

## DEED OF ESTABLISHMENT

**THIS DEED OF ESTABLISHMENT** is made on the date specified in Appendix A as the Date of Deed.

**BY:**

The person named and described in Appendix A as the Trustee

**RECITALS:**

**A** The Trustee has decided to establish a superannuation fund to be maintained solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Gainful Employment, for the Dependants of Members in the event of the death of a Member and for other purposes permitted under the Relevant Law.

**B** The Trustee has determined to act as Trustee in accordance with the provisions of this Deed.

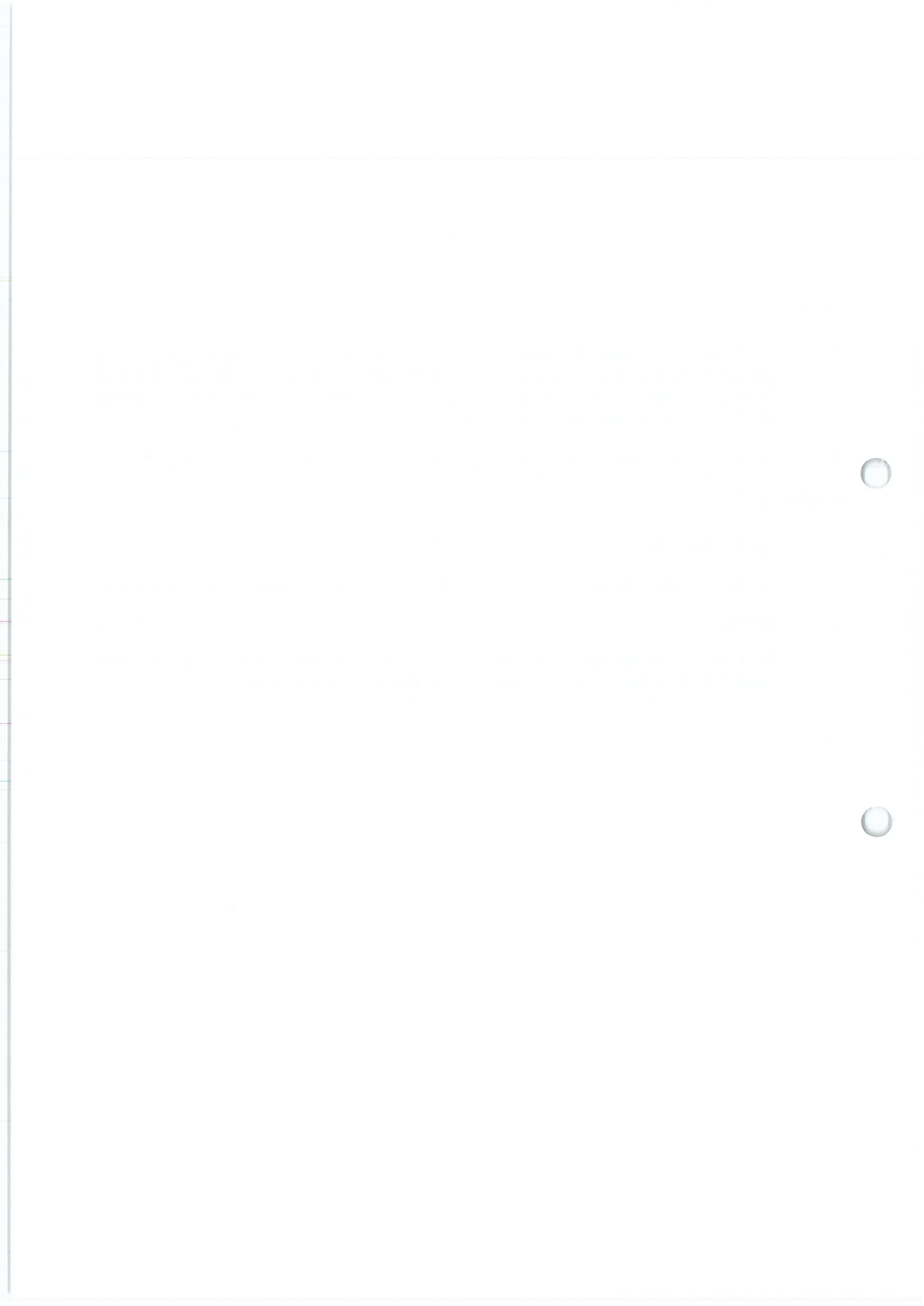
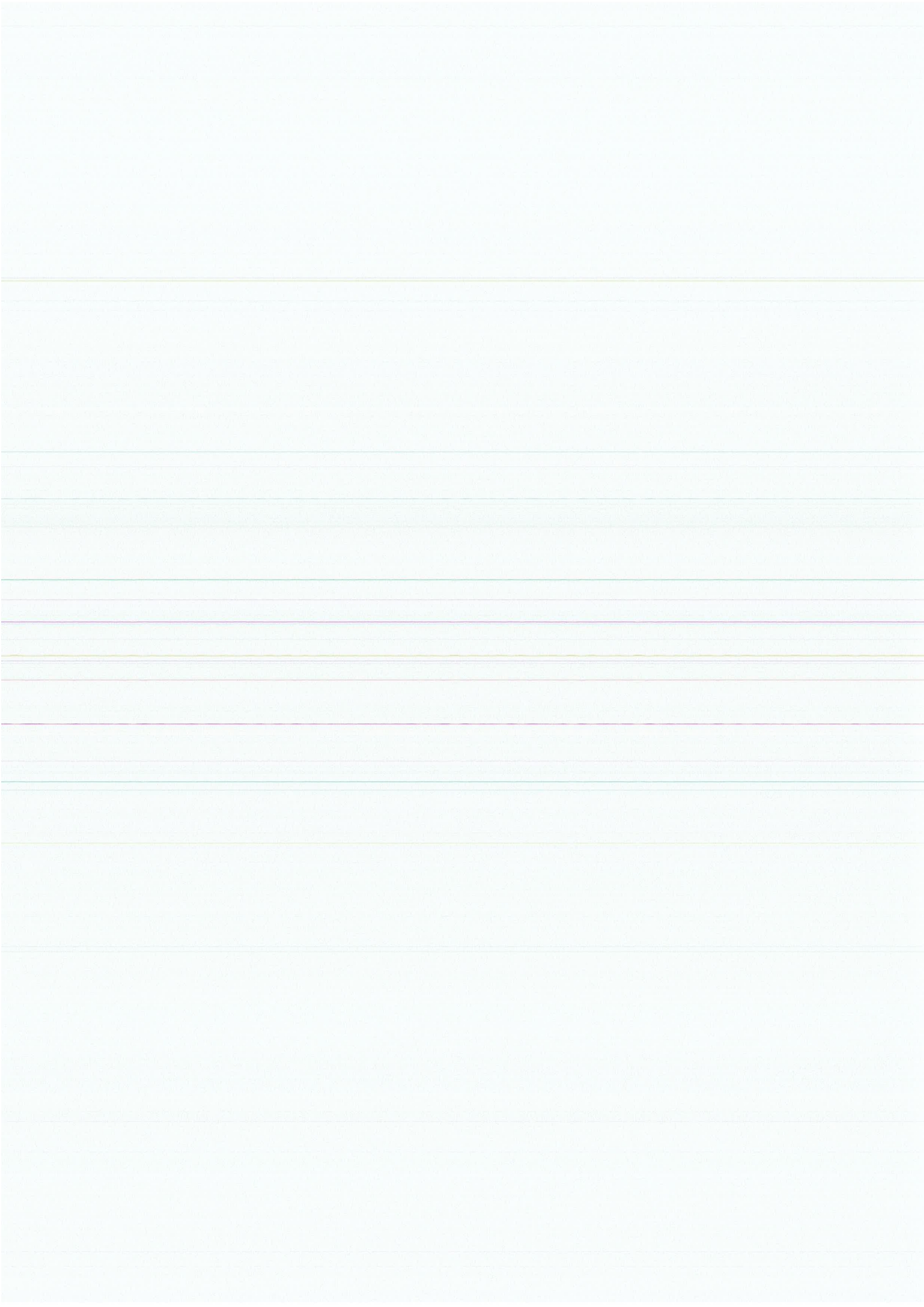
**IT IS DECLARED:**

**1. ESTABLISHMENT**

The Trustee establishes the Fund which commences on the Date of Deed specified in Appendix A.

**2. RULES**


The Fund shall be maintained, managed and administered pursuant to the rules set out in the attached *SMSF Governing Rules Version 15.01*, which forms part of this Deed.






EXECUTED as a Deed on the date set out in Appendix A.

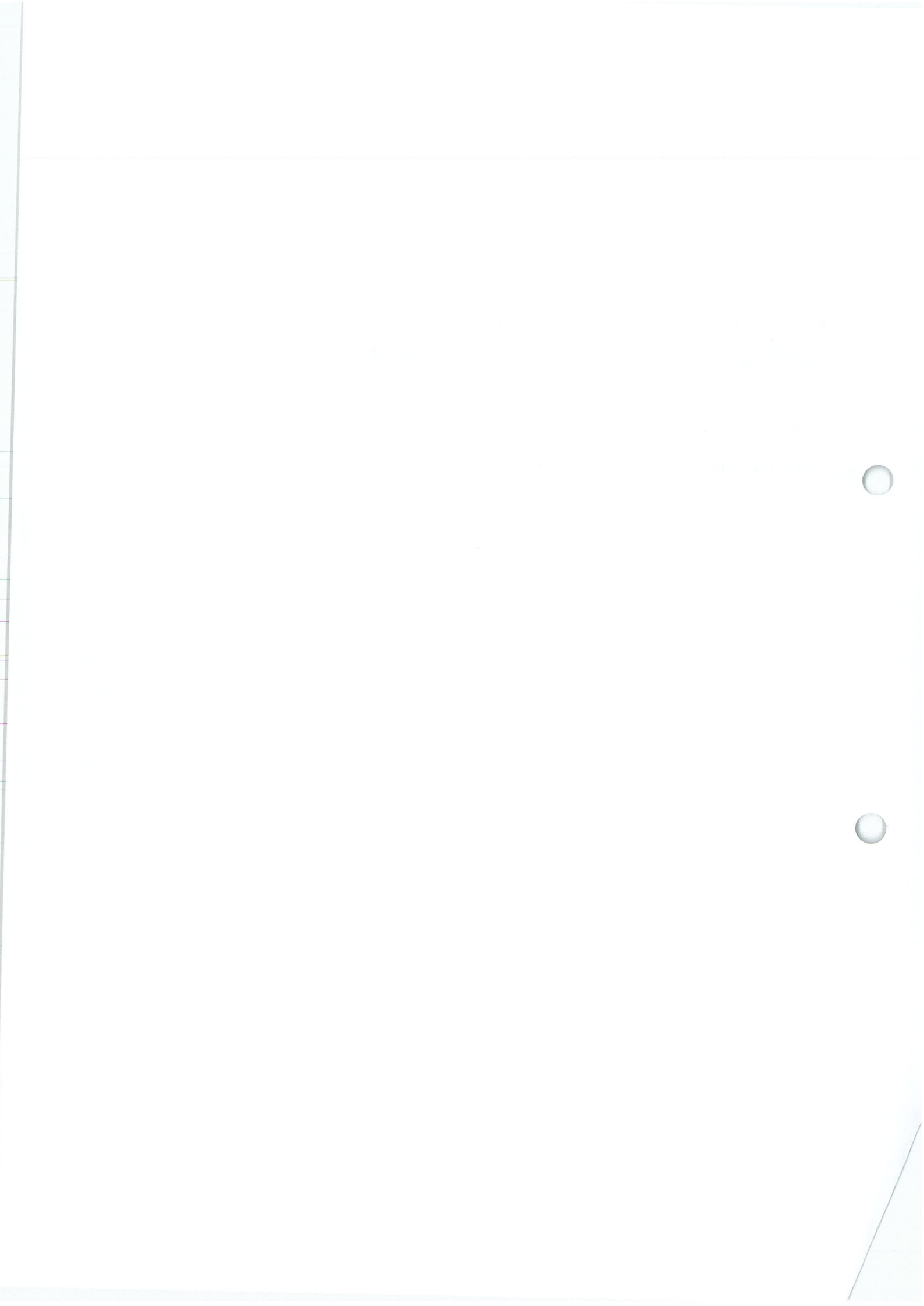
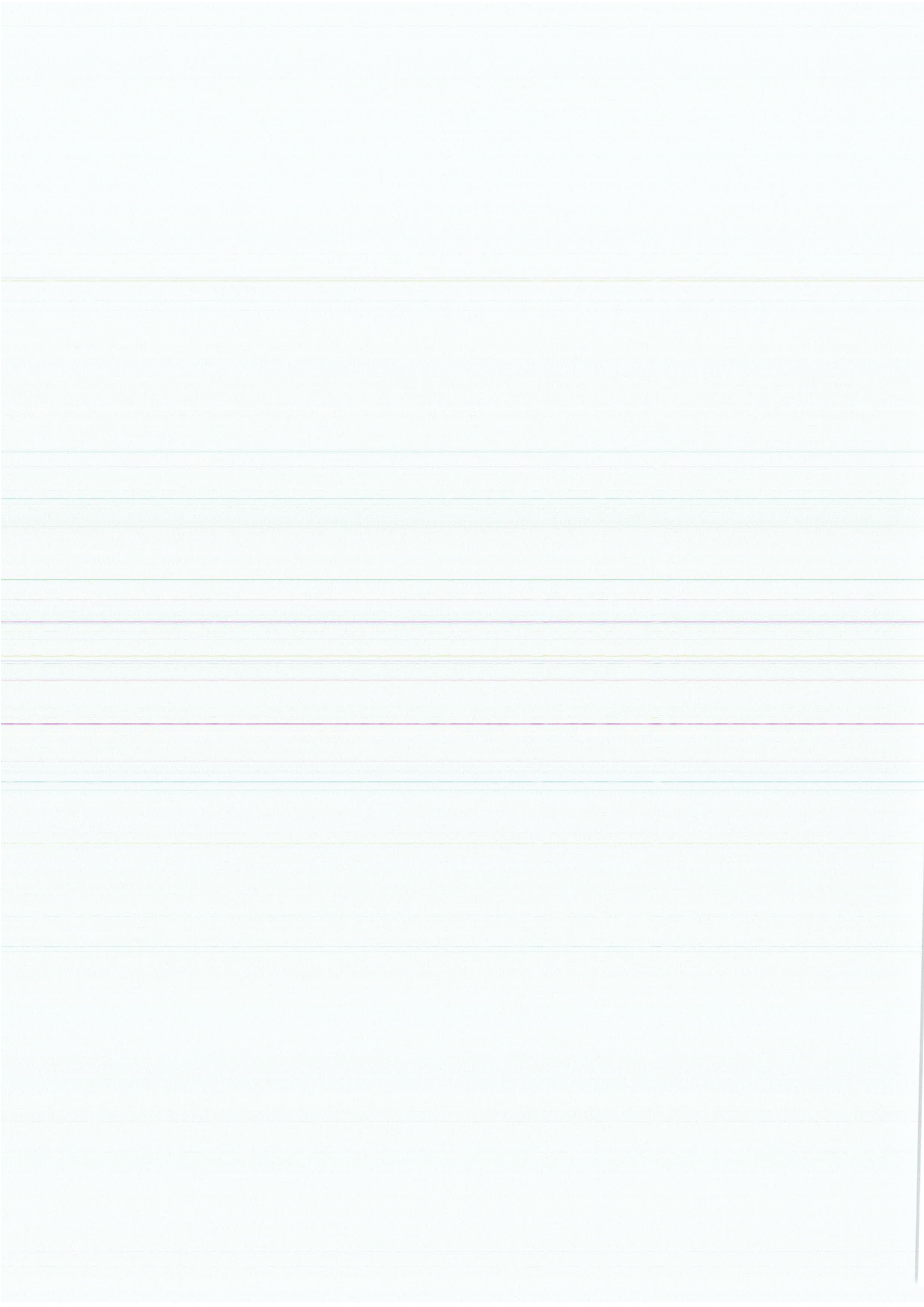
EXECUTED BY P & D BARRY FAMILY )  
SUPER PTY LTD (ACN 606 973 095) as )  
Trustee in accordance with the Corporations )  
Act:

  
\_\_\_\_\_  
Director Signature

Peter Gerard Barry  
\_\_\_\_\_  
Director Name

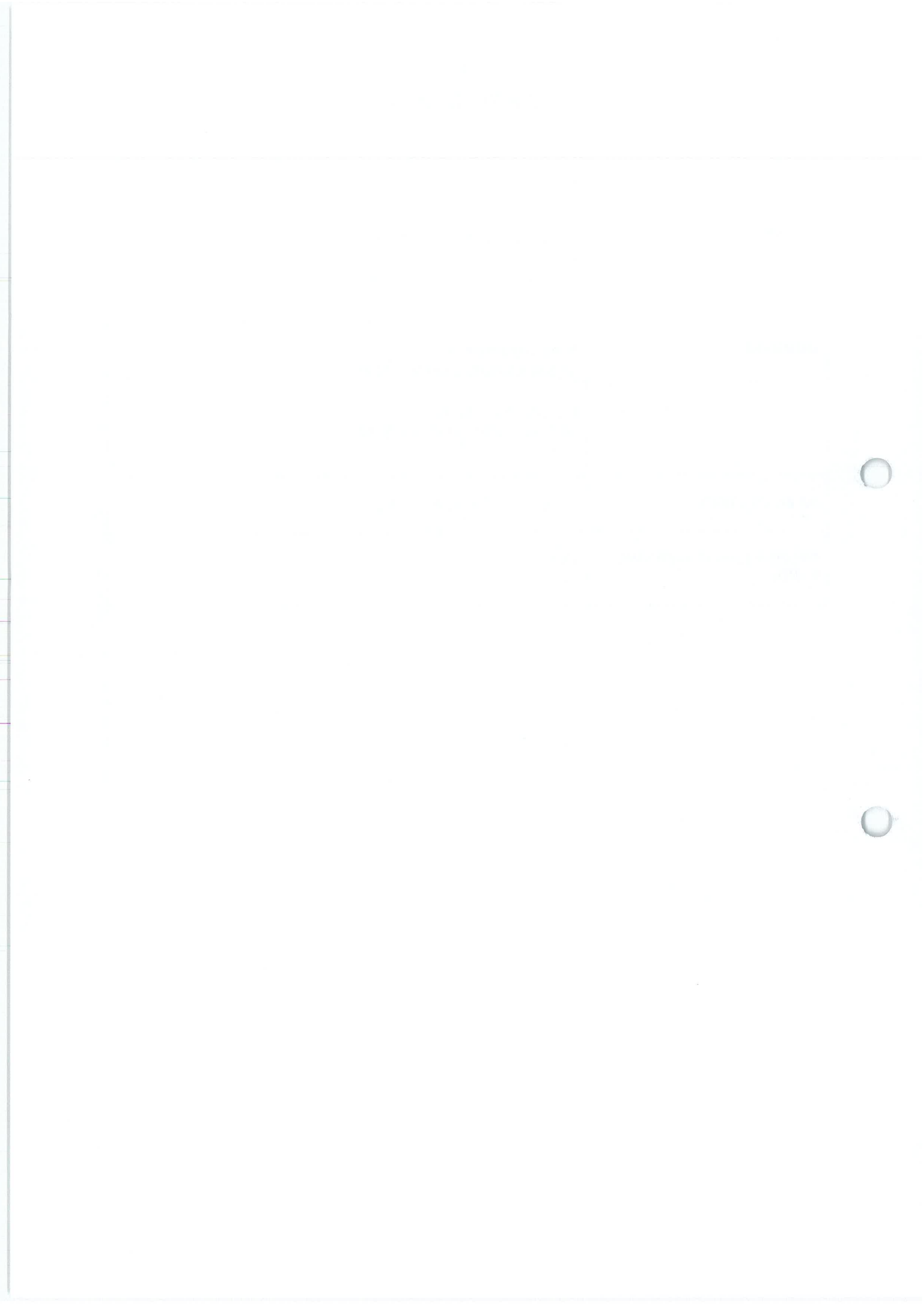
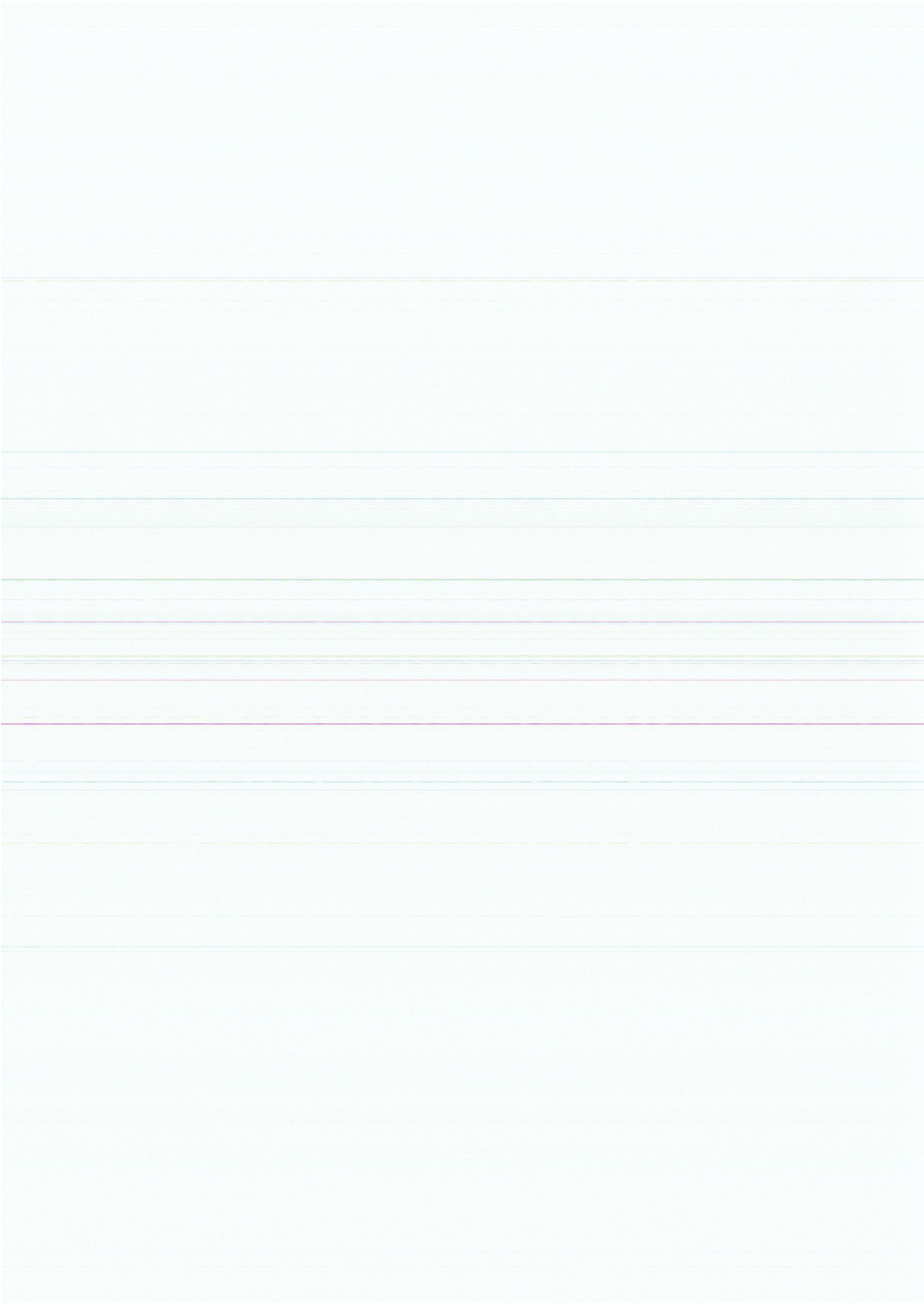
  
\_\_\_\_\_  
Director Signature

Deborah Anne Barry  
\_\_\_\_\_  
Director Name



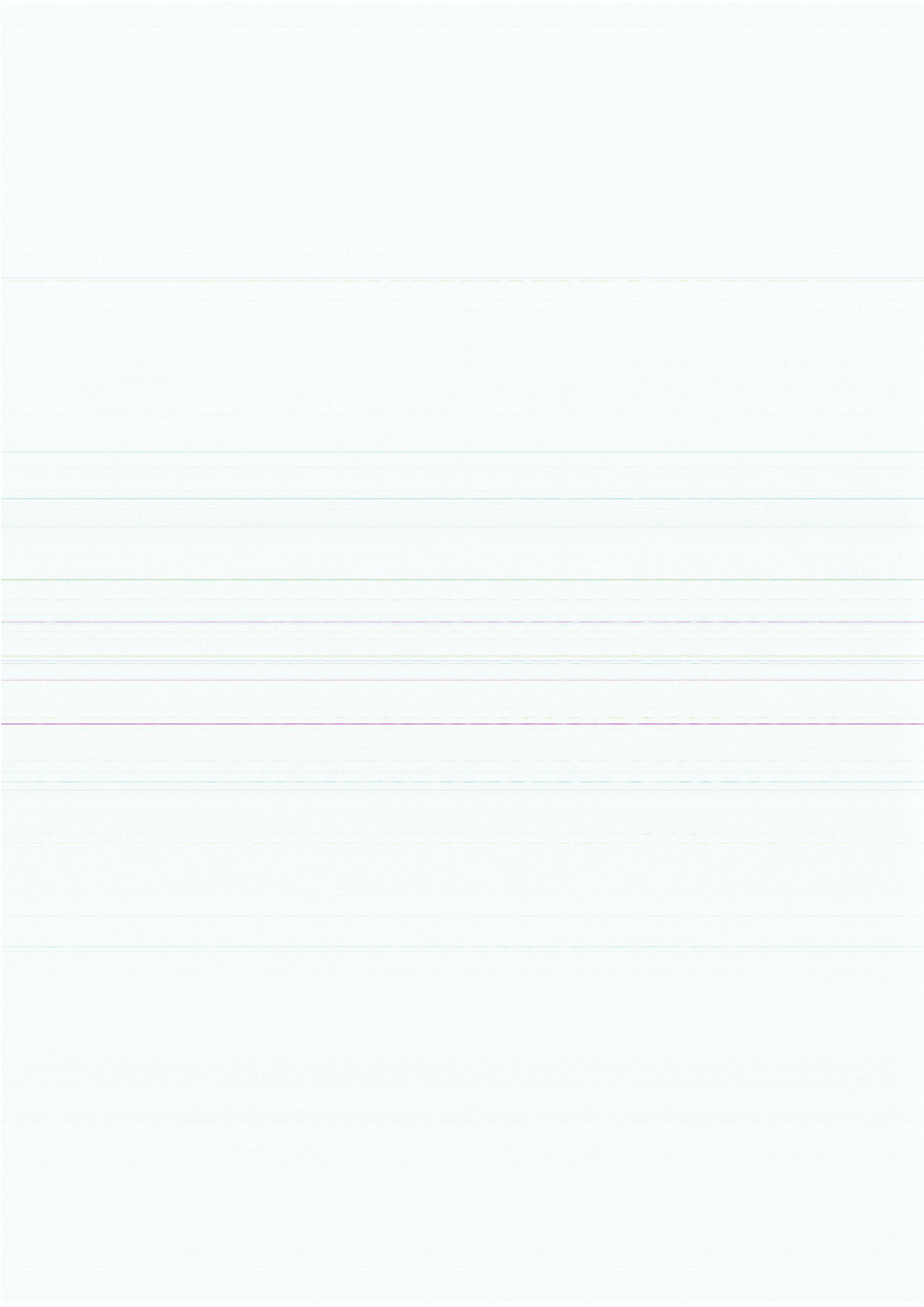
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**APPENDIX A**

<b>DATE OF DEED:</b>	9 July 2015
<b>TRUSTEE:</b>	P & D Barry Family Super Pty Ltd (ACN 606 973 095) 2, 21 Shierlaw Ave Canterbury VIC 3126
<b>MEMBERS:</b>	Peter Gerard Barry 14 Church Rd Carrum VIC 3197  Deborah Anne Barry 14 Church Rd Carrum VIC 3197
<b>NAME OF FUND:</b>	P & D Barry Family Super Fund
<b>PROPER LAW GOVERNING FUND:</b>	Victoria





SMSF Governing Rules Version 15.01



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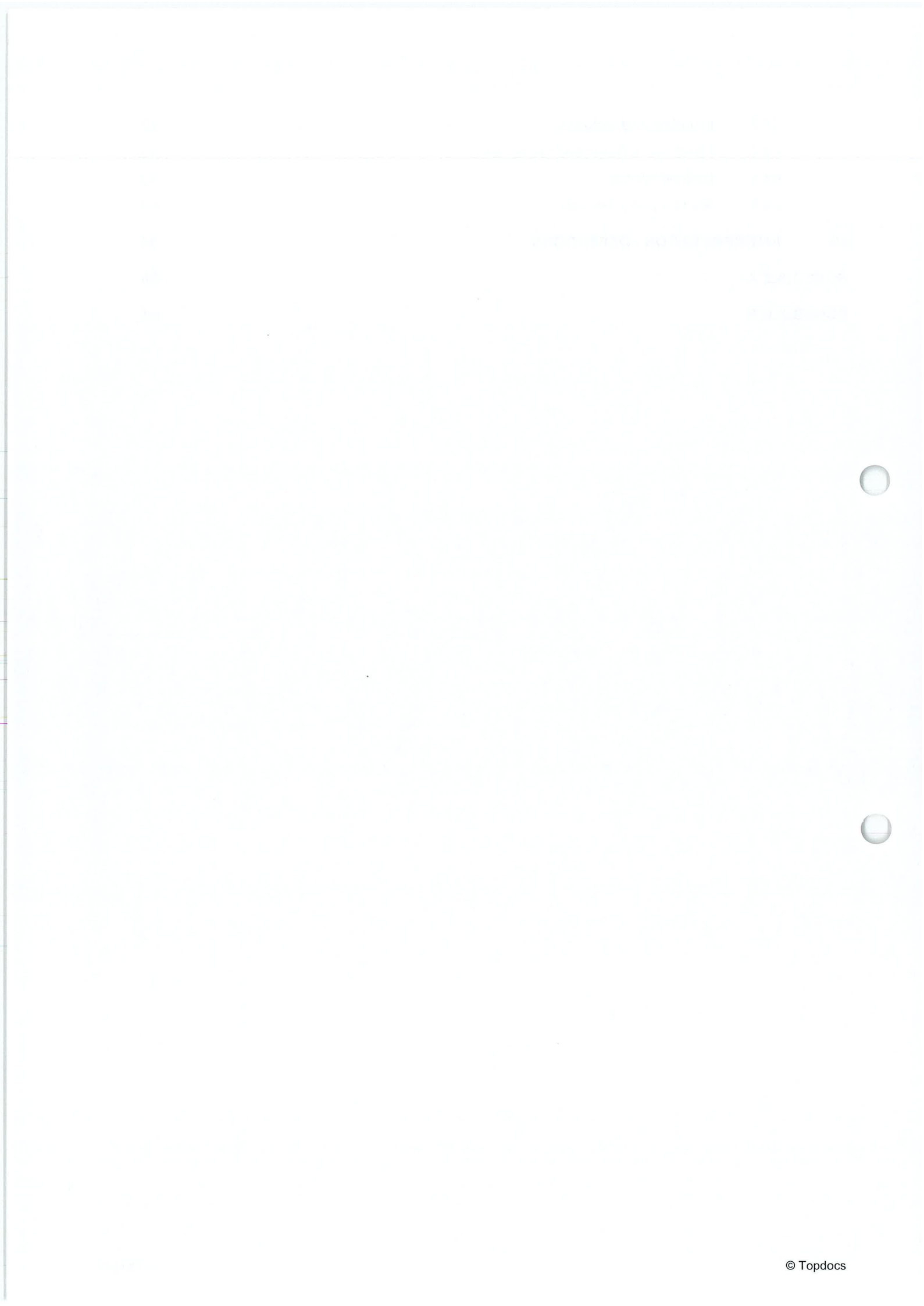
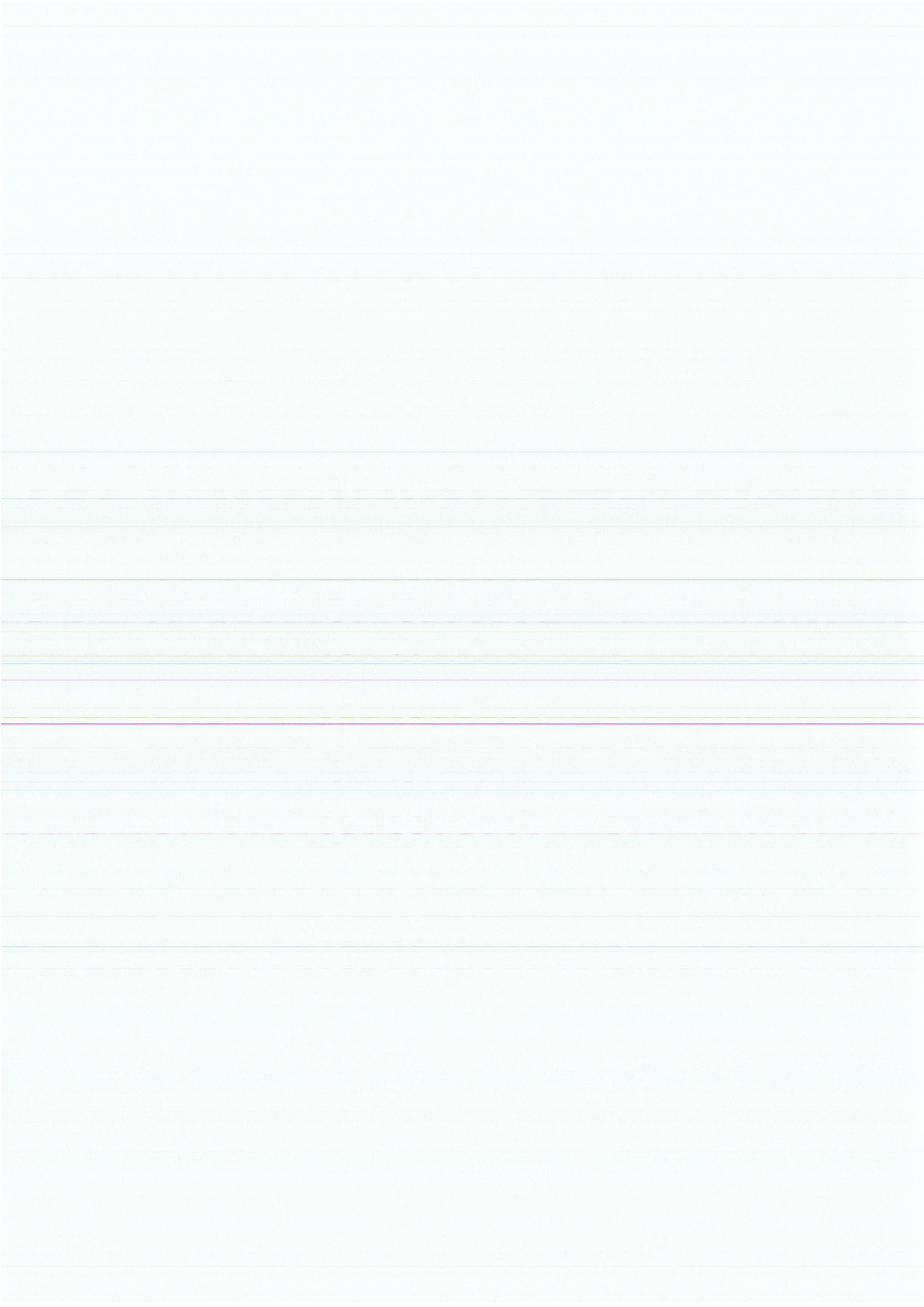
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## 1 PURPOSE

### 1.1 Purpose of Fund

The Trustee must maintain the Fund solely for the purpose of providing superannuation benefits for Members in the event of their retirement from employment, for the Dependants of Members in the event of the death of a Member and for other purposes permitted under the Relevant Law, provided that while the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund will be the provision of old-age pensions within the meaning of the Relevant Law.

### 1.2 Maintenance of the Fund as a Self Managed Superannuation Fund

The Trustee must manage the Fund and must exercise its powers and discretions so as to ensure that at all times, subject to rule 1.3, the Fund is a Self Managed Superannuation Fund.

### 1.3 Ceasing to be a Self Managed Superannuation Fund

If:

- (a) the Trustee considers that it is not possible or not reasonably practicable for the Fund to continue to be a Self Managed Superannuation Fund; or
- (b) all of the Members so request in writing,

the Trustee and the Members must do all such things as are required for the Fund to commence to meet the requirements under the Relevant Law to be another type of regulated superannuation fund, including amending these Governing Rules, notifying the Regulator and applying for such approvals as are required in the circumstances under the Relevant Law, and appointing a replacement trustee which meets the requirements under the Relevant Law applicable to the trustee of the relevant type of regulated superannuation fund.

### 1.4 Proper Law

These Governing Rules are governed, must be construed and take effect in accordance with the laws of the State or Territory of the Commonwealth of Australia specified in the Deed. The Trustee, Members and Beneficiaries must accept the jurisdiction of the courts of that State or Territory.

The provisions of section 35B of the Trustee Act 1936 of South Australia do not apply to these Governing Rules.

The provisions of part 2 of the Trusts Act 1973 of Queensland do not apply to these Governing Rules to the extent permitted by the exceptions available, including the full discharge of any Trustee ceasing through retirement or otherwise, when the cessation will result in only a single Trustee remaining.

### 1.5 Fund Subject to Relevant Law

- (a) The provisions in these Governing Rules are to be read subject to the Relevant Law.
- (b) These Governing Rules must be read and construed on the basis that the Relevant Law is deemed to be incorporated into the Governing Rules to the extent that it imposes covenants or obligations on the Trustee in order for the Fund to operate as a Self Managed Superannuation Fund (unless the Trustee and the Members have determined that the Fund should cease to be a Self Managed Superannuation Fund and to commence to be another type of Regulated Superannuation Fund as contemplated by rule 1.3), to qualify for concessional Taxation treatment and to satisfy any other requirements of the Regulator and these Governing Rules must be further read and construed on the basis that:



- (i) where there is any inconsistency between a provision of these Governing Rules and the Relevant Law, the latter prevails to the extent of the inconsistency; and
  - (ii) in the event of any doubt arising as to the effect of the Relevant Law or if there is an inconsistency between the Relevant Law and a provision of these Governing Rules, the decision of the Trustee is final.
- (c) These Governing Rules must not be read or construed and no such provision of the Relevant Law may be so incorporated if to do so would constitute a breach of the power granted by rule 42 to add to, amend, alter, modify, rescind or vary the provisions of these Governing Rules.

#### **1.6 Superannuation Guarantee Legislation**

The Trustee must administer the Fund in order to facilitate the acceptance of Contributions in accordance with the Guarantee Act and must provide all certificates, reports and other information required under the Guarantee Act.

## **2 FUND TRUSTEES**

### **2.1 Nature of Trustee**

The Trustee must at all times be a person, persons or body which is or are eligible to be the Trustee under rule 2.2.

### **2.2 Eligibility for Appointment as Trustee**

The following persons or bodies are eligible to be the Trustee:

- (a) Individual Trustees who are not Disqualified from holding office as Trustees;
- (b) a Constitutional Corporation:
  - (i) which is not Disqualified from holding office as Trustee; and
  - (ii) no Director of which is Disqualified from holding office as a Trustee; and
- (c) such other persons or bodies as satisfy the Relevant Law or are appointed by the Regulator under the Relevant Law.

### **2.3 Corporate Trustee**

Subject to rule 2.8, where the Trustee is a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:
  - (i) a Constitutional Corporation, the Director of which is the Member; or
  - (ii) a Constitutional Corporation, the Directors of which are the Member and another person who is a Relative of the Member; or
  - (iii) a Constitutional Corporation, the Directors of which are the Member and another person who is not a Relative of the Member where the Member is not an Employee of the other person; and
- (b) while the Fund has more than one Member, but less than five Members, a Constitutional Corporation of which all of the Directors are the Members.

### **2.4 Individual Trustees**

Subject to rule 2.8, where the Trustee is not a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:



- (i) the Member and another person who is a Relative of the Member acting as Individual Trustees; or
  - (ii) the Member and another person who is not a Relative of the Member where the Member is not an Employee of the other person, acting as Individual Trustees; and
- (b) while the Fund has more than one Member, but less than five Members, all of the Members acting as Individual Trustees.

## 2.5 Later Trustees or Directors

Subject to rule 2.8, the Members must put in place arrangements to ensure that:

- (a) where the Trustee is comprised of Individual Trustees, before a person commences to act as an Individual Trustee; or
- (b) where the Trustee is a Constitutional Corporation, before a person is appointed as a Director of the Trustee,

the Members are satisfied that the person will become a Member under rule 11.1 following their commencement or appointment or that the Fund will otherwise comply with the trustee and membership requirements of the Relevant Law.

## 2.6 Trustee/Member Rules

Subject to the Relevant Law, if at any time the trusteeship of the Fund does not meet the requirements of either rules 2.3, 2.4 or 2.8, the Trustee and the Members must:

- (a) restructure the Membership of the Fund; or
- (b) complete such arrangements as are necessary under rule 2.9; and
- (c) ensure that the trusteeship of the Fund meets those requirements no later than 6 months after the trusteeship ceased to meet those requirements.

## 2.7 Continuity of Office

Any person who acts as an Individual Trustee must, on any person becoming or ceasing to be a Trustee, under this rule 2, do everything necessary to vest the Fund in any new and any remaining Trustees and must deliver all records and other books to such new and remaining Trustees.

## 2.8 Other Persons as Trustees or Directors

The Members may, and must if such action is required in order to prevent the Trustee from ceasing to meet the requirements under the Relevant Law which relate to the nature and composition of the trustees of Self Managed Superannuation Funds, unless the Fund is to cease to be a Self Managed Superannuation Fund under rule 1.3, take such steps as are necessary to appoint or remove as an Individual Trustee or facilitate the appointment or removal as a Director of a Constitutional Corporation which is the Trustee, the following persons:

- (a) the Legal Personal Representative of a deceased Member in place of the deceased Member, during the period:
  - (i) beginning when the deceased Member died; and
  - (ii) ending when death Benefits commence to be payable in respect of the deceased Member; or
- (b) the Legal Personal Representative of a Member in place of the Member, during any period when:
  - (i) the Member is under a legal disability; or

- (ii) the Legal Personal Representative has an enduring power of attorney in respect of the Member; or
- (c) the Legal Personal Representative or the parent or guardian of a Member who is under a legal disability because of age in place of the Member; or
- (d) an acting trustee of the Fund appointed under the Superannuation Industry (Supervision) Act 1993.

Where a Legal Personal Representative appointed as provided under this rule 2.8 consists of more than one person, whether acting jointly or jointly and severally, that Legal Personal Representative shall have one vote only. If, in accordance with rule 10.2, each Individual Trustee appointed in place of a Member shall have such number of votes as is equal to the value in dollars of the total balances of that Member, where more than one Individual Trustee has been appointed as Legal Personal Representative of a Member, those Individual Trustees shall be entitled to vote, between them, only on the number of votes equivalent to the total balances of that Member.

Any other person may also be a Trustee, or a Director of a Constitutional Corporation which is the Trustee, if the Relevant Law permits that the person may be a Trustee or Director of a Constitutional Corporation which is the Trustee and the Fund would remain a Self Managed Superannuation Fund.

## **2.9 Appointment and Removal of Trustee**

- (a) On the establishment of the Fund, the Trustee is the person, persons or body named and described in the Establishing Deed.
- (b) At all other times, and subject to rules 2.8 and 2.9(i), the Members must determine who will act as Trustee in accordance with this rule 2 and the Relevant Law for the Fund to be maintained as a Self Managed Superannuation Fund and must take such steps as are necessary to appoint or remove the persons or body to or from the office of Trustee to ensure such compliance is maintained, provided that any obligation imposed on a deceased Member by this paragraph shall be performed by the Legal Personal Representative of the deceased Member or, if there is no Legal Personal Representative or the Legal Personal Representative is unable or unwilling to act, then by the remaining Members.
- (c) An Individual Trustee will cease to hold the office of Trustee if the person dies or becomes mentally incapacitated such that:
  - (i) the person is found by two medical practitioners (expressed in writing) to be under a disability and unable to make reasonable judgements to fulfil the role of Trustee; or
  - (ii) a Court or Tribunal of competent jurisdiction decides that the individual is suffering from incapacity to the extent the person is unable to make reasonable judgements to fulfil the role of Trustee,
- (d) If an Individual Trustee who ceases to hold the office of Trustee by virtue of having become mentally incapacitated is the only Member of the Self Managed Superannuation Fund, then:
  - (i) the Legal Personal Representative of that Member is appointed as Trustee in accordance with rule 2.8 or, if no Legal Personal Representative exists or a Legal Personal Representative exists but is unable to act as Trustee; then
  - (ii) the remaining Trustee may appoint an additional individual as Trustee for the purpose of:

- (A) paying the Benefits to or for the benefit of the incapacitated Member, if permitted under the Relevant Law; or
  - (B) transferring the Benefits of the incapacitated Member to an Eligible Rollover Fund, if permitted under the Relevant Law; or
  - (C) appointing a replacement trustee in accordance with the powers contained in rule 1.3.
- (e) The appointment or removal of a Trustee must be in writing and must immediately be advised to any other Trustee.
  - (f) For the purposes of rule 2.9(b) the Members may accept the resignation in writing of any Trustee.
  - (g) Where a new Trustee or an additional Trustee is appointed pursuant to the power of appointment contained in this rule 2, the Fund at that time vests in the person or body, or jointly in the person or body with the other Trustee or Trustees without the necessity for any declaration, transfer, conveyance, registration or other assurance for such appointment to be effective.
  - (h) Where a Trustee is removed or resigns the other Trustees must take such steps to remove that person or body from any registration which may have been made in the course of acting as Trustee.
  - (i) In the event that there are no Members remaining in the Fund, the Legal Personal Representative of the last surviving Member may determine who will act as Trustee for the Fund.

#### **2.10 Trustee Declarations and Diligence**

Each person who is an Individual Trustee or who is a Director of a Constitutional Corporation which is the Trustee must do all such things, make all such declarations and execute all such documents as are required under the Relevant Law to be done, made or executed by a person who holds or who commences to hold such office.

Each person who is a Director of a Constitutional Corporation which is the Trustee must exercise a reasonable degree of care and diligence for the purposes of ensuring that the Constitutional Corporation complies with the covenants and operating standards imposed by the Relevant Law.

### **3 COVENANTS AND OPERATING STANDARDS**

The Trustee for itself, its successors and assigns covenants with the Members to perform and observe the covenants, trusts and conditions of these Governing Rules and the covenants, operating standards and obligations imposed by the Relevant Law so far as they are or ought to be observed by the Trustee, including the following covenants and operating standards:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members and Beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or



- (ii) that are money or assets, as the case may be, of an Employer, or an associate of an Employer;
- (e) 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;
- (f) to formulate, review regularly 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:
  - (i) 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;
  - (ii) 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;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
  - (v) whether the Trustee should hold a contract of insurance that provides insurance cover for one or more Members of the Fund;
- (g) if there are any Reserve Accounts of the Fund, to formulate, review regularly and 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;
- (h) to allow a Member or Beneficiary access to any prescribed information or any prescribed documents.

#### 4 TRUSTEE'S INVESTMENT POWERS

##### 4.1 Authorised Investments

Money forming part of the Fund from time to time which is not required immediately for the payment of Benefits and other amounts authorised by these Governing Rules must be invested in accordance with the investment strategy of the Fund as determined under rule 3(f) in any one or more of the following investments:

- (a) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (b) the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or like securities or Derivatives in or in respect of any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (c) on deposit with any bank or other authorised deposit-taking institution in any type of account, whether secured or unsecured and on such terms as the Trustee may determine;
- (d) on deposit with or on loan to any person or organisation whatsoever (including an Employer which contributes or has contributed to the Fund in respect of a Member) with or without security and at such rate of interest and on such terms as the



Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;

- (e) any Policy or Annuity with an Insurer whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- (f) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (g) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (h) the acquisition of any futures, options or synthetic investments or other Derivatives and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any other property forming part of the Fund; and
- (i) any other investments which the Trustee considers appropriate and which are permitted under the Relevant Law,

and the Trustee has all the powers and authorities necessary to enable it to make each such investment provided that it must not make a loan to or give any financial assistance to a Member or a Relative of a Member and provided further that the Trustee must ensure that all investments are made and maintained in accordance with the Relevant Law.

#### **4.2 Power to Sell and Vary Investments**

The Trustee has power to sell any investments, to vary and transpose any investments into other investments authorised by these Governing Rules and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

#### **4.3 Limited Recourse Borrowing Arrangements**

Notwithstanding any other provision of these Governing Rules, the Trustee may borrow money, or maintain a borrowing of money, under an arrangement under which:

- (a) the money is or has been applied for the acquisition of a single Acquirable Asset, including:
  - (i) expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the Acquirable Asset, but not expenses incurred in improving it; and
  - (ii) money applied to refinance a borrowing, including any accrued interest on it, in relation to the single Acquirable Asset, and no other Acquirable Asset; and
- (b) the Acquirable Asset, whether it be the Original Asset or a Replacement Asset, is held on trust so that the Trustee acquires a beneficial interest in it; and
- (c) the Trustee has a right to acquire legal ownership of the Acquirable Asset, whether it be the Original Asset or a Replacement Asset, by making one or more payments after acquiring the beneficial interest; and
- (d) the rights of the lender of any other person against the Trustee for, or in connection with, or as a result of, whether directly or indirectly, default on:
  - (i) the borrowing; or
  - (ii) the sum of the borrowing and charges related to it;

are limited to rights relating to the Acquirable Asset, whether it be the Original Asset or a Replacement Asset,

or which otherwise meets such requirements as must be met in order for the borrowing to be permitted under the Relevant Law<sup>1</sup>.

#### 4.4 Conflict of Interest of Trustee or Director

- (a) Subject to rule 4.4(b), the Trustee and any Director of a Constitutional Corporation which is the Trustee has the power and is authorised to make or vary any of the investments authorised under these Governing Rules notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- (b) The Trustee and any Director of a Constitutional Corporation which is the Trustee must disclose details of any interest in an investment to which rule 4.4(a) applies in the manner prescribed under the Relevant Law.

#### 4.5 Member Investment Choice

- (a) Without limiting in any way the obligations and powers vested in the Trustee under the preceding provisions of this rule 4, the Trustee may:
  - (i) establish any number of investment strategies;
  - (ii) nominate the assets which will be subject to each particular investment strategy;
  - (iii) offer Members the opportunity of having amounts held in one or more of their Accumulation Accounts or Pension Accounts invested in accordance with a particular investment strategy; and
  - (iv) make rules regarding when and how Members may give the Trustee directions in this respect.
- (b) Where a Member is provided with an opportunity to have an amount in an Accumulation or Pension Account invested under a particular investment strategy or strategies, the Trustee must provide to the Member such information as is required in respect of the investment strategy or strategies by the Relevant Law.
- (c) Where a Member is provided with an opportunity to have an amount in an Accumulation or Pension Account invested pursuant to a particular investment strategy or strategies and either fails or is unwilling to nominate a particular investment strategy, the Trustee must invest the amount in the Member's account in such manner as, in its absolute discretion, it may consider appropriate.
- (d) Where the Trustee establishes more than one investment strategy under rule 4.5(a), it must:
  - (i) establish a sub-account within the Income Account established under rule 15.4 in respect of each strategy; and
  - (ii) debit and credit to each sub-account any amounts including costs, charges and any Taxation attributable to the relevant strategies as the Trustee determines.
- (e) Where the Trustee establishes a sub-account under rule 4.5(d), it must:

<sup>1</sup> Other rules relating to SMSF Borrowing include but are not limited to rules 4.1(b), 4.1(f), 4.4, 5.1(c), 5.1(d), 5.2 and 9.4.

- (i) determine a Fund Earning Rate in respect of each sub-account;
- (ii) allocate an amount determined by the application of the Fund Earning Rate in respect of each sub-account to each sub-account within a Member's or Beneficiary's Accumulation or Pension Accounts in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the relevant sub-account within the Member's or Beneficiary's Account at the beginning of the Fund Year in respect of which the allocation is being made; and
- (iii) make an appropriate adjustment for amounts (if any) credited or debited to the sub-account during that Fund Year.

#### 4.6 Property Held for a Specified Member

Notwithstanding any other provision of these Governing Rules, the Trustee may, by irrevocable instrument in writing (in this rule referred to as the **Instrument**), determine that a Specified Asset is held in the Fund by the Trustee solely for the benefit of a Specified Member (in this rule referred to as the **Specified Member**) where:

- (a) **Specified Asset** means the asset specified in the Instrument, being an asset transferred by the Specified Member to the Trustee or, if the asset is sold, the proceeds of that sale; and
- (b) A Specified Asset held in the Fund by the Trustee is held solely for the benefit of a Member if:
  - (i) it is held specifically for the benefit of the Member;
  - (ii) it cannot be pooled with the contributions or other assets of, or property held for, another Member; and
  - (iii) no other Member can obtain an interest in it.

## 5 TRUSTEE'S POWERS OF MANAGEMENT

### 5.1 Additional Powers

In addition to the powers which it might have by law and which are otherwise granted to it by these Governing Rules, the Trustee has the following powers:

- (a) to settle, compromise or submit to arbitration any claims, matters or things relating to these Governing Rules or to the rights of Members, former Members and Beneficiaries;
- (b) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members and Beneficiaries and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member, former Member or Beneficiary as a result of any negligence, default, omission, breach of duty or breach of the terms of these Governing Rules and the Trustee may abandon, settle, compromise or release any such legal proceedings as it may consider desirable;
- (c) to borrow in any lawful manner, including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument, and to secure the repayment of money in any manner and on any terms (including with or without security) which the Trustee may deem advisable provided that such borrowing must be permitted under rule 4.3;
- (d) to permit or to procure that the investments of the Fund or any of them are registered in the name of a custodian or a nominee appointed or approved by the Trustee for such purpose, and to permit or to procure such custodian or nominee to



give security over any investment of the Fund registered in the name of such custodian or nominee for the purpose of securing the repayment of borrowings of the Trustee where the proceeds of such borrowings were applied in the acquisition of the relevant investment, provided that the giving of such security must not breach the Relevant Law;

- (e) to give a charge over, or in relation to, an asset of the Fund if:
  - (i) the charge is given in relation to a Derivatives Contract entered into:
    - (A) by, or on behalf of, the Trustee; or
    - (B) by a broker on the instructions, or on account, of the Trustee; or
    - (C) by a broker for the benefit of the Trustee; and
  - (ii) the charge is given in order to comply with the rules of an Approved Body that requires the performance of obligations in relation to the Derivatives Contract to be secured; and
  - (iii) the Fund has in place a derivatives risk statement that sets out:
    - (A) policies for the use of Derivatives that include an analysis of the risks associated with the use of Derivatives within the investment strategy of the Fund; and
    - (B) restrictions and controls on the use of Derivatives that take into consideration the expertise of the Individual Trustees or the Directors of a Constitutional Corporation which is the Trustee; and
    - (C) compliance processes to ensure that the controls are effective (for example, reporting procedures, internal and external audits and internal management procedures); and
  - (iv) the investment to which the charge relates is made in accordance with the derivatives risk statement; or
  - (v) the charge is otherwise able to be given by the Trustee without breaching the Relevant Law;
- (f) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (g) to open and operate an account with any bank or other authorised deposit-taking institution on such terms as the Trustee may determine;
- (h) to purchase an Annuity from an Insurer in order to provide all or a part of any Pension payable in respect of a Member and in the name of the Trustee or, if the Trustee determines, in the name of the Member;
- (i) to retain the services of and to appoint professional or other advisers in relation to the management, investment, administration and conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (j) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its non-Trustee services provided to the Fund in a separate professional capacity;



- (k) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or any investment of the Fund or to the rights of Members, former Members and Beneficiaries in respect of the Fund provided that an indemnity may only be provided to the extent it is not limited by or would be inoperative under the Relevant Law;
- (l) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Fund by that person;
- (m) to appoint a person to chair the meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, may pay a fee or remuneration to such person in respect of such position;
- (n) to insure and keep insured as it sees fit any liability of:
  - (i) the Trustee;
  - (ii) any Directors or officers of a Constitutional Corporation which is the Trustee; or
  - (iii) the Fund to indemnify or reimburse the Trustee or the Directors or officers of a Constitutional Corporation which is the Trustee under rules 7 and 8;
- (o) to enter into any agreement, provide any notice, make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (p) to apply for qualification as a qualifying recognised overseas pension scheme for the purposes of section 169 of the *Finance Act 2004 of the United Kingdom of Great Britain and Northern Ireland* (the **UK Act**), and to provide such information and enter into such agreements as the Trustee considers necessary for the purposes of the Fund receiving recognised transfers from UK pension schemes registered under the UK Act;
- (q) to seek modifications of or exemptions from the application of the Relevant Law to the Fund and the Trustee is relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted;
- (r) to correspond, where the Trustee considers it appropriate or necessary, with Members, Beneficiaries, Employers and other third parties by means of Electronic Communication, including the use of unique identifiers or digital signatures; and
- (s) generally to do all acts and things that the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under these Governing Rules.

## 5.2 Conflict of Interest

- (a) Subject to rule 5.2(b) all the powers and discretions conferred by these Governing Rules or by law on the Trustee, or any Director of a Constitutional Corporation which is the Trustee, may be exercised notwithstanding that such Trustee or Director or any person being a shareholder of a Constitutional Corporation which is the Trustee or a relative of such Trustee, Director or shareholder may:
  - (i) have a direct, indirect or personal interest (whether as trustee of any other settlement, in his/her personal capacity, as a shareholder, director, relative of a Trustee or Director or shareholder of a Constitutional Corporation which is the Trustee, member or partner of any company, organisation or

partnership, unit holder in any unit trust, beneficiary of any discretionary trust or otherwise howsoever) in the manner or result of exercising such power or discretion; or

- (ii) benefit directly or indirectly as a result of the exercise of any such power or discretion,

notwithstanding that the Trustee for the time being is the sole Trustee

- (b) The Trustee and any Director of a Constitutional Corporation which is the Trustee must disclose details of any interest to which rule (a) applies in the manner prescribed under the Relevant Law.

### **5.3 Trustee Discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by these Governing Rules:

- (a) has an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which is final and binding;

provided that,

- (b) the Trustee must not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination; and
- (c) the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by these Governing Rules must be made as required under, and so as not to breach, the Relevant Law, and any such purported exercise shall be of no effect to the extent that it is not made as required under the Relevant Law or would, if effective, breach the Relevant Law.

### **5.4 Trustee Delegation**

The Trustee may:

- (a) delegate to any person any of the powers, duties and discretions conferred on it under these Governing Rules on such terms and conditions as it may determine;
- (b) execute such powers of attorney or other instruments as the Trustee considers appropriate for such purpose; and
- (c) vary, limit or revoke any such delegation, power of attorney or instrument,

provided that any such delegation may only be undertaken in accordance with the Relevant Law.

### **5.5 Trustee Direction**

Except as provided in these Governing Rules and in such circumstances which are permitted under the Relevant Law, the Trustee is not subject to direction by any person in the exercise of any of its powers.

## **6 LIMITATION OF LIABILITY**

### **6.1 Liability of Trustees, Directors and Officers**

Neither an Individual Trustee, nor any Director or officer of a Constitutional Corporation which is the Trustee, is liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund except if such Individual Trustee or Director:

- (a) fails to act honestly;

- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- (c) incurs a monetary penalty in respect of a civil penalty order under the Relevant Law.

## **6.2 Loss, Default, Bona Fide Acts, Mistake**

Without limiting the generality of the exemption from liability under rule 6.1, the Trustee will not incur any liability for:

- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (b) any act or default of any former Trustee or any Director or officer of a Constitutional Corporation which was formerly a Trustee, of any Member or of any agent employed in good faith by the Trustee;
- (c) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee; or
- (d) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.

## **6.3 Limitation of Exemption from Liability**

This rule 6 operates only to exempt a person from liability to the extent that the provision of such an exemption is not limited by or inoperative under the Relevant Law.

# **7 INDEMNITY OF TRUSTEE**

## **7.1 Indemnity and Lien**

The Trustee and where applicable its Directors and officers shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise, purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them under these Governing Rules or at law except if that person:

- (a) fails to act honestly; or
- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- (c) incurs a monetary penalty under the Relevant Law,

and the Trustee will have a lien on and may use the money representing the assets of the Fund for the purposes of this indemnity.

## **7.2 Payments in Good Faith**

This indemnity extends to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

## **7.3 Opinion or Advice**

This indemnity extends to circumstances where the Trustee acts on the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and on reasonable grounds to be expert in relation to the matters on which they are consulted.



**7.4 Failure to Carry Out Agreement**

This indemnity extends to circumstances where there has been a failure of any person or corporation to carry out any agreement made with the Trustee and to any act or omission on the part of such person or corporation.

**7.5 Agents and Servants of Trustee**

This indemnity extends to circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

**7.6 Limitation of Indemnity**

This indemnity does not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

**8 REMUNERATION AND REIMBURSEMENT****8.1 Remuneration**

The Trustee is not entitled to receive any remuneration from the Fund or any person in relation to the performance of the normal activities of a trustee provided in relation to the Fund.

**8.2 Reimbursement**

The Trustee is entitled to be reimbursed from the Fund for and in respect of the following expenses:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties) but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (b) such fees and expenses of the Auditor as the Trustee considers reasonable;
- (c) any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (d) all fees, wages and expenses of any barrister, solicitor, accountant, Actuary, fund manager, Administration Manager, Investment Manager, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under these Governing Rules;
- (e) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any periodic or other report or document in relation to the Fund or the making available of any books or documents of the Fund;
- (f) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;
- (g) all and any costs incurred in relation to an investigation of the Fund, the resolution of disputes or the preparation of information and submissions; and
- (h) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices.