

# TANK SAFE SUPER FUND

## DEED OF TRUST

**ROBERTS PARTNERS**

Barristers & Solicitors

PO Box 656  
Frankston VIC 3199  
Ph (03) 9783 5000

# TANK SAFE SUPER FUND

## APPLICATION FOR MEMBERSHIP

To: The Trustee of Tank Safe Super Fund

I, Leanne Margaret George, hereby apply to become a member of the Tank Safe Super Fund and submit the following details for the benefit of the trustee:

Full Name: Leanne Margaret George

Address: 17 Bradey Ave, Hammondville NSW 2170

Date of Birth: May 18th, 1967

Signed: L George

Date: 7/5/08

# TANK SAFE SUPER FUND

## APPLICATION FOR MEMBERSHIP

To: The Trustee of Tank Safe Super Fund

I, David Walter Tankard, hereby apply to become a member of the Tank Safe Super Fund and submit the following details for the benefit of the trustee:

Full Name: David Walter Tankard

Address: 17 Bradey Ave, Hammondville NSW 2170

Date of Birth: June 9th, 1966

Signed:



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Date:


07/05/05

IN WITNESS WHEREOF the parties hereto have executed this Deed on the 7-5-05


THE TRUSTEES:

Signed Sealed  
and delivered by  
David Walter Tankard  
in the presence of

}  
}  
}  
}   
\_\_\_\_\_

  
-----  
Witness:

Signed Sealed  
and delivered by  
Leanne Margaret George  
in the presence of

}  
}  
}  
}   
\_\_\_\_\_

  
-----  
Witness:

IN WITNESS WHEREOF the members of the fund have hereto executed this Deed on the 7-5-05

Signed Sealed }  
and delivered by }  
David Walter Tankard }  
in the presence of } \_\_\_\_\_



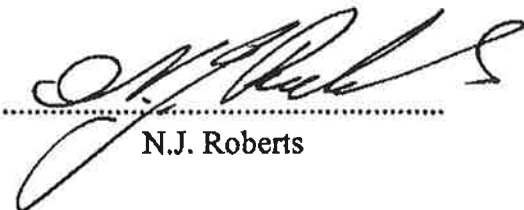
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Witness: MP. George

Signed Sealed }  
and delivered by }  
Leanne Margaret George }  
in the presence of } \_\_\_\_\_



-----  
Witness: MP. George

I, NICHOLAS JOHN ROBERTS, Legal Practitioner of 216 Main Street, Mornington, certify that, subject to this deed being validly executed by the Trustee and the appropriate Stamp Duty ( if any ) being paid, that this Deed complies with the Superannuation Law existing as at the date of this Deed.



N.J. Roberts

THE SCHEDULE HEREINBEFORE REFERRED TO

Date of making this deed: 7.5.05

Name of this fund: TANK SAFE SUPER FUND

Trustees: DAVID WALTER TANKARD  
17 Bradey Ave,  
Hammondville NSW 2170

LEANNE MARGARET GEORGE  
17 Bradey Ave,  
Hammondville NSW 2170

Type of Fund: Pension Fund

New or Existing: NEW

If Existing  
Date of Commencement:

If amending  
Amending Clause No:

If previously amended  
Date of Amendment

CONSENT TO ACT AS TRUSTEE

TO

TANK SAFE SUPER FUND

STATUTORY INFORMATION

Leanne Margaret George hereby consents to act s a trustee of the above named Trust and provides the following information

Full Name: Leanne Margaret George

Address: 17 Bradey Ave, Hammondville NSW 2170

Signed Sealed }  
and delivered by }  
Leanne Margaret George } L George  
in the presence of }

Witness: MP George

Printed name: Leanne George MARK PHILLIP GEORGE, J.P.

Date: 7.5.05



CONSENT TO ACT AS TRUSTEE

TO

TANK SAFE SUPER FUND

STATUTORY INFORMATION

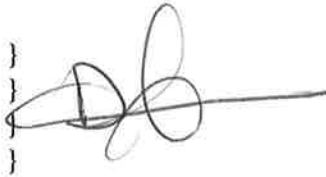
David Walter Tankard hereby consents to act s a trustee of the above named Trust and provides the following information

Full Name: David Walter Tankard

Residential Address: 17 Bradey Ave, Hammondville NSW 2170

Signed Sealed  
and delivered by  
David Walter Tankard  
in the presence of

}  
}  
}  
}  
}



Witness:

MP. George

Printed name:

MARK PHILLIP GEORGE J.P

Date:

7.5.05

## INTRODUCTION

*This document establishes a Superannuation Fund with a commencement date as specified in the Schedule.*

*This is a Superannuation Fund established and maintained to provide benefits in the form of lump sum payment or old age pensions for its Members upon retirement and for the Dependants of Members upon the death of Members. It permits the payment of benefits to other persons connected with Members in certain circumstances.*

*The Fund is intended to be a 'Regulated Superannuation Fund' and a 'Complying Superannuation Fund' as defined in the Superannuation Law and the regulations made under that Act. The details of the Fund's establishment and the history of the Fund prior to it becoming regulated by this document is set out in the Schedule.*

*The intention of the Deed is to impose an obligation upon the Trustees and Managers of the Fund to manage the Superannuation Fund in accordance with Superannuation Law for the benefit of Members and the dependants of Members so that Members and their Dependants may take advantage of the benefits available to persons who contribute to Superannuation Funds under the Superannuation Law.*

*This document provides that the primary purpose of this Fund is the provision of Old Age Pension if it is described in the Schedule as a Pension Fund.*

*This document is intended as a general guide only to the Trustee who should on all matters have recourse to professional advice concerning the particular requirements of the Superannuation Deed.*

(I)  
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THIS DEED is made on the day stated at Item 1 (the date of this Deed) in the Schedule by the person or persons stated at Item 3 in the Schedule (hereinafter called the "Trustee") for the benefit of:-

- the person or persons who shall now apply to be Members of the Fund;
- and
- any person who on any date after the date specified in Item 1 in the Schedule, applies to be a Member; and

## BACKGROUND

- (A) The "Superannuation Law" permits payments to be made to a Superannuation Fund by or for the benefit of a person who is gainfully employed either full-time, part-time or on a casual basis. This includes payments made under an award, agreement, or under superannuation guarantee legislation.
- (B) The "Trustee" wishes to establish such a Fund, so that a fund can be built up to pay benefits to a Member of the Fund or a Dependant of a Member on death or the retirement of a Member from gainful employment.

## WHEREAS

- A. The "Trustee" is desirous of establishing and indefinitely continuing a Superannuation Fund to be known by the name specified at Item 2 in the Schedule for the benefit of any person (including the dependents of such person) who is entitled at law to be a Member of a Superannuation Fund and who joins the Fund on or after the date of this Deed.
- B. The "Trustee" has agreed to act as the first Trustee of the Fund and if in that capacity is in this Deed and the Governing Rules called "the Trustee".
- C. The Fund is to be managed and administered and the assets thereof are to be applied by the "Trustee" in accordance with "the Superannuation Law".

## NOW THIS DEED WITNESSETH

- 1. That as and from the date of this Deed the Fund shall be established and the "Trustee" shall from the date of this Deed hold all assets investments contributions and other property of the Fund upon and according to the trusts contained in this Deed, and the "Governing Rules" and the "Superannuation Law".

2. The Fund shall commence operation upon execution of this Deed by the "Trustee" and shall be known by the name specified at Item 2 in the Schedule or any other name that the "Trustee" may from time to time decide upon.
3. The "Governing Rules" shall be the Rules as set out in this Deed under the heading "The Governing Rules" which may be amended from time to time as provided in the Rules subject to any contrary or overriding requirement contained in the "Superannuation Law".

## "THE GOVERNING RULES"

### I. INTERPRETATION

This Deed shall be interpreted in accordance with the Laws of the State of residence of the "Trustee" and if more than one the majority of Trustees and the requirements of the Superannuation Law.

In these "Rules" and for the administration of the Fund the following words and expressions shall unless the context otherwise requires have the meaning attached thereto and if any meaning attached thereto in this interpretation Rule shall be inconsistent with a meaning attached thereto in the "Superannuation Law" then the meaning given in the Superannuation Law shall prevail:-

**"Actuary"** means the Actuary for the time being appointed pursuant to the Rules.

**"Benefit"** means any amount paid or payable by the "Trustee" out of the Fund to or in respect of a Member or Member's Dependant.

**"Child"** includes a step-child, a legally adopted child or a person recognised by the "Trustee" as a defacto adopted child of a Member or a Dependant or any person who, in the sole discretion of the "Trustee", is or was at any relevant date a child in respect of whom a Member is or was standing in Loco Parentis.

**"Contributions"** means payments to the Fund by Members and Employers permitted by the Rules and as permitted by the Superannuation Law.

**"Dependant"** means the spouse, former spouse and any "child" of a Member and any person who in the opinion of the "Trustee" is or was at the relevant date wholly or partially dependant on the Member.

**"Disability"** means physical or mental disablement which the "Trustee" considers will render the Member unable to perform his or her duties to his or her Employer or engage in gainful employment.

**"Employee"**, **"Employer"** and **"Employed"** have their ordinary meaning as modified by Section 15A of the Superannuation Industry (Supervision) Act

1993 and includes the Principal Employer or any Participating Employer and wherever appearing means the Employer by which the Member is for the time being employed. For the purposes of determining whether or not a person is an employee of an employer sponsor of the Fund, the term employee shall also be taken to mean a person who is an employee of another person if the employer-sponsor is:

a relative of the other person; or  
either of the following:

- a body corporate of which the other person, or a relative of the other person, is a director; or
- a body corporate related to that body corporate; or

the trustee of a trust of which the other person, or a relative of the other person, is a beneficiary; or

a partnership; where:

- the other person, or a relative of the other person, is a partner in the partnership; or
- 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
- 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.

**"Member Financed Benefits"** means a Member's contributions and investment earnings thereon less any expenses applicable to those amounts but excludes any salary sacrifice contributions.

**"Membership"** means Membership of this Fund and any previous fund accepted by the "Trustee" as Membership for the purposes of this Fund.

**"Membership Period"** in relation to a Member means the latest continuous period of Membership expressed in years and any fraction of a year, in respect of which contributions have been made or are deemed to have been made in relation to a Member and shall include any additional or varied Membership Period granted to a Member by the "Trustee".

**"Normal Retirement Age"** means the Member's sixty-fifth birthday or such age as is agreed between the Member and the "Trustee" with the "Regulator's" approval.

**"Participating Employer"** means any corporation person or firm which has applied to participate such application being in any manner that may be

approved by the "Trustee" and which the "Trustee" has exercising unfettered discretion admitted to participate in the Fund.

**"Pension"** means a benefit payable at a yearly rate by instalments, in a manner that is in compliance with Regulation 1.06.

**"Pensioner"** means a person receiving a pension.

**"Permanent Incapacity"** means an incapacity, disability or invalidity which is either total or partial which in the opinion of the "Trustee", after considering a certificate or certificates signed by two registered medical practitioners, renders a Member incapable of engaging in any employment for which he or she is reasonably qualified by education, training or experience or where the benefit payable on permanent incapacity or invalidity is insured, a permanent incapacity or invalidity as defined in any policy effecting such insurance for the Member.

**"Reasonable Benefits Limit"** shall be the amounts which shall from time to time be fixed pursuant to the Superannuation Law that may be paid to a Member and be taxed at a concessional rate.

**"Regulated Superannuation Fund"** has the meaning given by Section 19 of the Superannuation Industry (Supervision) Act 1993.

**"Regulations"** mean the Superannuation Industry (Supervisor) Regulations.

**"Regulator"** means the person or authority for the time being carrying out the duties of ensuring that the provisions of the Superannuation Law are complied with by this Fund.

**"Relative"** means in relation to an individual 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 some other individual having such a relationship to the individual or his or her spouse or former spouse because of adoption or remarriage or the spouse or former spouse of one of those individuals or by reason of some provision in the Superannuation Law.

**"Salary"** means in relation to a Member his or her salary or remuneration as advised by the Employer or if the Member is self employed the Member from time to time and includes (where the context requires) Final Average Salary.

**"Self Managed Superannuation Fund"** means unless otherwise defined in the Superannuation Law a Superannuation Fund of which there are fewer than 5 Members, where all Members are Trustees or Directors of a Trustee that is a Constitutional Corporation and if a Constitutional Corporation is the Trustee, all the Directors of the Trustee are Members of the Fund and all the Members of the Fund are Trustees or Directors of the Trustee Corporation and no Member of the Fund is an employee of another member of the Fund unless the Members concerned are relatives and the Trustee or Trustees (including the



Directors of a Trustee company) do not receive remuneration for services as Trustee or Trustees.

In the case of a Fund with only one Member, the Trustee is a Body Corporate of which the Member is the sole director or the Member is one of only two directors of the Body Corporate Trustee and the Member and the other director are relatives or the Member is one of only two directors of the Body Corporate and the Member is not an employee of the other director or if individuals are Trustees, there are only two trustees and one is a Member and the other is a relative of the Member or the Member is one of only two Trustees and the Member is not an employee of the other Trustee and 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.

**"Spouse"** means the wife or husband of a Member and includes the widow or widower of the Member or any other person accepted by the "Trustee" as being in a bona fide domestic relationship with a member or former member which shall include a same gender relationship (when the Superannuation Law so permits).

**"Tax Act"** means the Income Tax Assessment Act 1936 (as amended) and any amendment or re-enactment thereof for the time being in force.

**"The Superannuation Law"** means the law collectively described in the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations, the Superannuation Industry (Supervision) (Transitional Provisions) Regulations, the Superannuation (Financial Assistance Funding) Levy Act 1993, the Superannuation (Resolution of Complaints) Act 1993, Superannuation (Resolution of Complaints) Regulations, Superannuation (Excluded Funds) Taxation Act 1987, Occupational Superannuation Standards Regulations, Australian Prudential Regulation Authority Act 1998, Australian Prudential Regulation Authority Regulations, Superannuation (Excluded Funds) Supervisory Levy Imposition Act 1991, Superannuation (Excluded Funds) Supervisory Levy Imposition Regulations 1991, Retirement Savings Accounts Act 1997, Retirement Savings Accounts Regulations, Retirement Savings Accounts Supervisory Levy Regulations, Financial Institutions Supervisory Levies Collection Act 1998, Superannuation Supervisory Levy Imposition Act 1998, Retirement Savings Account Providers Supervisory Levy Imposition Act 1998 and any other Act or Regulation enacted or made from time to time touching upon the management of a Superannuation Fund in Australia.

**"Transfer Value"** in relation to a Member means the amount (if any) transferred to the Fund from another Fund.

**"Trustee"** means the Trustee for the time being of this Fund whether original additional or substituted.

**"Trust Deed"** means the foregoing of which these Rules form part including any amendments thereto.

Words importing the singular or plural number shall (where the context permits) include the plural or singular number respectively and words importing one gender shall include other genders; all references to "the Rules" shall be deemed to be the Rules for the time being in operation.

## 2. MEMBERSHIP OF FUND

- 2.1 Any person may be a Member of this Fund provided such person shall not be excluded by any provision in the Superannuation Law.
- 2.2 Each person whom the "Trustee" has invited to join the Fund and who intends to join the Fund shall sign an application in a form determined by the "Trustee". Such application shall be deemed to be an agreement by the Member to be bound by these Rules. Each Member on joining the Fund shall receive a copy of these Rules and shall be bound by these Rules.
- 2.3 The "Trustee" may establish such number of classes or categories of Membership as the "Trustee" shall determine and allocate each Member to a class or category after taking account of the position of the Member as a Director, Manager or other Employee of an Employer or any Participating Employer or a Self-employed person.

## 3. CONTRIBUTIONS AND INVESTMENTS

- 3.1 Subject to Rule 4, a Member, Members Spouse, Employer and any other person permitted by the Superannuation Law, may contribute to the Fund in such manner, and an Employer may contribute to the Fund in such manner, at such times and for such time as the Member, Members Spouse, Employer and other person and the "Trustee" may from time to time agree. No contribution may be made and no contribution may be accepted by the "Trustee" other than as permitted by the Superannuation Law. The "Trustee" is authorised to accept payments pursuant to the Superannuation Guarantee Law as amended from time to time.
- 3.2 Contributions may be in cash or non-cash provided the value attached to a non-cash contribution is fair and reasonable in all the circumstances and may include transfers from other Funds.
- 3.3 A contribution may be refunded to the person who made the contribution only if the Superannuation Law so permits and, the Member requests it, the law requires the refund to be made, the

person who made the contribution requests that the refund be made and the Member has consented thereto in writing or the contribution was made by mistake and the "Trustee" agrees (after reasonable enquiry) that this is so and the person asking for the refund to be made makes the request and provides the "Trustee" with such information as reasonably supports that payment was made by mistake, and the request is made within three months of the contribution being made.

- 3.4 The contributions to the Fund shall be invested as a common fund by or on behalf of the "Trustee" in the "Trustee's" own name or in the name of any nominee selected by the "Trustee" in any one of the following investments (with liberty to the trustee at any time and from time to time to vary and transpose the same) namely:
- 3.4.1 any investment authorised by the law of the Commonwealth of Australia or any of the States thereof for the investment of trust funds;
  - 3.4.2 in the purchase or acquisition of real estate (whether income producing or not and wherever situated) or any estate or interest therein;
  - 3.4.3 on deposit at interest or otherwise with any Bank, Building Society, Company or Body Corporate or on loan at interest or otherwise and either with or without security and upon such terms as the "Trustee" may think fit to any Corporation or person;
  - 3.4.4 the shares or stock of any class or the bonds debentures debenture stock notes or other securities or obligations however called of any Corporation or Body Corporate;
  - 3.4.5 any investment or property (wherever situated) or any form or mode of investment from time to time approved by the "Trustee" (the intention of this paragraph being that the "Trustee" may invest or cause to be invested the moneys of the Fund in the same manner as if the "Trustee" were absolute and beneficial owner thereof).
  - 3.4.6 policies of insurance or assurance as a "whole of life", "endowment", or other with any corporation registered under the Life Insurance Act 1945 (as amended).
  - 3.4.7 in any manner that the "Trustee" could invest the "Trustee's" own money.

Provided however no investment shall be made that contravenes any standard fixed by the Regulator or the Superannuation Law.

- 3.5 Except as permitted by the Superannuation Law the "Trustee" shall not invest any of the Funds money or assets.
  - 3.5.1 in or upon any loan to a Member or a relative or related party of a Member (as defined in the Superannuation Law) either directly or by means of an arrangement being entered into for lending money to a Member in the exercise of a general power of investment of assets of the Fund.
  - 3.5.2 in or upon any loan, investment or other security in or for the benefit of an Employer of any Member.
  - 3.5.3 in or upon any investment other than an investment permitted by the Superannuation Law.
  - 3.5.4 in any way other than on an arms length basis.
  - 3.5.5 in or upon any asset acquired from a Member or relative of a Member unless the same be permitted by the Superannuation Law.
- 3.6 The "Trustee" shall not borrow or maintain any borrowing of money whether by way of secured or unsecured loan otherwise than to secure temporary finance as provided for in the Superannuation Law.
- 3.7 The "Trustee" and in the case that the "Trustee" shall engage an Investment Manager, the Investment Manager may exercising an unfettered discretion determine the basis for calculating the amount of investment earnings allocated to Members. In calculating investment earnings the "Trustee" may deduct amounts for any anticipated liabilities, expenses or losses for which the "Trustee" thinks it would be appropriate to provide.
- 3.8 The "Trustee" may determine which liabilities, expenses or losses (or provisions for those amounts) will be deducted directly from Members' accounts and which shall be deducted from investment earnings (which may be later allocated to Members). The "Trustee" may also determine how to split the liabilities, expenses or losses between various Members' accounts.
- 3.9 The "Trustee" may hold back any amount of investment earnings from allocation to Members which the "Trustee" thinks appropriate but if any amount of investment earning is held back it shall be held in a reserve account. The "Trustee" may later release amounts from the reserve account to increase investment earnings in a later period or otherwise apply them for the benefit of Members in such manner as the "Trustee" thinks appropriate. The "Trustee" shall at all times

have a reserve strategy which is consistent with the "Trustee's" investment, objectives and strategies for the Fund.

- 3.10 Unless the "Trustee" otherwise determines, the "Trustee" will allocate investment earnings (or losses) between Members on a pro rata basis according to each Member's monthly account balance. The "Trustee" may from time to time select another system for the allocation of investment earnings between Members however if the "Trustee" selects another allocation system or changes the system the "Trustee" must tell any Member who is effected by the change in accordance with the requirements of the Superannuation Law.
- 3.11 The "Trustee" can divide the Fund into parts either physically or by accounting means. The "Trustee" in determining whether to divide the Fund into parts may take account of the needs of different investment portfolios, where different parts of the Fund have different tax rates applying to them, whether it's appropriate to separate assets that relate to one type of benefit from assets that relate to a different type of benefit and whether the "Trustee" generally considers such a division appropriate. The "Trustee" may invest different parts of the Fund differently and may apportion any income, gains, losses or outgoings, provision, tax credits, other credits or other amounts between the various parts and determines the attributes of any apportioned amount for tax or other purpose in such manner as the "Trustee" thinks fit.
- 3.12 The "Trustee" must formulate investment objectives and strategies to give effect to the above objectives and requirements. The "Trustee" must determine objectives and strategies for the Fund as a whole or for parts of the Fund, invested differently. The strategy shall comply with the requirements of the Superannuation Law.
- 3.13 The Trustee may in addition to the power described in Rule 3.9 have power to create a general reserve account and may pay into that account such monies including unallocated contributions as may be permitted by the Superannuation Law. The Trustee may later release amounts from the reserve account for the benefit of Members and their Dependants as the Trustee thinks fit. The Trustee shall at all times have a strategy for the reserve account created under this Rule which is consistent with the Trustee's investment objectives and strategies for the Fund.
- 3.14 The "Trustee" may hold back any amount of employer contribution from allocation to Members as may be permitted by the Superannuation Law and which the "Trustee" thinks appropriate but if any amount of contribution is held back it shall be held in a reserve account. The "Trustee" may later release amounts from the reserve account to increase allocated contributions in a later period or otherwise apply them for the benefit of Members in such manner as

may be permitted by the Superannuation Law and as the "Trustee" thinks appropriate. The Trustee shall at all times have a reserve strategy which is consistent with the Trustees investment, objectives and strategies for the Fund.

#### 4. LIMITATION ON BENEFITS

If the benefits being provided by the Fund for a Member or if such benefits, together with the benefits which have been or are being provided for a Member, under any other relevant superannuation fund are regarded or are in the opinion of the "Trustee" likely to be regarded by the Regulator having regard to the provisions the Tax Act or the Superannuation Law as excessive then:-

- 4.1 The "Trustee" may refuse to accept any further contributions to the Fund for or from that Member or may require a reduction in contributions to the Fund of such Member to a level that shall having regard to the provisions of the Superannuation Law be acceptable, the amount of the excess may be transferred to a Separate Fund for the Member being the Fund referred to in sub-paragraph 4.2 or may be dealt with for the benefit of the Member in such manner as the Regulator shall approve in writing.
- 4.2 The Separate Fund shall be held by the "Trustee" in trust for the same persons upon the like terms and conditions and subject to the like trusts powers and authorities and provisions as if the excess amount had remained in the Fund unless the Member and the "Trustee" otherwise agree. Any balance of the contributions which would otherwise have been payable to the Fund but for the provisions of Rule 4.1 may thereafter be paid to the separate fund unless the Member and the "Trustee" otherwise agree. No person shall be a Member of the separate fund other than a Member for whom an excess amount has been transferred under Rule 4.1.

#### 5. MEMBER NOT TO DEAL WITH BENEFIT

- 5.1 A Member shall not charge or otherwise deal with his or her interest in the Fund or any of its investments.
- 5.2 If a Member charges or otherwise attempts to deal with his or her interest in the Fund or becomes bankrupt or commits an act of bankruptcy or has his or her affairs made the subject of the Bankruptcy Law then his or her interest in the Fund shall subject to the provisions of the Superannuation Law cease and the "Trustee" may at any time pay or apply a benefit not exceeding the interest of the Member to such one or more of the Member or Member's Dependants to the exclusion of the others or other of them as the

"Trustee" shall in the "Trustee's" absolute discretion determine **PROVIDED HOWEVER THAT** no benefit shall be paid to or in respect of a Member whilst the Member remains in gainful employment and is under the age of seventy years and any balance not so applied by the "Trustee" shall be applied in such manner as shall be permitted by the Superannuation Law.

- 5.3 No payment shall be made if the payment shall offend against the Superannuation Law.

## 6. ACTUARIAL APPOINTMENT AND INVESTIGATIONS

- 6.1 The "Trustee" may from time to time appoint and remove (on such conditions as the "Trustee" may think fit) an Actuary to the Fund. The Actuary shall be a Fellow of the Institute of Actuaries in Australia or a firm of Actuaries of which each Member is such a Fellow or such other person who may be from time to time permitted so to act as an Actuary by the Superannuation Law.
- 6.2 If an Actuary has been appointed then the "Trustee" may from time to time ask the Actuary to make an actuarial investigation of the Fund and to report in writing to the "Trustee" as to the results of the investigation and on the state and sufficiency of the Fund, having regard to the then present and future liabilities of the Fund and to further make any recommendation which the "Trustee" shall consider appropriate concerning the Fund. Such actuarial investigations shall take place in accordance with prudent actuarial practice and the provisions of the Superannuation Law.
- 6.3 The "Trustee" shall give the Actuary any information which the Actuary may reasonably request for the purposes of the investigation.
- 6.4 Where the report by the Actuary discloses that the Fund is more than or less than sufficient to provide the benefits payable to the Members, the Members and an Employer of a Member based upon the advice of the Actuary may alter their contributions.

## 7. VESTING OF BENEFITS

- 7.1 Subject to any overriding requirement in the Superannuation Law or Law effecting the administration of a Superannuation Fund the total amount of Member financed benefits accruing to a Member from the date upon which this Fund is established shall vest in the individual Member on the day upon which the benefit or benefits accrue.

- 7.2 In the event that any part of a Member's benefit (other than death or disability benefits) accrue directly or indirectly from contributions made by an Employer to the Fund in accordance with a prescribed agreement or award or as a consequence of a payment made to comply with any requirement of the Superannuation Guarantee (Charge) Act 1992 or any mandated payment or if there is no award but the Employer so intends or the Law so requires the benefits applicable thereto shall vest in the Member on the date on which the benefits accrue being the date on or after the date of the agreement, award or requirement.

## 8. PAYMENT OF BENEFITS

- 8.1 Benefits may be paid in any of the following ways:-
- 8.1.1 Subject to the requirement to pay benefits in the form of a pension, if Rule 26 applies and any limitation contained in the Superannuation Law, if there is a specific agreement between the "Trustee" and the Member as to how the Member's benefits shall be calculated or defined then in accordance with that Agreement, or
- 8.1.2 If there is no such agreement then by way of an amount equal to the aggregate of:
- 8.1.2.1 the Member's accumulation, and
- 8.1.2.2 the amount of any life insurance which was received by the "Trustee" in respect of the Member by reason of his or her retirement, disability or death (if the case so requires) and the "Trustee" shall cause to be paid from the Fund to the Member or to such other person institution or approved roll-over facility as the Member directs, the whole or such part of the amounts specified in this Rule as the Member advises and shall retain in the Fund until the Member dies or requests payment of same the remainder (if any) of the amount determined in accordance with this Rule adjusted by the share of any further investment earnings determined by the "Trustee" to be attributed to that amount; and
- 8.1.2.3 subject to the Member or the Member's Dependents or personal representative as the case requires so requesting and all proper taxes and other deductions being made therefrom and the



Trustee being satisfied that there is no breach of the Superannuation Law minimum benefits and accrued benefits standards any amount in the Separate Fund, established under Rule 4, that has accrued to the Member under the Fund.

- 8.1.3 By the "Trustee" purchasing for the benefit of a Member an annuity as defined in the Superannuation Law which shall provide for the payment of an immediate or deferred annuity to the Member from such date as the Member selects being not later than the Member's seventieth birthday.
- 8.1.4 If the Member and the "Trustee" agree, which agreement shall be acknowledged in writing, or if Rule 26 shall apply by paying the benefits progressively to the Member as a pension (whether allocated or otherwise) as defined in the Superannuation Law.
- 8.1.5 In any other manner permitted by the Superannuation Law.

8.2 **Minimum Requirements for Payment of Lump Sum Benefits**

- 8.2.1 If benefits are paid in accordance with a specific agreement under Rule 8.1.1 (a Defined Benefit) then the Member or the Member's Dependants or Personal Representative as the case requires should be paid at least:-
  - 8.2.1.1 in the case that the Member belongs to a particular class of employees in relation to which a relevant benefit certificate applies the amount of the Member's minimum requisite benefit; or
  - 8.2.1.2 in any other case the total of the Member's Member Financed Benefits, and the Member's Mandated Employer Financed Benefits (if any).
- 8.2.2 If benefits are paid under Rule 8.1.2 (an Accumulation) then the Member or the Member's Dependants or Personal Representative as the case requires shall be paid at least the total of the Member's Member Financed Benefits, the Member's Mandated Employer Financed Benefits and any roll-overs or transfers from other Funds.

8.3 **Minimum Requirements for Payment of Pensions**

If benefits are paid in the form of a pension, whether the same be an allocated pension or a life expectancy pension or some other form of

pension permitted by the Superannuation Law, then the following Rules shall apply:-

- 8.3.1 A pension shall be paid for life or such shorter period as the Member and the "Trustee" shall agree provided that if the payment be for less than the life of the recipient such agreement and payment must not offend against the Superannuation Law. If there is a reversionary beneficiary then payments shall be made throughout the life of the reversionary beneficiary or if the reversionary beneficiary is a child of the Member or a former reversionary beneficiary then payment shall be made at least until his or her sixteenth birthday or in the event that such person is a full-time student at age sixteen then payments shall be made at least until the end of his or her full-time studies or until his or her twenty-fifth birthday whichever event shall first occur.
- 8.3.2 Payment of pensions shall be made at regular intervals and at least annually. The size of payments in a year shall be fixed allowing for variation only as provided in these Rules or to allow commutation to pay a superannuation contributions surcharge;
- 8.3.3 No pension shall be paid unless the payment of the same complies with the Superannuation Law
- 8.3.4 A pension shall not be transferred to a person other than a reversionary beneficiary on the death of the Member or of another reversionary beneficiary;
- 8.3.5 The pension shall not have a residual capital value.
- 8.3.6 The pension shall not be commuted except;
  - 8.3.6.1 in the case that the commutation is made within six months after the commencement of the payment of the pension; or
  - 8.3.6.2 where the commutation is made within ten years after the commencement of the payment of pensions such payment is made to or for the benefit of a reversionary beneficiary upon the death of a Member; or
  - 8.3.6.3 if an eligible termination payment resulting from the commutation of a pension is transferred directly to the purchase of another benefit that meets the standards of Sub-Regulation 1.06(2) or

1.06(3) of 1.06(7) of the Regulations or is provided under a Contract that meets the standards set forth in Sub-Regulations 1.05 (2) or 1.05(3) or 1.05(9) of the Regulations; or

8.3.6.4 if it is applied to pay a superannuation contribution surcharge; or

8.3.6.5 if the conversion to a lump sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under Schedule 1 (b) of the Regulations as amended from time to time to the pension as if the commencement date were the day on which the commutation occurs; or

8.3.6.6 if the pension reverts or is commuted and does not have a reversionary component that is greater than 100% of the benefit that was payable before the reversion or the commutation; or

8.3.6.7 in the case that the commutation is otherwise permitted by the Regulator.

8.3.7 Unless the Regulator otherwise approves the sum payable as a benefit in each year to the primary beneficiary or to a reversionary beneficiary is:-

8.3.7.1 if CPI<sub>c</sub> is not less than CPI<sub>p</sub> not less than SP<sub>p</sub>; or

8.3.7.2 if CPI<sub>c</sub> is less than CPI<sub>p</sub> not less than:

$$\frac{\text{CPI}_c}{\text{CPI}_p} \times \text{SP}_p$$

CPI<sub>p</sub>

where:

CPI<sub>c</sub> means the quarterly Consumer Price Index first published by the Australian Statistician for the second-last quarter before the day on which payment is to be made; and

CPI<sub>p</sub> means the quarterly Consumer Price Index first published by the

Australian statistician for the same quarter in the immediately preceding year; and

Spp means the sum payable in the immediately preceding year.

8.3.8 The capital value of a pension and the income from it must not be used as security for any borrowing.

8.3.9 In the event that the Trustee and the Member agree that the pension shall be paid in the form of an allocated pension then this Rule shall apply to such payments and any Rule which conflicts with this Rule shall not apply to the benefit payments:-

8.3.9.1 the pension shall be paid from the amount standing to the credit of the separate account of the pensioner;

8.3.9.2 the pension shall not be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of a reversionary beneficiary and then only as permitted by the Superannuation Law;

8.3.9.3 the capital value of the pension and the income from it cannot be used as security for a borrowing;

8.3.9.4 payments must be made at least annually;

8.3.9.5 the payments in a year except a payment by way of commutation shall not be larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the Regulations (or any other applicable requirement of the Superannuation Law).

8.3.10 In the event that the Trustee and the Member determine that the pension shall be paid and that the size of benefit payments shall be fixed then this Rule shall apply to such payments and any Rule which conflicts with this Rule shall not apply to the payments:-

8.3.10.1 the size of the payment of a benefit in any year shall be fixed allowing only for variation as specified in these Rules;

- 8.3.10.2 if the pension reverts or is commuted it shall not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation; and
  - 8.3.10.3 the pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary; and
  - 8.3.10.4 the capital value of the pension and the income from it cannot be used as security for a borrowing; and
  - 8.3.10.5 except in relation to payments by way of commutation for superannuation contributions surcharge, variation in payments from year to year shall not exceed in any year the average rate of increase of the Consumer Price Index in the preceding three years; and
  - 8.3.10.6 payments in accordance with the contracted size are made at least annually; and
  - 8.3.10.7 the pension cannot be commuted except if conversion is in relation to a commutation to pay a superannuation contributions surcharge the conversion to a lump sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under Schedule 1(b) of the Regulations to the pension as if the commencement day were the day on which the commutation occurs.
- 8.3.11 In the event that the Trustee and the Member agree that the pension shall be paid pursuant to the provisions of regulation 1.06(7) then this Rule will apply to such payments and any Rule which conflicts with this Rule shall not apply to the payments:
- 8.3.11.1 the pension shall be paid at least annually to the primary beneficiary or to a reversionary beneficiary and if the life expectancy of the primary beneficiary on the day when the first payment of the pension is made is less than

fifteen years throughout a period equal to the primary beneficiary's life expectancy rounded up at the primary beneficiary's option (which option shall be exercised not later than the day when the primary beneficiary becomes entitled to the pension) to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or if the life expectancy of the primary beneficiary on the day when the first payment of pension is made is 15 years or more throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy rounded up (at the primary beneficiary's option) not later than the day when the primary beneficiary becomes entitled to the pension to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years;

8.3.11.2 the total amount of the payment or payments to be made in the first year after the date when the first payment of pension is made excluding commuted amounts shall be fixed and that payment or the first of those payments shall relate to the period commencing on the day when the primary beneficiary became entitled to the pension;

8.3.11.3 the total amount of the payments to be made in a year other than the first year after the date upon which the first payment of pension is made, excluding any commuted amounts, does not fall below the total amount of the payments made in the immediately preceding year (the previous total) and does not exceed the previous total if CPIc is less or equal to 4% by more than 5% of the previous total or if CPIc is more than 4% by more than CPIc plus 1% where CPIc is the change (if any) expressed as a percentage determined by comparing the quarterly Consumer Price Index first published by the Australian Statistician for the second last quarter before the day on which the first of those payments is to be made and the quarterly Consumer Price Index first published by the Australian Statistician for the same quarter in the immediately preceding year; and

8.3.11.4 the total amount of the payments to be made in a year in accordance with paragraph 8.3.11.1 and 8.3.11.2 may only be varied to allow commutation to pay a superannuation contribution surcharge; and

8.3.11.5 the pension shall not have a residual capital value; and

8.3.11.6 the pension cannot be commuted except:

8.3.11.6.1 within six months after the commencement day of the pension or by payment on the death of the primary beneficiary to the benefit of a reversionary beneficiary or if there is no reversionary beneficiary to the estate of the primary beneficiary; or

8.3.11.6.2 by payment on the death of a reversionary beneficiary to the benefit of another reversionary beneficiary or if there is no other reversionary beneficiary to the estate of the reversionary beneficiary;

8.3.11.6.3 if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under Rules that meet the standards of Regulation 1.06(2) and 1.06(3) of the Regulations or under a contract that meets the standards of Regulations 1.05(2), 1.05(3) or 1.05(9) or to pay a superannuation contributions surcharge; and

8.3.11.6.4 if the pension reverts it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and

8.3.11.6.5 if the pension is commuted the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and

8.3.11.6.6 the pension cannot be transferred to a person except on the death of the primary beneficiary to a reversionary

beneficiary or if there is no reversionary beneficiary to the estate of the primary beneficiary or on the death of a reversionary beneficiary to another reversionary beneficiary or if there is no other reversionary beneficiary to the estate of the reversionary beneficiary;

8.3.11.6.7 the capital value of the pension and the income from it must not be used as security for a borrowing.

8.3.12 To the extent that they may not be specifically included in these Rules, these Rules shall be deemed to include the Rules required to be included in the Rules of a Superannuation Fund concerning the payment of pensions as are required by Regulation 1.06.

8.4 **Other Provisions Relating to Payment of Pensions**

8.4.1 These Sub-Rules shall apply in the case of Benefits being required by Reason of Rule 26 or an Agreement between the Trustee and the Member to pay benefits in the form of a pension and not in some other way and shall be complimentary to Rules 8.3.

8.4.2 **Payment of Pension at or After Attaining the "Normal Retirement Age"**

The "Trustee" shall pay or cause to be paid to the Member on his or her ceasing to be gainfully employed on or after attaining the Normal Retirement age, or on such earlier date as may be permitted by these Rules and the Superannuation Law such pension as may be agreed to between the Member and the "Trustee" PROVIDED HOWEVER THAT the "Trustee" shall not be permitted to pay a pension or instalment of a pension which would exceed the Member's equitable share.

8.4.3 **Payment of Pension to Spouse on Death of Member During Employment**

On the death of a Member who is survived by a spouse the "Trustee" shall pay a pension to the spouse of such amount as the "Trustee" shall determine taking into account the amount of the pension which would have been payable to the Member PROVIDED THAT the "Trustee" shall not be permitted to pay a pension or instalment thereof if such payment would exceed the



balance of the Member's equitable share or if such pension shall breach any requirement of the Superannuation Law and for the purposes of determining whether the payment of a pension or instalment thereof might exceed the balance of the Member's equitable share during the life of the spouse the "Trustee" may seek the advice of the Actuary either generally or for the purposes of this Rule and the "Trustee" shall adjust the pension and or instalments of the pension to take into account the Actuary's report, advice and/or recommendations

8.4.4 **Payment of Pension on Disability of a Member During Employment**

In the event of a Member ceasing to be gainfully employed on account of disablement the "Trustee" shall pay or cause to be paid to the Member a pension in such manner as shall be agreed to between the Member and the Trustee having regard to the requirements of the Superannuation Law and Rule 8.3 which shall not exceed the pension that would have been payable to the Member had he or she ceased to be in gainful employment by reason of attaining his or her normal retirement age PROVIDED HOWEVER THAT the Trustee shall not be obliged to pay a pension or instalment thereof if the payment would exceed the balance of the Member's equitable share.

8.4.5 **Payment of Pension to Spouse on Death of Pensioner**

On the death of a Member receiving a pension who is survived by a spouse, the "Trustee" shall pay a pension to the spouse of such amount as the "Trustee" shall determine PROVIDED HOWEVER THAT the "Trustee" shall not be obliged to pay a pension or instalment thereof if the payment would exceed the balance of the Member's equitable share or if such pension shall breach any requirement of the Superannuation Law and for the purposes of determining whether the payment of a pension or an instalment thereof might exceed the balance of the Member's equitable share during the life of the spouse, the "Trustee" may seek the advice of the Actuary either generally or for the purposes of this Rule and the "Trustee" shall adjust the pension to take account of the Actuary's report, advice and/or recommendations.

8.4.6 **Transfer Value - Minimum Benefits**

Notwithstanding anything stated to the contrary in these Rules, the capital value of any pension payable to or in respect of a Member shall not be less than its Transfer Value together with interest thereon from the date of receipt into the Fund to the date the Member ceases to be a Member at such rate or rates as the "Trustee" shall in the absolute discretion of the "Trustee" determine having regard to the earning rate of the Fund.

8.4.7 **Payment to Legal Personal Representative**

In the event that there shall be no person entitled to be paid a pension by reason of the death of a person who prior to such person's death was receiving payment of a pension then the "Trustee" shall pay the whole of the benefits standing to the credit of the deceased's person to the legal personal representative of such person upon production of Probate or Letters of Administration and if no legal personal representative shall claim the benefit within two years of the death of the person entitled to the pension the benefit shall cease to be payable and shall be retained in the Fund for the general purposes thereof.

8.4.8 **Accrual and Payment of Pensions**

Subject to the Superannuation Law, no pension shall be payable to or in respect of a Member on any day on which the Member is in full time gainful employment. A pension shall commence on the day following the day when the Member (or other person) became entitled to the pension. Pensions shall accrue from day to day.

8.4.9 **"Trustee" may Approve Commutation**

Following the request of a Member or pensioner, the "Trustee" may, (subject to the Superannuation Law) after exercising an absolute discretion, vary the benefits and entitlements of a Member from time to time and may commute to a lump sum benefit such proportion as shall be permitted by the Superannuation Law of any pension payable from the Fund and the provisions of Rules 8.3.6 and 8.9 shall apply to the payment of the lump sum.

8.5 **General Provisions concerning Payment of Benefits**

8.5.1 **Conditions for Payment**

A Members entitlement to benefits shall crystallize and shall be paid or commenced to be paid if:

8.5.1.1 The Member has attained the age of 65 years, but not the age of 70 years and is no longer gainfully

employed for at least 10 hours each week, or has attained the age of 70 years and is no longer gainfully employed for at least 30 hours per week, or

8.5.1.2A Member has died;

8.5.1.3A Member has retired permanently from gainful employment by reason of total and permanent incapacity or permanent invalidity or permanent disability, or

8.5.1.4A Member has attained an age that requires or permits the payment of a benefit by reason of any provision of the Superannuation Law.

8.5.1.5A Member has left the service of an Employer or ceased to be gainfully employed in other circumstances that may allow the payment of benefits under the Superannuation Law or has met such other criteria as may be approved by the Regulator.

8.5.1.6A Member has met some other criteria which shall permit the Trustee to pay a benefit.

#### 8.5.2 Payment to Dependants

Any amount which becomes payable by reason of the death of a Member shall at the option of the "Trustee" be paid to or for the benefit of the Dependants of that Member or such one or more of them and to the exclusion of the other or others of them and in such proportions and such manner as the "Trustee" in the "Trustee's" absolute discretion shall determine where any Dependant to whom such benefit is paid is an infant or under a disability the payment may be made in Trust to the person appearing to the "Trustee" to be the Guardian or the person having the actual custody or control of such infant or to the person with whom such infant will permanently reside or to such other person or institution (subject to such directions as to the manner in which the payment is to be applied) for the benefit of the infant as the "Trustee" shall determine. The receipt of such person or the appropriate official of such institution shall be a good and sufficient discharge to the "Trustee" for any monies so paid and the "Trustee" shall not be bound to see to the application thereof nor to the carrying out of directions. A payment may be paid to the Legal Personal Representatives of that Member.

8.5.3 **Trustee to Give Effect to Election**

The Trustee in making a determination to pay a benefit or benefits to a Dependant of a Member or where there is no Dependant to another person shall take account of and give full effect to any election that may have been made by a Member in writing to the Trustee prior to the date of the determination by the Trustee. If the Superannuation Law so permits such an election may be made in writing at any time during the member's lifetime or by Will or some other testamentary documentation.

8.5.4 **Provision of Medical Certificates**

Any Member seeking payment of benefits from the Fund on his or her retirement from the work force on the ground of permanent incapacity or permanent invalidity shall provide to the "Trustee" a Certificate signed by two registered Medical Practitioners certifying that in the opinion of those Medical Practitioners the Member is unlikely to ever be able to work again in a job for which the Member is reasonably qualified by education training or experience.

8.5.5 **Payments on Ceasing to be Employed**

If a Member ceases to be in gainful employment in circumstances which do not entitle him or her to a benefit pursuant to these Rules then the "Trustee" shall:-

8.5.5.1 retain in the Fund all of the benefits to which such Member is entitled upon withdrawal and which are required to be preserved and retain the same for the benefit of the Member until the Member satisfies any requirement of these Rules or the Superannuation Law permitting payment; or

8.5.5.2 transfer all of the benefits to which the Member is entitled on such withdrawal and that are required to be preserved to -

8.5.5.2.1 another Superannuation Fund nominated by the Member being a Superannuation Fund of which the Member is or intends to become a Member and that is required to preserve any benefits so transferred in accordance with the standards set out in the Superannuation Law, or

8.5.5.2.2 an approved deposit Fund nominated by the Member being a Fund that is required to preserve any benefits so transferred in accordance with the standards set out in the Superannuation Law, or

8.5.5.2.3 such other Fund as may be authorised by the Superannuation Law.

8.5.5.3 Pay to the Member such portion of the benefits that are unrestricted, non-preserved benefits as defined in the Superannuation Law by paying the same in one or more lump sum payments, one or more pensions that comply with Rule 8.3 and Regulation 1.06 for the purchase of one or more annuities in the form of income, provided by a Life Insurance Company, Friendly Society or a Registered Organization in accordance with the Regulation 1.05.

8.6 **Benefit Payable on the Death of a Member leaving Dependants but not Spouse**

Following the death of a Member leaving no spouse entitled to a benefit pursuant to these Rules but leaving dependants, the "Trustee" shall pay any balance of that Member's account to such one or more of the former Member's Dependants in the manner, at the times, by the instalments and subject to the terms and conditions and in such proportions between them, if more than one, as the "Trustee" may from time to time exercising an absolute discretion determine.

8.7 **Benefit Payable on the Death of a Member leaving no entitled Spouse and no Dependants**

Following the death of a Member not leaving a spouse entitled to a benefit pursuant to these Rules, and not leaving any Dependants, the "Trustee" shall pay or apply any balance of the Member's account to his or her legal personal representative, or if there is no legal personal representative, to such relatives of the deceased Member as appear to the "Trustee" to be entitled under the Laws of Intestacy to share in his or her estate, provided that if there be no such relatives, any balance of the Member's account shall be absolutely forfeited and shall remain in the Fund for the benefit of the remaining Members and beneficiaries.

8.8 **Payment of Benefits "in Specie"**

If the "Trustee" and the person receiving a benefit so agree and provided the same shall not offend against the Superannuation Law, the "Trustee" may pay benefits by transferring assets of the Fund to the recipient without converting them into cash. The assets may be real or personal and the value attributable to such assets shall be determined by the "Trustee" after exercising a reasonable discretion but shall be equal in value to the amount of benefit being paid to the recipient at the date of payment or provision of the benefit. The "Trustee" shall have all necessary powers to pay benefits in this manner including the power to select the particular asset for transfer.

8.9 **Conversion of Lump Sum Payment to Pension**

Benefits payable in the form of a lump sum may be converted to a pension as follows:

- 8.9.1 If a Member shall request in writing the Trustee may subject to the Superannuation Law pay (and for the purposes of Rule 8.1.4.) convert the whole or a portion of any lump sum benefit or transferred payment that is payable to the member to a pension.
- 8.9.2 If the Trustee agrees to pay a pension then the Trustee shall establish a separate account for the Member and shall transfer into that account from the Member's entitlement such amount (or amounts as the case shall require) as the Trustee determines to be necessary in order to be able to pay the pension.
- 8.9.3 Such amounts as are permitted by the Superannuation Law shall be paid to and from the account from time to time.
- 8.9.4 The Trustee may set aside assets of the Fund "in Specie" for the purposes of establishing the separate account.

9. **TRUSTEE TO PROVIDE CERTIFICATE**

When a person ceases to be a Member of the Fund, the "Trustee" shall give or arrange to be given to that Member as soon as practicable after he or she ceases to be a Member a written statement setting out:

- 9.1 the amount of the benefit entitlement of the Member, identifying any amounts that are required to be preserved; and
- 9.2 the method of determining that entitlement; and
- 9.3 all other information, statements and material required by the Superannuation Law.

10. **TRANSFER OF BENEFITS**

- 10.1 If whilst still gainfully employed, a Member is or becomes eligible for Membership in another Superannuation Fund, the "Trustee" may upon the written request of the Member (and provided the Rules of any such other fund permit) transfer the whole or any part of the value of the interest in the Fund of such Member determined in accordance with these Rules and the Superannuation Law to that Fund and the "Trustee" shall advise the "Trustee" of that fund of the extent to which it is vested.
- 10.2 If upon ceasing to be gainfully employed a Member becomes eligible for membership in another Superannuation Fund or becomes eligible to make a deposit or deposits into an Approved Deposit Fund maintained in accordance with the Superannuation Law or wishes to purchase or acquire a Deferred Annuity or an Immediate Annuity as defined in the Superannuation Law, the "Trustee" may upon the written request of the Member and provided the rules of such other fund and the Superannuation Law permit :
- 10.2.1 transfer to any one or more of the trustees of any such Superannuation Fund or Approved Deposit fund assets (and such terms shall include Cash Funds) representing the whole or any part of the value of the interest of the Fund attributable to such Member; or
- 10.2.2 apply the whole or any part of the value of the interest in the Fund attributable to such Member in the purchase of a Deferred Annuity or an Immediate Annuity.
- 10.3 10.3.1 The "Trustee" may at the request of a Member accept a transfer of assets from:
- 10.3.1.1 the Trustee of any Superannuation Fund of which such Member was or is a Member;
- 10.3.1.2 any person by whom such Member was or is employed;
- 10.3.1.3 the Trustee of any Approved Deposit Fund in which such Member was or is a depositor;
- 10.3.1.4 any person from whom such Member has purchased a Deferred Annuity or an Immediate Annuity;
- 10.3.1.5 a Member provided such transfer is in accordance with the Superannuation Law

on the condition that -

- 10.3.1.6 the "Trustee" and such Member agree as to benefits payable to the Member in the given circumstances referred to in these Rules as a consequence of such transfer of assets;
- 10.3.1.7 the assets so transferred are to form part of the Fund to pay benefits to any person as provided for in these Rules;
- 10.3.1.8 the "Trustee" is provided with such information as the "Trustee" may reasonably request as to:  
the age;  
the sex;  
the period or periods of membership of the Member with any previous Fund;  
the period or periods of service of the Member with any Employer in respect of which the assets so transferred represent benefits accrued to the Member including an allocation of those benefits between the respective period or periods and the extent to which the assets so transferred represent the Member's personal contributions and dates or periods (as specified by the "Trustee") upon or during which such contributions were made; and  
the extent to which the assets so transferred represent non preserved assets (which non preserved assets so far as the Superannuation Law permits may continue to be held as non preserved assets);
- 10.3.1.9 any reasonable arrangements supplied by the "Trustee" about any other matter which in the opinion of the "Trustee" is incidental to or consequent upon a transfer or admitting a Member to membership of the Fund or allowing a Member to remain a Member of the Fund are complied with.
- 10.3.1.10 the money or assets so transferred shall have the same value and provide the same benefits to the new Member as the new Member had in the other



Superannuation Fund or like scheme immediately before the date of transfer. The amount shall represent the Members transfer value for the purposes of these rules.

10.3.2 The "Trustee" may, if the "Trustee" thinks fit, accept a transfer of any Life Insurance policy existing on the life of a Member.

10.3.3 In the event that assets or Life Insurance Policies are transferred to the Fund for the benefit of a Member, then except in the event of the Member's death or permanent disability or in accordance with the Superannuation Law or such other circumstances as the Regulator may allow such benefits shall not be paid on to the Member or any other person, prior to the Member attaining the age of fifty-five years.

10.4 When accepting a transfer of making a Transfer the Trustee shall transfer to the new Fund or accept from the old Fund the benefit of any taxation concession on the benefits being transferred, including the benefit of any capital gain or other tax relief.

## 11. MONEYS NOT APPLIED TO BENEFITS TO REMAIN IN FUND

Moneys released in respect of any benefits forfeited and not subsequently paid or applied in accordance with these Rules and the Superannuation Law shall remain in the Fund for the general purposes thereof of the Fund.

## 12. FORFEITURE OF BENEFITS

### 12.1 Conditions of Forfeiture

Any Member, former Member, or, after his or her death any of the dependents or the personal representatives of a Member or former Member who cannot (subject to reasonable enquiry having been made) be located and whose dependents cannot be located by the "Trustee" during a period of two years after a payment was last made to him or her by an employer particulars of which employer have been given in writing to the "Trustee" or by the "Trustee" or if the Member was immediately before ceasing to have contact with the "Trustee", self employed, then from the date the Member was last in contact with the "Trustee", shall forfeit entitlement to all his or her benefits and in the event that he or she shall not have prior to that

date given notice of his or her retirement from the Fund shall on that date cease to be a Member of the Fund. Any benefits that have accrued to a Member, former Member and beneficiary that is forfeited under this sub Rule shall be paid to the Regulator or the appropriate receiver of unclaimed monies in accordance with any requirement of the Superannuation Law.

12.2 **Member's Account Residue**

Any Member or former Member who has been paid all benefits which the "Trustee" considers should be paid to him or her in accordance with these Rules and who still has a residual amount standing to his or her credit shall, upon the day that the "Trustee" declares all benefits due to the Member have been paid to the Member, forfeit such amount and such amount shall be dealt with as a forfeited benefit.

12.3 **Application of Forfeited Benefits**

The "Trustee" shall hold upon trust and pay or apply any benefits which have been forfeited which represent Members' vested contributions or preserved payment benefits to or for the benefit of the Member or his or her dependents or any one of them in such portions between them and on such terms as the "Trustee" may from time to time in the "Trustee's" absolute discretion determine provided that no benefit shall be paid to or in respect of a Member whilst the Member remains in gainful employment and any balance not so applied by the "Trustee" shall be applied in such manner as is authorised by the Superannuation Law.

12.4 **Application of Remaining Forfeited Benefits**

Subject to Sub-Rule 12.3 and any overriding requirement of the Superannuation Law, the "Trustee" may, exercising an absolute discretion, pay or apply any benefits which have been forfeited

12.4.1 to or for the benefit of the Members or former Members of the Fund or any of their respective dependents or any one or more of them in such proportions between them and on such terms as the "Trustee" may from time to time exercising an absolute discretion, deem fit;

12.4.2 to or for the benefit of Members or former Members of the Fund who have rights to receive benefits from the Fund or for any of their respective dependents on a basis that the "Trustee" considers reasonable having regard to all the circumstances in which benefits may be paid in lieu of contributions which were otherwise payable by an Employer or a Member to the Fund;

- 12.4.3 to repay to an Employer or a contributor contributions made to the Fund in respect of a Member whose rights to receive benefits under the Fund have ceased, or
- 12.4.4 for any other purpose approved from time to time by the Regulator or
- 12.4.5 as required by the Superannuation Law.

13. PRESERVATION OF BENEFITS

The amount of any benefits vested in a Member in accordance with these Rules or the Superannuation Law shall be preserved and in relation to each Member of the Fund and any amounts that may be transferred to the Fund for the benefit of a Member in accordance with these Rules or under the Superannuation Law shall be preserved in the manner and to the extent required by the Superannuation Law.

14. AUDITOR

The Fund shall ( if the Superannuation Law so requires ) have an Auditor to audit the books of the Fund and such Auditor shall:-

- 14.1 be an independent registered auditor; or
- 14.2 when the Superannuation Law so permits be a person who -
  - 14.2.1 is a Member of the Institute of Chartered Accountants or the Australian Society of Certified Practising Accountants or the National Institute of Accountants or is a Fellow or Member of the Association of Taxation and Management Accountants or such other person as shall be permitted by the Superannuation Law;
  - 14.2.2 is not a Trustee or Member of or contributor to the Fund, Member of the Management Board, Committee or other body exercising actual control over the policies, assets or property of the Fund, or a partner, employee or officer of such Trustee, Member or contributor and
  - 14.2.3 does not have actual control over the investments or administration of the Fund and is not a partner, employee or officer of any person having such control.
- 14.3 take office immediately upon being appointed by the "Trustee" and shall remain in office until -
  - 14.3.1 death; or
  - 14.3.2 insanity or such illness as incapacitates him or her from carrying out the duties of Auditor; or

- 14.3.3 resignation; or
- 14.3.4 ceasing to satisfy any of the requirements for acting as Auditor as provided in these Rules or the Superannuation Law; or
- 14.3.5 removal from office by the "Trustee".

## 15. TRUSTEE

### Rules Applying to Trustee Generally

- 15.1 The Fund shall be managed by a Trustee who shall:-
  - 15.1.1 unless Rule 26 applies be a Constitutional Corporation and
  - 15.1.2 once appointed, continue to hold office until removed or ceasing to hold the qualifications for office as required in these Rules and
  - 15.1.3 be appointed and hold office in accordance with these Rules and the Superannuation Law and
  - 15.1.4 in the case of the first Trustee be the persons or Corporation named at Item 3 in the Schedule and
  - 15.1.5 except in the case that the Fund has fewer than five members, comply with the equal representation rules contained in the Superannuation Law and
  - 15.1.6 in the case that the Fund is a Self Managed Superannuation Fund, comply with Rule 15.17.
  - 15.1.7 in the case that the Fund has fewer than 5 Members but is not a Self Managed Superannuation Fund, be a Trustee who is an independent Trustee approved to act as Trustee by the Australian Prudential Regulation Authority.
- 15.2 The office of Trustee shall become vacant
  - 15.2.1 if, being a Corporation, it is placed in receivership or goes into liquidation or in some other manner ceases to hold the qualification required for it to be a Trustee; or

- 15.2.2 if the Members and the Employer (if there be an employer) agree to remove the "Trustee" and in the event that there shall only be Members the Members and in the event that there shall be a disagreement between the Members and an Employer or Members on the question of the removal of the "Trustee" if the Auditor upon the request of any Member shall direct upon reasonable grounds that the "Trustee" be removed;
- 15.3 A person acting as a director of a Trustee company shall be removed from office if:
  - 15.3.1 he or she dies or resigns by notice in writing
  - 15.3.2 he or she is disqualified from acting as a director pursuant to the Corporations Law
  - 15.3.3 he or she is disqualified from acting as a director pursuant to any of the provisions of the Superannuation Law
  - 15.3.4 he or she becomes mentally ill or his or her affairs come under the protective jurisdiction
  - 15.3.5 he or she becomes bankrupt or makes an assignment to or composition with his or her creditors
  - 15.3.6 if the Members and the Employer (if there be an Employer) and if there only be Members the Members agree to remove the director and in the event that there shall be a disagreement between the Members and the Employer (if there be an Employer) or the Members on the question of removal of the director, if the Auditor upon written request from a Member shall direct upon reasonable grounds that the director be removed.
- 15.4 In the case of a Trustee or a Director holding office as a result of an agreement to appoint or nominate as an independent Trustee or Director such Trustee or Director shall be removed as soon as such mutual agreement or nomination ceases.
- 15.5 In the case of a natural person "Trustee", the person shall be removed from office if :
  - 15.5.1 he or she dies or resigns by notice in writing
  - 15.5.2 he or she is disqualified from acting as a Trustee pursuant to any of the provisions of the Superannuation Law

- 15.5.3 he or she becomes mentally ill or his or her affairs come under the protective jurisdiction
- 15.5.4 he or she becomes bankrupt or makes an assignment to or composition with his or her creditors
- 15.5.5 Is guilty of gross misconduct in the management of the affairs of the Fund.
- 15.6 A "Trustee" or the directors of a Corporate "Trustee" shall not be under any personal liability in respect of any loss or breach of trust relating to the Fund unless the same shall have been due to its or his or her own dishonesty or gross neglect.
- 15.7 A "Trustee" shall be indemnified by the Fund against all liabilities and damages incurred by the "Trustee" in the execution or attempted execution or in respect of the non execution of the trust, authorities, power and discretions contained in these Rules provided the "Trustee" shall have acted reasonably and the "Trustee" shall have a lien on and may use any monies for the repayment of all proper legal and other costs and charges, and expenses of administering or winding up the Fund, and otherwise of performing the "Trustee's" duties under these Rules. The indemnity provided shall extend and apply to any payment made on the death of a Member to any person whom the "Trustee" bona fide believed to be entitled thereto.
- 15.8 A "Trustee" shall not be entitled to indemnity, reimbursement or payment of expenses from the Members or any of them or any other person entitled to benefit from the Fund and the Members likewise shall not be personally liable for the debts of the Fund.
- 15.9 The "Trustee" shall in each year of the Fund's existence as soon as practicable after the end of a year of income and not later than the date which may be prescribed for that purpose in respect of that year by the Regulator as being the last date for filing of a return as required by the Superannuation Law, give or cause to be given to the Regulator in relation to the year of income -
  - 15.9.1 a return in a form approved by the Regulator for the purposes of providing such information relating to the Fund and to the Fund's satisfaction of the Fund's conditions during the year of income as is required by the Superannuation Law; and
  - 15.9.2 a certificate by the "Trustee" of the Fund as to the matters required by the Superannuation Law in the form prescribed; and

- 15.9.3 a certificate by the Fund's Auditor as to the matters required by the Superannuation Law in the form prescribed; and
- 15.9.4 the prescribed fee and any other information that may be required by the Regulator or the Superannuation Law.
- 15.10 The "Trustee", whether original or substituted, shall see to the proper administration of the Fund and use the "Trustee's" best endeavours to ensure that in the administration of the Fund there is no breach of the Superannuation Law and that the Fund is at all times a Complying Superannuation Fund as defined in the Superannuation Law.
- 15.11 As soon as practicable after the end of the year of income of the Fund first occurring after the date hereof and of each succeeding year of income (and in no case later than 6 months after the end of each year) the "Trustee" shall provide to each and every Member a written statement setting out -
  - 15.11.1 the amount of benefits vested in the Member at the commencement of the first day of the year of income to which the statement relates;
  - 15.11.2 the amount of benefits vested in the Member at the expiration of the last day of that year of income;
  - 15.11.3 the method of determining the amount of the benefits referred to in subparagraph 15.11.2;
  - 15.11.4 the amount or proportion of the benefits referred to in subparagraph 15.11.2 that is required by the Superannuation Law and/or this deed to be preserved in relation to the Member in the event of the Member's withdrawal from the Fund;
  - 15.11.5 the amount of contributions made by the Member during that year of income;
  - 15.11.6 the amount of net earnings allotted to the Member during that year of income and the rate at which those earnings were allotted;
  - 15.11.7 the amount of any current death benefit of the Member;

And where the amount of benefits that are vested in a Member of the Fund is calculated on the basis of the benefits purchased by the "Trustee" under an endowment or whole of life policy, the amount of:

- 15.11.7.1 the sum assured; and

- 15.11.7.2 any bonuses that have accrued to the Member on or before the end of the year of income to which the statement relates; and
    - 15.11.7.3 contributions made by that Member during that year of income.
  - 15.11.8 any other information required to be given pursuant to the Superannuation Law.
- 15.12 The "Trustee" shall give to every person who becomes a Member of the Fund as soon as practicable thereafter a written statement containing details of the kinds of benefits provided to Members by the Fund, the conditions relating to those benefits and the method of determining entitlements of Members to benefits and such other information as shall from time to time be required by the Superannuation Law.
- 15.13 The "Trustee" shall as soon as practicable after appointment become familiar with the provisions of these Rules and the requirements of the Superannuation Law and apply them fairly between the Members and beneficiaries of the Fund.
- 15.14 The "Trustee" shall deal appropriately with any conflict between the interests of the Members and or those in receipt of payments or benefits and the interests of the Employer (if there be an Employer) and the "Trustee" and if a conflict of interest arises disclose it to the Members or if the case requires the persons in receipt of benefits.
- 15.15 In addition to the duties and obligations of a "Trustee" otherwise provided in these Rules, the "Trustee" shall -
  - 15.15.1 take all reasonable steps to ensure that there are at all times in force arrangements under which
    - 15.15.1.1 Members and beneficiaries have the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to the Member or beneficiary making the enquiry or complaint, and
    - 15.15.1.2 enquiries or complaints so made are properly considered and dealt with within 90 days after they were made.
  - 15.15.2 if the "Trustee" enters into an agreement with an Investment Manager under which money of the Fund will be placed under the control of the Investment Manager



- 15.15.2.1 ensure that the agreement contains adequate provision to enable the "Trustee" to require the Investment Manager from time to time:
  - 15.15.2.1.1 to ensure the provisions of appropriate information as to the making of, and return on, the investment; and
  - 15.15.2.1.2 to ensure the provision of such information as is necessary to enable the "Trustee" to assess the capability of the Investment Manager to manage the investments of the Fund and
- 15.15.2.2 ensure that wherever it is necessary or desirable to do so, the Investment Manager provides the information.
- 15.15.3 keep and retain for at least 10 years minutes of all meetings of "Trustees" or directors of a "Trustee" Corporation as the case requires;
- 15.15.4 keep and retain for at least 10 years up to date records of all changes of "Trustees" and changes of directors of any corporate "Trustee" and of all consents given under Section 118 of the Superannuation Industry (Supervision) Act 1993;
- 15.15.5 keep and retain for as long as they are relevant and in any event for at least 10 years copies of all reports that are given from time to time to all Members of the Fund or to all Members included in a particular class and to make those copies available for inspection by the Regulator if required so to do;
- 15.15.6 to notify the Regulator in writing not later than the third business day after becoming aware of the event of the occurrence of any event having a significant adverse effect on the financial position of the Fund;
- 15.15.7 make and publish Rules setting out a procedure for appointing the individual Member "Trustees" or the Member directors of a corporate "Trustee" ensuring that the Member representatives so appointed can only be removed by the same procedure as that by which they were appointed except in the event of -
  - 15.15.7.1 death, or

- 15.15.7.2 mental or physical incapacity, or
- 15.15.7.3 retirement, or
- 15.15.7.4 termination of employment, or
- 15.15.7.5 the Member representative becoming a disqualified person within the meaning of Part 15 of the Superannuation Industry (Supervision) Act 1993 or the suspension or the removal of the "Trustee" under Part 17 of the Superannuation Industry (Supervision) Act 1993, or
- 15.15.7.6 any other circumstance prescribed in the Superannuation Law

and publish those Rules in such a way as will make Members of the Fund aware of the procedure for appointment and removal of the Member representatives;

- 15.15.8 except in the case of the Fund being a Self Managed Superannuation Fund or relying on Sub-Section 89(2) of the Superannuation Industry (Supervision) Act 1993 in order to comply with the basic Equal Representation Rules, to the extent that these Rules do not so provide the "Trustee" shall establish Rules ensuring that the additional independent Trustee or additional independent director, as the case may be, can only be removed by the same procedure as that by which such Trustee or Director was appointed except in the event of -

- 15.15.8.1 death, or
- 15.15.8.2 mental or physical incapacity, or
- 15.15.8.3 becoming a disqualified person within the meaning of the Superannuation Law, or
- 15.15.8.4 being suspended or removed under the Superannuation Law

and shall publish those Rules in such a way as will make Members of the Fund aware of the procedure for removal of such Trustee or Director as the case may be.

- 15.15.9 keep such accounting records as correctly record and explain the transactions and financial position of the Fund, so keeping the accounting records as to enable the accounts and statements of the Fund as required by the Superannuation Law and the returns referred to in the Superannuation Law to be prepared, keeping the accounting records, statements and returns so that the

same may be conveniently and promptly audited, retaining the records for at least 5 years after the end of the year of income to which the transaction relates, causing the records to be kept in Australia and keeping the records in writing in the English language or in a form in which they are readily accessible and readily convertible into writing in the English language;

- 15.15.10 satisfy all of the requirements concerning the proper and efficient conduct of and management of the Fund as are contained in the Superannuation Law.
- 15.15.11 satisfy all of the requirements of the Superannuation Law for the preservation of small balances in Members' accounts.
- 15.16 No Director of a Corporation acting as "Trustee" shall have a second or casting vote.

15.17 **Where the Fund is a Self Managed Fund**

- 15.17.1 This Rule and the general Rules concerning the "Trustee" shall apply so long as the Fund is a Self Managed Superannuation Fund.
- 15.17.2 If Rule 26 applies the "Trustee" shall, subject to the Superannuation Law, comprise all the Members and :-
  - 15.17.2.1 in the case that there is only one member of the Fund, that person together with one other person who is an individual and who is a relative of the member or is a person who is an individual who is not a relative and the member is not an employee of that other Trustee;
  - 15.17.2.2 if there are two or more members of the Fund, all of the members must be Trustees;
  - 15.17.2.3 there must not be any other Trustee;
  - 15.17.2.4 the Trustee or Trustees must not receive any remuneration from any person for any duties or services performed by the Trustee or Trustees in relation to the Fund.
- 15.17.3 If Rule 26 does not apply then the Trustee shall subject to the Superannuation Law be a Constitutional Corporation and :-

- 15.17.3.1 if there is only one member of the Fund and the Constitutional Corporation is a single director Corporation, then that person must be the single director and in the case that the Trustee is not a single director Corporation, then the Corporation shall have two directors, one of whom must be the member and one of whom may be a relative or a person who is not a relative, provided that the member is not an employee of that second unrelated director;
- 15.17.3.2 if there are more than one member of the Fund, all the members must be directors of the Constitutional Corporation;
- 15.17.3.3 there must be no directors of the Trustee Corporation other than persons who are members of the Fund, except in the case described in 15.17.3.1;
- 15.17.3.4 the directors of the Trustee Corporation must not receive any remuneration from any person for any duties or services performed by the Trustee in relation to the Fund;
- 15.17.3.5 there must not be any other Trustee of the Fund.

15.18 **Where the Fund has more than 4 Members**

- 15.18.1 This Rule and the general Rules concerning the "Trustee" apply so long as the Fund has more than 4 Members.
- 15.18.2 If Rule 26 applies the "Trustee" shall be such individuals or Constitutional Corporation as shall satisfy the requirements for the appointment as a "Trustee" of this Fund in the Superannuation Law taking into account the number of Members. The Rules contained in the Superannuation Law concerning equal Employer-Employee representation shall apply.
- 15.18.3 If Rule 26 does not apply or if Rule 26 does apply but the Members and Employer (if there is an Employer) agree the "Trustee" shall be a Constitutional Corporation, the Board of Directors of which must comply with the equal Employer-Employee representation rules contained in the Superannuation Law.
- 15.18.4 There may be an additional independent Director of the "Trustee" Corporation if either the Employer representatives (if there be an employer) or the Member

representatives shall so request and if there be only Member representatives a Member shall so request.

- 15.18.5 Such a representative shall be appointed by mutual agreement between the Employer representatives (if there be an Employer), and the Member representatives, if the circumstances so require however in the event that they are unable to agree upon the nominee or where the request be made by a single Member and the Members are unable to agree, the Fund's Auditor shall nominate a suitable person for that purpose and that nomination shall be final and binding.
- 15.18.6 The Directors of the "Trustee" Corporation may only in accordance with the Superannuation Law or with the consent of the Regulator, comprise unequal numbers of Employer and Member representatives.
- 15.18.7 Where for any reason a vacancy occurs in the "Trustee" individuals or in the Board of Directors of the "Trustee" corporation, that vacancy shall be filled within 60 days or such shorter period as the Superannuation Law may require of its occurrence
- 15.18.8 A resolution of the "Trustees" or of the Board of Directors of the "Trustee" Corporation, as the case may be, shall not be of any force or effect unless at least two-thirds of the "Trustees" or Directors cast an affirmative vote (unless the Superannuation Law shall otherwise permit).
- 15.18.9 Subject to Rule 15.18.10 where for any reason a vacancy occurs in the Board of Directors of the "Trustee" Corporation, that vacancy shall be filled by the Employer (where there is an employer) where the person vacating office represented an Employer or by the Members where that person represented them or any sectional group of them. Where the vacancy is of a person appointed as an independent representative, then that vacancy shall be filled in the manner provided for the appointment of an independent representative.
- 15.18.10 If the Employer (if there is an Employer) or the Members cannot agree upon a nominee to fill a vacancy in the "Trustee" or in the Board of Directors of a "Trustee" Corporation to represent the Employer or Members (as the case may require) either of them or any one of them may request the Fund's Auditor to nominate a suitable Corporation or person for that purpose and the nominee of the Auditor shall be appointed.

16. GENERAL POWERS OF THE TRUSTEE

In addition to the powers which may by Law be conferred upon or which are provided for by these Rules, the "Trustee" shall have the following powers:

- 16.1 to settle, compromise or submit to mediation or arbitration any claims, matters or things relating to this Deed or to the rights of Members or any other person making any claims upon the Fund;
- 16.2 to commence, carry on and defend proceedings relating to the Fund or to the rights of any Members, former Members or any beneficiaries under the Fund;
- 16.3 to insure or re-insure risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, re-insurance company or other superannuation fund;
- 16.4 to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any participating Employer where there exists the possibility of transfers of employees to the Fund;
- 16.5 to retain the services of such professional or other advisers in relation to the management, administration or investment of the Fund and to pay out all expenses properly incurred and incidental to the management and administration and investment of the Fund;
- 16.6 to indemnify or to undertake to indemnify any person in respect of any claim matter or thing relating to the Fund or to the rights of any Member, former Member or beneficiary in respect of the Fund;
- 16.7 generally to do all acts, things and matters as the "Trustee" may consider necessary and expedient for the proper administration, maintenance and preservation of the Fund including the making of an election to be a Regulated Superannuation Fund.

17. ALTERATIONS TO RULES

- 17.1 These Rules may from time to time whether prospectively or retrospectively be altered, repealed or added to by the "Trustee" by Deed or resolution and such alterations or additions may in like manner be altered, repealed or added to **PROVIDED HOWEVER** that no amendment shall detrimentally effect the benefits which have already been provided under the Fund in respect of any Member from contributions made by that Member and in respect of that Member to the date of such amendment unless such amendment is made in conformity with these Rules and either with the consent in writing first had and obtained from all the Members of the Fund or the

Regulator. No amendment shall be made which has the effect of creating a re-settlement of this Trust.

- 17.2 Any amendment made shall be binding on each Member of the Fund whether or not such Member has executed a Deed of Adoption before or after such amendment and shall take effect as and from the date of the Deed or resolution or as and from such earlier or later date as may be specified for that purpose in the Deed or Resolution and shall be of the same validity as if it had been originally contained in these Rules.
- 17.3 As soon as practicable after such amendment the "Trustee" shall give to each of the Members a written statement explaining the nature and purpose of the alteration and the effect (if any) of the alteration on the entitlements of Members.
- 17.4 In the event that the "Trustee" shall become aware that any of the provisions of these rules offend against the Superannuation Law, the "Trustee" shall, within 30 days of becoming aware, cause this Deed to be amended so as to remedy that breach.

18. SERVICE OF NOTICES

Every notice or other communication whatsoever to be made or given by the "Trustee" a Member or an Employee shall be in writing, signed by an officer appointed by the "Trustee" or Employer or by the Member (and if the notice be given on behalf of a group of Members then by a nominee of the group) and shall be sent by post or electronic means to the last advised address of the person to whom the notice is sent

19. INSPECTION OF THIS DEED

- 19.1 A copy of this Deed shall be kept by the "Trustee" at the "Trustee's" registered office and shall be open to inspection by any Member at all reasonable times.
- 19.2 Every Member upon request to the "Trustee" shall be supplied with a copy of this Deed and Rules of the Fund.

20. DEDUCTION OF TAXES AND EXPENSES

- 20.1 The "Trustee" may deduct from any benefit or payment under these Rules

- 20.1.1 any taxes payable from or in respect of it whether by the person entitled thereto or the Fund and shall thereupon pay the taxes deducted to the Commissioner of Taxation or such other person entitled to receive the same.
- 20.1.2 The costs or expenses incurred in locating and determining the identity of any person entitled to benefit hereunder and any costs or expenses in determining the amount of any benefit payable hereunder.
- 20.2 The person entitled under the Fund shall be entitled to receive only the benefits or payments due after the deduction or deductions have been made.

21. MONEY OWING TO FUND OR AN EMPLOYER

Subject to the Superannuation Law, where a Member at the time he or she ceases to be an employee owes any money to the Fund or to an Employer (including costs of any prosecution or civil proceedings together with interest on those monies at a rate determined by the "Trustee") or if the Member has committed any fraud upon an employer or is guilty of dishonesty, defalcation or serious misconduct such that the monies are owing to the Employer, the Member shall be deemed to have forfeited his or her rights to receive a sum equivalent to the money owing to the Fund or the Employer (as the case maybe) from that part of the benefit payable which does not represent Members' vested contributions or preserved payment benefits and the "Trustee" shall

- 21.1 if the monies are owed to the Fund, retain them in the Fund; or
- 21.2 if the monies are owed to the Employer, retain them in the Fund or pay them to the Employer or as the Employer directs.

22. TERMINATION OF FUND

- 22.1 An Employer shall cease to be a contributor and participant in the Fund upon giving written notice to the "Trustee" of an intention to cease to be a contributor and participant from such date.
- 22.2 A Member who is an employee of an Employer contributing to the Fund that has ceased to be a participant and contributor in the Fund may continue to be a Member. No benefit shall be paid to such Member during the period that his or her employment with the former participating Employer continues unless the Member shall be more than 70 years of age.



- 22.3 If there is only one Employer contributing to the Fund and that Employer is for any reason unable or unwilling to continue as a contributor to and a participant in the Fund, the "Trustee" shall have the power to appoint by Deed any Corporation or person that is willing to contribute and participate in the Fund, to take the place of the principal Employer and such Corporation or person shall upon appointment become the Employer for the purposes of this Trust Deed.
- 22.4 Subject to Rule 22.3 where there is an Employer Sponsor the Fund shall be wound up upon the happening of any of the following events:
- 22.4.1 the expiry of one months notice to the "Trustee" and each Member by the Employer that it has decided to cease permanently contributing to the Fund; or
  - 22.4.2 if the Employer be a Corporation - if an order is made or an effective resolution is passed for the winding up of the Employer other than for the purpose of amalgamation or reconstruction or if the Employer for any other reason ceases to carry on business; or
  - 22.4.3 if the Employer, being a partnership or sole trader, the partnership is dissolved or the business of the Employer in any way ceases to exist other than for the purpose of succession, amalgamation or reconstruction; or
  - 22.4.4 if there is no person to whom a benefit is or may be payable pursuant to these Rules; or
  - 22.4.5 if the liabilities of the Fund at any time exceed the assets of the Fund; or
- 22.5 Where the Fund has no Employer but has Members who are self employed it shall be wound up:
- 22.5.1 if there is no person to whom a benefit is or maybe payable; or
  - 22.5.2 if at any time the liabilities of the Fund exceed its assets.
- 22.6 In the event of a winding up of the Fund any liability of any Employer or any Member or other person to make contributions shall cease and determine (save and except to the extent of any payment the liability for which has arisen but in respect of which payment has not been made) and the "Trustee" shall distribute amongst the Members or former Members or their dependents the assets of the Fund in accordance with these Rules either as a death benefit or a withdrawal benefit or a permanent disablement benefit or by way of payment to another Fund as appropriate provided that the "Trustee" shall have the absolute discretion to vary such benefits in such circumstances and on a basis that the "Trustee" considers reasonable having regard

to the circumstances and the provisions of the Superannuation Law. No benefit shall be paid to a Member whilst the Member is gainfully employed except as permitted by the Superannuation Law.

- 22.7 If any amount remains in the Fund after all the Members' entitlements have been paid the amount so remaining shall be paid to the Employers and/or the Members in such proportions as the "Trustee" considers to be appropriate or to such other persons or Corporation as the Regulator may require.

23. MISCELLANEOUS

- 23.1 This Fund is an indefinitely continuing Fund and shall be maintained solely for either or all of the following purposes:
- 23.1.1 the provision of benefits for each Member of the Fund in the event of the retirement of the Member from any business, trade, profession, vocation, calling, occupation or employment;
  - 23.1.2 the provision of benefits for dependents of each Member of the Fund in the event of the death of a Member
  - 23.1.3 for such ancillary purpose as the Regulator may from time to time approve.
- 23.2 In the event that at any time the provisions of the Superannuation Law shall permit a benefit to be provided or an investment to be made or some action to be take or done that is in the opinion of the "Trustee" more beneficial to the recipient or the Fund than a benefit, investment or action permitted hereunder, the "Trustee" shall be permitted (but not obliged unless required so to do by the Regulator) to provide the benefit to the recipient or make an investment or take or do the action that is permitted by the Superannuation Law.
- 23.3 The "Trustee" shall at all times whilst exercising a discretion, exercise the discretion having regard to the provisions of the Superannuation Law, the Tax Act any other relevant legislation and prudent business and investment practice.
- 23.4 Notwithstanding the provisions of any of these Rules or any other Rule of Law, any right acquired or action taken by the "Trustee" in the terms of these Rules shall be deemed to be acquired or taken by the "Trustee" in a capacity of "Trustee" and any monies payable to the "Trustee" shall be received and disbursed by the "Trustee" as such "Trustee" as provided by these Rules and shall not form part of the personal or separate assets of the "Trustee".

- 23.5 The Trustee may take any action, make any payment or investment, establish any Fund or Sub-Fund, divide the Fund into any number of parts, exercise any discretion and give effect to any request made by a Member, Member's Dependant or other beneficiary as shall be permitted by the Superannuation Law.

24. COVENANTS AND REQUIREMENTS DEEMED TO BE INCORPORATED IN THESE RULES

To the extent that they are not incorporated in these Rules -

- 24.1 The covenants set out and the standards prescribed by the Superannuation Law and any additions to or modifications of those requirements, covenants and standards that may become operative at any time after the date of this Deed, shall be **DEEMED TO BE INCLUDED IN THESE RULES** and where any inconsistency exists between any matter or thing contained in or referred to in these Rules and the covenants and standards so prescribed and any other regulation and any additions to or modifications of those covenants, standards, requirements and regulations that may become operative at any time after the date of this Deed such covenant, standard, requirement, or regulation, shall take precedence and **SHALL BE DEEMED** to be incorporated in these Rules as and from the date upon which such amendment, addition or modification shall take effect.
- 24.2 A requirement that the Fund comply with the equal representation rules, the rules relating to the appointment of a "Trustee", the investment rules and the rules for payment of Benefits and Pensions, contained in the Superannuation Law **SHALL BE DEEMED** to be incorporated in these Rules.

25. TRUSTEE NOT IN CONTRAVENTION

The "Trustee" shall not be taken to be in contravention of these Rules or to be in breach of trust if the "Trustee" does anything, or fails to do anything, which is in contravention of the Superannuation Law or any provision of these Rules if:

- 25.1 the contravention is permitted by the Superannuation Law, or
- 25.2 the contravention is approved by the Regulator or the person or persons (if any) specified for that purpose, in accordance with the Superannuation Law, or

25.3 the contravention is rectified within 28 days, or (where applicable) such other period allowed by the Superannuation Law, from the date the "Trustee" became aware of the contravention.

26. CIRCUMSTANCES IN WHICH FUND DEEMED TO BE A PENSION FUND

In the event that this Fund shall be described in the Schedule as a pension fund, or if not so described but the Trustees are individuals then the primary purpose of the Fund shall be the provision of old age pensions and benefits shall be paid in the form of old age pensions unless the Superannuation Law permits otherwise.

27. RULES TO BE WRITTEN DOWN

In the event that any of these Rules or any part of a Rule shall offend against the Superannuation Rule is unenforceable or illegal such Rules, rule or part of a Rule shall be read down so as to be valid, enforceable and comply with the Superannuation Law and not allow a re-settlement to occur or if it cannot be so read down the Rules, Rule or part of a Rule (or where possible, the offending words) shall be severed from these Rules without affecting the validity or legal enforceability of the remaining Rules (or parts of these Rules) shall continue in force and effect as if written down or severed Rules, Rule or part of a Rule had never been part of this Deed.