

**Deed of Replacement**  
**- for the -**  
**Toomey Superannuation Fund**

**Prepared for NTAA Corporate by  
Australian Business Structures**

# Deed of Replacement

## Toomey Superannuation Fund

Date 16 / 2 / 2021

### Parties

Windfall Holdings Pty Ltd ACN 009 402 304  
of 10 Waterford Drive, Gidgegannup, WA 6083

(Trustee)

JOHN FRANCIS TOOMEY  
of 10 Waterford Drive, Gidgegannup, WA 6083

(Member)

### Recitals

- A The Toomey Superannuation Fund (**Fund**) was established by trust deed dated 19 May 1995 (**Trust Deed**).
- B The Trustee is the current trustee of the Fund.
- C The Member is the current member of the Fund.
- D The Trustee has decided to join with the Member to replace the Trust Deed with the terms of a new trust deed to provide the governing rules for the Fund (**Replacement Trust Deed**), after having discovered that they did not have an original copy of the Trust Deed, and after having made all reasonable efforts to locate an original or a copy of the Trust Deed and its precise terms, therefore reasonably concluding that the Trust Deed has been lost or destroyed.
- E The Member has agreed to give his consent to the proposed replacement of the Trust Deed and join with the Trustee in adopting the Replacement Trust Deed.

The parties agree

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### 1 Replacement

The Trustee declares that with effect on and from the date of this deed, the Trust Deed is repealed and replaced in its entirety with the Replacement Trust Deed attached as annexure A to this deed.

### 2 Rights of members

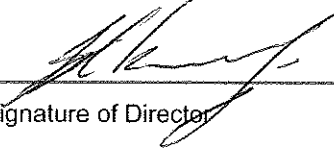
The Trustee declares and confirms, that the Replacement Trust Deed will not reduce or adversely affect the rights of any member in relation to an accrued benefit or any amount of any accrued benefit payable to any member or beneficiary of the Fund.

### 3 Consent of Member

By execution of this deed, the Member confirms his consent to the adoption of the Replacement Trust Deed.

**EXECUTED as a deed.**

**EXECUTED by Windfall Holdings Pty Ltd )  
(ACN 009 402 304) as Trustee in accordance )  
with the Corporations Act 2001 by being signed )  
by the following officer(s): )**

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

John FRANCIS TOOMEY.  
\_\_\_\_\_  
Name of Director (please print)

**SIGNED SEALED AND DELIVERED by )  
JOHN FRANCIS TOOMEY as Member in )  
the presence of:**

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Signature of JOHN FRANCIS TOOMEY

FARRELL Madbach  
\_\_\_\_\_  
Name of witness (please print)

# Annexure A

## Contents

<b>Contents</b>	<b>i</b>
<b>Part 1 - How to read this deed</b>	<b>6</b>
<b>1 Overview of deed</b>	<b>6</b>
<b>2 Definitions</b>	<b>6</b>
<b>3 Interpretation</b>	<b>13</b>
3.2 Severability	13
3.3 Fund subject to Superannuation Law at all times	14
<b>4 Other provisions to note</b>	<b>14</b>
4.1 Exercise of powers and rights	14
4.2 Benefits secured	14
<b>5 Governing law and jurisdiction</b>	<b>14</b>
5.1 Governing law	14
5.2 Jurisdiction	14
<b>6 Dispute resolution</b>	<b>15</b>
6.1 Enquiries and complaints mechanism	15
6.2 Trustee to implement decision	15
<b>Part 2 - The Fund</b>	<b>16</b>
<b>7 Structure of the Fund</b>	<b>16</b>
7.1 Fund vested in Trustee	16
7.2 Class of Members	16
7.3 Composition of the Fund	16
<b>Part 3 - Trustees</b>	<b>17</b>
<b>8 Covenants</b>	<b>17</b>
<b>9 Appointment and change of Trustee</b>	<b>17</b>
9.1 Purpose of Fund	17
9.2 Self Managed Superannuation Funds and Approved Trustee Funds	17
9.3 Appointment of Trustee	18
9.4 Ceasing to act as Trustee	18
9.5 Continuity of office	19
9.6 Quorum of Individual Trustees	19
9.7 Remuneration of Trustee	19
9.8 Confidentiality of information	19
9.9 Member may be Trustee	19
<b>Part 4 - Other persons in Fund</b>	<b>20</b>
<b>10 Appointment and removal of other persons</b>	<b>20</b>

10.1	Appointment	20
10.2	Removal	20
<b>Part 5 - Powers of Trustees</b>		<b>21</b>
<b>11</b>	<b>Investment powers of Trustees</b>	<b>21</b>
11.1	Investment strategy	21
11.2	Power of investment	21
11.3	Power to hold investment in different names	22
11.4	Disclosure of Trustee's interest in investment	22
11.5	Specific investments	22
<b>12</b>	<b>Trustee powers generally</b>	<b>22</b>
12.1	General powers	22
12.2	Discretion of Trustee	24
12.3	Power of delegation	24
12.4	Trustee's Powers and Compliance with the Superannuation Law	24
<b>13</b>	<b>Liability and indemnification of Trustee</b>	<b>25</b>
13.1	Liability	25
13.2	Indemnity	25
13.3	Limitation of liability clause	25
<b>Part 6 - Accounts of the Fund</b>		<b>26</b>
<b>14</b>	<b>Trustee to open Accounts</b>	<b>26</b>
<b>15</b>	<b>Accumulation Account</b>	<b>26</b>
15.1	Establishment	26
15.2	Amounts to be credited	26
15.3	Amounts to be debited	26
<b>16</b>	<b>Pension Account</b>	<b>27</b>
16.1	Establishment	27
16.2	Amounts to be transferred	27
16.3	Amounts to be credited	27
16.4	Amounts to be debited	27
<b>17</b>	<b>Income Account</b>	<b>27</b>
17.1	Establishment	27
17.2	Amounts to be credited	27
17.3	Amounts to be debited	27
17.4	Trustee to determine Earnings and Fund Earning Rate	28
17.5	Distribution of Earnings	28
17.6	Trustee to notify Members	28
<b>18</b>	<b>Fluctuation Account</b>	<b>28</b>
18.1	Establishment	28
18.2	Transfers to Fluctuation Account	28
18.3	Separation of Account moneys	28
18.4	Use of Fluctuation Account	28
18.5	Adjustment of Member Account	29
<b>19</b>	<b>Reserve Accounts</b>	<b>29</b>
<b>20</b>	<b>Specific investments</b>	<b>29</b>

20.1	Recording of specific investments	29
20.2	Allocation of Earnings and costs for specific investments	29
<b>21</b>	<b>Valuation of Fund</b>	<b>29</b>
<b>Part 7 - Record Keeping</b>		<b>30</b>
<b>22</b>	<b>Records, Reports and Audit</b>	<b>30</b>
22.1	Trustee obligations	30
22.2	Provision of information	30
22.3	Information and documents for Tribunal	31
22.4	Directions of Statutory Authority	31
<b>Part 8 - General matters</b>		<b>32</b>
<b>23</b>	<b>Policies of insurance</b>	<b>32</b>
23.1	Member Policies	32
23.2	Member may request a specific Policy	32
23.3	Trustee to effect Policy if required	32
23.4	Premiums	32
23.5	Limitation on liability of Trustee	32
<b>24</b>	<b>Payment of Tax and Levies</b>	<b>32</b>
24.1	Deduction of Tax on Benefit	32
24.2	Tax on Contributions and Shortfall Components	32
<b>Part 9 - Membership of the Fund</b>		<b>33</b>
<b>25</b>	<b>Membership</b>	<b>33</b>
25.1	Eligibility for Membership	33
25.2	Application for Membership	33
25.3	Admission to Membership without application	33
25.4	Members and Beneficiaries to provide information	33
25.5	Trustee may amend or alter Benefits	33
25.6	Member bound by deed	33
25.7	Member to be medically examined	33
25.8	Refusal to be medically examined	34
<b>26</b>	<b>Membership notification requirements</b>	<b>34</b>
26.1	Product Disclosure Statements	34
26.2	Disclosure and reporting requirements	34
26.3	Former Member notices	34
26.4	Inspection of deed and other Documents	34
26.5	Meetings and Members	34
<b>27</b>	<b>Ceasing to be a Member</b>	<b>35</b>
<b>Part 10 - Contributions to the Fund</b>		<b>36</b>
<b>28</b>	<b>Contributions to the Fund</b>	<b>36</b>
28.1	Eligibility to make Contributions	36
28.2	Amount of Contributions	36
28.3	Superannuation Guarantee legislation	36
<b>29</b>	<b>General provisions concerning Contributions</b>	<b>36</b>
29.1	Form of Contribution	36
29.2	Obligations to contribute	36

29.3	Limitation on commencing Contributions	36
29.4	Limit on Contributions	36
29.5	Ineligible Contributions	37
29.6	Contributions Splitting	37
29.7	Fund capped Contributions	39
<b>30</b>	<b>Transfers from and to Approved Benefit Arrangements</b>	<b>39</b>
30.1	Transfers from Approved Benefit Arrangements	39
30.2	Payment of Benefits deferred	39
30.3	Transfers to Approved Benefit Arrangements	39
30.4	Roll overs	40
30.5	Trustee to protect Preservation on roll over	40
<b>Part 11 - Benefits</b>		<b>41</b>
<b>31</b>	<b>Types of Benefits</b>	<b>41</b>
31.1	Benefit Entitlement	41
31.2	Election	41
31.3	Benefit Entitlement - with cashing restrictions	41
31.4	Transfer of Policy as Benefit	41
31.5	Transfer of assets as Benefit	41
<b>32</b>	<b>Preservation</b>	<b>42</b>
<b>33</b>	<b>Payment of Unrestricted Non Preserved Amount</b>	<b>42</b>
<b>34</b>	<b>Payment of additional Benefits</b>	<b>42</b>
<b>35</b>	<b>Retention of Benefit in Fund</b>	<b>42</b>
<b>36</b>	<b>Compulsory payment of Benefits</b>	<b>42</b>
<b>37</b>	<b>Voluntary payment of Benefits</b>	<b>42</b>
<b>38</b>	<b>Pension Benefit</b>	<b>43</b>
<b>39</b>	<b>Reduction of Member's Benefit</b>	<b>44</b>
39.1	Reduction in Member's Benefit by amounts owed to Employer	44
39.2	Evidence of amounts owed to Employer	44
39.3	Payment of amounts to Employer	44
<b>40</b>	<b>Statement of Unclaimed Benefits</b>	<b>44</b>
<b>41</b>	<b>Limitation on payment</b>	<b>44</b>
<b>42</b>	<b>Forfeited Benefits</b>	<b>45</b>
42.1	Forfeiture	45
42.2	Application of forfeited money	45
42.3	Forfeiture Account	45
42.4	Treatment of money in Forfeiture Account	45
42.5	Unclaimed Benefits Account	45
<b>43</b>	<b>Death Benefit Nominations</b>	<b>45</b>
43.1	Non Binding Death Benefit Nomination	45
43.2	Binding Death Benefit Nomination	45
<b>44</b>	<b>Payment of death benefits</b>	<b>46</b>
44.1	Application	46
44.2	Payment if Non Binding Death Benefit Nomination	46
44.3	Payment if Binding Death Benefit Nomination	47

44.4	Payment if Binding Death Benefit Nomination is invalid or ineffective	47
44.5	Payment if no Binding Death Benefit Nomination or Reversionary Beneficiary nomination	47
44.6	Forms of payment	47
<b>45</b>	<b>Commutation of Income Stream</b>	<b>47</b>
<b>46</b>	<b>Anti detriment payment</b>	<b>48</b>
<b>Part 12 - Family Law</b>		<b>49</b>
<b>47</b>	<b>Information to Members and Non Member Spouses</b>	<b>49</b>
<b>48</b>	<b>Trustee may create new interest for Non Member Spouse</b>	<b>49</b>
<b>49</b>	<b>Non Member Spouse may request transfer of interest</b>	<b>49</b>
<b>50</b>	<b>Family Law fees</b>	<b>49</b>
<b>51</b>	<b>Satisfaction of entitlement</b>	<b>50</b>
<b>Part 13 - Termination of Trust</b>		<b>51</b>
<b>52</b>	<b>Termination</b>	<b>51</b>
52.1	Events of termination	51
52.2	Notice to Members	51
52.3	No further Contributions	51
52.4	Order of payment of Benefits	51
52.5	Payment if Member Dies	52
52.6	Surplus	52
52.7	Form of Payment	52
52.8	Payment to other Persons	52
<b>Part 14 - Amendment</b>		<b>53</b>
<b>53</b>	<b>Amendment of this deed</b>	<b>53</b>
53.1	Method of amendment	53
53.2	Notification of Members of Amendment	53



# Part 1 - How to read this deed

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## 1 Overview of deed

This deed explains the way the Fund will operate and also sets out the roles and the responsibilities of each of the Trustees as well as the obligations of any person, company or entity associated with or having some responsibility under this deed.

The deed comprises fourteen parts. Each part deals with a specific aspect of the Fund. These parts are described as follows:

Part number	Description
Part 1	How to read this deed
Part 2	The Fund
Part 3	Trustees
Part 4	Other persons in the Fund
Part 5	Powers of Trustees
Part 6	Accounts of the Fund
Part 7	Record keeping
Part 8	General matters
Part 9	Membership of the Fund
Part 10	Contributions to the Fund
Part 11	Benefits
Part 12	Family Law
Part 13	Termination of Trust
Part 14	Amendment

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## 2 Definitions

In this deed:

**Account** means any one of the following (as the case requires):

- (a) Accumulation Account;
- (b) Equalisation Account;
- (c) Forfeiture Account;
- (d) Income Account;
- (e) Income Stream Account; and

- (f) any other accounts required to be opened or maintained by the Trustee in accordance with the Superannuation Law or any other accounts the Trustee decides to establish and maintain.

**Accumulation Account** means the Account established on behalf of each Member or Beneficiary as described in clause 15.

**Actuary** means a person for the time being appointed as actuary of the Fund under clause 10.1(b).

**Administrator** means a person appointed as administrator of the Fund under clause 10.1(c).

**Allot** has the same meaning given to that term in the SIS Regulations.

**Annuity** means a Benefit payable by instalments that satisfies the meaning of Annuity in regulation 1.05 of the SIS Regulations or any other provision of the Superannuation Law.

**Applicant** means a Member who makes a Splittable Contributions application under clause 29.6.

**Approved Benefit Arrangement** means a fund or benefit arrangement other than the Fund, including:

- (a) another Complying Superannuation Fund;
- (b) an Approved Deposit Fund;
- (c) an Annuity arrangement; or
- (d) an Eligible Roll Over Fund,

into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or to fail to comply with the Superannuation Law.

**Approved Deposit Fund** in relation to a year of income means a fund which is a complying approved deposit fund in accordance with the Taxation Act.

**Approved Trustee** means a trustee approved by the Australian Prudential Regulation Authority or any other body or person that has responsibility for the administration of superannuation funds other than Self Managed Superannuation Funds.

**Auditor** means a person for the time being appointed as auditor of the Fund under clause 10.1(d).

**Authorised Deposit Taking Institution** has the same meaning given to that term in the *Banking Act 1959* (Cth).

**Bankruptcy Act** means the *Bankruptcy Act 1966* (Cth).

**Beneficiary** means a person who is presently and absolutely entitled or has a contingent right to receive a Benefit under the provisions of this deed at any given time and includes a Member, a Dependant or a Pensioner.

**Benefit** means any amount which is payable by the Trustee out of the Fund in accordance with this deed to or in respect of a Member.

**Benefit Entitlement** means any amount held in the Fund which may become payable to a Beneficiary but to which the person has not become absolutely and indefeasibly entitled and includes a contingent right to payment of an amount.

**Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is binding on the Trustee.

**Child** has the same meaning given to that term in the SIS Act.

**Closing Date** means the date determined in accordance with this deed on which the Fund will be wound up.

**Compassionate Ground** has the same meaning given to that term in the Superannuation Law.

**Complying Superannuation Fund** in relation to a year of income means a fund which is a complying superannuation fund in accordance with the Superannuation Law.

**Constitutional Corporation** has the same meaning given to that term in the Superannuation Law.

**Contributions** means payments to the Fund by Members, Employers and other Permitted Entities in accordance with the provisions of this deed prior to the deduction of any Tax payable in respect of those Contributions.

**Contributions Cap** means a Member's concessional contributions cap, Non Concessional Contributions cap or CGT cap (as the case requires) as defined in the Taxation Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Custodian** means the person appointed as custodian of the assets of the Fund under clause 10.1(e).

**Date of Establishment** means the date of commencement of the Fund as set out in schedule 1.

**Dependant** in relation to a Member or former Member means:

- (a) the Spouse of the Member or former Member or the widow or widower of a deceased Member;
- (b) any Child of a Member or former Member;
- (c) any person with whom the Member is in an Interdependency Relationship; or
- (d) any other person who, in the opinion of the Trustee, was financially dependant on the Member at the relevant time.

**Directors** means, where the Trustee is a Constitutional Corporation, the directors or board of management for the time being of the Trustee as applicable.

**Disclosure Document** means any document required to be given under the Corporations Act to a person applying to be a Member.

**Earnings** means all net income and net capital gains derived from the assets of the Fund whether realised or unrealised after deducting any capital losses and such allowances for expenses and Tax as the Trustee considers appropriate.

**Eligible Roll Over Fund** has the same meaning given to that term in the SIS Act.

**Employee** has the same meaning given to that term in the SIS Act.

**Employer** has the same meaning given to that term in the SIS Act.

**Family Law** means the Payment Splitting arrangements under the Superannuation Law.

**Financial Assistance** means any financial assistance granted to the Fund in accordance with Part 23 of the SIS Act.

**Financial Year** means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee determines.

**Fluctuation Account** means the account established in accordance with clause 18.

**Forfeiture Account** means the account established in accordance with clause 42.3.

**Full Time Gainful Employment** in relation to a Member means Gainful Employment on a full time basis within the meaning of the Superannuation Law.

**Fund** means the superannuation fund under the name set out in schedule 1.

**Fund Earning Rate** means the earning rate for the Fund (which may for the purposes of this deed be negative) determined under clause 17.4 after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable.

**Fund Year** means a period of twelve months ending on 30 June, or such other period ending on such other date as the Trustee determines from time to time.

**Gainful Employment** means, in relation to a Member, engagement in any business, trade, profession, vocation, calling, occupation or employment for personal gain to the extent required by the Superannuation Law.

**Guarantee Act** means the *Superannuation Guarantee Charge Act 1992* (Cth) which incorporates the *Superannuation Guarantee (Administration) Act 1992* (Cth) and any regulations made to that Act.

**Income Stream** means:

- (a) a Pension;
- (b) an Annuity; or
- (c) a Benefit payable in a form other than as a Superannuation Lump Sum as permitted by the Superannuation Law.

**Individual Trustee** means a natural person who is appointed to be a Trustee of the Fund.

**Insured Member** means any Member who has a Policy effected in his or her name by the Trustee.

**Insurer** means any insurer with whom the Trustee effects a Policy or Policies.

**Interdependency Relationship** has the same meaning given to that term in Superannuation Law.

**Investment Manager** means a person appointed as an Investment Manager of the Fund in accordance with clause 10.1(a).

**Legal Personal Representative** has the same meaning given to that term in the SIS Act.

**Levy** includes a levy payable by the Fund in accordance with the *Superannuation Supervisory Levy Act 1991* (Cth), the *Superannuation (Fund Assistance Levy) Act 1993* (Cth) and any other legislation or regulations which impose a levy or levies on the Fund.

**Maximum Splittable Amount** has the same meaning given to that term in the SIS Regulations.

**Member** means a person who has been admitted as a member of the Fund under clause 25.

**Member Account** means a Member's Accumulation Account or Pension Account as the case may be.

**Membership** means a Member's or Beneficiary's membership of the Fund.

**Nominated Beneficiary** means one or more Dependants or Legal Personal Representatives of a Member nominated by the Member as a nominated Beneficiary.

**Non Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is not binding on the Trustee.

**Non Concessional Contribution** has the same meaning given to that term in the Taxation Act.

**Non Member Spouse** in relation to a Member has the same meaning given to that term in the Superannuation Law. A person ceases to be a Non Member Spouse when the entitlement of the Non Member Spouse in respect of a Payment Split is paid to the Non Member Spouse or transferred or rolled over in accordance with the Superannuation Law.

**Normal Retirement Age** means the age of 65 years or any other age being not less than 55 years as is acceptable to or required by the Superannuation Law and as the Trustee determines.

**Part Time Gainful Employment** means, in relation to a Member, a Member who is in Gainful Employment on a part time basis within the meaning of the Superannuation Law.

**Payment Flag** has the same meaning given to that term in the Superannuation Law.

**Payment Split** has the same meaning given to that term in the Superannuation Law.

**Pension** means a Benefit payable by instalments that satisfies the meaning of Pension in regulation 1.06 of the SIS Regulations or any other provision of the Superannuation Law and (without limiting the foregoing) includes a Transition to Retirement Income Stream (TRIS).

**Pensioner** means a member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and includes a Reversionary Beneficiary in receipt of a Pension.

**Pension Account** means the account established in respect of a Pensioner in accordance with clause 16.

**Permanent Incapacity** has the same meaning given to that term in the Superannuation Law.

**Permitted Entity** means an entity permitted to contribute to the Fund at the sole discretion of the Trustee from time to time subject to the Superannuation Law.

**Policy** means any policy of assurance, including:

- (a) a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy (in which case in relation to a Member or a former Member, Policy means the particular assurance on the life of the Member or former Member);
- (b) any policy covering any two or more of the risks described in paragraph (a); and

- (c) any policy which provides that Benefits are payable to the Trustee on the death or disablement of a Member,

provided that the acquisition of any given policy is not prohibited by Superannuation Law.

**Preservation Age** means:

for a person born before 1 July 1960	55 years of age
for a person born during the year 1 July 1960 to 30 June 1961	56 years of age
for a person born during the year 1 July 1961 to 30 June 1962	57 years of age
for a person born during the year 1 July 1962 to 30 June 1963	58 years of age
for a person born during the year 1 July 1963 to 30 June 1964	59 years of age
for a person born after 30 June 1964	60 years of age

**Preserved** means the prohibition against paying any amount held in the Fund before a Member reaches Preservation Age or is otherwise entitled to be paid that amount in accordance with the Superannuation Law and **Preserve** has a corresponding meaning.

**Preserved Payment** means a payment made to the Fund which is required to be Preserved in order for the Fund to be a Complying Superannuation Fund.

**Relative** has the same meaning given to that term in the SIS Act.

**Reserve Account** means an account established in accordance with clause 19.

**Retires from Employment** means retirement as defined by the Superannuation Law.

**Retires from Gainful Employment** means actual retirement by a Member from Gainful Employment or retirement as defined for the purposes of the Superannuation Law for the payment of Benefits.

**Reversionary Beneficiary** means a Dependant nominated by a Pensioner (and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee) who is eligible to receive a Benefit on the death of a Pensioner.

**RSE Licensee** has the same meaning given to that term in the SIS Act.

**Self Managed Superannuation Fund** means a superannuation fund which satisfies the requirements of a self managed superannuation fund set out in the Superannuation Law.

**Severe Financial Hardship** has the same meaning given to that term in the Superannuation Law.

**Shortfall Component** has the same meaning given to that term in the Guarantee Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993 (Cth)*.

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations 1994 (Cth).

**Splittable Contribution** has the same meaning given to that term in the SIS Regulations.

**Spouse** has the same meaning given to that term in the SIS Act.

**Statutory Authority** means, as the case requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Department of Human Services, or such other government, statutory or regulatory authority which is responsible for administering or regulating Superannuation Law.

**Superannuation Law** means any requirement under the SIS Act, the SIS Regulations, the *Occupational Superannuation Standards Act 1987* (Cth), the *Occupational Superannuation Standards Regulations 1987* (Cth), the *Family Law Act 1975* (Cth), the Corporations Act, the Corporations Regulations, the Taxation Act, the *Financial Sector (Collection of Data) Act 2001* (Cth), the *Financial Institutions Supervisory Levies Collection Act 1998* (Cth), the *Superannuation (Unclaimed Money and Lost Members) Act*, and any other present or future legislation which the Trustee must comply with in order for the Fund:

- (a) to qualify for concessional Tax treatment as a Complying Superannuation Fund; or
- (b) to meet any other requirement of the Statutory Authority,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively.

**Superannuation Lump Sum** has the same meaning as in the Taxation Act.

**Superannuation (Unclaimed Money and Lost Members) Act** means the *Superannuation (Unclaimed Money and Lost Members ) Act 1999* (Cth)

**Taxation Act** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax (Transitional Provisions) Act 1997* (Cth) and any regulations issued under those Acts.

**Tax** includes income tax, pay roll tax, land tax, stamp duty and any other taxes, duties or surcharges paid or payable by the Trustee on behalf of the Fund or a Member or, where applicable, by any Member, former Member, Dependant or Beneficiary.

**Taxed Splittable Contribution** has the same meaning given to that term in the SIS Regulations.

**Temporary Incapacity** has the same meaning given to that term in the Superannuation Law.

**Terminal Medical Condition** has the same meaning given to that term in the Superannuation Law.

**Total and Permanent Disablement** means ill health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill health, ever again to engage in Full Time Gainful Employment or Part Time Gainful Employment for which the Member is reasonably qualified by education, training or experience.

**Transition to Retirement Income Stream** (or TRIS) has the same meaning given to that term in the Superannuation Law.

**Tribunal** means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993* (Cth).

**Trustee** means the trustee or trustees for the time being of the Fund whether original, additional or substituted who are appointed in accordance with clause 9 of this Deed.

**Unclaimed Benefits** means those Benefits described as Unclaimed Money in sections 12 and 14 of the *Superannuation (Unclaimed Money and Lost Members ) Act* and the unclaimed superannuation benefits of former temporary residents under Part 3A of the *Superannuation (Unclaimed Money and Lost Members ) Act*.

**Unrestricted Non Preserved Amount** means an amount including a roll-over payment payable to or in respect of a Member which is not required to be Preserved or at the time of payment is no longer required to be Preserved under the Superannuation Law and is an Unrestricted Non Preserved Benefit as that term is defined in the SIS Regulations.

**Untaxed Splittable Contribution** has the same meaning given to that term in the SIS Regulations.

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### 3 Interpretation

In this deed, headings are inserted for convenience only and do not affect the interpretation of this deed unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (e) a reference to a document or instrument, including this deed, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (f) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a party includes the party's successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives;
- (h) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a firm and a trust;
- (i) if any dispute arises as to the interpretation of any of the provisions of this deed or as to the rights or obligations of a Member or any other person, then (except to the extent otherwise expressly provided in the deed) the decision of the Trustee is final and binding;
- (j) all monetary amounts are in Australian dollars, unless otherwise stated, and a reference to payment means payment in Australian dollars; and
- (k) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day.

#### 3.2 Severability

If any provision of this deed is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this deed without affecting the validity or enforceability of the remaining provisions of this deed.



### **3.3 Fund subject to Superannuation Law at all times**

- (a) The provisions contained in this deed are at all times subject to the Superannuation Law and are deemed to incorporate the Superannuation Law to the extent necessary for the Trustee and the Fund to qualify for concessional Tax treatment or to satisfy any other requirements of the Statutory Authority.
- (b) In the event that there is an inconsistency between the deed and the Superannuation Law, the Superannuation Law prevails to the extent of the inconsistency.

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## **4 Other provisions to note**

### **4.1 Exercise of powers and rights**

All powers, rights, decisions, discretions, appointments or other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this deed, may be fully and effectively exercised, made, done or performed by or on behalf of a Trustee:

- (a) where the Trustee is a Constitutional Corporation, by resolution of the Directors in accordance with its constitution or by any person or persons having the authorisation of such Directors to act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, by unanimous resolution or, if allowed by the Superannuation Law, by a majority of persons holding the office of Trustee,

despite any direct or personal interest the Trustee (or, where the Trustee is a Constitutional Corporation, any director or shareholder of the Trustee) may have in whatsoever capacity in the exercise of the powers, rights, decisions, discretions, appointments or other authorisations or that the Trustee (or director or shareholder of the Trustee) may benefit either directly or indirectly from such exercise and provided that any requirements of the Superannuation Law are satisfied.

### **4.2 Benefits secured**

The rights of the Members or their Dependants who receive Benefits payable under this deed are secured within the meaning of the Superannuation Law.

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## **5 Governing law and jurisdiction**

### **5.1 Governing law**

This agreement is governed by the laws in force in the State or Territory specified in Schedule 1.

### **5.2 Jurisdiction**

The Trustee, Members, Beneficiaries and Employers submit to the exclusive jurisdiction of courts of the State or Territory specified in Schedule 1 and any courts that may hear appeals from those courts about any proceedings in connection with this deed.

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## **6 Dispute resolution**

### **6.1 Enquiries and complaints mechanism**

The Trustee must ensure that there are arrangements in place to deal with enquiries and complaints from Members, Dependents or Beneficiaries in the circumstances and within the time limits required by the Superannuation Law.

### **6.2 Trustee to implement decision**

Subject to the Trustee's rights to determine in its discretion to appeal against any decision of a court or tribunal, the Trustee must ensure that it implements any decision of a court or tribunal as required by that court or tribunal.

## Part 2 - The Fund

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### **7 Structure of the Fund**

#### **7.1 Fund vested in Trustee**

The Fund is at all times to be vested in the Trustee and must be managed by the Trustee on the terms and conditions contained in this deed and subject to the trusts, powers, authorities and discretions contained in this deed.

#### **7.2 Class of Members**

The Trustee has the power to create any additional class or classes of Membership with those rights, entitlements, conditions of eligibility and Benefits as the Trustee thinks appropriate.

#### **7.3 Composition of the Fund**

The gross assets of the Fund consist of all cash, investments and other property for the time being held and received by or on account of the Trustee on the trusts of this deed.

## Part 3 - Trustees

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### 8 Covenants

The Trustee must perform and observe the covenants, trusts, conditions and obligations of this deed as and to the extent they are included in the deed or deemed to be included in the deed by the Superannuation Law.

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### 9 Appointment and change of Trustee

#### 9.1 Purpose of Fund

Subject to the Superannuation Law:

- (a) the Trustee must at all times be a Constitutional Corporation; or
- (b) as otherwise permitted under the Superannuation Law and where the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund must be the provision of old age pensions as that term is defined in section 51(xxiii) of the *Commonwealth of Australia Constitution Act*.

#### 9.2 Self Managed Superannuation Funds and Approved Trustee Funds

- (a) Despite any provision in this clause 9, at any time while the Fund is a Self Managed Superannuation Fund, a person is not eligible to be:
  - (i) the Trustee; or
  - (ii) where the Trustee is a Constitutional Corporation, a Director of the Trustee, of the Fund unless all of the provisions in this clause 9.2 are satisfied.
- (b) Subject to clause 9.2(d), where the Fund is a Self Managed Superannuation Fund with one Member, the Trustee must either be:
  - (i) a Constitutional Corporation where:
    - (A) the Member is the sole director of the Constitutional Corporation; or
    - (B) the Member is one of only two Directors of the Constitutional Corporation and the other Director is a Relative; or
    - (C) the Member is one of only two Directors of the Constitutional Corporation and the Member is not employed by the other Director; or
  - (ii) two Individual Trustees comprising the Member and another person who is either:
    - (A) a Relative of the Member; or
    - (B) not an Employer of the Member.
- (c) Subject to clause 9.2(d), where the Fund is a Self Managed Superannuation Fund with more than one Member, the Trustee must be:

- (i) a Constitutional Corporation where each Member is a Director of the Constitutional Corporation and each Director is a Member; or
  - (ii) Individual Trustees where each Member is an Individual Trustee and each Individual Trustee is a Member of the Fund.
- (d) The requirements in clauses 9.2(b) and 9.2(c) are subject to any alternative tests or exceptions to the general rules outlined in those clauses contained in section 17A(3) of the SIS Act, or any other Superannuation Law.
  - (e) For the purposes of clause 9.2(c), no Member of the Fund may be employed by another Member of the Fund unless permitted by the Superannuation Law.
  - (f) If the Fund has fewer than five Members and is not a Self Managed Superannuation Fund, the Trustee must be an Approved Trustee or a RSE Licensee that is a Constitutional Corporation.

### **9.3 Appointment of Trustee**

- (a) Subject to the Superannuation Law, a majority of Members may, by deed or other written instrument, appoint a person or persons to act as Trustee provided that the person or persons have given their written consent to the appointment and give any other consents or declarations required by the Superannuation Law.
- (b) The Legal Personal Representative of:
  - (i) a deceased Member;
  - (ii) a Member who has lost legal capacity; or
  - (iii) a Member who has appointed that Legal Personal Representative as their attorney under an enduring power of attorney,

may exercise the particular Member's decision making power to appoint a Trustee on behalf of the Member.

- (c) Where a Member is under the age of 18 years, a parent or guardian of the particular Member is permitted to exercise that Member's power to appoint a Trustee.
- (d) Where the Fund has no remaining Members and where there is no other person who has the power to appoint a Trustee under this clause 9.3 on behalf of the last person ceasing to be a Member, the Legal Personal Representative of the last Member to have a Legal Personal Representative has the power to appoint a Trustee.

### **9.4 Ceasing to act as Trustee**

A Trustee must immediately cease to act as Trustee of the Fund:

- (a) if, being an individual, he or she dies or otherwise loses his or her legal capacity;
- (b) if, being a Constitutional Corporation, it is placed into receivership or liquidation or an administrator is appointed over its affairs;
- (c) if the Trustee is disqualified from holding office as a trustee by operation of the Superannuation Law or is removed or suspended from office under the Superannuation Law;
- (d) if the Trustee resigns as Trustee of the Fund by notice in writing to a majority of the Members; or

- (e) subject to the Superannuation Law, if the person is removed from office by notice in writing given by no less than two thirds of the Members to the Trustee.

#### **9.5 Continuity of office**

Any person who acts as Trustee must, on ceasing to be Trustee under this clause 9, do everything necessary to vest the Fund in the remaining or new Trustee or Trustees and must promptly deliver all records and other books to the remaining or new Trustee or Trustees.

#### **9.6 Quorum of Individual Trustees**

A quorum of Trustees is the number of Trustees for the time being or as required by the Superannuation Law.

#### **9.7 Remuneration of Trustee**

Unless permitted by the Superannuation Law, during any time that the Fund is a Self Managed Superannuation Fund, no Trustee of the Fund may receive remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund in its capacity as Trustee of the Fund.

#### **9.8 Confidentiality of information**

The Trustee and every Employer must, as far as possible, treat as confidential all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this deed.

#### **9.9 Member may be Trustee**

No Individual Trustee, Director or officer of a Constitutional Corporation or Employee of an Employer is, by virtue of their office or the powers delegated to them by the Trustee, disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

## Part 4 - Other persons in Fund

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### **10 Appointment and removal of other persons**

#### **10.1 Appointment**

Subject to the Superannuation Law and the law generally, the Trustee may appoint in writing one or more persons, as appropriate, as:

- (a) Investment Manager, who has powers, discretions and authority relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to the Investment Manager;
- (b) Actuary, who must be a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (c) Administrator, who has power to carry out some or all of the administration of the Fund;
- (d) Auditor, who is appropriately qualified and is independent according to any criteria specified in the Superannuation Law;
- (e) Custodian, who has powers, discretions and authorities relating to holding the legal title and the custody of title, deeds and any documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund provided that person is not prohibited from acting under the Superannuation Law; and
- (f) any other consultants, officers or attorneys as may be desirable for the proper management and administration of the Fund.

#### **10.2 Removal**

The Trustee may remove from office any person or company appointed to any position under this clause 10 and must remove such person or company when so required by the Superannuation Law.

# Part 5 - Powers of Trustees

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## 11 Investment powers of Trustees

### 11.1 Investment strategy

The Trustee must from time to time formulate and give effect to one or more investment strategies having regard to the Fund's circumstances provided that such investment strategies are formulated and effected in accordance with the Superannuation Law.

### 11.2 Power of investment

Subject to the Superannuation Law, the Fund's investment strategy and to clause 11.3, the Trustee has power, at the Trustee's absolute discretion, to invest the whole or any part of the Fund's assets, as if the Trustee was the absolute owner and beneficially entitled to those assets, in investments with full power to vary, replace or otherwise deal with any investments as fully and effectively as a person absolutely and beneficially entitled to dealing with their own property, including:

- (a) in the acquisition by original subscription, purchase or otherwise of debentures, debenture stock (whether secured or unsecured), secured or unsecured notes or other loan instruments of any corporation wherever situated or incorporated and payable or repayable in any currency and whether bearing interest or not;
- (b) in the acquisition by original subscription, purchase or otherwise of shares or stocks, whether ordinary, preferred, deferred, redeemable or otherwise and whether involving liabilities or not, of any corporation wherever situated or incorporated and expressed in any currency;
- (c) in the purchase of, or at interest on the security of, shares, stocks, funds, securities, land or other investment or property of any nature and wherever situated (other than an investment of a wasting or speculative nature) and whether income producing or not, whether fully or partly paid up and whether involving liabilities or not, or in loans on personal credit, with or without security, as the Trustee, in the Trustee's absolute discretion, thinks fit and to the intent that the Trustee has the same power in all respects;
- (d) in the acquisition by original subscription, purchase or otherwise of interests or rights, whether partly paid or not and whether involving liabilities or not, in corporations not having a share capital wherever situated or incorporated;
- (e) in the acquisition by original subscription, purchase or otherwise of securities of any country, state or territory for any period;
- (f) in the acquisition by original subscription, purchase or otherwise of securities of any statutory or municipal body, wherever situated and for any period;
- (g) in the acquisition by original agreement, purchase or otherwise of options and rights to take up shares or stock, whether ordinary, preferred, deferred, redeemable or otherwise, whether partly or fully paid and whether involving liabilities or not, of any corporation wherever situated or incorporated or to take up interests or rights, whether involving liabilities or not, in corporations not having a share capital wherever situated or incorporated;
- (h) in the acquisition by original subscription, purchase or otherwise of units or sub-units of any unit trust;



- (i) in the acquisition of any digital currency or digital asset;
- (j) in the acquisition by any means of land or interest in land of any tenure, improved or unimproved and wherever situated;
- (k) on loan to any person or deposit with any person, wherever situated, with or without security and for any period whatsoever;
- (l) on deposit with any Authorised Deposit Taking Institution for any period;
- (m) in erection of buildings or structures or the making of improvements on land with any tenure, whether improved or unimproved and wherever situated;
- (n) on any Policy or Annuity with an Insurer and any choses in action, interest for life or any lesser term or any reversion or otherwise arising and whether as original Policy holder or by assignment; and
- (o) in any other investments which the Trustee considers appropriate and which satisfy the Superannuation Law.

### **11.3 Power to hold investment in different names**

Any investment may be held in the names that the Trustee determines from time to time including the name of a nominee (whether individual or corporation).

### **11.4 Disclosure of Trustee's interest in investment**

The Trustee and any Director must disclose details of any interest in any investment in the manner prescribed by the Corporations Act and the Superannuation Law whenever they have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

### **11.5 Specific investments**

Subject to clauses 11.1 and 11.2, the Trustee may, with or without the consent of a Member or Beneficiary, make separate investments as the Trustee determines in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund or in respect of different classes for certain Members or Beneficiaries.

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## **12 Trustee powers generally**

### **12.1 General powers**

Subject always to the Superannuation Law and without prejudice to the powers vested in the Trustee by this deed or otherwise, the Trustee has the following powers that may be exercised or not in the Trustee's absolute discretion:

- (a) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or the Trustee or otherwise concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Fund;
- (b) to commence, carry on and defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, remission, breach of duty or breach of the terms of this deed;
- (c) to carry on a business;

- (d) to refer any claims or demands by or against the Fund to arbitration and to observe and perform any awards arising from that arbitration;
- (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (f) to open bank accounts (or accounts with non-bank financial institutions (NBFIs)) and to retain on current or deposit account at any bank (or NBFIs) any money that it considers proper and to make procedures for the operation of such bank accounts including the signing and endorsing of cheques;
- (g) to enter into a leasing arrangement with any person, including:
  - (i) a finance lease;
  - (ii) an operating lease; or
  - (iii) a hire purchase agreement;
- (h) to determine who is entitled to sign receipts, acceptances, endorsements, release, contracts and documents on the Fund's behalf;
- (i) to pay Benefits out of the Fund to a Member or a Dependant;
- (j) to decide who are Dependents for the purposes of this deed;
- (k) in case of the mental or physical ill health or incapacity of any person entitled to Benefits, to pay or apply all Benefits or any part of those Benefits to, or for the benefit of, that person and the Dependents of that person without being responsible for seeing to the application of payments under this clause 12.1(k) or payments made in the exercise of any other power vested in the Trustee by this deed;
- (l) to indemnify, give any guarantee or to undertake to indemnify or give any guarantee to any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund provided that an indemnity or guarantee may only be provided to the extent that it is not limited by or contrary to the Superannuation Law;
- (m) to pay and advance out of the Fund all costs, expenses and outgoings (including Tax) of, and incidental to, the management and administration of the Fund;
- (n) to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (o) to take and act on the opinion of any legal practitioner, whether in relation to the interpretation of this deed or any other document or statute or as to the administration of the trusts declared under this deed, without being liable to any Member or his or her Dependents in respect of any act done by in accordance with that opinion;
- (p) to insure and keep insured as it thinks fit any liability of the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers) or the liability of the Fund to indemnify and reimburse the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers);
- (q) to insure or re-insure any risk, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company or re-insurance company;

- (r) to provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;
- (s) to purchase an Annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such Annuity will be in the name of the Trustee or, if the Trustee determines, in the name of the Member or former Member;
- (t) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (u) to seek modifications of or exemptions from the application of the Superannuation Law to the Fund;
- (v) to accept Contributions and any Shortfall Component from any person authorised to make Contributions or pay the Shortfall Component in accordance with the Superannuation Law;
- (w) to borrow from any person, company, trust, government or institution on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law;
- (x) to give a charge over, or in relation to, an asset of the Fund on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law; and
- (y) to draw down any bill of exchange, promissory note or other negotiable instrument on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law.

## **12.2 Discretion of Trustee**

Subject to any exceptions in the Superannuation Law and despite any other provision in this deed, no discretion under the rules of this Fund can be exercised by a person other than the Trustee, unless the Fund is a Self Managed Superannuation Fund.

## **12.3 Power of delegation**

The Trustee may delegate to any person, or where there is more than one Trustee, to any one or more of the Trustees, any of the powers, duties and discretions conferred on the Trustee under this deed on such terms and conditions as the Trustee determines and the Trustee may vary, limit or revoke any such delegation provided that any such delegation must only be undertaken in accordance with the Superannuation Law.

## **12.4 Trustee's Powers and Compliance with the Superannuation Law**

In relation to the Trustee's exercise of its powers, discretions and obligations under this deed, the Trustee:

- (a) may do anything that it is permitted to do or not restricted from doing under the Superannuation Law;
- (b) must do everything that it is required to do to comply with the Superannuation Law or with any direction by a Statutory Authority in relation to the Fund; and

must refrain from doing anything that would result in a breach of the Superannuation Law by the Trustee or the Fund.

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## **13 Liability and indemnification of Trustee**

### **13.1 Liability**

The Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) is not liable for:

- (a) any act, omission or mistake in connection with the exercise of its powers, duties or discretions vested by this deed or with the proper performance of its duties under this deed;
- (b) any losses or expenses incurred by the Fund due to the insufficiency or deficiency of any security in or upon which any of the money of the Fund is invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities are deposited;
- (d) any loss suffered as a result of relying on any professional advice or assistance; or
- (e) any other loss, damage or misfortune whatever,

except where the Trustee or other relevant person fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or other relevant person is required to exercise, or incurs a monetary penalty in respect of an administrative penalty or a civil penalty order under the Superannuation Law.

### **13.2 Indemnity**

- (a) Subject to clause 13.2(b), the Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) is indemnified and has, subject to the Superannuation Law, a lien on the Fund for its indemnity against all liabilities incurred by the Trustee or other relevant person through any act, omission or mistake in connection with the exercise of the powers, duties and discretions vested in them under this deed or in the proper performance of their duties under this Deed.
- (b) Where the Trustee or other relevant person fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or other relevant person is required to exercise, or incurs a monetary penalty in respect of an administrative penalty or a civil order under the Superannuation Law, the indemnity in clause 13.2(a) does not apply.

### **13.3 Limitation of liability clause**

This clause 13 only operates to exempt a person from liability and provide an indemnity to the extent that the exemption from liability or provision of indemnity would not be limited by or inoperative under the Superannuation Law.

## Part 6 - Accounts of the Fund

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### **14 Trustee to open Accounts**

The Trustee has the power to open and operate the Accounts.

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### **15 Accumulation Account**

#### **15.1 Establishment**

The Trustee must establish an Accumulation Account in respect of each Member or Beneficiary.

#### **15.2 Amounts to be credited**

The Trustee may (or must) credit all amounts that are permitted (or required) by this deed and the Superannuation Law to be credited to the Accumulation Account, including:

- (a) Contributions;
- (b) the portion of the Earnings (if positive) that the Trustee determines in accordance with clause 17.4;
- (c) amounts received by transfer from Approved Benefit Arrangements;
- (d) proceeds of any Policy or Annuity attributable to the Member;
- (e) any Financial Assistance received by the Fund that is attributable to the Member;
- (f) any amounts transferred or Allotted from other Accounts;
- (g) any Levy or Shortfall Component paid in respect of the Member; and
- (h) any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

#### **15.3 Amounts to be debited**

The Trustee may (or must) debit all amounts that are permitted (or required) by this deed and the Superannuation Law to be debited to the Accumulation Account, including:

- (a) Benefits paid to Members or Beneficiaries;
- (b) the portion of the Earnings (if negative) that the Trustee determines in accordance with clause 17.4;
- (c) amounts transferred to Approved Benefit Arrangements;
- (d) any Tax calculated in accordance with clause 24 attributable to the Member for whom the Accounts or Account has been established;
- (e) any amounts transferred or Allotted to other Accounts;
- (f) any costs or expenses attributable to the Member including the cost of any Policies effected by the Trustee in respect of the Member; and

- (g) any other amounts as the Trustee determines and are permitted by the Superannuation Law.

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## **16 Pension Account**

### **16.1 Establishment**

Where the Trustee determines to pay all or any of the Benefits to the Member as a Pension, the Trustee must establish a Pension Account in respect of the Member.

### **16.2 Amounts to be transferred**

The Trustee must transfer to the Pension Account assets of the Fund or amounts as are determined in accordance with this deed which the Trustee believes are necessary in order to provide the Member's Benefit as a Pension.

### **16.3 Amounts to be credited**

The Trustee may credit to the Pension Account the portion of the Earnings (if positive) as the Trustee determines in accordance with clause 17.4, and any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

### **16.4 Amounts to be debited**

The Trustee may debit all amounts that are required or permitted by this deed and the Superannuation Law to be debited to the Pension Account, including:

- (a) Benefits to be debited to the Pension Account paid to Members or Beneficiaries;
- (b) the portion of the Earnings (if negative) that the Trustee determines in accordance with clause 17.4; and
- (c) any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

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## **17 Income Account**

### **17.1 Establishment**

The Trustee must establish an Income Account for the Fund.

### **17.2 Amounts to be credited**

The Trustee must credit the Income Account with amounts that are required by this deed and the Superannuation Law, including the Earnings (if positive) determined in accordance with clause 17.4 and any proceeds from Policies or Financial Assistance not credited to any other Account.

### **17.3 Amounts to be debited**

The Trustee must debit the Income Account with all amounts that are required by this Deed and the Superannuation Law including:

- (a) any amounts required under clause 21(b);
- (b) any losses on sale of investments;

- (c) any Tax or Levy not attributed to a Member Account; and
- (d) the cost of any Policy not credited to a Member Account.

#### **17.4 Trustee to determine Earnings and Fund Earning Rate**

At the end of each Fund Year or at any other time as the Trustee considers it appropriate or as the Superannuation Law requires, the Trustee must determine:

- (a) the Earnings of the Fund in respect of the period since the previous determination; and
- (b) the Fund Earning Rate.

#### **17.5 Distribution of Earnings**

Subject to clauses 18 and 20 and the Superannuation Law, the Fund Earning Rate determined under clause 17.4 must be used to determine, at the Trustee's discretion, the proportion of the Earnings to be credited or debited from the Income Account to other Accounts, including Member Accounts, Pension Accounts or Reserve Accounts.

#### **17.6 Trustee to notify Members**

The Trustee must notify the Members of the basis of the calculation of the Fund Earning Rate when required to do so by the Statutory Authority or the Superannuation Law.

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### **18 Fluctuation Account**

#### **18.1 Establishment**

The Trustee may establish a Fluctuation Account.

#### **18.2 Transfers to Fluctuation Account**

The Trustee must transfer any amount remaining in the Income Account after distribution of Earnings under clause 17.5 to the credit of the Fluctuation Account.

#### **18.3 Separation of Account moneys**

Amounts credited to the Fluctuation Account do not form part of any Member Account and any income earned by the Fund on the moneys held in the Fluctuation Account must be credited to the Fluctuation Account.

#### **18.4 Use of Fluctuation Account**

Subject to the Superannuation Law, the Fluctuation Account may be used:

- (a) as part of a reserving strategy to stabilise investment earnings;
- (b) to supplement the Fund Earning Rate;
- (c) to pay any Tax; and
- (d) to provide for any contingencies the Trustee decides to provide for.

## **18.5 Adjustment of Member Account**

The Trustee may make, in its discretion and in accordance with the Superannuation Law, adjustments to the credit of a Member Account to reflect the Fund Earning Rate applying at the date of payment.

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## **19 Reserve Accounts**

Subject to the Superannuation Law, the Trustee may establish and maintain one or more Reserve Accounts and operate Reserve Accounts for any purpose that it may specify from time to time, including for the purpose of separating:

- (a) assets funding a Pension from assets that are needed for solvency reasons as instructed by an Actuary or as otherwise determined by the Trustee;
- (b) assets funding a Pension into various classes to comply with the rules of the relevant Pension or to obtain favourable taxation treatment; or
- (c) some assets of the Fund from other assets to establish any other type of reserve account permitted by the Superannuation Law.

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## **20 Specific investments**

### **20.1 Recording of specific investments**

Where the Trustee invests separately in respect of certain Members or Beneficiaries in accordance with clause 11.5, the Trustee must record on whose behalf the specific investments are made for the purposes of determining allocations to the Member Account.

### **20.2 Allocation of Earnings and costs for specific investments**

The Member Account of the relevant Member or Beneficiary must be:

- (a) credited with any income and profit; and
- (b) debited with any costs, charges or Tax

in proportions applicable to any specific investment made under clause 20.1, in accordance with the Superannuation Law.

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## **21 Valuation of Fund**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Superannuation Law requires, the Trustee must:

- (a) make a valuation of all of the assets of the Fund (including the value of any Policy held by the Fund);
- (b) transfer any surplus or deficiency in the valuation of assets, other than specific investments in accordance with clause 20.1, to the Income Account; and
- (c) ensure that the records and Accounts of the Fund reflect the valuation of each asset.



# Part 7 - Record Keeping

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## 22 Records, Reports and Audit

### 22.1 Trustee obligations

The Trustee must:

- (a) keep accounts and issue receipts in respect of all money and any other assets received into and disbursed from the Fund and of all dealings in connection with that money or assets;
- (b) collect and promptly pay all money due to or received on behalf of the Fund to the credit of an account in the name of the Fund kept with a bank, building society, or other financial institution or into a trust account of a solicitor, accountant, investment manager or administration manager;
- (c) pay all premiums to Insurers that are required to maintain any Policies or Annuities;
- (d) keep and retain in safe custody all records, books, accounts, minutes, reports and other documentation for the period that the Superannuation Law requires;
- (e) prepare and lodge all documents that the Superannuation Law requires to be lodged;
- (f) ensure the Fund is audited at the end of each Fund Year or at such other time as is required by the Superannuation Law and ensure that the Auditor provides all certificates that are required by the Statutory Authority in accordance with the Superannuation Law;
- (g) once in each Fund Year, report on the affairs of the Fund to the Member in any form that the Superannuation Law requires;
- (h) produce any books or information relating to the Fund and make suitable arrangements for access to premises where the books or information are kept for the purposes of inspection in accordance with the Superannuation Law; and
- (i) record against a Member's Benefit or Benefit Entitlement, a Payment Flag that has been validly served on the Trustee in accordance with the Superannuation Law until the time when it is validly lifted.

### 22.2 Provision of information

The Trustee must provide any information or documentation required by the Superannuation Law to:

- (a) Employers;
- (b) the Statutory Authority;
- (c) the Actuary;
- (d) the Auditor;
- (e) Members; and
- (f) any other persons specified in the Superannuation Law.

### **22.3 Information and documents for Tribunal**

The Trustee must do all things necessary to comply with its obligations to the Tribunal under the *Superannuation (Resolution of Complaints) Act 1993 (Cth)*.

### **22.4 Directions of Statutory Authority**

The Trustee must comply with any direction or requirement of the Statutory Authority or Tribunal in relation to the Fund including:

- (a) the acceptance of Contributions into the Fund;
- (b) the disposal of assets of the Fund;
- (c) the appointment of an investigator to the Fund; and
- (d) the conduct of an investigation into the Fund.

## Part 8 - General matters

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### **23 Policies of insurance**

#### **23.1 Member Policies**

The Trustee may, in its absolute discretion, effect Policies with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one and partly in another.

#### **23.2 Member may request a specific Policy**

Where a Member requests in writing the Trustee to effect a Policy of a specified type in respect of the Member, the Trustee must effect that Policy, except if it is of the opinion that the Policy is not in the best interests of the Member or the Dependants of the Member and provided that the Member has not in writing withdrawn, cancelled or altered the Member's original request.

#### **23.3 Trustee to effect Policy if required**

If the Trustee has informed a Member that a Policy of a specified type will be effected in respect of a Member, the Trustee must effect the Policy except if the Member has requested the Trustee in writing not to effect that Policy.

#### **23.4 Premiums**

Any premiums for a Policy effected may, if the Trustee considers it appropriate and is otherwise permitted by the Superannuation Law, be debited to an Insured Member's Accumulation Account, a Pension Account or a Reserve Account.

#### **23.5 Limitation on liability of Trustee**

Where a Trustee is not required to exercise the power to effect a Policy or Policies, the Trustee is not responsible or liable to a Member, a Member's Legal Personal Representative or Dependant if the Trustee determines not to exercise the power to effect that Policy or those Policies.

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## **24 Payment of Tax and Levies**

#### **24.1 Deduction of Tax on Benefit**

The Trustee must deduct from any Benefit payable to any Member or Beneficiary under this deed any Tax required to be deducted from it.

#### **24.2 Tax on Contributions and Shortfall Components**

The Trustee or any other appropriate organisation (with the agreement of the Trustee) may deduct any Tax payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member.

## Part 9 - Membership of the Fund

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### **25 Membership**

#### **25.1 Eligibility for Membership**

- (a) The Trustee may admit any person who applies for membership in the Fund provided that his or her admission would not cause the Fund to breach the Superannuation Law.
- (b) If the Trustee accepts a person's application for Membership, the person will become a Member from the date and on the terms and conditions as the Trustee may, in its absolute discretion, determine.

#### **25.2 Application for Membership**

Each application for Membership is to be made by the relevant applicant in any form as the Trustee may from time to time approve.

#### **25.3 Admission to Membership without application**

The Trustee may, subject to Superannuation Law, admit a person as a Member even though he or she has not applied for membership in accordance with clauses 25.1 and 25.2.

#### **25.4 Members and Beneficiaries to provide information**

Each applicant for Membership and any Beneficiary must whenever requested by the Trustee supply all information that the Trustee deems necessary for the purposes of any investigations in connection with the Fund.

#### **25.5 Trustee may amend or alter Benefits**

Where the Trustee is or becomes aware that the information provided under clause 25.4 is incorrect or misleading or that any relevant information has been deliberately withheld, the Trustee may, in its absolute discretion, alter or amend the Benefits to amounts which would have been determined had full and accurate information been supplied.

#### **25.6 Member bound by deed**

Each Member is deemed to have consented to be bound by the provisions of this deed by virtue of his or her application for Membership.

#### **25.7 Member to be medically examined**

For the purposes of effecting, increasing or otherwise varying any Policy or Annuity, the Trustee may require a Member, or any person who has applied to become a Member, to take any steps that are required for those purposes to the satisfaction of the Insurer, including:

- (a) being medically examined;
- (b) submitting other evidence of health; or
- (c) providing proof of age.

## **25.8 Refusal to be medically examined**

If any Member or person who has applied to become a Member refuses or omits to:

- (a) take any step reasonably required under clause 25.7;
- (b) do anything which would or might prejudice the relevant Policy or Annuity; or
- (c) do anything which would or might result in some or all of the relevant Policy money not becoming payable,

the Trustee may adjust the Benefit to be provided by the Fund for and in respect of that Member or person as the Trustee considers appropriate.

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## **26 Membership notification requirements**

### **26.1 Product Disclosure Statements**

The Trustee must give to all new Members a Disclosure Document containing information and details relating to the Fund that are required by the Superannuation Law.

### **26.2 Disclosure and reporting requirements**

The Trustee must provide annually to Members, former Members and Beneficiaries, all information in writing and copies of accounts, records and documents of the Fund that are required by the Superannuation Law.

### **26.3 Former Member notices**

- (a) The Trustee must give to former Members or their Legal Personal Representatives a written statement containing all information and details relating to the Benefits of the former Members that the Superannuation Law requires to be provided.
- (b) No Member or Dependent of a Member is entitled to obtain information or details on the operation of the Fund or on any matter which may relate to the conduct of the Fund which, in the opinion of the Trustee, would be inappropriate to disclose other than as provided for in this clause 26.

### **26.4 Inspection of deed and other Documents**

- (a) A copy of this deed or any other documents required by the Superannuation Law to be made available for inspection must be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary.
- (b) Unless otherwise required by the Superannuation Law, it is sufficient for this clause 26.4 to make a copy of this deed or other documents available to the Member or Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when that office or business is open.

### **26.5 Meetings and Members**

The Trustee must notify the Members from time to time of the manner, time and place in which meetings of the Members of the Fund held in accordance with the provisions of the Superannuation Law and for the purposes of this deed are to be called and conducted.

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## 27 Ceasing to be a Member

A Member ceases to be a Member of the Fund on the first of the following to occur:

- (a) the Trustee determines that the Member has been paid all of his or her Benefit from the Fund;
- (b) where the Member dies, the Trustee determines that the deceased Member's Benefit has been paid to the deceased Member's dependants or Legal Personal Representative;
- (c) the Trustee determines that the Member's continued membership would cause the Fund to cease complying with the Superannuation Law; or
- (d) the Trustee determines, on reasonable grounds, that the Member should cease to be a Member.

## Part 10 - Contributions to the Fund

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### **28 Contributions to the Fund**

#### **28.1 Eligibility to make Contributions**

Subject to the consent of the Trustee and the provisions of clause 29, Contributions to the Fund may be made by a Member, an Employer or any other Permitted Entity.

#### **28.2 Amount of Contributions**

Subject to the provisions of clause 29 and the Superannuation Law, the Trustee may accept amounts by way of Contributions that are:

- (a) determined from time to time by each contributor; or
- (b) deemed or permitted to be made under the Superannuation Law.

#### **28.3 Superannuation Guarantee legislation**

Where the Trustee accepts Contributions in accordance with the Guarantee Act, the Trustee must provide all certificates, reports and other information that the Guarantee Act requires to be provided.

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### **29 General provisions concerning Contributions**

#### **29.1 Form of Contribution**

A Contribution made under this Part 10 may be made either in cash or by transfer of an asset or assets provided that the assets transferred are authorised investments and are transferred on the terms and conditions provided under the Superannuation Law and the acquisition of the assets is not prohibited by the Superannuation Law.

#### **29.2 Obligations to contribute**

- (a) Subject to the requirements of the Superannuation Law and in the absence of any agreement to the contrary, no Member, Employer or Permitted Entity is under any obligation to make a Contribution to the Fund in respect of any Fund Year.
- (b) Subject to the Superannuation Law, a Member may remain a Member of the Fund even if no Contributions are made in respect of that Member for any Fund Year.

#### **29.3 Limitation on commencing Contributions**

The Trustee must not accept Contributions to the Fund by or in respect of a Member if acceptance of the Contribution would contravene the Superannuation Law or this deed.

#### **29.4 Limit on Contributions**

The Trustee must not accept any Contributions or Shortfall Component if:

- (a) the Contributions are not otherwise authorised to be made, or are in excess of the amount of Contributions that can be made, on the Member's behalf by the Superannuation Law;

- (b) acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- (c) the Statutory Authority directs the Trustee not to accept any Contributions or any Shortfall Component in accordance with the Superannuation Law.

## 29.5 Ineligible Contributions

If any Contribution or Shortfall Component is accepted by the Fund in breach of the provisions of this Part 10, the Trustee must refund such Contribution or Shortfall Component as required by the Superannuation Law, less any:

- (a) Tax payable, or amounts which the Member has validly authorised the Trustee to pay, to the Statutory Authority;
- (b) charges which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contribution or Shortfall Components; and
- (c) reasonable administration charges,

and the Trustee must debit the Member's Account accordingly.

## 29.6 Contributions Splitting

- (a) This clause 29.6 does not apply to a Benefit:
  - (i) that is subject to a Payment Split; or
  - (ii) on which a Payment Flag is operating.
- (b) Subject to the Superannuation Law, an Applicant may, in a Financial Year, apply to the Trustee in writing in such form (if any) as the Trustee may require to roll over, transfer out of the Fund or Allot an amount of the Applicant's Benefits, for the benefit of the Spouse of the Applicant, that is equal to an amount of the Splittable Contributions made by, for, or on behalf of the Applicant in:
  - (i) the previous Financial Year; or
  - (ii) the Financial Year in which the application is made provided that the entire Benefit of the Applicant is to be rolled over or transferred in that Financial Year.
- (c) Subject to the SIS Regulations, an application under clause 29.6(b) is invalid:
  - (i) if in the Financial Year in which it is made:
    - (A) the Applicant has already made an application in respect of the relevant Financial Year; and
    - (B) the Trustee is:
      - (1) considering the application; or
      - (2) has given effect to the application; or
  - (ii) if the amount of any Benefits that the application relates to exceeds the Maximum Splittable Amount; or
  - (iii) subject to clause 29.6(d), if the Spouse of the Applicant is aged:



- (A) 65 years or more; or
  - (B) between the relevant Preservation Age and 65 years and satisfies item 101 in schedule 1 of the SIS Regulations.
- (d) Despite clause 29.6(c)(iii), an application is not invalid under that clause if the application includes a statement by the Applicant's Spouse that the Spouse is aged:
  - (i) between the relevant Preservation Age and 65 years, and does not satisfy item 101 in schedule 1 of the SIS Regulations; or
  - (ii) less than the relevant Preservation Age.
- (e) The Applicant must specify, in the application, the amount from his or her:
  - (i) Taxed Splittable Contributions;
  - (ii) Untaxed Splittable Contributions; or
  - (iii) both,

that the Applicant seeks to split for the benefit of his or her Spouse.
- (f) The Trustee may at its discretion accept an application made under clause 29.6(a) if:
  - (i) the application complies with clauses 29.6(a) to 29.6(e); and
  - (ii) the Trustee has no reason to believe that the statement referred to in clause 29.6(d) is untrue; and
  - (iii) the amount that the application relates to does not exceed the Maximum Splittable Amount for the relevant Financial Year.
- (g) Where the Trustee accepts an application under this clause 29.6, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application, roll over or transfer to an Approved Benefit Arrangement or Allot the amount of the Splittable Contribution that is the subject of the application for the benefit of the Applicant's Spouse.
- (h) Before the Trustee Allots any amount under clause 29.6(g) for the benefit of the Spouse:
  - (i) the Trustee must ensure that the requirements of clause 9.2 are satisfied where the Fund is a Self Managed Superannuation Fund; and
  - (ii) either, the Spouse must:
    - (A) be a Member; or
    - (B) apply to become and be accepted as a Member.
- (i) Subject to the Superannuation Law, if an Applicant requests a split of:
  - (i) his or her Untaxed Splittable Contributions, the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the Non Concessional Contributions that would form part of any Superannuation Lump Sum that would be payable if the Applicant withdrew his or her entire Benefits on or before 5 April 2007; or
  - (ii) his or her Taxed Splittable Contributions, the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the Concessional Contributions that may be split under the Superannuation Law that would form part of any Superannuation Lump Sum

that would be payable if the Applicant withdrew his or her entire Benefits at the time the Trustee gave effect to the application.

### **29.7 Fund capped Contributions**

- (a) Despite any other provision of this deed, the Trustee, having made all reasonable inquiries, must not accept any Contributions in a financial year in respect of a Member (excluding Employer Contributions required under Superannuation Law) that would cause the Member to exceed his or her Contributions Caps.
- (b) If a Trustee receives an amount to which clause 29.7(a) applies, the Trustee must return the amount to the person that paid the amount within 30 days of becoming aware that the amount is an amount to which clause 29.7(a) applies, unless a valid notice under section 290-170 of the Taxation Act is received by the Trustee within 30 days of that amount being received by the Trustee.
- (c) Any increase or decrease in the value of the amount to be returned by the Trustee under clause 29.7(b) as determined in the Trustee's sole discretion may be taken into account by the Trustee in determining the amount that must be returned.

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## **30 Transfers from and to Approved Benefit Arrangements**

### **30.1 Transfers from Approved Benefit Arrangements**

Subject to clause 30.2, the Trustee may make any arrangements as it thinks fit with any Member or the trustee of any Approved Benefit Arrangement to transfer any assets to the Fund and may also make arrangements about any other matter which is incidental to, or consequent on, the admission of that Member to the Membership of the Fund.

### **30.2 Payment of Benefits deferred**

If the Approved Benefit Arrangement from which assets are to be transferred is one in which the payment of Benefits is required by Superannuation Law to be deferred until the attainment of a particular age or until the occurrence of a specified event, then the Member is not entitled to receive from the Fund any part of the Benefits that is attributable to those assets at a date earlier than the date on which that Member would have been entitled to receive those Benefits from the transferring Approved Benefit Arrangement.

### **30.3 Transfers to Approved Benefit Arrangements**

The Trustee may:

- (a) if requested by the Member, in lieu of part or all of any other Benefit that the Member may be entitled to under this deed, transfer to the trustee of another Approved Benefit Arrangement a portion of the assets of the Fund that the Trustee, in its discretion, determines does not exceed the amount that the Trustee considers equivalent in value to the Benefit being provided to the Member to the extent that it has accrued;
- (b) transfer a Benefit which has become payable to a Member to an Approved Benefit Arrangement selected by the Trustee where a Member has not provided instructions to the Trustee on the payment or transfer of the Benefit within a reasonable period of the Benefit first becoming payable;
- (c) transfer some or all of any amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; and

- (d) transfer any other asset or amount in the Fund that it approves, including any reserves, surplus or unallocated amounts in the Fund, to another account or reserve in the Fund or to another Approved Benefit Arrangement.

#### **30.4 Roll overs**

The Trustee may, on receiving a written election or application from a Member to:

- (a) pay all or any of the Benefit of that Member in the Fund to any Approved Benefit Arrangement or back into the Fund in a manner permitted by the Superannuation Law;
- (b) roll over an amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; or
- (c) retain or apply all or any of the Benefit of that Member within the Fund in a manner permitted by the Superannuation Law,

pay, apply or retain the Benefit in accordance with that election or application.

#### **30.5 Trustee to protect Preservation on roll over**

Where a Member or former Member has a Preserved Payment Benefit in the Fund which forms part of the amount transferred or rolled over to an Approved Benefit Arrangement, the Trustee must ensure that the governing rules of the Approved Benefit Arrangement provide for the amount of the Preserved Payment Benefit to be preserved and vested in accordance with the Superannuation Law.

# Part 11 - Benefits

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## **31 Types of Benefits**

### **31.1 Benefit Entitlement**

Where a Member becomes entitled to a Benefit in accordance with this deed and the Superannuation Law and there are no cashing restrictions that apply to that Benefit under Superannuation Law, the Member may elect in writing to the Trustee to be paid the Benefit in one or more of the forms permitted under the Superannuation Law including:

- (a) one or more lump sums;
- (b) one or more Income Streams; or
- (c) any other form of Benefit permissible under the Superannuation Law,

but an election is not binding on the Trustee.

### **31.2 Election**

Unless the Trustee otherwise agrees, the election provided by the Member for the purposes of clause 31.1 must:

- (a) be in writing;
- (b) state the amount to be paid;
- (c) state the extent to which the amount is to be paid as any one or more types of Benefit permitted to be paid by this deed and the Superannuation Law; and
- (d) be provided to the Trustee before the Benefit commences to be paid to the Member.

### **31.3 Benefit Entitlement - with cashing restrictions**

Subject to the Superannuation Law, where a Member becomes entitled to a Benefit in accordance with clauses 36 or 37, and there are cashing restrictions that apply to that Benefit under the Superannuation Law, the Trustee must pay that Benefit in accordance with the applicable cashing restrictions.

### **31.4 Transfer of Policy as Benefit**

Where a Member or a Beneficiary is entitled to be paid a Benefit and that Benefit includes any interest in a Policy of any kind on the life of the Member or Beneficiary, the Trustee may transfer the relevant Policy to the Member or Beneficiary or to the Dependants.

### **31.5 Transfer of assets as Benefit**

The Trustee may, with the consent of a Member or Beneficiary to whom a Benefit is payable, transfer assets of the Fund of an equivalent value to that Member or Beneficiary in lieu of paying the whole or any part of the amount otherwise payable under the provisions of this deed.

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## **32 Preservation**

The Trustee must Preserve amounts of Contributions in respect of Members or Beneficiaries on the terms and conditions that are required by the Superannuation Law.

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## **33 Payment of Unrestricted Non Preserved Amount**

Despite any other provisions in this deed which may be construed to the contrary and subject to the Superannuation Law:

- (a) a Member may elect at any time to withdraw the whole or any part of the Unrestricted Non Preserved Amount of that Member by giving notice to the Trustee in the form and manner that the Trustee may determine from time to time; and
- (b) the minimum Unrestricted Non Preserved Amount which may be withdrawn by a Member under clause 33(a) will be determined by the Trustee and notified to Members of the Fund.

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## **34 Payment of additional Benefits**

In circumstances where a Member ceases to be a Member of the Fund, the Trustee may determine to pay, in addition to amounts otherwise payable under this deed, any part of the Fluctuation Account, which the Trustee considers equitable, to the Member's Accumulation Account for purposes of payment of a Benefit.

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## **35 Retention of Benefit in Fund**

Where a Member or Beneficiary does not require Benefits to be paid immediately, the Trustee may, in its absolute discretion, retain all or any part of any Benefit payable under this Part 11 in the Fund until the Member or Beneficiary entitled to the Benefit requests that the Benefit is paid to that Member or Beneficiary or until they are required to be paid under the Superannuation Law or this deed.

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## **36 Compulsory payment of Benefits**

The Trustee must pay a Member's Benefits as soon as practicable after:

- (a) the Member dies; or
- (b) payment of the Benefit is required in accordance with the provisions of this Deed or the Superannuation Law.

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## **37 Voluntary payment of Benefits**

Subject to the Superannuation Law, a Member may elect to receive a Benefit on or after the occurrence of any of the following events:

- (a) if the Member Retires from Gainful Employment;
- (b) if the Member suffers Permanent Incapacity;
- (c) if the Member suffers Temporary Incapacity;
- (d) if the Member being a temporary resident permanently departs Australia in circumstances described in the SIS Regulations, including regulation 6.20A or 6.20B, and requests in writing the release of his or her Benefits;

- (e) if the Member's Gainful Employment with an employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member is terminated;
- (f) if the Member suffers Severe Financial Hardship;
- (g) if the Member attains age 65;
- (h) the Trustee determines that some or all of the Member's Benefit may be released on Compassionate Grounds;
- (i) if the Member attains Preservation Age;
- (j) if the Member has a Terminal Medical Condition; or
- (k) any other condition of release permitted by the Superannuation Law.

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### **38 Pension Benefit**

The following provisions apply to the payment of a Pension:

- (a) where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee may, subject to the Superannuation Law, provide a Benefit to the Member as any one or more types of Pension permitted by the Superannuation Law;
- (b) subject to the Superannuation Law, where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee must provide that Pension in accordance with the governing rules of the Fund (including this deed), trustee resolutions or any pension agreement;
- (c) all relevant provisions prescribed by the Superannuation Law with which the Fund or the Trustee must comply in respect of a Pension shall apply to the Pension including any condition, standard or requirement of the Superannuation Law which is required to be satisfied in order for the Pension to qualify as a pension (or as a particular type of pension) under the Superannuation Law;
- (d) where an instalment of Pension is payable in respect of a Member and the amount standing to the credit of the Member's relevant Pension Account is less than the instalment payable, the lesser amount must be paid and the Trustee's liability in respect of the payment of the Pension is discharged; and
- (e) despite any other provisions of this clause 38, where a Benefit is payable as a Pension, the Trustee may at its discretion apply an amount representing the capital value of that Benefit in the purchase of an Annuity in its name and may arrange for payments to be made directly to the Member but may assign the Annuity to the Member if requested to do so and if permitted to do so under the Superannuation Law.
- (f) A Pensioner may, at any time whether before or after the commencement of a Pension, nominate a Reversionary Beneficiary to continue receiving the Pension following the death of the Pensioner.
- (g) Despite any other clause of this deed but subject to clause 45(d) and the Superannuation Law, where a Member requests that the Trustee continues to pay a Pension to a Reversionary Beneficiary following the Member's death, the Trustee must act in accordance with the request and the Pension will automatically continue to be paid to the nominated Reversionary Beneficiary following the death of the Member provided the payment is permitted by the Superannuation Law.

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## **39 Reduction of Member's Benefit**

### **39.1 Reduction in Member's Benefit by amounts owed to Employer**

Despite any other provision of this deed, the Member's Benefit may, in the Trustee's absolute discretion, be reduced by:

- (a) all amounts, whether actual or contingent, owing by the Member to an Employer or to the Trustee at the time when the Benefit becomes payable or applicable in accordance with this deed or the Superannuation Law;
- (b) the amount of any loss incurred by an Employer in consequence of the Member's proven fraud, dishonesty, misconduct or negligence; or
- (c) the amount of any costs of all proceedings, civil or criminal, incurred by an Employer in attempting to recover any amount owing by the Member to the Employer or in respect of his or her proven fraud, dishonesty, misconduct or negligence,

provided that this clause 39 must not be relied on to reduce the Member's Benefit below the amount required in accordance with the Superannuation Law to be vested in the Member.

### **39.2 Evidence of amounts owed to Employer**

Subject to the Superannuation Law, a written statement signed by an Employer and given to the Trustee that:

- (a) specifies the amount owing by a Member to the Employer or the amounts of any loss or costs incurred by the Employer in respect of the relevant Member; and
- (b) requests that the Member's Benefit is reduced by that amount,

will be sufficient authority to the Trustee to reduce the extent of the Member's Benefit by the specified amount.

### **39.3 Payment of amounts to Employer**

On receipt of a written statement under clause 39.2, the Trustee is entitled to pay to the relevant Employer all amounts actually owing or incurred as specified in the relevant statement and is entitled to retain any amount contingently owing pending the occurrence or non occurrence of the contingency.

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## **40 Statement of Unclaimed Benefits**

The Trustee must give to the Statutory Authority a statement of Unclaimed Benefits and must pay any Unclaimed Benefits to the Statutory Authority at the time and in the manner as is required by the Superannuation Law.

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## **41 Limitation on payment**

Despite any other provision in this deed, the Trustee must not pay any Benefits to Members, Dependants or Beneficiaries if any such payment would cause the Fund to breach the Superannuation Law.

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## **42 Forfeited Benefits**

### **42.1 Forfeiture**

Benefits payable out of the Fund must, subject to the Superannuation Law, be forfeited if:

- (a) without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge all or any part of those Benefits; or
- (b) required under the Bankruptcy Act.

### **42.2 Application of forfeited money**

The whole of the Benefits forfeited by a person under clause 42.1 must be applied by the Trustee for the benefit of a Member and his or her Dependants or for any one or more of them as the Trustee, in its absolute discretion, determines.

### **42.3 Forfeiture Account**

The Trustee has power at any time to establish a Forfeiture Account of the Fund and must transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the reasons above or otherwise forfeited in accordance with this deed or the Bankruptcy Act.

### **42.4 Treatment of money in Forfeiture Account**

While any money is held in the Forfeiture Account, that money does not form part of any other Account and any income derived by the Fund in respect of money held in the Forfeiture Account must be credited to the Forfeiture Account.

### **42.5 Unclaimed Benefits Account**

The Trustee is, subject to the Superannuation Law, entitled to treat as unclaimed and to forfeit and transfer to the Unclaimed Benefits Account, any money in the Fund standing to the credit of any Member whose whereabouts are unknown to the Trustee and if, after making such enquiries as the Trustee deems appropriate, the Trustee is unable to positively trace any person entitled to the benefit of that money.

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## **43 Death Benefit Nominations**

### **43.1 Non Binding Death Benefit Nomination**

A Member may at any time make a Non Binding Death Benefit Nomination designating one or more Dependants or Legal Personal Representatives as a Nominated Beneficiary of any Benefit payable by the Trustee on or following the death of the Member, provided that:

- (a) a Member wishing to designate a Nominated Beneficiary may do so by providing a written notice to the Trustee in any form as approved by the Trustee from time to time; and
- (b) subject to the Superannuation Law, a Non Binding Death Benefit Nomination is not binding on the Trustee.

### **43.2 Binding Death Benefit Nomination**

- (a) A Member wishing to make a Binding Death Benefit Nomination must make that Binding Death Benefit Nomination in a form that:



- (i) is in writing and states that the document is a Binding Death Benefit Nomination;
  - (ii) is signed and dated by the Member in the presence of two witnesses, each of who is:
    - (A) a person who has turned 18 years; and
    - (B) not a person mentioned in the notice; and
  - (iii) contains a declaration signed and dated by the two witnesses stating that the Binding Death Benefit Nomination was signed by the Member in their presence.
- (b) A Member may nominate in a Binding Death Benefit Nomination :
- (i) the person or persons to whom their Benefit must be paid so long as that person or each of those persons are a Legal Personal Representative or Dependant of the Member;
  - (ii) the proportions in which the Benefit will be paid to that person or each of those persons; and
  - (iii) the manner in which those benefits must be paid to the person or each of those persons.
- (c) A Binding Death Benefit Nomination may be confirmed, amended or revoked at any time by the Member and will otherwise be effective until revoked.
- (d) A Binding Death Benefit Nomination may be revoked by making a later valid Binding Death Benefit Nomination or by otherwise revoking it by notice in writing given to the Trustee.

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## **44 Payment of death benefits**

### **44.1 Application**

This clause 44 applies to a Member's Benefit that is payable under clause 36(a) on or following the death of a Member.

### **44.2 Payment if Non Binding Death Benefit Nomination**

Subject to clauses 44.3 and 38(g) and the Superannuation Law, on or following the death of a Member, if that Member had made one or more Non Binding Death Benefit Nomination, any Benefit payable in respect of that Member may be paid or applied in accordance with clause 44.6 to:

- (a) one or more of the Nominated Beneficiaries (if any) designated in the most recent Non Binding Death Benefit Nomination made by that Member;
- (b) other Dependants of that Member and in such proportions as the Trustee, in its absolute discretion, determines; or
- (c) one or more of the Legal Personal Representatives of that Member.

#### **44.3 Payment if Binding Death Benefit Nomination**

Subject to clauses 45 and 38(g), if a Member made a valid Binding Death Benefit Nomination, any Benefit payable on or following the death of the Member must be paid by the Trustee in accordance with that Binding Death Benefit Nomination.

#### **44.4 Payment if Binding Death Benefit Nomination is invalid or ineffective**

If a Member had made a Binding Death Benefit Nomination that is invalid or ineffective at the date of death, the Binding Death Benefit Nomination will be treated as a Non Binding Death Benefit Nomination.

#### **44.5 Payment if no Binding Death Benefit Nomination or Reversionary Beneficiary nomination**

Subject to clauses 44.3 and 38(g) and the Superannuation Law, on or following the death of a Member, if that Member has not made a Binding Death Benefit Nomination or a Reversionary Beneficiary nomination pursuant to clause 38(f), or they have made such a Binding Death Benefit Nomination or a Reversionary Beneficiary nomination but such nomination does not deal with all of the deceased Member's benefits, any Benefit (or remaining Benefit) payable in respect of that Member may be paid or applied in accordance with clause 44.6 to:

- (a) one or more of the Nominated Beneficiaries (if any) designated in the most recent Non Binding Death Benefit Nomination made by that Member (if any) in accordance with clause 44.2;
- (b) other Dependants of that Member and in such proportions as the Trustee, in its absolute discretion, determines; or
- (c) one or more of the Legal Personal Representatives of that Member.

#### **44.6 Forms of payment**

Subject to clauses 44.3 and 38(g) and the Superannuation Law, payment of a Member's Benefit under clauses 44.2 or 44.5 may be paid or applied, in the manner and on the terms that the Trustee, in its absolute discretion, determines, including by way of:

- (a) one or more Annuities;
- (b) one or more Income Streams;
- (c) one or more Superannuation Lump Sums; or
- (d) any combination of such methods of payment.

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### **45 Commutation of Income Stream**

- (a) Despite any other clause of this deed but subject to paragraph (d) and the Superannuation Law, the Trustee may, and must where required by Superannuation Law, discharge its liability to a Member, Dependant or Beneficiary in respect of a Pension by commuting the whole or any part of the Pension payable from the Fund to the Member, Dependant or Beneficiary as the case may be, and applying the amount in accordance with paragraph (b), provided that the commutation would not cause the Trustee or the Fund to breach the Superannuation Law.
- (b) Subject to the Superannuation Law, the Trustee may apply the amount of the commuted Pension by either:

- (i) retaining the amount in the Fund as a credit to an Accumulation Account for the Member, Dependant or Beneficiary; or
  - (ii) paying the amount as a Benefit in the form of a lump sum or other form of Pension in accordance with this deed.
- (c) If part of a Pension is commuted, the Trustee may reduce the total amount of the instalments in respect of the balance of the Pension payable to the Member, Dependant or Beneficiary by an amount that the Trustee considers appropriate subject to the Superannuation Law.
- (d) If clause 38(g) applies, the Trustee may only commute a Pension under this clause 45 if required by Superannuation Law or to comply with any applicable cap imposed on Pensions by the Superannuation Law, or as otherwise directed by the Commissioner of Taxation or by the Pensioner.

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## 46 Anti detriment payment

The Trustee may determine to increase the Superannuation Lump Sum Benefit payable to a Member's Dependant or Dependents on the death of a Member by way of an anti detriment payment in accordance with section 295-485 of the Taxation Act (**Anti detriment Payment**) to the extent that such Anti detriment Payment is applicable under the Superannuation Law.

## Part 12 - Family Law

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### 47 Information to Members and Non Member Spouses

If a Member's Benefit or Benefit Entitlement becomes subject to a Payment Split, the Trustee must provide the Member and the Non Member Spouse with all notices and information, and in such form as required under the Superannuation Law.

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### 48 Trustee may create new interest for Non Member Spouse

- (a) The Trustee may admit a Non Member Spouse in respect of a Payment Split as a Member:
  - (i) if the Non Member Spouse provides a written request as required by the Superannuation Law to the Trustee in a form approved by the Trustee; or
  - (ii) on its own initiative in the circumstances permitted by the Superannuation Law.
- (b) If the Trustee admits a Non Member Spouse as a Member under this clause 48, or the Non Member Spouse is already a Member of the Fund, the Trustee must reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.

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### 49 Non Member Spouse may request transfer of interest

If the Non Member Spouse in respect of a Payment Split is not admitted as a Member under clause 48, the Trustee must:

- (a) either:
  - (i) transfer or roll over the entitlement of the Non Member Spouse to an Approved Benefit Arrangement; or
  - (ii) pay the entitlement of the Non Member Spouse to the Non Member Spouse if permitted or required to do so by the Superannuation Law; and
- (b) reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.

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### 50 Family Law fees

- (a) In addition to its other powers under this deed, the Trustee may charge reasonable fees in respect of any action taken by the Trustee which is permitted or required by Family Law and for which the Trustee is entitled to charge fees.
- (b) The Trustee is entitled to recoup those fees in accordance with the Superannuation Law from:
  - (i) a Member's Benefit Entitlement; or
  - (ii) the entitlements of the Non Member Spouse.

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## **51 Satisfaction of entitlement**

- (a) The payment, transfer or roll over of the entitlement of a Non Member Spouse in accordance with this Part 12 will be a complete discharge of the Trustee's obligations in respect of any liability to that Non Member Spouse and the Member in respect of that Non Member Spouse for the amount paid, transferred or rolled over.
- (b) In addition to its other powers under this deed, the Trustee may deduct from the amount to be paid, transferred or rolled over the amount of any Tax that is calculated by the Trustee to be payable in respect of the entitlement of the Non Member Spouse.

# Part 13 - Termination of Trust

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## **52 Termination**

### **52.1 Events of termination**

The trusts declared under this deed will cease and terminate and the Fund must be wound up in accordance with this Part 13 on the occurrence of any of the following events:

- (a) if there are no Members in the Fund and the Trustee resolves to terminate the Fund;
- (b) all Members agree to terminate the Fund;
- (c) the Trustee decides that it is not reasonable to continue to operate the Fund; or
- (d) the Fund is required to be terminated to comply with the Superannuation Law.

### **52.2 Notice to Members**

On the trusts ceasing and terminating due to an event set out in clause 52.1, the Trustee must give written notice to each Employer and to each Member, if any, that the Fund will be wound up on the Closing Date, which will be a date no later than any date on which the Fund is required to be wound up under clause 52.1(d).

### **52.3 No further Contributions**

As from the Closing Date:

- (a) no Employer or Member may make any further Contributions, other than arrears of Contributions due to the Closing Date; and
- (b) arrears of Contributions, if any, must be called in immediately.

### **52.4 Order of payment of Benefits**

On the trusts ceasing and terminating due to an event set out in clause 52.1, subject to clause 52.8, the Trustee must make provision out of the Fund, after meeting expenses and liabilities, as is necessary to provide for the payment of the following Benefits in the following order of priority:

- (a) payments which on or before the Closing Date had become payable to retired Members or Dependants;
- (b) payments to each Member who is still in employment and has attained his or her Normal Retirement Age equal to the Member's Accumulation Account;
- (c) payment to each Member who is still in the employment of the Employer and has not attained his or her Normal Retirement Age equal to his or her Benefit had he or she resigned immediately prior to the Closing Date; and
- (d) payment to each Member who is still in the employment of the Employer of such amount of the assets of the Fund then remaining as the Trustee considers equitable after taking into account payments determined under clauses 52.4(b) and 52.4(c) as can be paid without being regarded as excessive amounts under the Superannuation Law.

## **52.5 Payment if Member Dies**

Where a Member dies before receiving a Benefit to which he or she has become entitled to under clause 52.4, that Benefit must be paid in accordance with clause 44.

## **52.6 Surplus**

If a surplus remains after providing Benefits for Members and their Dependants in accordance with clause 52.4, that surplus must, subject to any requirements of the Superannuation Law and clause 52.8, be paid by the Trustee to, or for the benefit of:

- (a) any Members;
- (b) any former Members;
- (c) any Dependants of any Members or former Members;
- (d) the Legal Personal Representatives (in their capacity as such) of any Members, former Members or Dependants; or
- (e) any Employer,

as the Trustee, in its absolute discretion, determines and, if provided to or for two or more persons, in the proportions as the Trustee, in its absolute discretion, determines, subject in the case of clauses 52.6(a) and 52.6(d) to clause 52.4.

## **52.7 Form of Payment**

Subject to clause 52.8, the payments to be provided under clauses 52.4 and 52.6 may be made in cash, Policies, participation in any other Approved Benefits Arrangement or otherwise as determined by the Trustee, but shall not be payable to or for the benefit of a Member unless in accordance with the Superannuation Law.

## **52.8 Payment to other Persons**

If any payment of Benefits provided under clauses 52.4 and 52.6 is otherwise required by the Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the relevant Member is not entitled to receive from the Fund any part of the Benefit which is required to be deferred and the Trustee must make any of the following arrangements with respect to the Benefits required to be deferred:

- (a) transfer the Benefit to another Complying Superannuation Fund if that Fund does not permit the payment of the Benefit prior to the attainment of the particular age or the specified event;
- (b) purchase an Annuity with the Benefits commencing no earlier than the particular age or specified event or which otherwise satisfies the Superannuation Law;
- (c) transfer the Benefits to an Approved Deposit Fund if that Fund does not permit the payment of the Benefit prior to the attainment of the particular age or the specified event; or
- (d) purchase a non commutable Pension payable for life in the name of the Member but only if the Member has permanently Retired from Employment.

## Part 14 - Amendment

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### **53 Amendment of this deed**

#### **53.1 Method of amendment**

- (a) Subject to clauses 53.1(b) and 53.1(c) and the Superannuation Law, the Trustee may at any time by resolution or by instrument in writing amend, alter, vary, modify or delete with immediate, prospective or, to the extent that the law allows, retrospective effect from time to time, any or all of the provisions of this deed.
- (b) No reduction of the accrued Benefit of a Member can be made without the written consent of the particular Member.
- (c) No amendment may be made under clause 53.1(a) which would cause the trusts contained in this deed to fail by reason of the application of the rule against perpetuities.
- (d) No amendment may be made under clause 53.1(a) that would allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the governing rules provide and will continue to provide after the amendment that the Fund has as its sole or primary purpose, the provision of old age pensions.

#### **53.2 Notification of Members of Amendment**

As soon as practicable after this deed has been amended under clause 53.1, the Trustee must give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlements of the Member.



## Schedule 1

**1 Name of Fund**

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Toomey Superannuation Fund

**2 Trustee**

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Windfall Holdings Pty Ltd  
ACN: 009 402 304

**3 Date of Establishment**

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19 May 1995

**4 Previous Amendments**

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Nil

**5 Proper Law Governing Fund**

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The Law of the State of Western Australia