that time, express power to lend money to Members;  
or

II. had not lent money to Members at that time,

the assets do not include loans to a Member of the Fund or to a relative of a Member of the Fund;

(iv) there is not an acquisition of assets by, or a use of resources of, the Fund after 1 July 1994 constituting the provision of financial assistance to a Member of the Fund or to a relative of a Member of the Fund; and

(v) there is not an intentional acquisition of assets by the Fund after 1 July 1994 from a Related Party of the Fund, except where:

A. the asset is a listed security acquired at Market Value;

B. the Fund is a Self Managed Superannuation Fund and the asset acquired is Business Real Property of the Related Party acquired at Market Value;

C. the Trustee of the Fund acquired the asset under a merger between Regulated Superannuation Funds;

D. the asset is a life insurance policy issued by a life insurance company (other than a policy acquired from a Member of the Fund or from a Relative of a Member);

E. the asset is an asset of a kind which the Regulator has determined may be acquired by the Fund; or

F. the asset is an In-house Asset of the Fund, acquired at Market Value, which would not result in the level of In-house Assets of the Fund exceeding the level permitted by Sub-rule 8.4(c).

- (c) **Post 28 January 1993 In-House Assets May Not Exceed 5%.** Notwithstanding any other provisions of this Deed, and subject to the Act and Regulations, from time to time, where, at any time after 28 January 1993 the Market Value of In-house Assets of the Fund exceed 5% of the Market Value of the total assets of the Fund, the Trustee shall not make any further investment in In-house Assets, which would result in the Market Value of In-house Assets exceeding 5% of the Market Value of the total assets of the Fund.
- (d) **Some Assets Acquired Before 23 December 1999 Are Not In-house Assets.** Subject to the Act and Regulations, from time to time, where an asset of the Fund was acquired, or a lease or Lease Arrangement was entered into, under a contract entered into prior to 23 December 1999, and that asset would otherwise be an In-house Asset of the Fund pursuant to the provisions of the Act and Regulations or Sub-rule 8.4, but that asset was not an In-house Asset at the time it was acquired by the Fund, the asset is not an In-house Asset of the Fund.
- (e) **Some Assets Acquired After 22 December 1999 May Not Be In-house Assets.** Subject to the Act and Regulations, from time to time, where an asset of the Fund was acquired under a contract entered into after 22 December 1999, and that asset would otherwise be an In-house Asset of the Fund pursuant to the provisions of the Act and Regulations or Sub-rule 8.4, that asset is not an In-house Asset in the following circumstances:-
- (i) Where the asset was acquired after 22 December 1999, but before 1 July 2001, and the asset would not have been an In-house Asset of the Fund if acquired prior to 23 December 1999, that asset is not an In-house Asset of the Fund until 1 July 2001.
- (ii) Where the asset was acquired after 22 December 1999, but before 1 July 2001, and was still owned by the Fund on 1 July 2001, or where the asset was acquired after 30 June 2001, the asset will not be an In-house Asset if:
- A. the asset was acquired prior to 1 July 2009, and was acquired solely by way of reinvestment of dividends or trust distributions in an Entity, in respect of an investment in that Entity made by the Fund prior to 23 December 1999; or
- B. the asset:
- I. was acquired prior to 1 July 2009;
- II. the Fund is a Fund with less than 5 Members;
- III. the asset is an investment in a company or unit trust in which the Fund held a pre-23 December 1999 investment;
- IV. the company or unit trust had a Loan principal amount outstanding on 23 December 1999; and
- V. the sum of the investments in the asset or assets in the said company or unit trust, acquired by the Fund after 23 December 1999, do not exceed the limits specified in Section 70E of the Act.

## **8.5 WHO CAN/MUST BE A TRUSTEE OR DIRECTOR**

### **(a) Introduction To The Equal Representation Rules.**

**"Basic Equal Representation Rules"** means, in relation to a Fund:

- (i) that:
- A. there is a group of 2 or more natural persons who are Trustees of the Fund; and

- B. the group of Trustees consists of equal numbers of Employer representatives and Member representatives; or
- (ii) that:
  - A. there is a single corporate Trustee of the Fund; and
  - B. the board of the corporate Trustee consists of equal numbers of Employer representatives and Member representatives; or
- (iii) in relation to a group of natural persons who are Trustees, or to the board of a corporate Trustee:
  - A. the group or board includes an additional Independent Trustee or an additional Independent Director, as the case may be; and
  - B. the additional Independent Trustee or additional Independent Director, as the case may be, is appointed at the request of the Employer representatives, or the Member representatives, who are Members of the group or board.

"Alternative Agreed Representation Rules" means, in relation to the Fund:

- (iv) there is a single corporate Trustee of the Fund; and
  - (v) the Trustee is appointed following the nomination by agreement between:
    - A. a majority of the Members of the Fund; and
    - B. the Employer or Employers of those Members; and
  - (vi) there is an approval of the Trustee in force in accordance with sub-rule 8.5(b); and
  - (vii) the Trustee is not an Associate of a Standard Employer Sponsor of the Fund.
- (b) **Funds Must Apply To Regulator Prior To Using Alternative Agreed Representation Rules.** Where the Fund has more than 4, but less than 50 Members and proposes to use the Alternative Agreed Representation Rules, the Trustee shall apply to the Regulator for approval to use the same, in such form as the Regulator requires, prior to adopting representation in accordance with those rules.
- (c) **The Representation Rules For Funds With More Than 4, But Fewer Than 50 Members.** Where the Fund has more than 4, but less than 50 Members, the Fund must comply with:
- (i) the Basic Equal Representation Rules; or
  - (ii) the Alternative Agreed Representation Rules.
- (d) **The Representation Rules For Funds With More Than 49 Members.** Where the Fund has more than 49 Members, the Fund must comply with the Basic Equal Representation Rules.
- (e) **The Representation Rules For Funds With 50 Or More Members.** Where:
- (i) the Fund's membership increases to 50 or more;
  - (ii) sub-rule 8.5(d) is applicable in respect of the Fund; and
  - (iii) the Fund does not, at that time, comply with the Basic Equal Representation Rules,
- then the Trustee shall have 90 days to do all acts, matters and things, and to make all necessary changes required of it to ensure that the Fund complies with the Basic Equal Representation Rules.

## **8.6 OTHER MATTERS REGARDING BOARDS OF TRUSTEES AND DIRECTORS**

- (a) **Vacancies In Trusteeship Or On Board Are To Be Remedied Within 90 Days.** Where a vacancy occurs in the membership of a group of natural persons who are Trustees or on the board of a corporate Trustee, and the Fund is required to comply with the Basic Equal Representation Rules, the vacancy must be filled within 90 days after it occurred in such a way that the Fund continues to comply with the Basic Equal Representation Rules.
- (b) **How To Appoint An Independent Trustee Or Director.** A group of natural persons who are Trustees of the Fund may appoint an additional Independent Trustee, or the board of Directors of a corporate Trustee of the Fund may appoint an additional Independent Director, as the case may be, by resolution of a majority of their number.
- (c) **Restrictions On Appointing Independent Trustees Or Directors.** An additional natural person Trustee or additional Independent Director, as the case may be, appointed in accordance with sub-rule 8.6(b), cannot exercise a casting vote in any proceedings of that group of natural persons who are Trustees or board of Directors of a corporate Trustee, as the case may be.

## **9. ACCOUNTS, AUDIT, RECORDS AND RETURNS**

### **9.1 ACCOUNTING FOR VOLUNTARY CONTRIBUTIONS**

- (a) **Trustee To Establish Voluntary Contribution Reserve.** Subject to the Act and Regulations, from time to time, the Trustee shall establish and keep, in respect of the Fund or, where there are one or more sub-plans, in respect of each sub-plan, a Voluntary Contribution Reserve, to which shall be credited all contributions other than contributions which form part of a Member's Minimum Benefits.
- (b) **Trustee To Make Voluntary Contribution Reserve Allocations At Least Annually.** Where, during a Year of Income, the Fund has operated in such a manner that an amount has accumulated in the Voluntary Contribution Reserve, the Trustee shall use the reserve for the purposes of the Fund as it sees fit and additionally it may, from time to time, allocate part or all of the amounts in the reserve to one or more Members' Accumulation Accounts, in proportions determined at the Trustee's absolute and unfettered discretion, and any such allocations shall be made at such times as the Trustee sees fit.
- (c) **Change In Manner of Contribution Allocation.** If required by the Act and Regulations, or otherwise at the Trustee's absolute and unfettered discretion, the Trustee may decide to allocate some or all contributions made by or on behalf of a Member directly to the Member's Accumulation Account, even if those contributions are of a type which would normally be allocated to the Voluntary Contribution Reserve.

### **9.2 TRUSTEE TO ESTABLISH MEMBER ACCUMULATION ACCOUNTS**

The Trustee shall establish and keep, in respect of each new Member of the Fund, an Accumulation Account, to which shall be added:

- (a) all contributions made by, for, or in relation to the Member which form part of a Member's Minimum Benefits;
- (b) all contributions allocated to the Member's Accumulation Account from the Voluntary Contribution Reserve;
- (c) all benefits or entitlements (including eligible termination payments) transferred into the Fund by, for, or in relation to the Member, in accordance with the provisions of this Deed;

- (d) all investment earnings of the Fund or, where the Member is a member of a sub-plan, of that sub-plan, allocated to that Member's Accumulation Account in respect of the amounts referred to in paragraphs (a) and (b);
- (e) the current surrender value of any policy of capital guaranteed life assurance taken out by the Trustee upon the life of that Member;
- (f) any reserves held by the Fund or, where the Member is a member of a sub-plan, by that sub-plan, which the Trustee has allocated to that Member's Accumulation Account,

and against which shall be deducted:

- (g) all direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund, allocated to the Member's Accumulation Account, whether or not the same relate directly, indirectly or otherwise to one or more of the amounts referred to in paragraphs (a), (b) and (c),

and the Trustee shall allocate, in respect of any and all amounts appropriate to be allocated in respect of Members of the Fund or, where Members are members of a sub-plan, in respect of Members of that sub-plan, the amounts in a fair, reasonable and consistent manner, having regard to any special circumstances relating to one or more Members which might impinge upon the allocation of amounts to a Member's Accumulation Account. Where the Trustee has made the allocations in accordance with these principles, its decision shall be final.

### **9.3 ESTABLISHMENT AND MAINTENANCE OF ACCOUNTS FOR NON-MEMBER SPOUSES (FAMILY LAW ACT ORDERS)**

#### **(a) Acting In Compliance With Family Court Orders**

Upon one or more orders being made pursuant to the Family Law Act 1975 in respect of a Member's Superannuation Interest, the Trustee may be required to take actions, including the following:-

- (i) Creating a new Accumulation Account for a Non-member Spouse;
- (ii) Splitting the amount standing to the credit of a Member's Accumulation Account with the Non-member Spouse;
- (iii) Identifying a component or percentage of a Member's Superannuation Interest which is to be paid to the Non-member Spouse;
- (iv) Transferring or rolling over a Non-member Spouse's Superannuation Interest to another regulated superannuation fund, approved deposit fund, EPSSS or RSA;
- (v) Notifying the Non-member Spouse and the Member of orders requiring the split to occur and other matters in respect of the split;
- (vi) Maintaining an Accumulation Account in respect of the Non-member Spouse.

#### **(b) Cost of Complying With Family Court Orders**

Where the Trustee is required to undertake one or more of the actions set out in paragraph (a), above, the Accumulation Account shall be kept in the same manner as a Member's Accumulation Account, established and kept pursuant to Sub-rule 9.2, with the proviso that any reasonable costs incurred in complying with the orders of the Family Law Act 1975 in respect of the Member's and Non-member Spouse's Superannuation Interests, including the costs of the Trustee in seeking professional advice, shall be deducted from the Non-member Spouse's interest.

**(c) Splitting Pensions Pursuant to Family Court Orders**

Where, pursuant to the Family Law Act 1975, an order is made which affects the Superannuation Interest of a Member in receipt of a Pension from the Fund, the Trustee may deduct any reasonable costs incurred in complying with such orders from the capital sum supporting the Pension to be paid to the Non-member Spouse, or from the periodical payments of the Pension to be paid to the Non-member Spouse.

**9.4 INVESTMENT EARNINGS MAY BE CREDITED TO AN INVESTMENT RESERVE**

Subject to the provisions of the Act and Regulations, from time to time, should the Trustee see fit, and for whatever reasonable purpose it shall see fit, it may, in its absolute and unfettered discretion, credit any investment earnings of the Fund to an investment reserve, to be used for satisfying any expenses of the Fund, as it sees fit, and which may be allocated to one or more Member's Accumulation Accounts in respect of Members of the Fund or, where Members are members of a sub-plan, in respect of Members of that sub-plan, as and when it sees fit, subject to the amounts being allocated in a fair, reasonable and consistent manner, having regard to any special circumstances relating to one or more Members which might impinge upon the allocation of those amounts.

**9.5 PENSION LIABILITIES MAY BE TRANSFERRED TO A PENSION RESERVE**

Subject to the provisions of the Act and Regulations, from time to time, where an obligation has arisen for the Trustee to pay one or more pensions from the Fund to one or more beneficiaries, the Trustee may, in its absolute and unfettered discretion, transfer an amount or amounts to one or more pension reserves, for the purpose of paying that pension or pensions, and from which may be deducted the cost of meeting such expenses, taxes or other outgoings as the Trustee decides are appropriate to be met from the reserve. Where an amount is so transferred to a pension reserve, the Trustee may reduce the Member's Accumulation Account, to the extent of the amount transferred and may, upon receiving the advice of an Actuary or other properly qualified person, transfer amounts between the pension reserve and Member's Accumulation Account or other reserves, in a fair, reasonable and consistent manner.

**9.6 MISCELLANEOUS RESERVES**

Subject to the provisions of the Act and Regulations, from time to time, the Trustee may, in its absolute and unfettered discretion, establish a miscellaneous reserve in respect of amounts not presently allocated to Members' Accumulation Accounts or to other reserves and from which may be deducted the cost of meeting such expenses, taxes or other outgoings as the Trustee decides are appropriate to be met from the reserve and which may be allocated to one or more Member's Accumulation Accounts in respect of Members of the Fund or, where Members are members of a sub-plan, in respect of Members of that sub-plan, as and when it sees fit, subject to the amounts being allocated in a fair, reasonable and consistent manner, having regard to any special circumstances relating to one or more Members which might impinge upon the allocation of those amounts.

**9.7 TRUSTEE TO MAKE ALLOCATIONS AT LEAST ANNUALLY**

Where, during a Year of Income, the Fund has operated such that amounts appropriate to be allocated to Members' Accumulation Accounts have arisen, the Trustee may make as many allocations of such amounts during the course of the Year of Income as the Trustee thinks fit, but shall in any event make at least one allocation in respect of each Year of Income which encompasses the period from the date of the last allocation (if any) up to and including the last day of that Year of Income.

## 9.8 TRUSTEE TO KEEP RECORDS OF TYPES OF BENEFITS

In addition to maintaining details of the value of Accumulation Accounts for each Member, the Trustee shall keep records in such a manner as to enable the Trustee to determine the amounts of benefits and entitlements of individual Members which consist of:

- (a) Minimum Benefits;
- (b) Preserved Benefits;
- (c) Restricted Non-preserved Benefits; and
- (d) Unrestricted Non-preserved Benefits.

## 9.9 TRUSTEE TO KEEP ACCOUNTING RECORDS

The Trustee of the Fund must:

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the Fund; and
- (b) keep its accounting records so as to enable the preparation of:
  - (i) the accounts and statements of the Fund mentioned in rule 9.10 and, where applicable, rule 9.11; and
  - (ii) the returns of the Fund mentioned in rule 9.13; and
- (c) keep its accounting records so as to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Act; and
- (d) keep the said accounting records of the Fund:
  - (i) for at least 5 years after the end of the Year of Income to which the transactions relate;
  - (ii) cause the records to be kept in Australia; and
  - (iii) keep the records:
    - A. In writing in the English language; or
    - B. In a form in which they are readily accessible and readily convertible into writing in the English language.

## 9.10 PREPARATION OF ACCOUNTS

Except where rule 9.11 applies, the Trustee of the Fund must, in respect of each Year of Income of the Fund, prepare accounts and statements in respect of the Fund which consist of at least:

- (a) a statement of financial position of the Fund;
- (b) an operating statement of the Fund; and
- (c) such other accounts and statements as the Act and Regulations specify, from time to time,

and, where practicable, the Trustee shall prepare those accounts and statements so as to ensure that the Auditor does not qualify the accounts of the Fund for lack of detail or non-compliance with relevant Australian Accounting Standards.

## 9.11 ACCOUNTS REQUIRED WHERE BENEFITS SOLELY LIFE ASSURANCE

Where the Fund, at the end of any Year of Income, is a Fund from which the benefits and entitlements paid to each individual Member of the Fund are wholly determined by reference to policies of life assurance, the Trustee shall prepare the following accounts and

statements:

- (a) a statement that policies of life assurance are in place at the end of the Year of Income;
- (b) a statement as to whether those policies have been fully maintained as directed by the relevant insurers;
- (c) a statement of the identities of those insurers;
- (d) the amounts contributed by Employers and Members in respect of the Year of Income;
- (e) where not all of those amounts have been paid as premiums on those policies, the amount of premiums paid on those policies in respect of the Year of Income; and
- (f) the expenses incurred by the Fund in respect of the Year of Income, other than amounts covered by premiums.

### **9.12 AUDIT OF THE ACCOUNTS**

The Trustee shall appoint, in writing, and shall have the power to dismiss, in writing, an Approved Auditor (the "Auditor") to audit the accounts and statements of the Fund prepared in respect of each Year of Income and shall ensure that each set of accounts and statements prepared in respect of a Year of Income are audited by the Auditor.

### **9.13 PREPARATION AND LODGMENT OF RETURNS**

The Trustee shall, in respect of each Year of Income of the Fund, prepare and lodge:

- (a) with the Regulator:
  - (i) an annual return, in the approved form, containing such information as is required by that form in relation to the Fund in respect of that Year of Income;
  - (ii) a certificate, in the approved form, by the Trustee in relation to the Fund in respect of that Year of Income; and
  - (iii) the certificate given to the Trustee by the Auditor under Part 13 of the Act in relation to the Fund in respect of that Year of Income; and
- (b) with the Taxation Commissioner, an income tax return, in the approved form, containing such information as is required by that form in relation to the Fund in respect of that Year of Income.

## **10. MEETINGS OF TRUSTEES AND MEMBERS**

### **10.1 RULES FOR MEETINGS OF TRUSTEES OR BOARD OF DIRECTORS**

- (a) **How To Call A Meeting Of Trustees Or Board Of Directors.** The Trustees may and, where the Trustee is a Constitutional Corporation, the Directors of the Trustee may, convene a meeting of the Trustees, or of the board of Directors of the Trustee, as the case may be, by 1 of their number giving 1 month's notice in writing to each of the other Trustees or Directors of the Trustee, as the case may be, of the time, place and matters which the meeting will be convened to address.
- (b) **Alternative Ways To Call A Meeting.** Where one or more Trustees and, where the Trustee is a Constitutional Corporation, one or more Directors of the Trustee, consider that the circumstances are such that the giving of notice as specified in sub-rule 10.1(a) is not appropriate, given the nature of the relationships of the Trustees, or Directors of the Trustee, as the case may be, or given the urgency of the matters to be discussed, 1 of their number shall make his or her best attempts to contact each of the other Trustees or Directors of the Trustee, as the case may be, and to outline the matters which the meeting is convened to address, and to agree upon a time and



- place at which the meeting is to be held.
- (c) **Appointing A Person To Chair Meetings.** Before any business is discussed at a meeting of Trustees and, where the Trustee is a Constitutional Corporation, of the board of Directors of the Trustee, they shall appoint one of their number to chair the meeting, and the meeting shall be conducted by that person in a fair and reasonable manner, but shall otherwise be conducted as that person sees fit.
- (d) **Meetings To Be Convened At Least Annually.** Meetings of Trustees and, where the Trustee is a Constitutional Corporation, meetings of the board of Directors of the Trustee, may be convened at any time one of their number considers appropriate, but as a minimum, shall be convened at least once each calendar year, after the end of the Fund's Year of Income, to consider:
- (i) the accounts of the Fund and the Auditor's report made out in respect of those accounts;
  - (ii) the returns and certificates of the Fund prepared to be lodged with the Regulator and the Taxation Commissioner;
  - (iii) any matters raised by the accounts and statements which require action or attention; and
  - (iv) any other matters which the Trustees or the board, as the case may be, consider appropriate.
- (e) **Quorum For A Meeting.** A quorum for the purpose of voting at meetings of Trustees shall be 1 in the case of a single individual trustee and in all other cases, including where the Trustee is a Constitutional Corporation and the meeting is a meeting of the board of Directors of the Trustee sitting in that capacity, shall be the greater of:
- (i) two (2); or
  - (ii) half of their total number.
- (f) **Voting By Proxy.** A Trustee and, where the Trustee is a Constitutional Corporation, a Director of the Trustee, not able to be present at a meeting of the Trustees or of the board, as the case may be, may nominate a person to attend the meeting as the first-mentioned person's proxy, subject to the following requirements:-
- (i) The person nominated as proxy shall carry into and put before the meeting an authority, signed by the person in whose place the proxy is attending, in the following form:-
 

"I,....., being a Trustee/Director of the Trustee, of.....Superannuation Fund, do hereby authorise....., who presents this document to the meeting, to act as my proxy for the purposes of this meeting.  
"Signed....., dated.....".
  - (ii) A person shall be nominated as proxy for one meeting at a time.
  - (iii) A person nominated as proxy, who is not otherwise a Trustee or a Director of the Trustee, as the case may be, shall be asked to leave the room in which the meeting is being held, should the chairperson consider that a subject to be discussed is of a sensitive or confidential nature.
  - (iv) A person nominated as proxy shall be given an opportunity to read aloud and to table any written statement from the person in whose place he or she is attending, and shall be entitled to vote strictly in accordance with the directions of that person, but a proxy, who is not otherwise a Trustee or a Director of the

Trustee, shall not be further entitled to participate in the discussions and conduct of the meeting.

## 10.2 RULES FOR MEETINGS OF MEMBERS

- (a) **When A Meeting Of Members Is To Be Held.** Subject to the provisions of Part 11, for the resolution of disputes, a meeting of the Members of the Fund shall be convened by the Trustees or, where the Trustee is a Constitutional Corporation, by the Directors of the Trustee, when:
- (i) the Trustee or the board of Directors, as the case may be, considers it necessary; or
  - (ii) the Trustee or a member of the board of Directors, as the case may be, receives a request that such a meeting be held, signed by not less than 25% of the current Members of the Fund.
- (b) **How To Call A Meeting Of Members.** Upon the requirements of sub-rule 10.2(a) being met, the Trustees or, where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, shall give to each Member of the Fund 1 month's notice in writing that a meeting of the Members of the Fund is to be held, and such a notice shall specify the time, place, reason why the meeting is required to be held and the matters to be addressed at the meeting.
- (c) **Appointing A Person To Chair Meetings.** The Trustees or, where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, shall appoint 1 of their number to chair the meeting, and the meeting shall be conducted by that person in a fair and reasonable manner, but shall otherwise be conducted as that person sees fit.
- (d) **Capacity Of Meetings Of Members.** Subject to the requirements of this Deed and to the provisions of the Act and Regulations, where the Fund is not a Standard Employer Sponsored Fund, the Trustees or, where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, must use their best endeavours to comply with a resolution carried in a meeting of Members by a majority of the Members then present in person or by proxy.
- (e) **Quorum For Meeting Of Members.** A quorum for the purposes of voting at meetings of Members shall be no less than half of the total Members of the Fund present in person or by proxy.
- (f) **Voting By Proxy.** A Member not able to be present at a meeting of Members may nominate a person to attend the meeting as the Member's proxy, subject to the following requirements:-
- (i) The person nominated as proxy shall carry into and put before the meeting an authority, signed by the Member in whose place the proxy is attending, in the following form:-
 

"I,....., being a Member of the ..... Superannuation Fund, do hereby authorise....., who presents this document to the meeting, to act as my proxy for the purposes of this meeting.

"Signed....., dated.....".
  - (ii) A person shall be nominated as proxy for one meeting at a time.
  - (iii) A person nominated as proxy shall be entitled to vote strictly in accordance with the directions of the Member, but a proxy, who is not otherwise a Member shall not be further entitled to participate in the discussions and conduct of the meeting.

## 11. RESOLUTION OF INQUIRIES AND COMPLAINTS

### 11.1 MEMBERSHIP OF EXTERNAL DISPUTE RESOLUTION BODY (OTHER THAN SELF-MANAGED SUPERANNUATION FUNDS)

If the Fund is not a Self-managed Superannuation Fund and if, pursuant to Division 3 of Part 7.9 of the Corporations Act 2001, the Fund is required to become a member of an external dispute resolution body, the Fund must become a member of such a body.

### 11.2 IN THE FIRST INSTANCE

- (a) **Procedure For Dealing With Complaints.** The Trustees, or where the Trustee is a Constitutional Corporation, the board of Directors of the Trustee, shall within 90 days consider any inquiry or complaint of one or more Members which has been raised either in a meeting of the Members, or in writing, and in any case where an inquiry or complaint is not dealt with to the satisfaction of the Member or Members within that time the parties shall arrange for a convenient time and place to meet with each other, for the purpose of resolving the matter and each party, or the representatives of each party, shall be allowed approximately equal time to present the reasons for and to propose resolutions to their grievances.
- (b) **Conduct Of Meetings.** The parties present at a meeting of the kind referred to in sub-rule 11.2(a):
- (i) may, by agreement, appoint a person to chair a meeting held to settle a dispute in the first instance, but it shall not be necessary to do so;
  - (ii) shall appoint a person to take and distribute to all parties in attendance written minutes of the proceedings at the meeting; and
  - (iii) may agree to convene one or more further meetings to address the issues in dispute.

### 11.3 PROCEDURES IF NO RESOLUTION IN FIRST INSTANCE

- (a) **Reference To External Dispute Resolution Body.** If the Fund is not a Self-managed Superannuation Fund and if, after a meeting of the kind referred to in sub-rule 11.2(a), there has been no resolution to the dispute and the dispute is not of a kind which may be referred to the Superannuation Complaints Tribunal, the Trustee shall inform the other parties of their right, if any, to refer the matters in dispute to the external dispute resolution body of which the Fund is a Member.
- (b) **Reference To Superannuation Complaints Tribunal.** If the Fund is not a Self-managed Superannuation Fund and if, after a meeting of the kind referred to in sub-rule 11.2(a), there has been no resolution to the dispute, the Trustee shall inform the other parties of their right, if any, to refer the matters in dispute to the Superannuation Complaints Tribunal.

## 12. ADMINISTRATION MATTERS

### 12.1 INTERPRETATION OF THE DEED

Except as otherwise expressly provided, the interpretation and application of the provisions of this Deed shall be the decision of the Trustee and that decision shall be binding and final.

### 12.2 HOW TO DESIGNATE A BENEFICIARY

In circumstances other than the giving of a Nominated Beneficiary Notice in accordance with Part 5 of the Deed, a Member wishing to designate a Dependant or other person as a beneficiary shall do so in writing to the Trustee in the following form, or in such other form as the Trustee may, from time to time, approve:-

"I,.....of..... hereby acknowledge that the discretion vested in you as to the application of benefits in circumstances where I cannot receive them myself is an absolute, free and unfettered discretion, but I express the wish that in the exercise of that discretion you give consideration to paying any such benefits to the following

persons, in the following proportions:

"Name of Designated Beneficiary	Address	Relationship to Member	Proportion of Benefits
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"Dated this.....day of.....

"Signed.....".

**12.3 LIMITS ON RIGHTS OF MEMBERS**

No person, whether as a Member or otherwise, shall have any claim, right or interest to, in respect of, or against the Trustee, the Fund, or any contributions made to the Fund, except under and in accordance with the provisions of this Deed.

**12.4 MEMBERS' RIGHTS TO INSPECT DEED**

Every Member shall have the right to inspect a copy of this Deed, at a time and a place which is convenient to the Trustee.

**12.5 SECRECY**

- (a) **Information About Interests Of Members Are Confidential.** No Member shall have any right to enquire, nor shall be given any information concerning the interest of another Member.
- (b) **Other Confidential Information.** The Trustee shall observe strict secrecy with regard to the affairs, accounts and transactions of the Fund, but this shall not prevent the publication of financial, statistical or other information to all Members, generally, whenever thought fit by the Trustee.

**12.6 RECEIPTS AND PAYMENTS WITH ASSETS RATHER THAN CASH**

Subject to the provisions of this Deed contained in sub-rule 5.6(b), restricting the payment of benefits and entitlements otherwise than in cash, and subject also to the provisions of the Act and Regulations, from time to time, where:

- (a) any benefits or entitlements of Members are payable, transferable or receivable by or to the Fund; or
- (b) any liabilities incurred on behalf of the Fund are required to be satisfied; or
- (c) any assets are owing to or are to be acquired by the Fund,

the Trustee may, with the agreement of the other party, in lieu of money and at its absolute and unfettered discretion make or receive settlement of the amounts concerned by:

- (d) transferring assets of the Fund to; or
- (e) receiving a transfer of assets from, another person, at the assets' arm's length Market Value.

## **12.7 MEMBERS TO PROVIDE CERTAIN INFORMATION AT THE TRUSTEE'S REQUEST**

Every Member and every person claiming a benefit or entitlement, or in receipt of a pension, or other benefit or entitlement shall, from time to time, give the Trustee such information or authorisation and produce such documents as the Trustee shall consider necessary for the purposes of giving effect to the provisions of this Deed.

## **12.8 VARIATION OF TRUSTS OR DEED**

The Trustee may and, where the Fund is a Standard Employer Sponsored Fund, the Trustee and the Standard Employer Sponsor may, at any time amend, revoke, replace or modify all or any of the provisions of this Deed by deed or other written instrument or by resolution in writing, provided that such amendment, revocation or modification does not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members;
- (c) alter the rights and benefits of existing Members in a manner such that, on the whole, equity between Members is not maintained; or
- (d) offend the provisions of the Act and Regulations as they exist, from time to time, or any re-enactments or replacements of the Act and Regulations made after the date of this Deed.

## **12.9 EFFECT OF CHANGES IN RELEVANT LEGISLATION**

The Trustee shall be authorised and empowered to act in accordance with the provisions of the Act and Regulations, the Tax Act, the Corporations Law and any other laws (the "Relevant Legislation") governing the provision of superannuation and retirement benefits, as well as any amendments, replacements, re-enactments, or additions to the Relevant Legislation (including the requirements for the Fund to constitute a Complying Superannuation Fund and a Regulated Superannuation Fund) and, to the extent that there is any inconsistency between this Deed and the Relevant Legislation, that legislation may prevail.

## **13. WINDING UP THE FUND**

### **13.1 CONDITIONS FOR TERMINATION**

The trusts created by this Deed shall cease and determine:

- (a) where the Members, by unanimous resolution, vote to wind up the Fund in a special meeting convened for that purpose, on the first day on which the membership of all Members has been terminated and all benefits and entitlements paid or transferred out of the Fund, such that all the assets of the Fund are expended or distributed;
- (b) where the Fund is a Fund initiated and maintained by one or more Employer Sponsors for their Employees, by unanimous resolution of all current Employer Sponsors that the Fund be wound up, in a special meeting convened for that purpose, on the first day on which the membership of all Members has been terminated and all benefits and entitlements paid or transferred out of the Fund, such that all the assets of the Fund are expended or distributed;
- (c) where the Trustee becomes aware that the Fund is insolvent and the Regulator's permission to wind-up is obtained; or
- (d) in any other circumstances where there are no Members or beneficiaries of the Fund and the Trustee considers it to be unlikely that there will be any new Members.

**13.2 STEPS FOR THE TRUSTEE TO TAKE ON WIND-UP**

Where it becomes clear to the Trustee that a vote of the kind mentioned in rule 13.1 has been taken, or that the circumstances of the Fund are those mentioned in either of paragraphs (c) or (d) of that sub-rule, the Trustee shall take all necessary steps to distribute any remaining assets of the Fund and to satisfy any outstanding liabilities, and shall then:

- (a) notify any remaining interested parties of its intention to wind-up the Fund;
- (b) notify the Regulator and the Taxation Commissioner of its intention to wind-up the Fund;
- (c) have reference to any other requirements of the Act and the Regulations concerning the winding-up of Funds; and
- (d) take such further steps as, in the opinion of the Trustee, are required to wind-up the Fund.

**SCHEDULE**

**THE PROVISIONS HEREINBEFORE REFERRED TO**

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**DATE OF DEED:** 19/03/2004

**TRUSTEES:** MAREE ANN GILLAM  
MICHAEL FRANCIS GILLAM

**NAME OF FUND:** KEELA-WE SUPERANNUATION FUND

**INCEPTION DATE:** 19/03/2004

Client REF: 4079

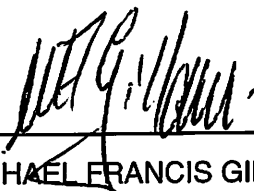
SIGNED, SEALED AND DELIVERED by )  
MAREE ANN GILLAM as Trustee in the )  
presence of: )

  
\_\_\_\_\_  
MAREE ANN GILLAM

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Full Name of Witness

SIGNED, SEALED AND DELIVERED by )  
MICHAEL FRANCIS GILLAM as Trustee in )  
the presence of: )

  
\_\_\_\_\_  
MICHAEL FRANCIS GILLAM

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Full Name of Witness

Client REF: 4079