

## **Deed of Ratification and Amendment D & M Brake Superannuation Fund**

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**This Deed** is made on the Deed Date.

**Between**                    The parties named in Item 2 in the Schedule.

## **Recitals**

- A.     The Fund was established by the execution of the Trust Deed.
- B.     Throughout the Trust Deed and Deed of Amendment, the names of certain persons are incomplete.
- C.     Each Member is a member of the Fund.
- D.     The Resigning Trustee wishes to resign as Trustee of the Fund.
- E.     The Member wishes to appoint the New Trustee as Trustee of the Fund.
- F.     The New Trustee wishes to amend the Governing Rules.
- G.     The parties wish to record the amendment in accordance with the Trust Deed.

## **Operative Part**

### **1.     DEFINITIONS & INTERPRETATION**

#### **1.1     Definitions**

In this Deed, unless the context or subject matter require otherwise:

**Act** means the Superannuation Industry (Supervision) Act 1993;

**Amendment Clause** means the provision authorising the amendment of the Trust Deed which is listed in Item 6 in the Schedule;

**Appointment Clause** means the provision of the Trust Deed authorising the appointment of a Trustee which is listed in Item 5 in the Schedule;

**Deed Date** means the date of this Deed specified in Item 1 in the Schedule;

**Deed of Amendment** means the deed of variation dated 02/08/2017 between the trustee and members;

**Defect** means each of the errors appearing in the Trust Deed and Deed of Amendment which are described in clause 2;

**Fund** means the superannuation fund described in Item 3 in the Schedule;

**Governing Rules** means the governing rules (as defined in the Act) for the Fund as they are amended or varied from time to time;

**Resignation Clause** means the provision of the Trust Deed authorising the resignation of a

Trustee which is listed in Item 4 in the Schedule;

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

## 1.2 Interpretation

- (a) Each party to this Deed will be referred to in this Deed by the description against their name in Item 2 in the Schedule.
- (b) In the interpretation of this Deed, unless the context or subject matter require otherwise, references to:
  - (i) **singular** words include the **plural** and vice versa;
  - (ii) any **gender** include every gender;
  - (iii) a **person** include natural persons, firms, companies, corporations, bodies corporate, trustee, trusts, associations, partnerships, government authorities, and other legal entities and includes successors and assigns;
  - (iv) **writing** include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
  - (v) **signature** and **signing** mean due execution of a document by a person, corporation or other relevant entity and include signing by an agent or attorney or representative (if a body corporate);
  - (vi) **months** mean calendar months;
  - (vii) **statutes** include statutes amending, modifying, rewriting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, orders in council and ordinances made under those statutes;
  - (viii) **sections** of statutes or terms defined in statutes are to corresponding sections or defined terms in amended, consolidated or replacement statutes;
  - (ix) an **agreement** or **document** (including the Trust Deed and this Deed) mean that agreement or document as amended, novated or supplemented and includes all recitals, schedules, appendices and exhibits to it;
  - (x) a **party** include that party's executors, administrators, substitutes, successors and assigns;
  - (xi) **clauses** or **schedules** are references to the clauses or schedules of this Deed.
- (c) The following rules apply unless the context or subject matter require otherwise:
  - (i) **headings** are used for convenience only and will be disregarded in the interpretation of this Deed;
  - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning;
  - (iii) if a word or phrase is given a **defined meaning in the Trust Deed**, that word or phrase will have the same meaning in this Deed unless another meaning is given in this Deed.

## **2. DEFECT**

Each party acknowledges that:

- (a) the names of persons in the Trust Deed and are incompletely recorded as David Brake and Melissa Gay Brake and should be David North Brake and Melissa Gay Curley Brake, respectively;
- (b) the name of a person in the Deed of Amendment is incompletely recorded as Melissa Gay Brake and should be Melissa Gay Curley Brake.

## **3. RESIGNATION OF TRUSTEE**

### **3.1 Resignation of Trustee**

The Resigning Trustee resigns as Trustee of the Fund in accordance with the Resignation Clause.

### **3.2 Waiver of Notice**

The Member waives any notice period required by the terms of the Trust Deed and consents to the resignation of the Resigning Trustee becoming effective on the Deed Date.

## **4. APPOINTMENT OF TRUSTEE**

### **4.1 Appointment**

The Member appoints the New Trustee as Trustee of the Fund in accordance with the Appointment Clause.

### **4.2 Confirmation**

- (a) The parties agree and declare that the New Trustee will, from the Deed Date, hold the property of the Fund as Trustee upon the same trusts, powers, discretions and obligations as those contained and conferred under the Trust Deed.
- (b) The New Trustee accepts the appointment and agrees and declares that it will undertake and carry out the trusts and exercise the rights, powers, privileges and discretions and that it will observe and be bound by the restrictions and limitations imposed upon the Trustee of the Fund as set out in the Trust Deed.
- (c) The New Trustee confirms and acknowledges that the New Trustee has read the terms and conditions in the Trust Deed and fully understands the duties and obligations of a Trustee under the Trust Deed and the Relevant Law.

## **5. TRUSTEE DISCHARGED**

Upon the appointment of the New Trustee:

- (a) the property of the Fund vests in the New Trustee; and
- (b) the Resigning Trustee will be discharged from the obligations and office of trustee of the Fund to the extent allowed by law from the Deed Date; but

- (c) without affecting any liability or obligation of the Resigning Trustee which has accrued, or may accrue, because of any thing done, or omitted to be done, by the Resigning Trustee prior to the Deed Date; and
- (d) without affecting any liability or obligation of the Fund, or any liability of the Fund, arising under any agreement or other instrument, to which the Fund is a party, or is bound, and entered into prior to the resignation of the Resigning Trustee.

## **6. AMENDMENT OF TRUST DEED**

The New Trustee amends the Trust Deed in accordance with the Amendment Clause by:

- (a) amending the names David Brake and Melissa Gay Brake where they appear in the Trust Deed so that the names are David North Brake and Melissa Gay Curley Brake, respectively;
- (b) amending the name Melissa Gay Brake where it appears in the Deed of Amendment so that the name is Melissa Gay Curley Brake;
- (c) deleting all of the operative Governing Rules and inserting the new Governing Rules which are annexed to this Deed.

## **7. ACKNOWLEDGEMENT**

All actions previously in relation to the Fund are valid and effective and no party will raise the Defect to avoid the consequences of any act that has been performed on behalf of the Fund. Further, subject to an order of the court to the contrary, all agreements the Fund has entered into prior to the Deed Date and any future agreements it enters into will not be affected by the Defect.

## **8. MISCELLANEOUS**

The parties confirm that the Trust Deed, other than to the extent that it has been amended or varied in accordance with this Deed remains in full force and effect.

## **9. EFFECTIVE DATE**

All of the changes effected by this Deed take effect on the Deed Date, or if no date is completed as the Deed Date, on the date on which the last party to sign this Deed does so.

## **10. SECRETARIAL**

The parties must promptly do all acts, matters and things necessary to give effect to the provisions of this Deed.

## **11. MULTI CAPACITY**

- (a) Where a person being a party to this Deed is named more than once or in more than one capacity in Item 2 in the Schedule, it is only necessary that the person execute and deliver this Deed once. The initial execution and delivery will bind that person in all such capacities.
- (b) If a party named in Item 2 in the Schedule consists of more than one person, those persons enter into this Deed jointly and severally.

## **12. CONSENT GIVEN**

Where a party to this Deed is required by the Trust Deed to consent to the doing of a thing or

act by another party, the consent of that party is given by their execution of this Deed.

### **13. COUNTERPARTS**

This Deed may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.

### **14. LIMIT ON AMENDMENTS**

Regardless of anything contained in this Deed to the contrary, this Deed does not and will not:

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

### **15. SEVERANCE**

This Deed will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable or not permitted or required by the Act or results in a re-settlement of the Fund:


- (a) that provision will, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation;
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Deed will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability; or
- (c) that provision will, be read down or severed to the extent that it may be necessary to ensure that it does not result in a re-settlement of the Fund.


## SCHEDULE

- Item 1. Deed Date:** 07 107 2023
- Item 2. New Trustee:** Brakeland Pty Ltd ACN 668 722 834
- Resigning Trustee:** David North Brake  
Melissa Gay Curley Brake
- Member:** David North Brake  
Melissa Gay Curley Brake
- Item 3. Fund:** D & M Brake Superannuation Fund established by the Trust Deed dated 23/06/1997.
- Item 4. Resignation Clause:** Clause 9.4(d)
- Item 5. Appointment Clause:** Clause 9.3(a)
- Item 6. Amendment Clause:** Clause 53.1

Executed as a Deed.

**Executed as a Deed** by Brakeland Pty Ltd ACN )  
668 722 834. )

)  
)   
) \_\_\_\_\_  
) David North Brake  
) Director  
)


)  
)   
) \_\_\_\_\_  
) Melissa Gay Curley Brake  
) Director  
)

**Signed Sealed and Delivered** by David North )  
Brake in the presence of: )

  
\_\_\_\_\_  
Witness:  
Name (printed): C BIGGAM

)  
)   
) \_\_\_\_\_  
) David North Brake

**Signed Sealed and Delivered** by Melissa Gay )  
Curley Brake in the presence of: )

  
\_\_\_\_\_  
Witness:  
Name (printed): C BIGGAM

)  
)   
) \_\_\_\_\_  
) Melissa Gay Curley Brake



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## RULES

**PLEASE NOTE** that the material referred to in these Rules is constantly changing and you must keep up to date with those changes. If you are unsure about the currency of any information in the Rules, please contact us immediately or your accountant, financial planner or other advisor.

**YOU SHOULD NOT ATTEMPT TO MANAGE YOUR OWN SUPERANNUATION FUND WITHOUT CONSULTING YOUR ACCOUNTANT, FINANCIAL PLANNER, LAWYER OR OTHER ADVISER.**

### 1. INTERPRETATION PROVISIONS

#### 1.1 Terms defined in the Act

- (a) Any terms or expressions which have defined meanings in the Superannuation Industry (Supervision) Act 1993 have the same meanings when used in these Rules. If any term or expression defined in these Rules conflicts or is inconsistent with any term or expression defined in the Act, the term or expression will have the meaning set out in the Act.
- (b) If a definition used in these Rules expands any defined term contained in the Act, the expanded meaning does not, by itself, result in a conflict or inconsistency under Rule 1.1(a).

#### 1.2 Dictionary

The terms and expressions set out in the Dictionary in Schedule 2:

- (a) will apply to these Rules; and
- (b) will have those meanings when used in these Rules.

#### 1.3 Additional Definitions

In this Deed, unless the context or subject matter requires otherwise:

**Deed** means this deed including all of its recitals, clauses, Rules and Schedules;

**Dictionary** means the dictionary in Schedule 2;

**Part** means one of the Parts 1 to 14 of this Deed within which numbered Rules are contained, unless the context refers to a Part of Schedule 1 or Schedule 2; and

**Rules** means these rules and **Rule** means any one of them.

#### 1.4 Interpretation

- (a) In these Rules, unless the context or subject matter requires otherwise, references to:
  - (i) **singular** words includes the plural and vice versa;
  - (ii) any **gender** includes every gender;
  - (iii) a **person** includes natural persons, firms, companies, corporations, bodies corporate, trustees, trusts, associations, partnerships, government authorities, and other legal entities and includes successors and assigns from time to time;
  - (iv) **writing** includes printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
  - (v) **signature** and **signing** mean due execution of a document by a person, corporation or other relevant entity and include signing by an agent or attorney or representative (if a body corporate);
  - (vi) **months** mean calendar months;
  - (vii) **statutes** include statutes amending, modifying, rewriting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, orders in council and ordinances made under those statutes;
  - (viii) **sections** of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
  - (ix) **regulations** or terms defined in regulations refer to corresponding regulations or defined terms in amended, consolidated or replacement regulations;
  - (x) an **agreement** or **document** (including these Rules) means that agreement or document as amended, novated or supplemented and includes all parts of it including clauses, recitals, schedules, appendices and exhibits to it;
  - (xi) a **party** includes that party's executors, administrators, substitutes, successors and assigns;

- (xii) **Rules, clauses or schedules** are references to the Rules, clauses or schedules contained in these Rules;
  - (xiii) where a person is entitled to **vote** or holds the **right to vote** on any matter by virtue of these Rules, the person may vote by proxy or attorney or representative (if a body corporate). A reference to a person being present means present in person or by proxy.
- (b) In these Rules, the following rules apply unless the context or subject matter requires otherwise:
- (i) **headings** and the **table of contents** are used for convenience only and must be disregarded in the interpretation of these Rules;
  - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning;
  - (iii) a requirement to give a person **notice** in writing must be satisfied by posting the notice to that person's last known address;
  - (iv) no **rule of construction** of documents will apply to the disadvantage of a party, on the basis that the party put forward the document or any relevant part of it;
  - (v) **notes and references** to statutes (or sections of statutes) or other documents contained in bold text after any term defined in these Rules are used to assist in the reading of these Rules and must be disregarded in the legal interpretation of these Rules.

### 1.5 Establishment of trust

Where these Governing Rules are adopted:

- (a) as the rules of a new SMSF, the Trustee acknowledges the receipt or anticipated receipt of funds or other property to be held on the trusts in these Rules; and
- (b) as replacement rules in respect of an existing SMSF, the Trustee acknowledges that it holds the assets and property of the Fund on the trusts in these Rules to the exclusion of other Governing Rules of the Fund.

### 1.6 Rules for Self Managed Superannuation Funds

Subject to the Act and Regulations, the Fund is a **Self Managed Superannuation Fund** or **SMSF** only if it satisfies all of the conditions in either Rule 1.6(a) or 1.6(b). **section 17A**

- (a) **Funds other than single member funds.** Where the Fund has more than one Member, the Fund is an SMSF if:
  - (i) it has no more than the maximum number of members permissible for an SMSF, from time to time;
  - (ii) where the Trustees are individuals - each Trustee is a Member;
  - (iii) where the Fund has a Corporate Trustee - each Director of the Corporate Trustee is a Member;
  - (iv) each Member is a Trustee or if the Fund has a Corporate Trustee, is a director of the Corporate Trustee;
  - (v) no Member is an Employee of another Member, unless they are a Relative of that Member; and
  - (vi) no Trustee receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.
- (b) **Single member funds.** Where the Fund has only one Member, the Fund is an SMSF if:
  - (i) where the Fund has a Corporate Trustee:
    - A. the Member is the sole Director;
    - B. the Member and one Relative of the Member are the only Directors; or
    - C. the Member and one other person who is not the Member's Employer are the only Directors;
  - (ii) where the Trustees are individuals, the Member and one Relative of the Member are the only Trustees or the Member and one other person who is not the Member's Employer are the only Trustees; and
  - (iii) no Trustee receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.
- (c) **Other persons may be Trustees.** The Fund does not fail to satisfy the conditions in either Rule 1.6(a) or Rule 1.6(b) simply because:

- (i) a Member has died and the Member's Legal Personal Representative is a Trustee or a Director of a Corporate Trustee, in place of the Member from the time when the Member died and ending when the payment of Death Benefits commence for the Member; or
  - (ii) a Member's Legal Personal Representative is a Trustee or a Director of a Corporate Trustee, in place of the Member, during any period when the Member is under a Legal Disability or the Legal Personal Representative has an enduring power of attorney from the Member; or
  - (iii) a Member's parent or guardian is a Trustee or a Director of a Corporate Trustee, in place of the Member where the Member is under a Legal Disability because of age and does not have a Legal Personal Representative; or
  - (iv) an appointment of an acting Trustee or a Director of a Corporate Trustee is in force under section 134 of the Act.
- (d) **Extended meaning of Employee.** For the purposes of this Rule 1.6, in addition to the meaning given in the Dictionary, a Member who is an Employee of an Employer is also an Employee of another person (the "Other Person") if the Employer is:
- (i) a Relative of the Other Person; or
  - (ii) a body corporate of which the Other Person, or a Relative of the Other Person, is a director or a body corporate related to that body corporate; or
  - (iii) the trustee of a trust of which the Other Person, or a Relative of the Other Person, is a beneficiary; or
  - (iv) a partnership, in which:
    - A. the Other Person, or a Relative of the Other Person, is a partner; or
    - B. the Other Person, or a Relative of the Other Person, is a director of a body corporate that is a partner; or
    - C. a trust of which the Other Person, or a Relative of the Other Person, is a beneficiary, is a partner.
- (e) **Meaning of Relative.** Relative, in relation to an individual, for the purposes of Rule 1.6, means:
- (i) a parent, Child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the individual or of his or her Spouse or former Spouse; or
  - (ii) a Spouse or former Spouse of the individual, or of an individual referred to in paragraph (i),
- and for the purposes of paragraph (i), if one individual is the child of another individual because of the definition of Child in these Rules, relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual.

## 1.7 Sole purpose

These Rules are subject to the requirement that:

- (a) the sole or primary purpose of the Fund will be the provision of Old-age Pensions at any time the Trustee of the Fund is not a Constitutional Corporation; and
- (b) the Trustee must be a Constitutional Corporation at any time when the sole or primary purpose of the Fund is not the provision of Old-age Pensions.

## 2. MEMBERSHIP

### 2.1 Who may apply

- (a) The Trustee may admit as a Member, any person who is or has at any time been an Employee, an Eligible Person or a Child of a Member and/or any other person acceptable to the Regulator.
- (b) Rule 2.1(a) is subject to the Relevant Law which may expand or restrict the persons or classes of persons who may be admitted as members of a superannuation fund.
- (c) Only a natural person may apply to be or become a Member of the Fund.

### 2.2 Becoming a Member

- (a) **Submit application.** Any person may apply for membership of the Fund by completing and submitting a Membership Application to the Trustee.
- (b) **Applicant agrees to these Rules.** A person who completes a Membership Application and is admitted as a Member, is bound by these Rules.

- (c) **Membership other than by application.** If a completed Membership Application is not provided by a person, the payment of a contribution by or on behalf of a person and the acceptance by the Trustee of that contribution will be deemed to be acceptance of that person as a Member on the date that the contribution is accepted by the Trustee.
- (d) **Membership by receipt of a pension.** Where a person who is not a Member becomes entitled to a Pension from the Fund, that person will be admitted as a Member. Upon admission to membership, that person is bound by these Rules.

### 2.3 Some ex-Spouses treated as Members

Where a Superannuation Interest is subject to a Splitting Order and the Non-member Spouse was not a Member immediately before the order is made, the Trustee must treat a Non-member Spouse as a Member for the purposes of:

- (a) Rule 1.6 and the definition of Self Managed Superannuation Fund;
- (b) Rule 8.4, which deals with In-house Assets and other restricted or prohibited investments; and
- (c) any other provisions which the Act may, from time to time, require.

### 2.4 Ceasing to be a Member

A person ceases to be a Member if the person's Benefit Account has a balance of nil and the remaining Trustees or Members determine that the person is no longer a Member.

### 2.5 Categories and sub-plans

- (a) **Trustee may divide Members into categories.** The Trustee may divide the Members and Beneficiaries into different categories for any purposes which it considers appropriate. The benefits and entitlements of each category, and the criteria for admission into each category must be determined by the Trustee in its absolute discretion. The benefits and entitlements of any Members or Beneficiaries affected by any division must not be reduced by the division without the prior written approval of the affected Members or Beneficiaries.
- (b) **Trustee may divide the Fund into sub-plans.** The Trustee may divide the Fund into one or more sub-plans for any purposes which it considers appropriate. The membership, contributions, assets, and liabilities for payment of benefits and entitlements or otherwise, in relation to each sub-plan must be maintained separately from the rest of the Fund. The criteria for admission into each sub-plan must be determined by the Trustee in its absolute discretion. The benefits and entitlements of any Members or Beneficiaries affected by any division must not be reduced by the division without the prior written approval of the affected Members or Beneficiaries.

### 2.6 Allocation of assets

Regardless of any other Rule, the Trustee may, to the extent permitted by the Relevant Law, designate or allocate specific assets of the Fund to specific accounts, Benefit Accounts, sub-plans or groups as determined by the Trustee in its discretion and may, without limiting that discretion, allocate specific assets or investments, including earnings derived from those assets or investments, to:

- (a) one or more Benefit Accounts;
- (b) one or more sub-plans;
- (c) any combination of the above.

### 2.7 Restrictions for Member-contributed WA property

Regardless of any other provision in these Rules, but subject to Rule 5.13, where the Trustee in that capacity acquires Member-contributed WA Property:

- (a) either:
  - (i) the Transferor or Transferors must be the only Member or Members and the Fund must not admit any further Members, while the Fund owns the Member-contributed WA Property; or
  - (ii) the Member-contributed WA Property must be held by the Fund specifically for the Transferor or Transferors and must not be combined or pooled with the contributions or other assets of another Member and no other Member is entitled to obtain or make any claim to any interest in the Member-contributed WA Property; and
- (b) any Member-contributed WA Property held under the preceding Rules can only be held in the Fund to be provided to the Transferor or Transferors as a retirement benefit.

## **2.8 Restrictions for Member-contributed NSW property**

Regardless of any other provision in these Rules, but subject to Rule 5.13, where the Trustee in that capacity acquires Member-contributed NSW Property:

- (a) either:
  - (i) the Transferor or Transferors must be the only Member or Members and the Fund must not admit any further Members, while the Fund owns the Member-contributed NSW Property; or
  - (ii) the Member-contributed NSW Property is segregated from other Fund property for the benefit of the Transferor; or Transferors and
- (b) the Member-contributed NSW Property must be used solely for the purpose of providing a retirement benefit to the Transferor or Transferors; and
- (c) for the purposes of Rule 2.8(a)(ii):
  - (i) the Member-contributed NSW Property must be held by the Trustee specifically for the benefit of the Transferor or Transferors as a Member or Members; and
  - (ii) the Member-contributed NSW Property (or the proceeds of sale of that property) cannot be pooled with any property held for any other Member; and
  - (iii) no other Member is entitled to obtain or make any claim to any interest in the Member-contributed NSW Property (or the proceeds of sale of that property).

## **3. INFORMATION WHICH TRUSTEE MUST GIVE**

### **3.1 Product Disclosure Statements**

The Trustee must consider whether or not an obligation exists to prepare a Product Disclosure Statement and, where necessary, must comply with Part 7.9 of the Corporations Act 2001 (Cth) as to the preparation, content and giving of such a statement.

### **3.2 Circumstances requiring information**

The Trustee must consider whether or not an obligation exists under the Relevant Law to provide information concerning the Fund to Members, Beneficiaries, Employers, the Taxation Commissioner or other appropriate persons:

- (a) at or before the time a new Member applies for membership;
- (b) upon receiving a request from a person who is (or was within the preceding 12 months) a Member or Beneficiary;
- (c) upon receiving a request from an Employer;
- (d) upon a Member ceasing to be a Member;
- (e) at the end of each Year of Income;
- (f) before a Member enters into a Binding Death Nomination or a Non-lapsing Binding Nomination;
- (g) upon the occurrence of any of the following events:
  - (i) the Governing Rules have been changed and, as a result, an adverse effect occurs in relation to:
    - A. a Member's accumulated benefits;
    - B. the benefits to which a Member may become entitled;
    - C. the circumstances in which a Member's benefits would become payable;
    - D. the manner in which a Member's benefits will be calculated; or
    - E. the security of the Member's benefits;
  - (ii) the Member's membership is transferred to a different fund;
  - (iii) a change occurs in the matters set out in any PDS which was or should have been issued under Rule 3.1;
- (h) upon receiving any notice of non-compliance of the Fund issued under the Relevant Law;
- (i) upon the winding up or termination of the Fund;
- (j) upon the occurrence of any event that the Trustee reasonably believes a Member would reasonably be expected to be informed of;
- (k) at the time of:
  - (i) paying benefits or entitlements at the direction of a Member;

- (ii) rolling over or transferring benefits or entitlements to another entity; or
  - (iii) any combination of the preceding paragraphs; or
- (l) at any other time or in any circumstances required by the Relevant Law.

### **3.3 How to provide information**

Where the Trustee considers that there is an obligation to provide information in accordance with this Rule, the Trustee must provide the appropriate information to Members, Beneficiaries, Employers or other appropriate persons in the manner prescribed in the Relevant Law.

### **3.4 Information on death of Member**

Upon the death of a Member, the Trustee must:

- (a) provide all appropriate information in accordance with this Rule to the Member's Legal Personal Representative; and
- (b) notify each person to whom any benefits or entitlements are payable of the reasons why benefits and entitlements are payable to them, the amounts payable and the terms upon which they are to be paid.

### **3.5 Information pursuant to Family Law Act orders**

- (a) **Information to be given.** If a Member's Superannuation Interest becomes subject to a Payment Split, or other action or restriction pursuant to an order under the Family Law Act, the Trustee will be required to give the information prescribed by the Relevant Law to the Non-member Spouse and to the Member.
- (b) **Cost of information.** Where the Trustee is obliged to give information under Rule 3.5(a) to the Non-member Spouse, the Trustee may levy reasonable charges against the Non-member Spouse's Superannuation Interest in respect of the provision of that information, including the cost of obtaining professional advice in relation to any requirement under this Rule.

## **4. CONTRIBUTIONS**

### **4.1 Who may make contributions**

The Trustee may accept contributions to the Fund that are made by or in respect of a Member, so long as the contributions are allowable under the Relevant Law.

### **4.2 Government Co-contribution**

For the avoidance of doubt, the Trustee may accept Government Co-contributions to the Fund.

### **4.3 Splittable Contributions**

Contributions which are Splittable Contributions are dealt with in Rule 6.4.

### **4.4 Downsizer Contributions**

For the avoidance of doubt and subject to the Relevant Law, the Trustee may accept Downsizer Contributions to the Fund that are made by or in respect of a Member.

## **5. BENEFITS AND ENTITLEMENTS**

### **5.1 Pensions and caps**

- (a) **Auto-Pension Commencement.** Subject to Rule 5.1(c), where the Trustee becomes aware that a Member has Unrestricted Non-preserved Benefits in the Fund which are not in Retirement Phase and that Member has Retired on or after attaining their Preservation Age, or has attained the age of 65 years, the Trustee must commence an Account Based Pension with all of those Benefits as soon as possible.
- (b) **Effect of Non-concessional Contribution or Roll-in for Existing Pension Member.** Where a Non-concessional Contribution is made or a benefit is rolled into the Fund in respect of a Member in receipt of one or more Pensions, subject to Rule 5.1(c), the Trustee must commence an additional Pension on the same terms and conditions as the most recently commenced Pension, in the amount of the Non-concessional Contribution, from the day on which that contribution is made.
- (c) **Restriction on Auto-Pension Commencement.** Where a Trustee would otherwise be required to commence an Account Based Pension pursuant to Rule 5.1(a) or an additional Pension pursuant to Rule 5.1(b) and:
  - (i) the Member notifies the Trustee in writing that part or all of the amount is not to be used to commence a Pension; or



- (ii) the Member notifies the Trustee in writing that the Pension, using part or all of the Member's Benefit or Non-concessional Contribution, as the case may be, is to commence on a different day; or
- (iii) commencing a Pension using part or all of the Member's Benefit or Non-concessional Contribution, as the case may be, would cause the Member to exceed their Transfer Balance Cap,

to the extent that the Member does not wish the Member's Benefit or Non-concessional Contribution to be used in starting a Pension, or in respect of the amount which would cause the Member to exceed their Transfer Balance Cap, the Trustee must not use that amount to commence a Pension, and where the Member has specified a different day for the Pension's commencement, the Trustee must not commence the Pension until that day.

- (d) **Pension Auto-commutation at Transfer Balance Cap.** Where the Trustee becomes aware that a Member who is receiving one or more Pensions is presently, or will, upon a certain date or the occurrence of a certain event, exceed, their Transfer Balance Cap, unless instructed otherwise by the Member in writing, the Trustee must commute part or all of one or more Pensions being received by the Member to an accumulation account in respect of that Member, to the extent necessary to reduce their benefits in Retirement Phase to their Transfer Balance Cap, and the Trustee shall decide which Pension or Pensions are to be commuted. Where a Member affected by this Rule is being paid more than one Pension and unless the Member elects otherwise or unless the Trustee decides it would be in the Member's best interests to do otherwise, the Trustee must prefer to commute Pensions in order, from those with the highest, to those with the lowest taxable components.
- (e) **Auto-Pension Commencement where Payments Below Minimums.** Where a Member is in receipt of an Account Based Pension, if the Member is paid an amount less than the minimum amount required by the Relevant Law during a financial year and the Pension ceases for that reason, the Trustee must, on the first day of July in the following financial year, commence an Account Based Pension on the same terms and conditions as the Pension that ceased, unless the Member notifies the Trustee otherwise.
- (f) **Order of Pension Commutation After Death of Another Person.** Where the Trustee becomes aware that a Member is or will exceed their Transfer Balance Cap because of that Member's entitlement to receive a superannuation pension consequent upon the death of another person, unless instructed otherwise by the Member in writing, and while also complying with paragraph (e) above, the Trustee must prefer to first commute the Member's own Pensions, before commuting part of all of the pensions receivable or to be received consequent upon the death of that other person.
- (g) **Trustee to Commute Payments Above Minimums for Certain Pensions.** Where a Member is in receipt of one or more Account Based Pensions, if the Member is paid an amount greater than their aggregate minimum payments (calculated in accordance with Part 1 of Schedule 1) during a financial year in respect of that or those pensions, the Trustee must pay the excess in the following order, until the amounts paid in excess of the aggregate minimum payments are exhausted:
  - (i) where the Member has Unrestricted Non-preserved Benefits which are not in Retirement Phase, from those amounts;
  - (ii) where the Member is being paid more than one Pension and unless the Trustee decides it would be in the Member's best interests to do otherwise, as full or partial commutations from the Pensions with the highest taxable components, to the lowest;
  - (iii) where the Member is being paid one Pension, as partial or full commutations from that Pension,

and this paragraph will apply unless the Member notifies the Trustee in writing that part or all of the payment or payments in excess of the minimum are to be treated in a different manner.

## 5.2 Benefits a Member may receive

- (a) **Retirement at the normal time.** A Member who Retires or attains the age of 65 years is entitled to receive a Normal Retirement Benefit, calculated in accordance with Rule 5.3.
- (b) **Benefits before the normal time.** A Member who has attained Preservation Age but has not yet Retired is entitled to receive a Normal Retirement Benefit, calculated in accordance with Rule 5.3, but subject to the benefit being paid as a pension which cannot be commuted to a lump sum before the Member Retires or attains the age of 65 years, or in any other form allowable under the Relevant Law, from time to time.
- (c) **Total and Permanent Disablement.** A Member who ceases Gainful Employment because of Total and Permanent Disablement is entitled to receive a Total and Permanent Disablement Benefit, calculated in accordance with Rule 5.3.

- (d) **Total and Temporary Disablement.** Upon the Total and Temporary Disablement of a Member, the Member is entitled to receive a Total and Temporary Disablement Benefit, calculated in accordance with Rule 5.3.
- (e) **Terminal Illness Benefit.** Upon a Member being diagnosed as Terminally Ill, the Member is entitled to receive a Terminal Illness Benefit.
- (f) **Death Benefits.** A Death Benefit becomes payable upon the death of:
- (i) a Member; or
  - (ii) a reversionary beneficiary in receipt of a Pension,
- to the extent that the type of Pension or other benefit being received allows for the calculation and payment of a Death Benefit from the Fund.
- (g) **Reversionary Pension.** A Member in receipt of a Pension may nominate by notice in writing to the Trustee, either at the commencement of the Pension or at any subsequent time, one or more reversionary beneficiaries who are to continue to receive that Pension after the Member's death. A Member may, at any time, by notice in writing to the Trustee, revoke their nomination of one or more reversionary beneficiaries.
- (h) **Reversionary Pension if Member dies.** If a Member dies while receiving a Reversionary Pension from the Fund and the terms applying to that Pension nominate a reversionary beneficiary (however described), subject to the Relevant Law, the Trustee must continue to pay that Pension in favour of the reversionary beneficiary on the same terms and conditions as applied to the deceased Member.
- (i) **Pension to Spouse if Member dies.** If a Member dies while receiving a Pension from the Fund, the Member's Spouse may apply to the Trustee to have that Pension continued. The Trustee may, in its absolute discretion, decide to continue that Pension. The amount of that Pension will not exceed the amount calculated in accordance with the Act and Regulations. Where a Pension nominates a reversionary beneficiary (other than the Member's Spouse) or the payment of the Pension to the Member's Spouse would be contrary to a nomination under Rule 5.4 or 5.5, the Trustee cannot elect to continue the Pension in favour of the deceased Member's Spouse.
- (j) **No right to elect to receive Death Benefit as Pension.** Unless Rule 5.4 or 5.5 requires a payment in accordance with a Binding Death Nomination or a Non-lapsing Binding Nomination to be made by way of a Pension, a person entitled to receive a Death Benefit does not have a right to elect to receive that benefit by way of a Pension. However, the person entitled to receive a Death Benefit may apply to the Trustee for part or all of their Death Benefit entitlement be paid as one or more Pensions and the Trustee, in its absolute discretion, may decide to grant the request.
- (k) **Other cases.** A person who ceases to be a Member, otherwise than by death, and who is not entitled to a:
- (i) Normal Retirement Benefit; or
  - (ii) Total and Permanent Disablement Benefit,
- will be entitled to:
- (iii) receive the balance of his or her Benefit Account, subject to the restrictions imposed by Rules 5.10 to 5.12; or
  - (iv) have the balance of his or her Benefit Account transferred to another Regulated Superannuation Fund, Approved Deposit Fund, EPSSS or RSA, in accordance with Rule 6.
- (l) **Reject Contributions.** Subject to the Relevant Law, if the Trustee receives:
- (i) a request or direction from a Member to reject a contribution (wholly or partially);
  - (ii) a contribution in error;
  - (iii) a contribution which would cause the Member to exceed their Contributions Cap;
  - (iv) a contribution which does or may result in the Trustee's inability to comply with the Relevant Law;
  - (v) a contribution which may not be accepted under with the Relevant Law; or
  - (vi) a contribution which may lawfully be rejected or repaid under the Relevant Law,
- the Trustee will hold the contribution upon a separate trust apart from the Fund may reject or repay the contribution (wholly or partially) to or at the direction of the person making the contribution after deducting any expenses incurred in the receipt or return of the contribution and any tax liability imposed on the Trustee as a result of the receipt of the contribution.

- (m) **Overpayments.** If, for any reason, a Member receives an amount of a benefit in excess of the amount due to the Member, subject to the Relevant Law, the Trustee may recover the excess by:
- (i) reducing the balance of the Member's Benefit Account;
  - (ii) reducing the amount of any future payments due to the Member;
  - (iii) any other method permitted by law and the Relevant Law.
- (n) **Early Release.** If the Trustee receives a written request for the early release of some or all of a Member's entitlements and if:
- (i) the Member's circumstances constitute grounds for early release; and
  - (ii) where required, the Trustee receives written approval from the Regulator,
- the Trustee may pay the benefits and entitlements to the Member, net of any taxes or reasonable charges applicable to the payment of those benefits and entitlements, and subject to any restrictions required as to the manner and amount of that payment.
- (o) **Release Authority.** If the Trustee receives a release authority from the Regulator, the Trustee must pay the amount specified in that authority and in accordance with that authority to the person or persons entitled to it.
- (p) **Payments to commence.** Where a Member, or another person, becomes entitled to receive any payment of benefit under the preceding paragraphs, the Trustee must pay those amounts in accordance with the terms of these Rules and the Relevant Law and within the time required by the Relevant Law and, if none is specified, within a reasonable time.
- (q) **Effect of Family Law Act.** Where, pursuant to an order under the Family Law Act, a Superannuation Interest has been created in favour of a Non-member Spouse, a reference in this Rule 5.1 to a Member will be read as including a Non-member Spouse.

### 5.3 How to calculate benefits

**NOTE:** While the primary form of benefit is a Pension, Lump Sum benefits may still be paid. See Rule 5.9 for details.

- (a) **More than one Benefit Account.** A Member may have one or more Benefit Accounts in the Fund which may be an accumulation account from which Pensions are drawn or any combination of them or any other type of account permitted by the Relevant Law, as determined by the Trustee.
- (b) **Normal Retirement Benefit.** A Member's Normal Retirement Benefit will be a Pension of an amount determined by the Trustee, having regard to:
- (i) the balance of the Member's Benefit Account intended to fund the Pension at the date the Pension commences to be paid;
  - (ii) the period over which and the terms upon which the Pension is to be payable;
  - (iii) the expected investment earnings of the Fund to be attributable to the relevant Benefit Account;
  - (iv) the operating costs of the Fund, costs associated with the termination of the Fund and any administrative, insurance and taxation costs relating to the operation and termination of the Fund, which are anticipated to be attributable to the relevant Benefit Account;
  - (v) the cost of any annuities, Pensions and income streams purchased or to be purchased by the Trustee in respect of the Member or the Member's Beneficiaries;
  - (vi) the terms of any agreement or other instrument containing the terms and conditions upon which the Pension is to be paid;
  - (vii) any restrictions placed upon the payment of annuities, Pensions and income streams by the Act and Regulations; and
  - (viii) any lump sum payment, or total or partial commutation in accordance with Rule 5.9.
- (c) **Benefit payable until nil balance.** A Member's Normal Retirement Benefit will:
- (i) be calculated to produce a nil balance in the Member's relevant Benefit Account after satisfying the terms on which the Pension is to be paid; and
  - (ii) in any event, cease to be payable when the balance in the Member's relevant Benefit Account is nil.
- (d) **Total and Permanent Disablement Benefit.** A Member's Total and Permanent Disablement Benefit will be an amount up to the balance of the total of the Member's Benefit Accounts less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.

- (e) **Total and Temporary Disablement.** A Member's Total and Temporary Disablement Benefit will, subject to any requirements imposed by the Regulator on the payment of similar benefits, be a Non-commutable Income Stream cashed from the Fund for:
- (i) the purpose of continuing (in whole or in part) the gain or reward which the Member was receiving before the Temporary Incapacity; and
  - (ii) a period not exceeding the period during which the Member is prevented from undertaking Employment of the kind engaged in immediately before the Temporary Incapacity,
- but in any event must not exceed an amount equal to the balance of the total of the Member's Benefit Accounts, less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (f) **Terminal Illness Benefit.** A Member's Terminal Illness Benefit will be an amount up to the balance of the total of the Member's Benefit Accounts less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (g) **Death Benefit.** A Member's Death Benefit will be an amount equal to the balance of the total of the Member's Benefit Accounts less:
- (i) any amount set aside to fund the payment of any reversionary Pension after the Member's death;
  - (ii) any taxes or reasonable charges determined by the Trustee to be applicable to the payment of that benefit; and
  - (iii) the amount necessary to meet any obligations with respect to a Pension or other payments required to be met from the Member's benefits and entitlements,
- and, unless Rule 5.4 or 5.5 requires a payment in accordance with a Binding Death Nomination or a Non-lapsing Binding Nomination, will be payable in any amounts and to any of the following persons as the Trustee reasonably considers to be appropriate in the circumstances:
- (iv) one or more of the Member's Designated Beneficiaries;
  - (v) one or more of the Member's Dependants;
  - (vi) the Member's Legal Personal Representative.

#### 5.4 Lapsing Binding Death Nominations

- (a) **Requirements.** A Binding Death Nomination:
- (i) must be in writing;
  - (ii) must be signed, and dated, by the Member in the presence of 2 witnesses, each of whom has turned 18 and neither of whom is a person mentioned in the notice;
  - (iii) must contain a declaration signed by the witnesses stating that the notice was signed by the Member in their presence;
  - (iv) will lapse and be of no further effect on the day which is 3 years after the day on which it was first signed or last confirmed or amended by the Member, whichever is the later;
  - (v) may be revoked by the Member by written notice to the Trustee at any time;
  - (vi) must contain sufficient details to identify the Member;
  - (vii) must contain sufficient details to identify one or more Beneficiaries for each category of benefits selected.
- (b) **Member may give.** A Member may, at any time, give the Trustee a Binding Death Nomination directing the payment of:
- (i) the whole or any part of the Member's Death Benefit; and/or
  - (ii) the whole or any part of the proceeds of any insurance effected by the Trustee with respect to the Member and to which the Member is entitled under Rule 5.8,
- to the Legal Personal Representative or a Dependant or Dependants of the Member. If the Trustee receives a Binding Death Nomination, the Trustee will pay the amount specified, in accordance with that notice, unless it has lapsed or been revoked by the Member.
- (c) **Preservation.** Where the Fund's governing rules have been amended and a valid nomination, which has not been revoked, would have been binding upon the Trustee in respect of a Member's death benefits under those previous rules, despite anything contained in these Rules, that nomination will continue to bind the Trustee until it is revoked or replaced in accordance with these Governing Rules.

## 5.5 Non-lapsing Binding Nomination

- (a) **Requirements.** A Non-lapsing Binding Nomination:
- (i) must be in writing;
  - (ii) must be signed, and dated, by the Member in the presence of 2 witnesses, each of whom has turned 18 and neither of whom is a person mentioned in the notice;
  - (iii) must contain a declaration signed by the witnesses stating that the notice was signed by the Member in their presence;
  - (iv) will not lapse by the passing of time;
  - (v) may be revoked by the Member by written notice to the Trustee at any time.
  - (vi) must contain sufficient details to identify the Member;
  - (vii) must contain sufficient details to identify one or more Beneficiaries for each category of benefits selected.
- (b) **Member may give.** A Member may, at any time, give the Trustee a Non-lapsing Binding Nomination directing the payment of:
- (i) the whole or any part of the Member's Death Benefit; and/or
  - (ii) the whole or any part of the proceeds of any insurance effected by the Trustee with respect to the Member and to which the Member is entitled under Rule 5.8,
- to the Legal Personal Representative or a Dependant or Dependants of the Member. If the Trustee receives a Non-lapsing Binding Nomination, the Trustee will pay the amount specified, in accordance with that notice, unless it has been revoked by the Member.
- (c) **Preservation.** Where the Fund's governing rules have been amended and a valid nomination, which has not been revoked, would have been binding upon the Trustee in respect of a Member's death benefits under those previous rules, despite anything contained in these Governing Rules, that nomination will continue to bind the Trustee until it is revoked or replaced in accordance with these Governing Rules.

## 5.6 Order of priority

- (a) **Invalid Nomination.** Where a Binding Death Nomination or a Non-lapsing Binding Nomination is invalid, in whole or in part, to the extent that it is invalid, the Trustee must pay the Member's Death Benefit in accordance with Rule 5.3(g).
- (b) **Automatic revocation.** A Binding Death Benefit Nomination or a Non-lapsing Binding Nomination, will automatically revoke any earlier Binding Death Nomination or Non-lapsing Binding Nomination given by the Member.
- (c) **Reversionary Pensions.** Where a Member is in receipt of a Pension in respect of which a reversionary beneficiary has been named, unless the Member has revoked that reversion in accordance with these Rules, or the reversionary beneficiary is no longer entitled to receive a Reversionary Pension under the Relevant Law, the entitlement of the reversionary beneficiary in respect of that Pension has priority over any Binding Death Nomination or a Non-lapsing Binding Nomination given by the Member and binding on the Trustee unless the Act or Regulations require otherwise.

## 5.7 Legal Personal Representative.

- (a) **Extending a Nomination.** A Member's Legal Personal Representative holding a subsisting enduring power of attorney given by the Member may extend a Binding Death Nomination (or one that has lapsed within the previous 30 days) on the same terms as the original nomination was made if the enduring power of attorney specifically authorises the Legal Personal Representative to do so. If the Binding Death Nomination relates to only part of the balance of a Member's Benefit Account, the extension may only apply to that part.
- (b) **Making a New Nomination.** A Member's Legal Personal Representative holding a subsisting enduring power of attorney given by the Member may make a Binding Death Nomination or Non-lapsing Binding Nomination on behalf of the Member in respect of the whole or part of the Member's Benefit Account if:
- (i) the enduring power of attorney specifically authorises the Legal Personal Representative to do so; and
  - (ii) a subsisting Binding Death Nomination or Non-lapsing Binding Nomination has not already been made or given by the Legal Personal Representative under this Rule or by the Member in respect of the whole or the relevant part of the Member's Benefit Account.

- (c) **Basic Rules for Legal Personal Representatives.** For the purposes of this Rule 5.7 and for the avoidance of doubt, the following Rules apply:
- (i) the Legal Personal Representative may benefit personally from a Binding Death Nomination or Non-lapsing Binding Nomination made or given under this Rule 5.7 provided the enduring power of attorney specifically authorises the Legal Personal Representative to benefit and then Rule 8.4 applies as though the Legal Personal Representative was a Trustee;
  - (ii) a Legal Personal Representative cannot amend, add to, vary or revoke in whole or in part any subsisting and valid Binding Death Nomination or Non-lapsing Binding Nomination made by the Member unless the enduring power of attorney specifically authorises the Legal Personal Representative to do so;
  - (iii) a Legal Personal Representative may amend, add to, vary or revoke in whole or in part any subsisting and valid Binding Death Nomination or Non-lapsing Binding Nomination made by the Legal Personal Representative if the enduring power of attorney specifically authorises the Legal Personal Representative to do so;
  - (iv) if the Member has more than one Legal Personal Representative holding an enduring power of attorney given by the Member, only one Binding Death Nomination or Non-lapsing Binding Nomination may be made or given on behalf of the Member under this Rule 5.7 unless the enduring power of attorney specifically authorises more than one nomination to be made or given;
  - (v) in all other cases, the Trustee cannot act in accordance with a Binding Death Nomination or Non-lapsing Binding Nomination purported to be made or given by a Legal Personal Representative on behalf of the Member.

## 5.8 Dealing with insurance

- (a) **Insurance relating to benefits.** The Trustee may take or hold one or more policies of insurance or assurance in relation to a Member as Benefit Payment Insurance or Additional Insurance.
- (b) **Insurance applied to liability.** Whenever a payment is received by the Trustee under any insurance policy held by the Trustee in respect of a Member, the payment will be applied:
  - (i) in the case of Benefit Payment Insurance, towards satisfaction of the Fund's liability to pay any one or more of a Member's benefits; or
  - (ii) in the case of Additional Insurance, in addition to the Fund's liability to pay any one or more of a Member's benefits,
 as agreed by the Member and the Trustee.
- (c) **Insurance not designated.** If a policy has been effected under Rule 5.8(a) and the policy is not designated as Benefit Payment Insurance or Additional Insurance, the policy will be deemed to be Benefit Payment Insurance.
- (d) **Treatment of Additional Insurance.** Where the Trustee has effected Additional Insurance and an amount becomes payable to the Trustee under it, the Trustee must add the amount payable, net of any reasonable fees, charges and taxes, to the Member's Benefit Account prior to calculating the amount of the Member's benefits or entitlements payable in accordance with these Rules.
- (e) **Treatment of Benefit Payment Insurance.** Where the Trustee has effected Benefit Payment Insurance and an amount becomes payable to the Trustee under it, the Trustee must first apply that amount towards satisfaction of the Fund's liability to pay the Member's benefits or entitlements in accordance with these Rules and the Trustee will reduce the Member's Benefit Account by the amount applied. Any amount remaining will be dealt with by the Trustee in its discretion as follows:
  - (i) where any amounts have been deducted from the Member's Benefit Account to pay any premiums in relation to the insurance, by paying or applying similar amounts to or on behalf of the Member in addition to the Fund's liability to pay benefits or entitlements in accordance with these Rules;
  - (ii) by paying amounts to or on behalf of the Member in addition to the amounts set out in Rule 5.8(b) and in addition to the Fund's liability to pay benefits or entitlements in accordance with these Rules;
  - (iii) by paying any expenses and liabilities of the Fund, whether or not those amounts are in whole or in part related to the Member's benefits and entitlements; and/or
  - (iv) by reallocating any amounts to a reserve to be dealt with as the Trustee sees fit.

## 5.9 How to pay a Pension and how to pay a lump sum benefit

- (a) **How to pay a Pension.** Any Pension payable under these Rules:
- (i) must conform to Rule 5.10;
  - (ii) must comply with at least the minimum terms specified in the Act and the Regulations; and
  - (iii) will be payable on other terms decided by the Trustee.
- (b) **Terms to be given to Member.** A copy of the terms and conditions of a Pension is to be given to the Member or Beneficiary of that Pension at or before the Pension Date for that Pension.
- (c) **How to pay a lump sum benefit (or change a Pension to a lump sum).** Subject to the Relevant Law, any person who is entitled to receive a Pension, Annuity or income stream from the Fund other than a Total and Temporary Disablement Benefit, may direct the Trustee in writing to:
- (i) pay any amount as a lump sum; or
  - (ii) commute any amount to a lump sum,
- but only to the extent permitted by the terms of the Pension, Annuity or income stream. The amount of any lump sum will be equal to the total of the balances of the Member's Benefit Accounts related to the payment less any taxes and other reasonable charges which the Trustee considers are applicable to the payment or commutation.
- (d) **How to reduce a Pension when commuting to a lump sum benefit.** Where a person exercises the right in Rule 5.9(c)(ii), the Trustee must discount the amount to which the person is entitled to the extent which the Trustee considers necessary to take account of the commutation. The Fund and the Trustee will then be discharged and relieved of any further liability in respect of the amount of the discount.
- (e) **How to pay benefits to minors and certain other people.** Where any Beneficiary is under a Legal Disability, the Trustee will be entitled to pay or apply the Beneficiary's benefits or entitlements:
- (i) to the Beneficiary; or
  - (ii) to another person for the sole purpose of that person paying or applying those benefits or entitlements for, or on behalf of, the Beneficiary and/or the Beneficiary's Dependants; or
  - (iii) to a trust established for the benefit of the Beneficiary and/or the Beneficiary's Dependants.
- That payment or application will constitute an effective discharge to the Fund and the Trustee. The Trustee need not be concerned and is not liable to see to the application of those benefits or entitlements after the time of their payment or application.
- (f) **Effect of Family Law Act.** A reference to a Member in this Rule 5.9 includes a Non-member Spouse. If a Superannuation Interest is created in favour of a Non-member Spouse and the order creating that interest does not require the Non-member Spouse's benefits or entitlements to be paid as a Pension, the Trustee is not required to pay those benefits or entitlements as a Pension.

## 5.10 Types of Pensions which may be paid

The Trustee may pay any Pension allowable under the Act and Regulations. A Pension must be subject to the terms and conditions contained in the Act and Regulations in relation to that type of Pension. The following Pensions, and the descriptions of them in Schedule 1, are specific examples of the Pensions which may be paid:

- (a) Pensions commencing after 30 June 2007:
  - (i) **Account Based Pensions** described in Part 1 of Schedule 1.
  - (ii) **Transition to Retirement Pensions** described in Part 2 of Schedule 1.
- (b) Pensions commencing before 20 September 2007:
  - (i) **Allocated Pensions** described in Part 3 of Schedule 1.
  - (ii) **Pre-20 September 2007 Market Linked Pensions** described in Part 4 of Schedule 1.
  - (iii) **Lifetime Pensions** (included in the definition of Defined Benefit Pension) described in Part 5 of Schedule 1.
  - (iv) **Life Expectancy Pensions** (included in the definition of Defined Benefit Pension) described in Part 6 of Schedule 1.
  - (v) **Lifetime Commutable Pensions** (included in the definition of Defined Benefit Pension) described in Part 7 of Schedule 1.
  - (vi) **Non-Commutable Allocated Pensions** described in Part 8 of Schedule 1.

- (c) Pensions commencing after 19 September 2007, where the amount was purchased with a rollover superannuation benefit that resulted from the commutation of a pension or annuity of the type referred to in Regulation 1.06(1B):
  - (i) **Post-19 September 2007 Market Linked Pensions** described in Part 9 of Schedule 1.
- (d) Pensions which commence after the death of a Member, whether they are Reversionary Pensions or Death Benefit Pensions, upon terms and to beneficiaries allowable under the Relevant Law, from time to time.

#### **5.11 Only some Funds may pay Defined Benefit Pensions**

Subject to the Act and Regulations, if the Fund is a Self Managed Superannuation Fund, the following provisions apply in relation to the Fund paying Defined Benefit Pensions to Members:

- (a) Where a Member was already receiving a Defined Benefit Pension on or before 11 May 2004, that Member may continue to receive that Pension, but any further Defined Benefit Pensions in respect of that or other Members are only payable in the circumstances set out in this Rule 5.11.
- (b) Where the Fund was in existence on 11 May 2004 and the Governing Rules provided for the payment of Defined Benefit Pensions at that time, the Fund may continue to provide that Pension.
- (c) Where the Fund was in existence on 11 May 2004 and the Governing Rules did not provide for the payment of a Defined Benefit Pension, the Fund may pay one or more Defined Benefit Pensions to a Member if:
  - (i) the Member was a Member on 11 May 2004;
  - (ii) before 31 December 2005, the Member:
    - A. retired on or after attaining age 55; or
    - B. attained age 65; and
  - (iii) a Defined Benefit Pension was commenced for that Member before 1 July 2005 in respect of which the first payment is made within 12 months after the Pension Date for that Pension.

#### **5.12 Restrictions on when and how benefits may be paid**

This Rule is subject to any amendments, modifications, re-enactments, or substitutions of the Act and Regulations, from time to time, which may impose any requirement on the payment of benefits and entitlements and must be read and interpreted accordingly.

- (a) **Restrictions on how benefits may be paid.** Subject to the Regulations, a Member's benefits and entitlements in the Fund may only be paid:
  - (i) by being cashed in accordance with Rule 5;
  - (ii) by being rolled over or transferred in accordance with these Rules; or
  - (iii) when, and to the extent that, the Fund is required or permitted to pay them in accordance with these Rules.
- (b) **Payment of Unrestricted Non-Preserved Benefits.** Subject to these Rules and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, the whole or a part of a Member's Unrestricted Non-preserved Benefits may be cashed at any time in any one or any combination of the following ways:
  - (i) one or more lump sums;
  - (ii) one or more Pensions; and/or
  - (iii) the purchase of one or more Annuities,

less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the Member's Unrestricted Non-preserved Benefits at the relevant time.
- (c) **Payment of Restricted Non-Preserved Benefits.** Subject to these Rules, the whole or a part of a Member's Restricted Non-preserved Benefits:
  - (i) may only be cashed on or after the satisfaction of a Condition of Release; and
  - (ii) must not exceed the Member's Restricted Non-preserved Benefits that had accrued at the time when the Condition of Release was satisfied,

less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the Member's Restricted Non-preserved Benefits at the relevant time. The form in which Restricted Non-preserved Benefits may be cashed is:



- (iii) the form, if any, specified in the Cashing Restriction for Restricted Non-preserved Benefits in relation to the relevant Condition of Release; or
  - (iv) if the Cashing Restriction is "Nil" then, subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, in any one or any combination of the following forms:
    - A. one or more lump sums;
    - B. one or more Pensions; and/or
    - C. the purchase of one or more Annuities.
- (d) **Payment of Preserved Benefits.** Subject to these Rules, the whole or any part of a Member's Preserved Benefits may only be cashed on or after the satisfaction of a Condition of Release and must not exceed the sum of:
- (i) the Member's Preserved Benefits that had accrued at the time when the Condition of Release was satisfied; and
  - (ii) any investment earnings accruing on those benefits from that time,
- less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the amounts in (i) and (ii) above at the relevant time. The form in which Preserved Benefits may be cashed is:
- (iii) the form, if any, specified in the Cashing Restriction for Preserved Benefits in relation to the relevant Condition of Release; or
  - (iv) if the Cashing Restriction is "Nil" then, subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, in any one or any combination of the following forms:
    - A. one or more lump sums;
    - B. one or more Pensions; and/or
    - C. the purchase of one or more Annuities.
- (e) **When it is compulsory to pay benefits.** A Member's benefits and entitlements must be cashed as soon as practicable after a Member dies.
- (f) **Payment of compulsory benefits.** Subject to these Rules and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, the form in which benefits and entitlements may be cashed under Rule 5.12(e) is any one or any combination of the following forms:
- (i) a single lump sum;
  - (ii) an interim lump sum plus a final lump sum;
  - (iii) one or more Pensions; and/or
  - (iv) the purchase of one or more Annuities,
- except where that benefit is to be paid to a Child of the deceased Member, in which case it is subject to the restrictions contained in Rule 5.12(g).
- (g) **Restriction on Death Benefit Pensions to Children.** Subject to the Act and Regulations, from time to time, if a Member dies after 30 June 2007 and part or all of that Member's Death Benefit is to be paid to a Dependant who is a Child of the Member, the Death Benefit may only be paid as a Pension if the Child:
- (i) is less than 18 years of age; or
  - (ii) is greater than 18 years of age, but less than 25 years of age and is financially dependent on the Member; or
  - (iii) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*,
- and, except in the case of a Child described in paragraph (iii), such a Pension must cease no later than the Child attaining 25 years of age.
- (h) **Effect of Family Law Act.** A reference to a Member in this Rule 5.12 includes a Non-member Spouse. If a Superannuation Interest is created in favour of a Non-member Spouse and the order creating that interest does not require the Non-member Spouse's benefits or entitlements to be paid as a Pension, the Trustee is not required to pay those benefits or entitlements as a Pension.

### 5.13 Member-contributed property

- (a) **Member-contributed Property subject to different payment rules.** Despite any provision to the contrary in these Rules, where the Fund holds Member-contributed WA Property or Member-contributed NSW Property, any provisions in these Rules purporting to enable a beneficial interest to be obtained by any person other than the Transferor or Transferors do not apply to that Member-contributed WA Property or Member-contributed NSW Property (or their proceeds of sale).
- (b) **Options for Trustee.** Where an event occurs which would normally entitle the Trustee to create a beneficial interest in Member-contributed WA Property or Member-contributed NSW Property in a person other than the Transferor or Transferors, the Trustee must deal with the Member-contributed WA Property or Member-contributed NSW Property only in one of the following ways:
- (i) by separating the Member-contributed WA Property or Member-contributed NSW Property from all other assets supporting the relevant Transferor's Benefit Account and dealing with the Member-contributed WA Property or Member-contributed NSW Property in such a manner that the beneficial interest in that property remains solely with the Transferor or Transferors or, if a Transferor has died, the Transferor's estate; or
  - (ii) in such other manner as the Trustee considers appropriate, but not so as to create a beneficial interest in any person other than the Transferor or Transferors.

## 6. ROLLOVERS AND TRANSFERS OF BENEFITS

### 6.1 Into the Fund

- (a) **Members may.** A Member may request that the Trustee accept a rollover or transfer into the Fund of any existing superannuation benefits or entitlements which are able to be rolled over or transferred into the Fund under the Relevant Law. Those benefits or entitlements may include:
- (i) any Superannuation Lump Sums being held with another superannuation fund, Approved Deposit Fund, EPSSS, RSA or pooled superannuation trust; and/or
  - (ii) any Superannuation Lump Sums from other sources which are able to be rolled over or transferred into the Fund under the Relevant Law.
- (b) **Trustee to decide.** The Trustee must consider a request made in accordance with Rule 6.1(a) and may:
- (i) accept a rollover or transfer of the entire amount of the benefits or entitlements;
  - (ii) accept a rollover or transfer of part of the benefits or entitlements; or
  - (iii) reject a rollover or transfer of the whole or any part of the benefits or entitlements,
- and in reaching that decision, the Trustee may consider the limits on benefits payable to the Member, the balance of the Member's Benefit Account before and after the proposed rollover or transfer, the terms under which the benefits or entitlements are currently being held and any other matters which the Trustee considers relevant.
- (c) **Some rollovers and transfers cannot be accepted.** The Trustee must not accept a rollover or transfer of any benefits or entitlements which would or would be likely to cause a breach of a Civil Penalty Provision or constitute an offence under the Act.
- (d) **Condition of rollover or transfer in.** Where the Trustee accepts a rollover or transfer of benefits or entitlements under this Rule 6.1, those benefits or entitlements must be maintained and will only be payable:
- (i) in accordance with the terms of the trust deed or governing rules, if any, of the transferring entity at the date of rollover or transfer, as advised to the Trustee; or
  - (ii) on other terms approved by the Regulator.
- (e) **Most benefits rolled over or transferred into the Fund retain the same status.** Except as otherwise provided by the Act and Regulations, for the purpose of determining the status of benefits or entitlements under these Rules, any benefits or entitlements rolled over or transferred into the Fund will retain the same character in the Fund as they had in the superannuation fund, Approved Deposit Fund, EPSSS, RSA or pooled superannuation trust from which they were transferred.

### 6.2 Out of the Fund

- (a) **Who may request.** A request to roll over or transfer any benefits or entitlements out of the Fund may only be made by:
- (i) a Member;

- (ii) in the case of a Member's death or Total and Permanent Disablement, the person or persons otherwise entitled to receive a benefit or entitlement; or
  - (iii) a Member's Legal Personal Representative.
- (b) **Trustee must notify others.** Upon receiving a request to roll over or transfer benefits out of the Fund, the Trustee must give notice in writing of the proposed rollover or transfer to all other interested persons who at that time are entitled to make a similar request.
- (c) **Trustee must not rollover or transfer benefits with objections.** Subject to Rule 10.2, if another Member or Beneficiary objects to the rollover or transfer by notice to the Trustee containing reasons, the Trustee must not roll over or transfer those benefits and must give notice of the objection and of the identity of the objector to the person making the request.
- (d) **Conditions of rollover or transfer out.** The Trustee will roll over or transfer benefits or entitlements in accordance with a request under Rule 6.2(a) if:
- (i) no person is required to be notified of a request for a rollover or transfer;
  - (ii) no objection has been received from an interested person within 7 days of giving notice; or
  - (iii) the Trustee is satisfied that any objection received has been removed.
- (e) **Time for rolling over or transferring out.** Subject to Rule 10.2, unless another provision of this Rule applies to a request to roll over or transfer benefits or entitlements, the Trustee must roll over or transfer the amounts within a reasonable time of receiving such a request containing the information required by Rule 6.2(g).
- (f) **SuperStream requirements.** The Trustee will comply with the Relevant Law in relation to rollovers and transfers, including such SuperStream requirements as applicable, from time to time.
- (g) **Information required to process rollover or transfer.** Schedule 2A of the Regulations sets out the form containing the information which must be provided by a Member to a Trustee before a request to roll over or transfer benefits or entitlements is processed by the Trustee.
- (h) **Non-member Spouse benefits.** Where a Superannuation Interest has been created in favour of a Non-member Spouse under a Family Law Act order and that order does not restrict the transfer or roll over of the Non-member Spouse's Superannuation Interest, that interest may be rolled over or transferred out of the Fund:
- (i) upon the request of the Non-member Spouse, subject to the request complying with the terms of this Rule 6.2; or
  - (ii) if the Trustee, in its absolute and unfettered discretion, decides to do so and the Trustee complies with all conditions imposed by the order,

and after all reasonable costs of rolling over or transferring that interest out of the Fund have been deducted from the Non-member Spouse's Superannuation Interest.

### 6.3 Trustee's duties

- (a) **Duty to ensure transferee is regulated.** When the Trustee receives a request under Rule 6.2(a), the Trustee must, before allowing any rollover or transfer, ensure that the entity accepting the benefits or entitlements is:
- (i) a Regulated Superannuation Fund;
  - (ii) an Approved Deposit Fund;
  - (iii) a RSA; or
  - (iv) an EPSSS,
- and it is sufficient for the Trustee to receive from the entity accepting the benefits or entitlements, confirmation in writing of its status.
- (b) **Duty to ensure proper deductions made.** Where a rollover, transfer or payment of benefits or entitlements out of the Fund is to be made, the Trustee must ensure that:
- (i) all taxes, expenses, accrued and actual liabilities required to be deducted from the Member's Benefit Account have been deducted; and
  - (ii) all income, gains and accretions required to be credited to the Member's Benefit Account have been credited,

prior to determining the amount of benefits or entitlements available for rollover, transfer or payment to the Member.

- (c) **People to be notified if Member has died.** If a Member dies and benefits or entitlements become payable to any person other than the Member's Legal Personal Representative, the Trustee may notify each person to whom benefits or entitlements are payable of the reasons why benefits or entitlements are payable to them, the amounts payable and the terms upon which they are to be paid.
- (d) **Dealing with Death Benefits if Beneficiaries cannot be located.** If the Trustee cannot, after making all reasonable attempts, locate a person to whom any benefits or entitlements are payable in accordance with Rule 6.3(c), the Trustee may pay those benefits or entitlements, to the Member's Legal Personal Representative, or to any one or more of the remaining Designated Beneficiaries, if any, in any proportions as the Trustee decides. No person will have any claim or cause of action against the Trustee or the Fund as a result of the Trustee exercising its discretion in accordance with this Rule.
- (e) **Information to the Taxation Commissioner.** When the Trustee pays benefits or entitlements out of the Fund and the entire amount of those benefits or entitlements are not rolled over or transferred into a Regulated Superannuation Fund, Approved Deposit Fund, EPSSS or RSA, the Trustee must, within the prescribed time, provide to the Taxation Commissioner, in the form prescribed by the Relevant Law, information required by the Taxation Commissioner in relation to those benefits or entitlements and in relation to the recipients.

#### 6.4 Splitting contributions

- (a) **Contributions that may be split.** Where contributions are made in respect of a Member after 1 January 2006, the following contributions (called "**Splittable Contributions**") may be split:
  - (i) if the contributions will be included in the Fund's taxable income for a Year of Income – up to 85% of the contributions; and
  - (ii) if the contributions will not be included in the Fund's taxable income for a Year of Income and the contributions are made on or before 5 April 2007 – up to 100% of the contributions.
- (b) **Spouse cannot receive Splittable Contributions.** If the Member's Spouse is either:
  - (i) over age 55 years and retired; or
  - (ii) over age 65 years,
 at the time the Member applies to the Trustee to split their contributions, the Trustee may not accept that application and may not split their contributions pursuant to this Rule 6.4.
- (c) **Manner of splitting contributions.** Contributions are split by the Trustee rolling over, transferring or crediting an amount of benefits, for the benefit of the Member's Spouse, in an amount no greater than the Splittable Contributions referred to in Rule 6.4(a).
- (d) **Trustee may create Spouse Member account.** If the Spouse who will be receiving a Splittable Contribution does not already have a Member account, the Member must apply for Membership, in accordance with Rule 2. A Trustee cannot accept an application to split contributions in respect of a Member until the Trustee has accepted the Member's Spouse as a Member.
- (e) **Application for contributions split.** A Member may apply to the Trustee to split their Splittable Contributions, in a form approved by the Trustee, either:
  - (i) after the end of a Year of Income in relation to Splittable Contributions made in the previous Year of Income; or
  - (ii) if the entire amount of a Member's Splittable Contributions for that year are to be rolled over, transferred or credited to the Member's Spouse, during the Year of Income in respect of which the Splittable Contributions are made,
 and the application must sufficiently identify the amounts and types of contributions referred to in Rule 6.4(a) which are to be split.
- (f) **Invalid contribution split application.** An application from a Member to split their Splittable Contributions is invalid if:
  - (i) in relation to the Year of Income to which the splitting application applies, the Member has already made an application which the Trustee is either still considering, or has already put into effect;
  - (ii) the amount of benefits to which the splitting application relates exceeds the maximum amount of Splittable Contributions, referred to in Rule 6.4(a); or
  - (iii) the benefits which would remain in the Member's account after the split would exceed the value of the Post-June 83 Component of the Member's account balance, as calculated at the time the split would be made.

- (g) **Trustee's discretion.** The decision to offer the option to split contributions and the decision to accept a particular application to split contributions under this Rule 6.4 is entirely at the discretion of the Trustee.
- (h) **This Rule does not affect Family Law Act splits.** For the avoidance of doubt, this Rule 6.4 does not apply to benefits which are split, pursuant to the operation of the Family Law Act.

## 7. EMPLOYERS' CONTRIBUTIONS TO THE FUND

### 7.1 Employers who may contribute

Subject to Rule 4.1, the Trustee may accept contributions from an Employer or past Employer whether or not the Employer has agreed in writing to the terms and conditions of these Rules.

### 7.2 SuperStream compliance

Where necessary, the Trustee will comply with the SuperStream standards set out in the Superannuation Data and Payments Standards Legislative 2012 Instruments and associated schedules, as modified or amended from time to time.

## 8. THE TRUSTEE

### 8.1 Appointment, resignation and removal

- (a) **Not Disqualified Person.** A Disqualified Person cannot be a Trustee.
- (b) **Appointment.** The Members have the right to appoint one or more Trustees or Directors of a Corporate Trustee. The right to appoint a Trustee or Director of a Corporate Trustee may be exercised by:
  - (i) a sole Member, where the Fund only has 1 Member; or
  - (ii) a resolution passed by a majority of the Members present at a meeting called for the purpose or by circular resolution signed by all of the Members, in all other cases, and
 the Legal Personal Representative of a Member who is deceased or under a Legal Disability will be treated as a Member and has the right of a Member for the purposes of this Rule.
- (c) **Consent to be in writing.** Any person appointed or to be appointed to be a Trustee or Director of a Corporate Trustee must consent in writing to the appointment and, upon appointment, is bound by these Rules.
- (d) **New Trustees or directors to sign declaration.** Where a person becomes a Trustee or a Director of a Corporate Trustee of the Fund, they must sign a declaration in a form approved by the Regulator, stating that they understand the obligations and responsibilities of a trustee of an SMSF. This declaration must be completed and signed within 21 days of their appointment and retained for not less than 10 years.
- (e) **How the Trustee may resign.** A Trustee may resign from the office of Trustee at any time, by giving notice in writing to the Members and to the Legal Personal Representative of each Member who is deceased or under a Legal Disability.
- (f) **How the Trustee may be removed.** The Members have the right to remove a Trustee or a Director of a Corporate Trustee at any time. The right to remove a Trustee or Director of a Corporate Trustee, may be exercised by written notice given by:
  - (i) a sole Member, where the Fund only has 1 Member; or
  - (ii) a resolution passed by a majority of the Members present at a meeting called for the purpose or by circular resolution signed by all of the Members, in all other cases, and
 the Legal Personal Representative of a Member who is deceased or under a Legal Disability will be treated as a Member and has the right of a Member for the purposes of this Rule.
- (g) **Removal of the Trustee in other circumstances.** A Trustee ceases to be a Trustee upon the happening of any of the following events:
  - (i) the Trustee, being a natural person:
    - A. dies;
    - B. becomes incapable of dealing with his or her own affairs;
    - C. is convicted of an offence of dishonesty or otherwise becomes disqualified from office by operation of law;
    - D. commits an act of bankruptcy or threatens to call any meeting with a view to entering into a composition or agreement with creditors;

- E. makes an assignment to or enters into a composition with his or her creditors, or seeks the protection of any statute for relief from creditors;
- F. becomes a Disqualified Person.

(ii) the Trustee, being a corporation:

- A. has an application made, resolution passed or an order made for its liquidation or winding up;
- B. is deemed to be insolvent, or any act or event constituting grounds for winding up by a court occurs;
- C. is struck off, de-registered or otherwise ceases to exist or to have full capacity;
- D. has a receiver or official manager appointed to the whole or any part of its undertaking;
- E. becomes disqualified from office by operation of law; or
- F. becomes a Disqualified Person.

(h) **Member dies or becomes Legally Disabled.** If a Member dies or becomes Legally Disabled, the Member's Legal Personal Representative may elect to become, and will, on that election being made, be appointed as:

- (i) a Trustee where the Trustee of the Fund is or are natural persons; or
- (ii) a Director of the Corporate Trustee where the Trustee is a Constitutional Corporation, but subject to the constitution of the Corporate Trustee,

and the Member's Legal Personal Representative will be deemed to have been appointed during the period:

- (iii) in the case of the Member's death, beginning at the date of the Member's death and ending when death benefits first commence to be payable in respect of the Member or such other date as may be allowed by the Relevant Law; or
- (iv) in the case of the Member's Legal Disability, beginning at the date when the Member's Legal Personal Representative assumes control of the Member's affairs and ending either when that person ceases to act in the capacity of Legal Personal Representative for the Member, or such other date as may be allowed by the Relevant Law.

(i) **Trustee discharged.** When a Trustee has been removed or has resigned in accordance with these Rules:

- (i) that Trustee will be discharged from the trusts in these Rules to the extent allowed by law from the effective date of removal or resignation; but
- (ii) without affecting any liability of the Trustee which has accrued, or may accrue, because of any thing done, or omitted to be done, by the Trustee prior to the effective date of removal or resignation; and
- (iii) without affecting any obligation of the Fund or any liability of the Fund arising under any agreement or security to which the Fund is a party entered into prior to the removal or resignation of the Trustee,

even if there is only one Trustee remaining provided that the Fund remains an SMSF.

## 8.2 Trustee may be a Member

Where a proposed Trustee is a natural person, that person is not, by their status as a Member, excluded or otherwise restricted from being appointed as a Trustee and may vote as a Member in all circumstances in which Members are entitled to vote, including resolutions for the appointment or dismissal of that person as Trustee.

## 8.3 Covenants, powers, authorities and restrictions

(a) **Trustee's covenants.** A person, by accepting the appointment to the office of Trustee or Director of a Corporate Trustee, covenants:

- (i) to act honestly in all matters concerning the Fund;
- (ii) to exercise, in relation to all matters affecting the Fund, the same degree of diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (iii) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Beneficiaries;

- (iv) to keep the money and other assets of the Fund separate from any money and assets respectively that are held by the Trustee personally or in any other capacity;
  - (v) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
  - (vi) to formulate and give effect to an investment strategy for the Fund;
  - (vii) if the Fund has any reserves, to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
  - (viii) to allow any Beneficiary access to information or documents which are prescribed by a Relevant Law to be accessible by them.
- (b) **Trustee may authorise others to act.** A covenant in Rule 8.3(a) does not prevent the Trustee from engaging, or authorising persons to do, acts or things on behalf of the Trustee.
- (c) **Matters to be considered in formulating investment strategy.** In formulating and maintaining one or more investment strategies for the purposes of Rule 8.3(a), the Trustee must ensure that each strategy has regard to all the circumstances of the Fund or sub-plan (as the case may be), including but not limited to:
- (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments, having regard to the Fund's or sub-plan's (as the case may be) objectives and expected cash flow requirements;
  - (ii) the composition of the investments as a whole, including the extent to which they are diverse or involve exposure of the Fund or sub-plan (as the case may be) to risks from inadequate diversification;
  - (iii) the liquidity of the investments, having regard to the Fund's or sub-plan's (as the case may be) expected cashflow requirements;
  - (iv) the ability of the Fund or sub-plan (as the case may be) to discharge its existing and prospective liabilities; and
  - (v) whether insurance on the life or disablement of one or more of the Members can or should be purchased,
- and the Trustee should review any investment strategies regularly to ensure that they remain current and in accordance with the Fund's present circumstances.
- (d) **Beneficiaries may direct Trustee.** An investment strategy made in accordance with Rule 8.3(a) may provide for a specified Beneficiary or class of Beneficiaries to give directions to the Trustee, where:
- (i) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund; and
  - (ii) the directions are given in circumstances where:
    - A. the Trustee gives to the Beneficiary, or to each member of a class of Beneficiaries, a choice of two or more investment strategies from which the Beneficiary, or class of Beneficiaries, may choose a strategy or combination of strategies;
    - B. the Beneficiary, or each member of the class of Beneficiaries, is given the investment objectives of each of the strategies mentioned in A. and all information the Trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of those strategies;
    - C. the Beneficiary, or each member of the class of Beneficiaries, is fully informed of the range of directions that may be given and the circumstances in which they may be changed;
    - D. the Trustee clearly identifies, when the Beneficiary, or each member of the class of Beneficiaries, is given a choice of two or more investment strategies, the strategy the Trustee will adopt if no direction is given;
    - E. the direction from the Beneficiary, or each member of the class of Beneficiaries, to the Trustee is given after compliance with the above paragraphs and the direction specifies which of the strategies, or which combination of strategies referred to in A, is to be followed and any other matters applicable to the choice offered in accordance with the above paragraphs; and
    - F. it conforms with any other matters prescribed by the Regulations for the purposes of section 52B(4) of the Act.

- (e) **General powers of Trustee.** Subject to the Relevant Law, the Trustee has all the rights of a natural person to do any thing, or to engage in any transaction or dealing, on behalf of the Fund as it could do if it were the beneficial owner of the Fund and absolutely entitled to it.
- (f) **Specific powers of Trustee.** The following powers are specific examples of the Trustee's powers in Rule 8.3(e) and should not be interpreted as limiting those powers:
- (i) to invest in such corporeal or incorporeal property, rights, currency, or other things of value as the Trustee decides.
  - (ii) to invest in or purchase any securities permitted by the Relevant Law.
  - (iii) to enter into any derivative contract or purchase, sell, deal or trade in any derivatives product. This right includes, without limitation, power for any purpose to enter into and perform or to deal with or in any:
    - A. options and futures contracts;
    - B. warrants or instalment warrants;
    - C. contracts for difference;
    - D. certificates of deposit;
    - E. default swap contracts; and/or
    - F. any other form of derivative contract,
 and otherwise to do and perform all things to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world.
  - (iv) to purchase, acquire, create, hold, rent, lease, license, sell or otherwise dispose of assets and investments in any property, rights or privileges, including derivatives assets and contracts, which the Trustee is authorised by law to acquire or dispose of, on terms and conditions as the Trustee decides.
  - (v) to invest in digital currencies, cryptocurrencies, initial coin offering and other digital assets.
  - (vi) to grant any lease, sub-lease or other rights in relation to any property of the Fund for any term or terms and whether or not that term or terms exceeds any term allowable under the Relevant Law.
  - (vii) to carry on a business, to the extent that it is allowable under the Relevant Law.
  - (viii) to appoint and/or remove or suspend, the Fund's Auditor, or any accountants, lawyers, Custodians, managers, secretaries, clerks, agents and other servants or consultants, and may appoint any of them permanently, temporarily or for special services and may determine the scope and extent of their powers and duties, on terms as to remuneration or salaries as the Trustee decides.
  - (ix) to appoint any person to be a Custodian for the purpose of holding or retaining the legal title of or to any asset, property, investment or other thing acquired or to be acquired by or for the benefit of the Fund.
  - (x) to institute, conduct, defend, compound, compromise or abandon any legal or other proceedings by or against the Fund or its officers or otherwise, concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands made by or against the Fund.
  - (xi) to make and give receipts, releases and other discharges for money payable to the Fund and for any claims and demands against the Fund and to pay expenses as it considers properly relate to the Fund, including any income tax liability which may attach to income of the Fund or contributions made to it.
  - (xii) to open accounts and to retain on current or deposit account at any bank or financial institution, any moneys as it considers proper and to make regulations for the operation of those accounts, including the signing and endorsement of cheques in connection with them.
  - (xiii) to borrow moneys, incur liabilities, pledge or charge the assets of the Fund as security, but only to the extent allowed or allowable in accordance with the Act and Regulations. Any borrowing or raising may include (without limitation):
    - A. the drawing, endorsing, accepting, negotiation or other dealing in bills of exchange, promissory notes, cheques or other negotiable instruments;
    - B. any other form of borrowing or raising of money which is authorised by the Act.



- (xiv) to purchase annuities, pensions and income streams, and to effect policies of insurance or assurance in relation to Members for the purpose of providing benefits under these Rules.
  - (xv) to revalue the Fund's assets, and to allocate the revaluation amount to the Members and Beneficiaries.
  - (xvi) to determine who will be entitled to sign, on the Fund's behalf, receipts, acceptances, endorsements, releases, contracts and documents.
  - (xvii) to pay benefits and entitlements out of the Fund to persons entitled to them.
  - (xviii) to decide, as and when required, who are Dependants for the purposes of these Rules.
  - (xix) to enter into any negotiations and contracts, to rescind and vary all contracts, to execute any deeds, and to do all or any things in the name of and on behalf of the Fund as it may consider expedient for or in relation to any of the matters referred to in these Rules or otherwise for the purposes of the Fund.
  - (xx) to enter into an agreement with a Member varying the benefits or entitlements, or the contributions otherwise payable in respect of that Member, in any manner which the Trustee decides, subject to the terms of these Rules and to the consent of affected Members.
  - (xxi) to enter into contracts, transactions or agreements, whether they be for sale, lease or any other purpose, with one or more individual trustees, with one or more Directors of a Corporate Trustee, or with a Corporate Trustee itself, notwithstanding that they have or may obtain an interest or benefit in their own or other capacities.
  - (xxii) to enter into contracts, transactions or agreements, whether they be for sale, lease or any other purpose, in respect of another trust where one or more individual Trustees or the Corporate Trustee, is a trustee of that trust.
  - (xxiii) subject at all times to the Relevant Law, generally, to exercise or concur in exercising all of the Trustee's powers and discretions contained in these Rules or otherwise conferred by law notwithstanding that any Trustee or any Director or shareholder of a Corporate Trustee or any person being a relative of a Trustee or of a Director or shareholder of a Corporate Trustee has, or may have, a direct or personal interest (whether as trustee of any other settlement or in his or her personal capacity or as a shareholder or Director or Member or as a relative of the Trustee or relative of a Director or shareholder of a Trustee or Member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.
- (g) **Trustee may delegate.** Regardless of any other provision of these Rules but subject to the Relevant Law, the Trustee may delegate, in writing, any of its powers or discretions to one or more other persons.
- (h) **Trustee's indemnity.** The persons listed in Rule 8.3(i) have a right of indemnity out of the assets of the Fund in respect of any expenses incurred or liabilities resulting from any activities carried out by those persons in the exercise or purported exercise of the powers, duties, responsibilities and discretions imposed or authorised by the trusts constituted by these Rules except where those expenses or liabilities arise from or as a result of:
- (i) a breach of trust by a person in Rule 8.3(i)(i) and/or (ii) if the person:
    - A. fails to act honestly in a matter concerning the Fund; or
    - B. intentionally or recklessly fails to exercise in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
  - (ii) an act or omission by a person in Rule 8.3(i)(iii) and/or (iv) if the person:
    - A. fails to act honestly in a matter concerning the Fund; or
    - B. intentionally or recklessly fails to exercise in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
  - (iii) a liability for a monetary penalty under a Civil Penalty Provision.
- (i) **Persons entitled to indemnity.** The following persons are entitled to claim the indemnity in Rule 8.3(h):
- (i) the Trustee;
  - (ii) the Directors and other officers of the Trustee, in the case of a Corporate Trustee;
  - (iii) any Custodian; and
  - (iv) any Investment Manager.

- (j) **Trustee not liable.** Without prejudice to Rule 8.3(h) the persons listed in Rule 8.3(i)(i) and/or (ii) will not be liable for any loss or damage arising from any:
- (i) act or omission in the exercise of any powers, duties, responsibilities or discretions;
  - (ii) contract entered into or document executed in relation to the Fund;
  - (iii) error in judgment;
  - (iv) neglect, default, intent to defraud, wilful misconduct, defalcation, or act or omission of any manager, agent, professional adviser, banker, stockbroker, or other person engaged by the Trustee for the purposes of the Fund; or
  - (v) breach of duty or of trust, or any neglect or otherwise.
- (k) **Limited Recourse Borrowing Arrangements.** Subject to the investment strategy of the Fund, the Trustee has the power to borrow money under arrangements of the kind contemplated by Section 67A of the Act and to enter into any and all such arrangements for that purpose, including:
- (i) the granting of indemnities to lenders for the purpose of furthering these arrangements provided they comply with Section 67A of the Act;
  - (ii) the granting of any security for the performance of any obligation or other dealing or engagement incurred or to be entered into by the Trustee or by any other person. The Trustee's power includes the power to grant any mortgage, charge or encumbrance over all or any part of any asset or property to be acquired in accordance with Section 67A of the Act provided they comply with Section 67A of the Act;
  - (iii) despite the covenants in Rule 8.3(a), to give proxies and powers of attorney (with or without power of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any part of the Fund. Without limitation, the Trustee may empower its attorney to take any action and/or perform any act on behalf of the Trustee and to sign and execute any deed, agreement or document that the Trustee may lawfully do, including the exercise of any of the Trustee's rights or obligations and the execution of mortgage and security documents. The Trustee may in its discretion, grant powers of attorney or proxies to any third party including any mortgagee, lender or financier of the Fund.

#### 8.4 Personal Interests

- (a) **Subject to Relevant Law.** This Rule 8.4 is subject at all times to the Relevant Law.
- (b) **No breach.** A Trustee may have and hold any Personal Interest:
- (i) without being in breach of any obligation, including, without limitation, any breach of trust; and
  - (ii) without the consent or approval of any Member or Members or any other person.
- (c) **Trustee contracts with itself.** For the avoidance of doubt, the Trustee may be a party to or interested in any instrument or transaction either alone or with any other person (including the Trustee acting in its personal or in any other capacity).
- (d) **Transaction not avoided.** A transaction or instrument will not be vitiated, avoided or voidable, merely because a Trustee has a Personal Interest in it.
- (e) **No liability.** A Trustee is not liable to:
- (i) account for any profit or benefit received by the Trustee;
  - (ii) hold any property on any trust for any Member; or
  - (iii) compensate the Fund or any Member for any loss suffered, merely because the Trustee has a Personal Interest.
- (f) **Corporate Trustee.** If the Trustee is a Corporate Trustee, this Rule will apply for the benefit of each director and shareholder of the Corporate Trustee as though the directors and shareholders of the Trustee were Trustees.
- (g) **More than one.** Where there is more than one Trustee, this Rule 8.4 will apply for the benefit of each of them severally with each other Trustee.

#### 8.5 In-house Assets and other restricted investments

- (a) **Restricted and prohibited investments.** The Trustee must not make any investments and, to the extent necessary, must divest the Fund of investments, to ensure that:
- (i) the acquisition of an asset would not cause the Market Value of In-house Assets of the Fund to exceed 5% of the Market Value of the total assets of the Fund;

- (ii) the Market Value of In-house Assets of the Fund does not exceed, at the end of any Year of Income, 5% of the Market Value of the total assets of the Fund;
  - (iii) the Fund's assets do not include loans to a Member or to a Relative of a Member unless the Fund was established before 16 December 1985 and the Trustee had express power to lend money to Members and had lent money to Members before that date;
  - (iv) there is no intentional acquisition of assets by the Fund from a Related Party of the Fund, except where:
    - A. the asset is a listed security acquired at Market Value;
    - B. the Fund is a Self Managed Superannuation Fund and the asset acquired is Business Real Property of the Related Party acquired at Market Value;
    - C. the Trustee acquired the asset under a merger between Regulated Superannuation Funds;
    - D. the asset is a life insurance policy issued by a life insurance company (other than a policy acquired from a Member or from a Relative of a Member);
    - E. the asset is of a kind which the Regulator has determined may be acquired by the Fund; or
    - F. the asset is an In-house Asset of the Fund, acquired at Market Value, which would not result in the level of In-house Assets of the Fund exceeding the level permitted by Rule 8.4.
- (b) **Pre 23 December 1999 not In-house Assets.** Subject to the Act and Regulations, where an asset of the Fund was acquired, or a lease or Lease Arrangement was entered into, under a contract entered into prior to 23 December 1999, and that asset would otherwise be an In-house Asset of the Fund, but that asset was not an In-house Asset at the time it was acquired, the asset is not an In-house Asset of the Fund.
- (c) **Post 22 December 1999 not In-house Assets.** Subject to the Act and Regulations, where an asset of the Fund was acquired under a contract entered into after 22 December 1999, and that asset would otherwise be an In-house Asset of the Fund and:
- (i) where the asset was acquired after 22 December 1999, but before 1 July 2001, and the asset would not have been an In-house Asset of the Fund if acquired before 23 December 1999, that asset is not an In-house Asset of the Fund until 1 July 2001.
  - (ii) where the asset was acquired after 22 December 1999, but before 1 July 2001, and was still owned by the Fund on 1 July 2001, or where the asset was acquired after 30 June 2001, the asset will not be an In-house Asset if:
    - A. the asset was acquired prior to 1 July 2009, and was acquired solely by way of reinvestment of dividends or trust distributions in an Entity, in respect of an investment in that Entity made by the Fund prior to 23 December 1999; or
    - B. the asset was acquired prior to 1 July 2009 and:
      - I the Fund has less than 5 Members;
      - II the asset is an investment in a company or unit trust in which the Fund held a pre-23 December 1999 investment;
      - III the company or unit trust had a Loan principal amount outstanding on 23 December 1999; and
      - IV the sum of the investments in the company or unit trust, acquired by the Fund after 23 December 1999, does not exceed the limits specified in section 71E of the Act.

## 8.6 Collectables

Regardless of any other provision in these Governing Rules, the Trustee must comply with the Act and Regulations regarding Collectables and must, unless otherwise permitted by the Act and/or the Regulations:

- (a) not enter and lease or lease arrangement with any related party of the Fund in respect of any Collectables;
- (b) store all Collectables of the Fund in accordance with the Act and Regulations;
- (c) document all decisions regarding the storage of Collectables in accordance with the Act and Regulations;
- (d) insure all Collectables in accordance with the Act and Regulations;
- (e) not permit any related party of the Fund to use any Collectable; and/or

- (f) not transfer any Collectible to any related party of the Fund other than in accordance with the Act and Regulations.

### 8.7 Rules apply to others

All of the rules and restrictions contained in these Rules which affect or apply to any act or thing done or not to be done by the Trustee, will apply to any act or thing done or not done on behalf of the Trustee by any person including, without limitation, any Director of a Corporate Trustee, Custodian or Investment Manager appointed by the Trustee.

## 9. ACCOUNTS, AUDIT, RECORDS AND RETURNS

### 9.1 Voluntary contributions

- (a) **Unallocated contributions account.** Subject to the Relevant Law, the Trustee may establish and keep, in respect of the Fund or, where there are one or more sub-plans, in respect of each sub-plan, an unallocated contributions account, to which the Trustee may credit contributions.
- (b) **Allocations within 28 days.** Where, during a Year of Income, an amount has accumulated in the voluntary contribution reserve, the Trustee must:
- (i) use the reserve for any purposes of the Fund as the Trustee decides; and
  - (ii) allocate all of the amounts in the reserve to one or more Members' Benefit Accounts, in the proportions determined by the Trustee within 28 days after the end of the month in which any such amounts are received, even if such allocation occurs after the Year of Income in which the contribution was made.
- (c) **Change in allocation.** If required by the Act and Regulations, or otherwise if the Trustee decides to do so, the Trustee may decide to allocate some or all contributions made by or on behalf of a Member directly to the Member's Benefit Account, even if those contributions are of a type which would normally be allocated to the voluntary contribution reserve.

### 9.2 Member Benefit Accounts

The Trustee must establish and keep, in respect of each Member, a Benefit Account or Accounts, to which must be added:

- (a) all contributions made by, for, or in relation to the Member which form part of a Member's Minimum Benefits;
- (b) all contributions allocated to the Member's Benefit Account from the voluntary contribution reserve;
- (c) all benefits or entitlements (including Superannuation Lump Sums) transferred into the Fund by, for, or in relation to the Member, in accordance with these Rules;
- (d) subject to Rule 9.4, all investment earnings of the Fund or, where the Member is a member of a sub-plan, of that sub-plan, allocated to that Member's Benefit Account attributable to the amounts in (a) and (b);
- (e) the current surrender value of any policy of capital guaranteed life assurance taken out by the Trustee upon the life of that Member;
- (f) the proceeds, or part proceeds, of any policies of insurance which the Trustee decides to allocate, or is obliged to allocate in respect of that Member;
- (g) any amounts which the Trustee decides to pay in respect of the Member, pursuant to Section 295-485 of the Tax Act;
- (h) any reserves held by the Fund or, where the Member is a member of a sub-plan, by that sub-plan, which the Trustee has allocated to that Member's Benefit Account;
- (i) any refunds of taxes or surcharges and any interest applicable to such amounts, where the tax or surcharge was deducted directly from contributions made by or on behalf of that Member;
- (j) any increase in the value of any investment or other asset held by the Fund (whether actual or notional) which is reasonably attributable to the Member's Benefit Account;
- (k) any other amount that the Trustee reasonably determines should be credited to the Member's Benefit Account,

and against which must be deducted:

- (l) all direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund allocated to the Member's Benefit Account; and

- (m) any overpayments of Government Co-contribution which the Fund is required to repay;
- (n) any amounts required to be paid to the Commissioner of Taxation as a result of the Member's failure to quote his or her tax file number to the Fund within the prescribed time;
- (o) any other taxes or surcharges applicable to contributions made by or on behalf of a Member which are required to be withheld or deducted directly from such contributions;
- (p) any decrease in the value of any investment or other asset held by the Fund (whether actual or notional) which is reasonably attributable to the Member's Benefit Account;
- (q) any other amount that the Trustee reasonably determines should be debited to the Member's Benefit Account,

and the Trustee must allocate all amounts in a fair, reasonable and consistent manner, having regard to any special circumstances relating to one or more Members which might otherwise affect the allocation of amounts to a Member's Benefit Account. Where the Trustee has made the allocations in accordance with these principles, its decision will be final.

### 9.3 Accounts for non-Member Spouses

- (a) **Compliance with Family Court Orders.** When any order is made under the Family Law Act in respect of a Member's Superannuation Interest, the Trustee may be required to:
  - (i) create and maintain a new Benefit Account for a Non-member Spouse;
  - (ii) split the amount standing to the credit of a Member's Benefit Account with the Non-member Spouse;
  - (iii) identify a component or percentage of a Member's Superannuation Interest which is to be paid to the Non-member Spouse;
  - (iv) transfer or roll over a Non-member Spouse's Superannuation Interest to another regulated superannuation fund, approved deposit fund, EPSSS or RSA; and/or
  - (v) notify the Non-member Spouse and the Member of orders requiring a Payment Split and other matters.
- (b) **Cost of complying.** If Rule 9.3(a) applies, the reasonable costs incurred in complying with any Family Court order, including the costs of the Trustee seeking professional advice, may be deducted from the Non-member Spouse's interest.
- (c) **Splitting Pensions.** Where, pursuant to the Family Law Act, an order is made which affects the Superannuation Interest of a Member in receipt of a Pension, the Trustee may deduct any reasonable costs incurred in complying with those orders from the capital sum supporting the Pension to be paid to the Non-member Spouse, or from the periodical payments of the Pension to be paid to the Non-member Spouse.

### 9.4 Investment reserve

Subject to the Act and Regulations, the Trustee may, in its discretion, credit any investment earnings of the Fund to an investment reserve, to be used for such purposes as the Trustee may decide, including in the satisfaction of any expenses of the Fund and for the purpose of smoothing investment earnings allocated to members' accounts. Part or all of the balance of the investment reserve may be allocated to one or more Member's Benefit Accounts or, where the reserve relates to a sub-plan, to the Benefit Accounts of Members of that sub-plan. The Trustee must make any allocation in a fair, reasonable and consistent manner having regard to any special circumstances relating to one or more Members which might otherwise affect the allocation.

### 9.5 Pension reserve

Subject to the Act and Regulations, where the Trustee is required to pay one or more Pensions to one or more Beneficiaries, the Trustee may, in its discretion, transfer an amount or amounts to one or more pension reserves, for the purpose of paying that Pension or Pensions. The cost of meeting expenses, taxes or other outgoings as the Trustee decides, may be deducted from the reserve. Where an amount is transferred to a pension reserve, the Trustee may reduce the Member's Benefit Account, to the extent of the amount transferred and may, upon receiving the advice of an Actuary or other properly qualified person, transfer amounts between the pension reserve and Member's Benefit Account or other reserves, in a fair, reasonable and consistent manner.

### 9.6 Other reserves

Subject to the Act and Regulations, the Trustee may, in its discretion, establish other reserves, including an anti-detriment reserve, in respect of amounts not presently allocated to Members' Benefit Accounts or to other

reserves. The cost of meeting expenses, taxes or other outgoings as the Trustee decides, may be deducted from the reserve. The balance of the reserve may be allocated to the Benefit Accounts of one or more Members or, where the Fund is divided into sub-plans, of Members of that sub-plan. The Trustee must make any allocation in a fair, reasonable and consistent manner having regard to any special circumstances relating to one or more Members which might otherwise affect the allocation.

### **9.7 Allocations from reserves**

Where, during a Year of Income, amounts appropriate to be allocated to Members' Benefit Accounts have arisen, the Trustee may make as many allocations of those amounts during the course of the Year of Income as the Trustee decides. Except for amounts allocated to a voluntary contribution reserve, the Trustee may decide when and how much of a reserve amount is to be distributed to Members' Benefit Accounts.

### **9.8 Trustee to keep records of types of benefits**

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

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

### **9.9 Trustee to keep accounting records**

The Trustee must:

- (a) keep accounting records in writing which correctly record and explain the transactions and financial position of the Fund; and
- (b) keep its accounting records to enable the preparation of:
  - (i) the accounts and statements required under Rule 9.10 and/or Rule 9.11; and
  - (ii) the returns of the Fund required under Rule 9.13; and
- (c) keep its accounting records to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Act; and
- (d) keep the accounting records of the Fund, or cause them to be kept, in Australia for at least 5 years after the end of the Year of Income to which they relate.

### **9.10 Preparation of accounts**

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

- (a) a statement of the financial position of the Fund;
  - (b) a statement of the Market Value of the assets of the Fund;
  - (c) an operating statement of the Fund; and
  - (d) other accounts and statements as the Act and Regulations specify,
- and prepare that financial information in a form or manner determined by the Trustee.

### **9.11 Accounts required where benefits solely life assurance**

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

- (a) a statement that policies of life assurance are in place at the end of the Year of Income;
- (b) a statement as to whether those policies have been fully maintained as required by the relevant insurers;
- (c) a statement of the identities of those insurers;
- (d) a statement of the amounts contributed by Employers and Members in the Year of Income;
- (e) a statement of the amount of premiums paid on those policies; and
- (f) a statement of the expenses incurred by the Fund in respect of the Year of Income, other than amounts covered by premiums.

### 9.12 Audit of the accounts

The Trustee must appoint, and has the power to dismiss, an Approved Auditor. The Trustee must ensure that each set of accounts and statements prepared in respect of a Year of Income is audited by the Auditor.

### 9.13 Preparation and lodgement of returns

The Trustee must, in respect of each Year of Income, prepare and lodge:

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

## 10. MEETINGS OF TRUSTEES AND MEMBERS

### 10.1 Trustees or Directors meetings

- (a) **How to call a meeting.** The Trustees, or the Directors of a Corporate Trustee, may convene a meeting of the Trustees, or of the Directors, as the case may be, by one of their number giving not less than 7 days notice in writing to each of the others, of the time, place and business to be conducted at the meeting. The notice period in this Rule may be waived by unanimous agreement of all Trustees and/or all Directors.
- (b) **Appointing a chair.** Before any business is discussed at a meeting of Trustees or Directors, they must appoint one of their number to chair the meeting, and the meeting must be conducted by that person in a fair and reasonable manner, but otherwise as that person determines.
- (c) **Meetings at least annually.** Meetings of Trustees or Directors may be convened at any time, but must be convened at least once in every calendar year, to consider:
  - (i) the accounts of the Fund and the Approved Auditor's report relating to those accounts;
  - (ii) the returns and other documents specified in Rule 9.13;
  - (iii) any matters raised by the accounts and statements which require action or attention; and
  - (iv) any other matters which the Trustees or the Directors, consider appropriate.
- (d) **Quorum.** The quorum for meetings of Trustees or Directors is two or half of the total number of Trustees or Directors, whichever is greater.
- (e) **Voting by proxy.** A Trustee and/or a Director who is unable to be present at a meeting of the Trustees or the Directors, as the case may be, may nominate another person to attend the meeting as their proxy, subject to the following requirements:
  - (i) the person nominated as proxy must carry into and put before the meeting an authority, signed by the person in whose place the proxy is attending, in a form approved by the Trustee.
  - (ii) a person may be nominated as a proxy for one meeting only. The same person may be nominated for any subsequent meeting.
  - (iii) a person nominated as proxy, who is not otherwise a Trustee or a Director of the Trustee, must be asked to leave the meeting if the chairperson considers that a subject to be discussed is of a sensitive or confidential nature.
  - (iv) a person nominated as proxy must be given an opportunity to read and to table any written statement from their appointor, and must vote strictly in accordance with the directions of that person, but a proxy, who is not otherwise a Trustee or a Director of the Trustee, is not further entitled to participate in the discussions and conduct of the meeting.

### 10.2 Resolving disputes between trustees

- (a) **Usual decision-making to be unanimous.** In any proceedings of individual Trustees, or Directors of a Corporate Trustee, decisions shall be made on a unanimous basis.
- (b) **Changes to usual decision-making arrangements.** The individual Trustees, or Directors of a Corporate Trustee, may unanimously decide that another basis for decision making be adopted:
  - (i) in respect of a particular decision; or

- (ii) for a period of time; or
- (iii) from that point onwards, until any one or more of them gives notice in writing to the other Trustees or Directors that they no longer wish the alternative arrangements to apply.

(c) **Where unanimous agreement cannot be reached.** Except in the circumstances outlined in paragraph (b) above, should the individual Trustees, or Directors of a Corporate Trustee, not be able to agree upon a unanimous decision or course of action at any point in time (the “**Disputed Actions**”), and if a Trustee or Director who is out voted does not accept that decision (a “**Dissenter**”), then the following provisions, in the following order shall apply:

(i) **Notice to be given.** A Dissenter shall within 1 week of the Disputed Actions give their fellow Trustees or Directors notice in writing that they do not accept that decision (a “**Disputed Actions Notice**”).

(ii) **Single member funds or funds with nil balance members.** If there are no Members who are recently deceased and in respect of whom a benefit payment decision has yet to be made, then the position of the Trustees or Directors of a Corporate Trustee will be recalculated on the basis that:

A. in the event that there is a single Member, the Trustee or Director who is or represents the Member shall have the casting vote; and

B. in the event that a Trustee or Director also is or represents a Member of the Fund with a nil balance, that person’s corresponding vote as Trustee or Director will not be counted,

however the Trustees or Directors who are also Members, and who do not have a nil balance, must agree in writing to personally indemnify the other Trustees or Directors against any legal or financial consequences of the Disputed Actions, unless the indemnified Trustees or Directors initiate the legal action, or cause the financial consequences.

(iii) **Willing Members prepared to voluntarily roll out.** If a Disputed Actions Notice has been given, and any Member is prepared to voluntarily roll the balance of their Member’s Benefit Account out of the Fund (the “**Willing Members**”), then they will be permitted to do so, as long as they provide details of an alternative regulated superannuation fund to which their benefits may be transferred within 14 days of the notification of their decision to roll out, and subject to paragraph (g) of this Rule. Until the Willing Members have been rolled out of the Fund, the Disputed Actions will not be undertaken.

(iv) **Funds where Members have small balances to be compulsorily rolled out.** If a Disputed Actions Notice has been given, and all of the Dissenters did not roll out as Members pursuant to paragraph (iii) above, then the Trustees or Directors who represent corresponding Members balances making up at least 80% of the market value of the Fund’s assets (the “**Majority Members**”) may commence to compulsorily rollover any Member who is also a Dissenter and whose balance is 20% or less of the market value of the Fund’s assets (“**Minority Members**”), subject to paragraph (f) of this Rule, as follows:

A. if a Minority Member nominates an alternative regulated superannuation fund to accept the rollover – that fund; or

B. if a Minority Member does not so nominate - an ATO-held super arrangement.

Until the Minority Members have been rolled out of the Fund, the Disputed Actions will not be undertaken.

(v) **Mediation or court action as a remedy in other cases.** In the event that the Disputed Actions have not been resolved pursuant to the preceding paragraphs, any one of the Trustees or Directors may request the Australian Mediation Association to select a mediator to resolve the matter and:

A. all Trustees and Directors shall attend any mediation hearings scheduled.

B. any Trustee or Director who has been notified of, but does not attend a scheduled mediation:

I shall be entitled to one alternative mediation date; and

II should they fail to attend that alternative mediation date,

shall be deemed to accept its outcome.

C. in the event that the Trustees or Directors are not able to resolve the matters which are the subject of the mediation, one or more of the parties may apply to the relevant court in the State or Territory in which the Fund is based, for a determination of the matter.



- (d) **Stay of decision while Minority Member rolled out.** For the avoidance of doubt, if a Minority Member is being compulsorily rolled out of the Fund, then the Majority Members may not cause the Fund to engage in the Disputed Actions until such time as all Minority Members have been rolled out of the Fund.
- (e) **Requirement to prepare accounts prior to rollover.** Prior to any rollover, the Fund's administrators will prepare management accounts showing the best estimate of the Members' present account balances, less a provision for accrued income and capital gains taxes, and any other reasonable provisions relating to the income and expenses of the Fund, accrued and incurred up to the date of those accounts.
- (f) **Stay of compulsory rollover during significant market declines.** If the All Ordinaries Index has declined by more than 20% during the 12 months preceding the Disputed Actions Notice being given, then the Minority Members are entitled to a deferral of 12 months, or the period taken for the All Ordinaries Index to regain its level from 12 months prior to the Disputed Actions Notice being given, whichever is the earlier, before any compulsory rollover is initiated.
- (g) **Stay of voluntary rollover during certain periods.** If a Member has requested a voluntary rollover of their benefits from the Fund in accordance with this Rule 10.2, then any other individual Trustee, or any other Director of a Corporate Trustee, may elect to defer the roll out:
- (i) if the All Ordinaries Index has declined by more than 20% during the 12 months prior to the rollover request – for 12 months, or the period taken for the All Ordinaries Index to regain its level from 12 months prior to the rollover request, whichever is the earlier; or
  - (ii) if, in order to pay out the Member, one or more illiquid, non-listed assets representing more than 20% of the Fund's total assets would need to be sold – 12 months from the date the rollover request is made, or a sufficient number of illiquid, non-listed assets are sold and the proceeds received, whichever is earlier; or
  - (iii) if, in order to pay out the Member, one or more of the Fund's assets which is leased to a business owned or operated by a Fund Member, or a Related Party of a Member, would need to be sold – the time taken to sell and receive the proceeds from the sale of that or those assets,
- however, during this time any of the individual Trustees, or any Director of a Corporate Trustee, may initiate the mediation provisions in paragraph (c)(v) of this Rule.
- (h) **Limit on this Rule for Legal Disability or Family Law Act proceedings.** The provisions of this Rule, other than those which require mediation or recourse to a court of law, shall not apply where:
- (i) the Disputed Actions concern the payment of benefits of a Member who is under a Legal Disability; or
  - (ii) where one or more of the Members is party to proceedings under the Family Law Act.
- (i) **When this Rule does not apply.** The preceding provisions of this Rule shall not apply if the Disputed Actions would be:
- (i) illegal; or
  - (ii) reasonably likely, in the opinion of the Fund's auditor, to cause:
    - A. a breach of the Act and Regulations; or
    - B. part or all of the Fund's income to be non-arm's length income.
- (j) **Continuation of good governance.** During any period where this Rule applies, the individual Trustees, or Directors of a Corporate Trustee shall continue to deal with each other in good faith and undertake all elements of their duties in a timely fashion.
- (k) **Preservation of Rights.** Apart from as otherwise specifically provided, nothing in this Rule shall prevent one or more parties from pursuing their usual legal and equitable rights and entitlements.
- (l) **Parties may voluntarily withdraw.** All of parties who served Disputed Actions Notices may jointly, by further notice in writing to all of the other individual Trustees or Directors of a Corporate Trustee, withdraw their Disputed Actions Notice, however the withdrawing parties must agree to:
- (i) their Member Benefit Accounts being debited with all of the Fund's expenses in relation to the Disputed Actions accrued after the Disputed Actions Notice was given; or
  - (ii) a portion of the Fund's expenses in relation to the Disputed Actions, which is agreed between all Trustees or all Directors, being debited to their Member Benefit Accounts; or
  - (iii) a mediation in accordance with this Rule being held, which is restricted to a decision on the allocation of such expenses.

### 10.3 Members' meetings

- (a) **When to hold meetings.** Subject to Rule 11, a Members' meeting must be convened by the Trustee, when:
- (i) the Trustee considers it necessary; or
  - (ii) the Trustee or a Director, receives a meeting request, signed by not less than 25% of the current Members.
- (b) **How to call a meeting.** In order to convene a Members' meeting, the Trustees must give to each Member not less than 7 days notice in writing that a Members' meeting is to be held, specifying the time and place and a general description of the business to be conducted at the meeting. The notice period in this Rule may be waived by the agreement of all Members. No notice and no meeting is required in the case of a sole Member.
- (c) **Appointing a chair.** Before any business is conducted at a Members' meetings, the Trustees or the Directors must appoint one of their number to chair the meeting, and the meeting must be conducted by that person in a fair and reasonable manner, but otherwise as that person determines.
- (d) **Capacity of meetings.** Subject to the requirements of these Rules and to the Act and Regulations, the Trustees or the Directors of the Trustee, must use their best endeavours to comply with a resolution passed by a majority of the Members then present in person or by proxy at a Members' meeting.
- (e) **Quorum.** The quorum for Members' meetings is half of the total number of Members present in person or by proxy rounded up to the nearest whole number.
- (f) **Voting by proxy.** A Member who is unable to be present at a meeting of Members may nominate a person to attend the meeting as the Member's proxy, subject to the following requirements:
- (i) The person nominated as proxy must carry into and put before the meeting an authority, signed by the Member in whose place the proxy is attending, in a form approved by the Trustee.
  - (ii) A person may be nominated as a proxy for one meeting only. The same person may be nominated for any subsequent meeting.
  - (iii) A person nominated as proxy must vote strictly in accordance with the directions of the appointing Member. A proxy, who is not otherwise a Member, is not further entitled to participate in the discussions and conduct of the meeting.

### 10.4 Member dies or becomes Legally Disabled

If a Member dies or becomes Legally Disabled, the Member's Legal Personal Representative has a right to attend meetings of Members and to vote as a Member at any meeting of Members and:

- (a) upon the Member's Legal Personal Representative becoming a Trustee where the Trustee of the Fund is or are natural persons, has a right to vote as a Trustee; and
- (b) upon the Member's Legal Personal Representative becoming a Director of the Corporate Trustee where the Trustee is a Constitutional Corporation, has a right to vote as a Director of the Corporate Trustee.

### 10.5 Resolution of Individual Trustees and Directors

- (a) Individual Trustees or Directors may pass a resolution without a meeting of Trustees or Directors if all of the Trustees or Directors:
- (i) sign a document stating that they are in favour of the resolution in which case duplicate copies of the document may be used; and/or
  - (ii) indicate electronically that they are in favour of the resolution in which case separate electronic communications and/or forms of electronic communications may be used,
- and a resolution is deemed to be passed at the time when the last Trustee or Director signs or confirms they are in favour of the resolution.
- (b) Where there is a single individual Trustee or where the Trustee is a Constitutional Corporation which has a sole Director:
- (i) any provision of these Rules which requires a meeting of Trustees or Directors, is deemed not to require a meeting of Trustees or Directors;
  - (ii) any provision of these Rules which requires a resolution to be passed, is deemed to require only that the sole Trustee or Director signs a resolution to that effect.

### 10.6 Resolution of Members

- (a) Members may pass a resolution without a meeting of Members if all of the Members:

- (i) sign a document stating that they are in favour of the resolution in which case duplicate copies of the document may be used; and/or
- (ii) indicate electronically that they are in favour of the resolution in which case separate electronic communications and/or forms of electronic communications may be used,

and a resolution is deemed to be passed at the time when the last Member signs or confirms they are in favour of the resolution.

(b) Where the Fund has a sole Member:

- (i) any provision of these Rules which requires a meeting of Members, is deemed not to require a meeting of Members;
- (ii) any provision of these Rules which requires a resolution to be passed, is deemed to require only that the sole Member signs a resolution to that effect.

## 11. INQUIRIES AND COMPLAINTS

- (a) **Dealing with complaints.** The Trustee must, within 90 days, consider any inquiry or complaint by one or more Members which has been raised either in a Members' meeting or in writing. Where an inquiry or complaint is not dealt with to the satisfaction of the Member or Members within that time, the parties must arrange for a convenient time and place to meet with each other, for the purpose of resolving the matter.
- (b) **Conduct of meetings.** The parties present at a meeting under Rule 11(a):
  - (i) may, by agreement, appoint a person to chair the meeting, but it is not necessary to do so;
  - (ii) must appoint a person to take and distribute, to all parties in attendance, written minutes of the proceedings; and
  - (iii) may agree to convene one or more further meetings to address the issues in dispute.

## 12. ADMINISTRATIVE MATTERS

### 12.1 Interpretation of these Rules

Except as otherwise expressly provided, the interpretation and application of these Rules will be determined by the Trustee and that determination will be binding and final.

### 12.2 How to designate a Beneficiary

In circumstances other than the giving of a Binding Death Nomination or a Non-lapsing Binding Nomination, a Member wishing to designate a Dependant or other person as a Beneficiary must do so in writing to the Trustee in a form approved by the Trustee.

### 12.3 Limits on rights of Members

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

### 12.4 Right to inspect

Every Member has the right to inspect a copy of these Rules, at a time and a place which is convenient to the Trustee.

### 12.5 Secrecy

- (a) **Confidential Information.** Subject to the Relevant Law, no Member has any right to enquire, or to be given any information concerning the interest of another Member.
- (b) **Other confidential information.** The Trustee must observe strict secrecy with regard to the affairs, accounts and transactions of the Fund, but this does not prevent the publication of financial, statistical or other information to all Members, generally, whenever the Trustee decides.

### 12.6 Receipts and payments with assets

Subject to Rule 5.10 and to the Act and Regulations, where:

- (a) any contribution, benefit or entitlement of a Member or Members is or are payable, transferable or receivable by or to the Fund; or
- (b) any liabilities incurred by or on behalf of the Fund are to be satisfied; or
- (c) any property is due to or is to be acquired by the Fund,

the Trustee may, with the agreement of the person to or from whom a payment is required to be made, in lieu of money, and at its discretion, make or receive settlement of the relevant amount by:

- (d) transferring, in specie, property of the Fund to; or
  - (e) receiving a transfer of property from,
- that person, at the property's Market Value.

### **12.7 Members to provide information**

Every Member and every person claiming a benefit or entitlement, or in receipt of a Pension, or other benefit or entitlement, must give the Trustee any information or authorisation and produce any documents which the Trustee considers necessary for the purposes of giving effect to these Rules.

### **12.8 Variation provision**

The Trustee may at any time amend, revoke, add to, replace or modify all or any of the Governing Rules and/or the provisions of these Rules, by deed or other written instrument, or by resolution in writing. Any amendment, revocation, replacement or modification must not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members without the prior written approval of the Members unless the amendments are required to comply with the Relevant Law;
- (c) alter the rights and benefits of existing Members in any manner so that, on the whole, equity between Members is not maintained in accordance with their Member Benefit Account balances;
- (d) where the Fund holds Member-contributed WA Property and/or Member-contributed NSW Property, alter the undertakings contained in Rule 2.7 or 2.8; or
- (e) be contrary to or inconsistent with the Act and Regulations.

### **12.9 Additional variation provision**

- (a) Provided the Fund is subscribed to and recorded as Active on superdepot.net.au (the "Site"), SuperDepot Pty Ltd ACN 122 036 248 may at any time amend, revoke, add to, replace or modify all or any of the Governing Rules and/or the provisions of these Rules, by uploading new Governing Rules to the records of the Fund on the Site. Any amendment, revocation, replacement or modification must not:
  - (i) alter the objects of the Fund;
  - (ii) reduce the benefits and entitlements payable to Members without the prior written approval of the Members unless the amendments are required to comply with the Relevant Law;
  - (iii) alter the rights and benefits of existing Members in any manner so that, on the whole, equity between Members is not maintained in accordance with their Member Benefit Account balances;
  - (iv) where the Fund holds Member-contributed WA Property and/or Member-contributed NSW Property, alter the undertakings contained in Rule 2.7 or 2.8; or
  - (v) be contrary to or inconsistent with the Act and Regulations.
- (b) Where the Fund is subscribed to and recorded as Active on the Site, any new Governing Rules uploaded by SuperDepot Pty Ltd ACN 122 036 248 to the records of the Fund on the Site will be taken to be the Governing Rules of the Fund as from the date of upload and the then existing Governing Rules will be replaced by the new Governing Rules.
- (c) The Trustee may, at any time, exercise the power in Rule 12.8 to amend, revoke, add to, replace or modify all or any of any Governing Rules made pursuant to this Rule.
- (d) The Trustee delegates the power to amend, revoke, replace or modify all or any of the Governing Rules and/or the provisions of these Rules to SuperDepot Pty Ltd ACN 122 036 248, but only whilst the Fund is subscribed to and recorded as Active on the Site.

### **12.10 Effect of changes in Relevant Law**

The Trustee is authorised and empowered to act in accordance with the Relevant Law (including the requirements for the Fund to be a complying superannuation fund and a Regulated Superannuation Fund) and, to the extent that there is any inconsistency between these Rules and the Relevant Law, the Relevant Law will prevail. For the avoidance of doubt and regardless of the terms of these Rules:

- (a) the Trustee may act in accordance with the Relevant Law regardless of the terms of these Rules;
- (b) the Trustee must act in accordance with the Relevant Law where the provisions of the Relevant Law are mandatory;

- (c) the Trustee is authorised to do any act or thing which is permitted by the Relevant Law regardless of the terms of these Rules;
- (d) the Trustee is authorised to refrain from doing any act or thing which is restricted or prohibited by the Relevant Law regardless of the terms of these Rules.

#### **12.11 Saving provision**

The exercise of the power in Rule 12.8 or Rule 12.9 will not invalidate or alter the terms of any:

- (a) Binding Death Nomination given by a Member;
- (b) Non-lapsing Binding Nomination given by a Member;
- (c) Pension rules in respect of Pensions commenced to be paid prior to the exercise of that power;
- (d) Superannuation will or other testamentary instrument executed by a Member prior to the exercise of that power,

and whether or not the terms of, or provisions applicable to, any of them does not comply with the operative Governing Rules of the Fund applying after the exercise of that power.

#### **12.12 Penalties and Orders**

The Trustee acknowledges that:

- (a) pursuant to the Relevant Law, various penalties and orders may be imposed on the Trustee and/or the Fund for breaches of the Act or Regulations or this Deed; and
- (b) the Regulator may (amongst other penalties and orders) levy or issue to, or against, the Trustee and/or the Fund:
  - (i) a Rectification Notice requiring specific action be taken by the Trustee within a specified time to rectify a breach or contravention; and/or
  - (ii) an Education Notice requiring a person to undertake a specified course of education within a certain time, and to give to the Regulator evidence of completion; and/or
  - (iii) an Administrative Penalty Notice which imposes a monetary penalty on the Trustee in relation to a breach or contravention; and
- (c) where it is a requirement of the Relevant Law, the Trustee is personally liable for complying with any such order or penalty and must not pay any costs or penalties out of the Fund nor seek reimbursement for any person out of the Fund.

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

#### **13.1 Conditions for termination**

The trusts created by these Rules will terminate:

- (a) on the date determined by the Members;
- (b) where the Trustee becomes aware that the Fund is insolvent, on the day on which the Regulator's permission to wind-up is obtained; or
- (c) in any other circumstances when there are no Members or Beneficiaries and the Trustee considers it to be unlikely that there will be any new Members or Beneficiaries, on the day determined by the Trustee.

#### **13.2 Steps to take on winding-up**

When Rule 13.1 applies, the Trustee will take all necessary steps to distribute any remaining assets of the Fund and to satisfy any outstanding liabilities, and will then:

- (a) notify any remaining interested parties (including the Regulator and the Taxation Commissioner) that the Fund will be wound up;
- (b) comply with any other requirements of the Act and the Regulations concerning the winding-up of Funds; and
- (c) take any further steps which, in the Trustee's opinion, are required to wind-up the Fund.

**SCHEDULE 1**  
**Description of Pensions**  
**Rule 5.10**

**PART 1****ACCOUNT BASED PENSION**

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(9A)(a), which included the following requirements at the date of these Rules:

- (a) payments are made at least annually;
- (b) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not smaller in total than the following amounts:

$$\text{Account Balance} \times \text{Percentage Factor}$$

Where:

**Account Balance** means:

- (i) the value of the annuity or pension:
  - A. on 1 July in the financial year in which the payment is made; or
  - B. if that year is the year in which the annuity or pension payments commence - on the commencement day,
 being the total amount paid as consideration to purchase the annuity or pension, as increased by returns on investments and as decreased by fees, charges, applicable taxes, payments to the annuitant or pensioner and payments made under a Splitting Order; or
- (ii) if the value of the annuity or pension under paragraph A. is less than the withdrawal benefit to which the beneficiary would be entitled if the annuity were to be fully commuted — the value of the withdrawal benefit.

**Percentage Factor** means the percentage factor specified in Table 1, below, that applies to the beneficiary because of the beneficiary's age on:

- (i) 1 July in the financial year in which the payment is made; or
- (ii) if that is the year in which the annuity or pension payments commence - the commencement day.

**Table 1**

Item	Age of Beneficiary	Percentage Factor
1	Under 65	4
2	65 – 74	5
3	75 – 79	6
4	80 – 84	7
5	85 – 89	9
6	90 – 94	11
7	95 or more	14

- (c) for the financial year commencing 1 July 2008 and any other year or years permitted under the Act and Regulations, the minimum payment will be not smaller than half the amount determined under the formula in paragraph (b), above;
- (d) if the Pension commences or is required to be re-calculated (for example, because it has been partially commuted) on a day other than 1 July of a year, the minimum payment specified in paragraph (b), above, is reduced to the following amount:

$$\text{minimum payment} \times \frac{\text{days remaining in financial year}}{\text{total days in financial year}}$$

- (e) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year;
- (f) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (g) if the primary beneficiary or a reversionary beneficiary dies, the Pension cannot be transferred to a Child of that person (but may be paid as a lump sum), unless the Child:
  - (i) is less than 18 years of age; or
  - (ii) is greater than 18 years of age, but less than 25 years of age and is financially dependent on the Member; or
  - (iii) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*, and, except in the case of a Child described in (iii) above, such a Pension must cease no later than the Child attaining 25 years of age;
- (h) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (i) if the Pension is commuted, at least the minimum amount, calculated in accordance with Regulation 1.07D, has been paid in the year of commutation.

## PART 2

### TRANSITION TO RETIREMENT PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(9A)(a), which included the following requirements at the date of these Rules:

- (a) payments are made at least annually;
- (b) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not smaller in total than the following amount:

$$\text{Account Balance} \times \text{Percentage Factor}$$

Where:

**Account Balance** means:

- (i) the value of the annuity or pension:
  - A. on 1 July in the financial year in which the payment is made; or
  - B. if that year is the year in which the annuity or pension payments commence - on the commencement day,
 being the total amount paid as consideration to purchase the annuity or pension, as increased by returns on investments and as decreased by fees, charges, applicable taxes, payments to the annuitant or pensioner and payments made under a Splitting Order; or
- (ii) if the value of the annuity or pension under paragraph A. is less than the withdrawal benefit to which the beneficiary would be entitled if the annuity were to be fully commuted — the value of the withdrawal benefit.

**Percentage Factor** means the percentage factor specified in Table 1, below, that applies to the beneficiary because of the beneficiary's age on:

- (i) 1 July in the financial year in which the payment is made; or
- (ii) if that is the year in which the annuity or pension payments commence - the commencement day.

**Table 1**

Item	Age of Beneficiary	Percentage Factor
1	Under 65	4
2	65 – 74	5
3	75 – 79	6
4	80 – 84	7
5	85 – 89	9

Item	Age of Beneficiary	Percentage Factor
6	90 – 94	11
7	95 or more	14

- (c) for the financial year commencing 1 July 2008 and any other year or years permitted under the Act and Regulations, the minimum payment will be not smaller than half the amount determined under the formula in paragraph (b), above;
- (d) if the Pension commences or is required to be re-calculated (for example, because it has been partially commuted) on a day other than 1 July of a year, the minimum payment specified in paragraph (b), above, is reduced to the following amount:

$$\text{minimum payment} \quad \times \quad \frac{\text{days remaining in financial year}}{\text{total days in financial year}}$$

- (e) until the primary beneficiary Retires or reaches 65 years of age (whichever comes first), the payments in a year (including payments made under a Splitting Order) are not larger in total than the following amount:

$$\text{Account Balance} \times 10\%$$

- (f) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year;
- (g) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (h) if the primary beneficiary or a reversionary beneficiary dies, the Pension cannot be transferred to a Child of that person (but may be paid as a lump sum), unless the Child:
- (i) is less than 18 years of age; or
  - (ii) is greater than 18 years of age, but less than 25 years of age and is financially dependent on the Member; or
  - (iii) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*, and, except in the case of a Child described in (iii) above, such a Pension must cease no later than the Child attaining 25 years of age;
- (i) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (j) if the pension is commuted, any resulting Superannuation Lump Sum cannot be cashed unless:
- (i) the purpose of the commutation is:
    - A. to cash an unrestricted non-preserved benefit;
    - B. to pay a superannuation contributions surcharge; or
    - C. to give effect to an entitlement of a non-member spouse under a Splitting Order; or
  - (ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil';
- (k) if the Pension is commuted, at least the minimum amount, calculated in accordance with Regulation 1.07D, has been paid in the year of commutation.

### PART 3

#### ALLOCATED PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(4), which included the following requirements at the date of these Rules:

- (a) payments are made at least annually;
- (b) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) for a Pension that has a commencement day on or after 22 December 1992 and before 1 January 2006 - the payments in a year (excluding payments by way of commutation but including payments made



under a Splitting Order) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the Regulations; and

- (e) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than the following:
  - (i) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006 – the respective maximum and minimum limits for the year calculated in accordance with one of the following Schedules to the Regulations:
    - A. Schedule 1A;
    - B. Schedule 1AAB;
  - (ii) for payments made on or after 1 July 2006 – the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB;
- (f) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year; and
- (g) if the Pension is commuted, at least the minimum amount, calculated in accordance with Regulation 1.07A, has been paid in the year of commutation.

#### **PART 4**

##### **PRE-20 SEPTEMBER 2007 MARKET LINKED PENSION**

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(8), which included the following requirements at the date of these Rules:

- (a) the Pension must not commence before 20 September 2004;
- (b) payments are made to the primary beneficiary or a reversionary beneficiary at least annually throughout the Pension Period;
- (c) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a Splitting Order) is determined in accordance with Schedule 6 of the Regulations;
- (d) the Pension does not have a residual capital value;
- (e) the Pension cannot be commuted, except as authorised by Regulation 1.06(8);
- (f) if the Pension reverts, it does not have a reversionary component greater than the balance of the Member's Benefit Account immediately before the reversion;
- (g) if the Pension is commuted, the commutation amount cannot exceed the balance of the Member's Benefit Account immediately before the commutation;
- (h) the Pension can be transferred only as authorised by Regulation 1.06(8);
- (i) the capital value of the Pension, and the income from it, cannot be used as security for any borrowing; and
- (j) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year.

#### **PART 5**

##### **LIFETIME PENSIONS (INCLUDED IN THE DEFINITION OF "DEFINED BENEFIT PENSION")**

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(2), which included the following requirements at the date of these Rules:

- (a) the Pension is paid at least annually throughout the primary beneficiary's life and, if there is a reversionary beneficiary:
  - (i) throughout the reversionary beneficiary's life;
  - (ii) if he or she is a Child of the primary beneficiary or of a former reversionary beneficiary, at least until his or her 16th birthday; or
  - (iii) if the person referred to in paragraph (ii) is a full-time student at age 16, at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs first);
- (b) the size of payments of benefit in a year is fixed, allowing for variation only:
  - (i) as specified in the Governing Rules;
  - (ii) to allow commutation to pay a superannuation contributions surcharge; or

- (iii) to allow an amount to be paid under a Payment Split and reasonable fees in respect of a Splitting Order;
- (c) unless the Regulator otherwise approves, the sum payable as a benefit in each year to the primary beneficiary or to the reversionary beneficiary, is determined in accordance with the formula contained in Regulation 1.06(2)(c);
- (d) the Pension does not have a residual capital value;
- (e) the Pension cannot be commuted except as authorised by Regulation 1.06(2);
- (f) if the Pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation;
- (g) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (h) the capital value of the Pension and the income from it, cannot be used as security for any borrowing; and
- (i) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii), a surviving reversionary beneficiary may obtain a payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period; and
- (j) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii) and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been payable in the period, is payable to the primary beneficiary's estate; and
- (k) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii) and there is a surviving reversionary beneficiary who also dies within that period, an amount is payable to the reversionary beneficiary's estate determined as described in Rule 5.8(b) as if that Rule applied to the reversionary beneficiary.

## **PART 6**

### **LIFE EXPECTANCY PENSIONS (INCLUDED IN THE DEFINITION OF "DEFINED BENEFIT PENSION")**

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(7), which included the following requirements at the date of these Rules:

- (a) if a Pension has a Pension Date before 20 September 2004 and:
  - (i) if the life expectancy of the primary beneficiary on the Pension Date day is less than 15 years, the Pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout the Pension Period provided that the Pension Period must not exceed 15 years; or
  - (ii) if the life expectancy of the primary beneficiary on the Pension Date day is 15 years or more, the Pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout the Pension Period provided that the Pension Period must not exceed the primary beneficiary's life expectancy on the Pension Date;
- (b) if a Pension has a Pension Date on or after 20 September 2004 payments are made to the primary beneficiary or a reversionary beneficiary at least annually throughout the Pension Period;
- (c) the total amount of the payment, or payments, to be made in the first year after the Pension Date (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day the primary beneficiary became entitled to the Pension;
- (d) the total amount of the payments to be made in a year other than the first year after the Pension Date (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the "previous total"), and does not exceed the previous total by more than the amounts allowable under Regulation 1.06(7)(d)(i) or (ii);
- (e) the total amount of the payments to be made in a year in accordance with (c) or (d) may be varied only:
  - (i) to allow commutation to pay a superannuation contributions surcharge; or
  - (ii) to allow an amount to be paid under a Payment Split and reasonable fees in respect of a Splitting Order;
- (f) the Pension does not have a residual capital value;
- (g) the Pension cannot be commuted except as authorised by Regulation 1.06(7);

- (h) if the Pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
- (i) if the Pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and
- (j) the Pension can be transferred only as authorised by Regulation 1.06(7);
- (k) the capital value of the Pension, and the income from it, cannot be used as security for any borrowing.

## **PART 7**

### **LIFETIME COMMUTABLE PENSIONS (INCLUDED IN THE DEFINITION OF "DEFINED BENEFIT PENSION")**

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(6), which included the following requirements at the date of these Rules:

- (a) if the Pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation;
- (b) the Pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) the size of the payments of benefit in a year is fixed, allowing for variation only as specified in these Rules or as advised by or to allow payments to be made under a Splitting Order;
- (e) except in relation to payments, by way of commutation for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the consumer price index published by the Australian Bureau of Statistics in the preceding 3 years;
- (f) payments in accordance with the contracted size are made at least annually; and
- (g) where the Pension is commuted, except if conversion is in relation to a commutation to pay a superannuation contributions surcharge, the conversion to a lump sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under Schedule 1B of the Regulations to the Pension as if the Pension Date was the day on which the commutation occurs.

## **PART 8**

### **NON-COMMUTABLE ALLOCATED PENSIONS**

A Pension which meets the minimum terms and conditions contained in Regulations 1.06(4) and 6.01(2), which included the following requirements at the date of these Rules:

- (a) payments are made at least annually;
- (b) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) for a Pension that has a commencement day on or after 22 December 1992 and before 1 January 2006 - the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the Regulations;
- (e) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than the following:
  - (i) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006 – the respective maximum and minimum limits for the year calculated in accordance with one of the following Schedules to the Regulations:
    - A. Schedule 1A;
    - B. Schedule 1AAB;
  - (ii) for payments made on or after 1 July 2006 – the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB;
- (f) if the pension is commuted, the resulting Superannuation Lump Sum cannot be cashed unless:
  - (i) the purpose of the commutation is:

- A. to cash an unrestricted non-preserved benefit;
  - B. to pay a superannuation contributions surcharge; or
  - C. to give effect to an entitlement of a non-member spouse under a Splitting Order; or
- (ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and
- (g) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year.

## **PART 9**

### **POST-19 SEPTEMBER 2007 MARKET LINKED PENSION**

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(8), which included the following requirements at the date of these Rules:

- (a) payments are made to the primary beneficiary or a reversionary beneficiary at least annually throughout the Pension Period;
- (b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a Splitting Order) is determined in accordance with Schedule 6 of the Regulations;
- (c) the Pension does not have a residual capital value;
- (d) the Pension cannot be commuted, except as authorised by Regulation 1.06(8);
- (e) if the Pension reverts, it does not have a reversionary component greater than the balance of the Member's Benefit Account immediately before the reversion;
- (f) if the Pension is commuted, the commutation amount cannot exceed the balance of the Member's Benefit Account immediately before the commutation;
- (g) the Pension can be transferred only as authorised by Regulation 1.06(8);
- (h) the capital value of the Pension, and the income from it, cannot be used as security for any borrowing; and
- (i) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year.

## SCHEDULE 2

### Dictionary

Many of the terms you will encounter in these Rules are specifically defined in the Superannuation Industry (Supervision) Act 1993 (Cth) or any one of a number of other pieces of Commonwealth legislation. Due to the complex nature of superannuation, the definitions used by the legislation and by the documents establishing your Fund can be difficult to read and / or understand.

Please seek professional advice if you are unsure about any matter concerning your Superannuation Fund.

The Dictionary uses plain English versions of some definitions. These must be used as a guide to interpreting these Rules. **PLEASE NOTE** that the definitions set out in the Relevant Law will apply to these Rules regardless of the terms provided in the Dictionary.

Not all of the definitions in the legislation are included in this Dictionary. If you require clarification of any defined term or have any questions about these Rules or about anything you do not understand you should immediately contact your accountant or legal advisor.

#### PART 1

##### REFERENCES TO THE ACT

- (a) Unless otherwise stated, references to sections or regulations appearing after defined terms refer to sections of the Act or regulations made under the Act.
- (b) Any terms or expressions used in these Rules which are not defined in these Rules have the meanings given to them by the Act or the Regulations as the case requires.

#### PART 2

##### DEFINITIONS

In these Rules, unless the context or subject matter requires otherwise:

**Act** means the Superannuation Industry (Supervision) Act 1993;

**Actuary** means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia; **section 10**

**Additional Insurance** means insurance effected by the Trustee to provide benefits in addition to the Trustee's liability to pay Total and Temporary Disablement Benefits, Total and Permanent Disablement Benefits or Death Benefits in accordance with Rule 5.8(b)(ii);

**Adopted Child** means a person adopted by another person under any law of (or recognised in) any state or territory of Australia relating to the adoption of children; **section 10**

**Annuity** means a benefit which meets the standards of Regulation 1.05; **Reg 1.05**

**Anti-detriment Payment**, means a payment made pursuant to Section 295-485 of the Tax Act;

**Approved Auditor** means a person included in a class of persons specified in the Regulations, but excludes a person disqualified under the Act; **section 10**

**Approved Deposit Fund** means an indefinitely continuing fund that is maintained by an Approved Trustee solely for Approved Purposes and has approved rules; **section 10**

**Approved Purposes** means the purposes of:

- (a) receiving on deposit:
  - (i) Eligible Termination Payments under section 27D of the Tax Act as in force before 1 July 2007; and
  - (ii) amounts paid under Part 24 of the Act; and
  - (iii) amounts paid under section 65 of the Superannuation Guarantee (Administration) Act 1992; and
- (b) dealing with those amounts, in accordance with the Rules and in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the Fund; and
- (c) paying to Beneficiaries (subject to any standards under section 32 of the Act) in accordance with the covenant referred to in section 53 of the Act, or to the Legal Personal Representatives of Beneficiaries, amounts deposited with the Fund together with accumulated earnings on those amounts;
- (d) any other purposes approved by APRA; **section 10**

**Approved Trustee** means a Constitutional Corporation in relation to which an approval under section 26 of the Act is in force; **section 10 section 26**

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

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

**Associate** has the meaning given by section 12 of the Act; **section 10**

**Beneficiary** means a person who has a beneficial interest in the Fund and includes, in all cases, the Legal Personal Representative of such a person; **section 10**

**Benefit Account** means an account established and maintained under Rule 9.2;

**Benefit Payment Insurance** means insurance effected by the Trustee to discharge the Trustee's liability to pay Total and Temporary Disablement Benefits, Total and Permanent Disablement Benefits or Death Benefits in accordance with Rule 5.8(b)(i);

**Binding Death Nomination** means a nomination which complies with Rule 5.4(a);

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

- (a) any freehold or leasehold interest of the Entity in real property;
- (b) any interest of the Entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or
- (c) any other class of real property prescribed as Business Real Property by the Regulations;
- (d) where the property is used wholly and exclusively in one or more businesses (whether carried on by the Entity or not), but does not include any interest held in the capacity of beneficiary of a trust estate. For the purposes of this definition, real property used in one or more Primary Production Businesses does not cease to be used wholly and exclusively in that business or those businesses only because:
  - (i) an area of the real property, not exceeding 2 hectares, contains a dwelling used primarily for domestic or private purposes; and
  - (ii) the area is also used primarily for domestic or private purposes,
  - (iii) provided that the use for domestic or private purposes is not the predominant use of the real property;

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

**Child**, in relation to a person, includes:

- (a) an Adopted Child, a step child or an ex nuptial child of the person; and
- (b) a child of the person's Spouse; and
- (c) a person who is a child of the person within the meaning of the Family Law Act 1975; **section 10**

**Civil Penalty Provision** has the meaning in section 193 of the Act;

**Collectables** means:

- (a) artwork (within the meaning of the *Income Tax Assessment Act 1997*);
- (b) jewellery;
- (c) antiques;
- (d) artefacts;
- (e) coins, medallions or bank notes;
- (f) postage stamps or first day covers;
- (g) rare folios, manuscripts or books;
- (h) memorabilia;
- (i) wine or spirits;
- (j) motor vehicles;
- (k) recreational boats;
- (l) memberships of sporting or social clubs;

**Condition of Release** means a condition of release specified in Column 2 of Schedule 1 to the Regulations;

**Constitutional Corporation** means a trading corporation or a financial corporation formed within the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); **section 10**

**Contributions Cap** means a Member's concessional contributions cap or non-concessional contributions cap for the purposes of the Income Tax Assessment Act 1997; **section 291-20 and section 292-85**

**Control**, for the purpose of Part 8 has the meaning given in section 70E of the Act;

**Corporate Trustee** means a Constitutional Corporation that is a Trustee; **section 10**

**Corporations Act** means the Corporations Act 2001;

**Custodian** means a person (other than a Trustee) who, under a contract with a Trustee or an Investment Manager, performs custodial functions in relation to any of the assets of the Fund; **section 10**

**Death Benefit** means a benefit payable under Rule 5.3(g);

**Death Benefit Pension**, means a new pension which commences to be payable from the Fund to a beneficiary of a deceased Member, after that Member's death;

**Defined Benefit Pension** means a Pension, other than:

- (a) a pension wholly determined by reference to policies of life assurance purchased or obtained by the Trustee solely to provide benefits to Members; or
- (b) an Allocated Pension; or
- (c) a Post-19 September 2007 Market Linked Pension; or
- (d) an Account Based Pension; or
- (e) a Transition to Retirement Pension;

**Dependant** includes a Spouse, any Child and any person with whom a person has an Interdependency Relationship; **section 10**

**Designated Beneficiary** means any Dependant of a Member who is named as a Designated Beneficiary in a Membership Application;

**Director** has the same meaning as in the Corporations Act;

**Disqualified Person** means:

- (a) an individual who:
  - (i) has been convicted of an offence in respect of dishonest conduct against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, or has had a civil penalty order made in relation to them and that individual has not been granted a waiver by the Regulator of their disqualified status;
  - (ii) is an Insolvent Under Administration; or
  - (iii) has been disqualified by the Regulator;
- (b) a corporation which:
  - (i) knows or has reasonable grounds to suspect that a responsible officer is a disqualified person under (i) above;
  - (ii) has a receiver, or a receiver and manager appointed in respect of property beneficially owned by the corporation;
  - (iii) has an official manager, deputy official manager or administrator appointed in respect of the corporation;
  - (iv) has a provisional liquidator appointed in respect of the corporation; or
  - (v) has begun to be wound up.

**Downsizer Contribution** means a contribution covered under section 292-102 of the Income Tax Assessment Act 1997;

**Dwelling** has the meaning given by section 118-115 of the Income Tax Assessment Act 1997, but does not include a caravan, houseboat or other mobile home;

**Eligible Employment** means:

- (a) the holding of any office or appointment;
- (b) the performance of any functions or duties;
- (c) the engaging in of any work; or
- (d) the doing of any act or things,

that results in a person being treated as an employee for the purposes of section 12 of the Superannuation Guarantee (Administration) Act 1992 (but excluding section 12(11) of that Act);

**Eligible Person** means any person, except someone who is engaged in Eligible Employment during part or all of a Year of Income, unless the following formula applies to that year:

[Assessable income + reportable fringe benefits] from Eligible Employment  
is less than 10% of

[Assessable income + exempt income + reportable fringe benefits] from all sources.

**Eligible Termination Payment** has the meaning in Subdivision AA of Division 2 of Part III of the Tax Act; **Reg 1.03**

**Employee** has its natural meaning as that meaning is contained and expanded by section 15A of the Act; **section 10 section 15A**

**Employer** has its natural meaning as that meaning is contained and expanded by section 15A of the Act; **section 10 section 15A**

**Employer Sponsor** means an Employer who does or would contribute to the Fund for the benefit of:

- (a) a Member who is an Employee of the Employer or its Associate; or
- (b) the Dependants of the Member on the death of the Member; **section 16**

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

**EPSSS** means an exempt public sector superannuation scheme; **Reg 1.03**

**Excluded Instalment Trust** means a trust:

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

**Family Law Act** means the Family Law Act 1975;

**Full-time** means Gainfully Employed for at least 30 hours each week; **Reg 1.03**

**Fund** means the Superannuation Fund created upon the execution of these Rules;

**Gainfully Employed** or **Gainful Employment** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment; **Reg 1.03**

**Governing Rules** or **Rules** means the governing rules (as defined in the Act) of the Fund which include these rules and any provision applied to the Fund by any Relevant Law; **section 10**

**Government Co-contributions** means contributions made in respect of a Member by the Government under the Superannuation (Government Co-contribution for Low Income Earners) Act 2003;

**Illiquid Investment** in relation to a Member's interest in the Fund means an investment of a nature that produces either of the following outcomes:

- (a) It cannot be converted to cash in less than the time required to roll over or transfer a withdrawal benefit under Rule 6.2(e).
- (b) Converting it to cash within the time period specified under Rule 6.2(e) would be likely to have a significant adverse impact on the realisable value of the investment. **Reg 6.31**

**Indexation Arrangement**, in relation to a Pension, means an arrangement specified in the rules for the provision of the pension:

- (a) the purpose of which is to maintain over time the purchasing power of the pension relative to the CPI; and
- (b) that:
  - (i) ensures that an adjustment will be made at least annually to the amount of the pension payments; or
  - (ii) has been approved by APRA. **Reg 1.06**

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

- (a) is an undischarged bankrupt under the Bankruptcy Act 1966 or the law of an external Territory or a foreign country; or
- (b) has the status of an undischarged bankrupt under the law of any country other than Australia or of an external Territory;
- (c) and includes:



- (d) a person, any of whose property is subject to control under section 150 or 188 of the Bankruptcy Act 1966, or a corresponding provision of the law of an external Territory or of a foreign country; or
- (e) a person who has, at any time, executed a personal insolvency agreement under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or of a foreign country and the person has not been released from obligations under that Act or law; **section 10**

**Interdependency Relationship** means circumstances in which 2 persons (whether or not related by family):

- (a) have a close personal relationship, live together, one or each of them provides the other with financial support and one or each of them provides the other with domestic support and personal care; or
- (b) have a close personal relationship but do not satisfy paragraph (a) because either or both of them suffer from a physical, intellectual or psychiatric disability,

but excludes relationships which are excluded by the Regulations; **section 10 section 10A**

**Investment Manager** means a person appointed by a Trustee to Invest on behalf of the Trustee; **section 10**

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

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

**Legal Disability or Legally Disabled** in relation to a natural person means a lack of legal capacity because the person is:

- (a) a minor;
- (b) an intellectually disabled person who is liable to have their affairs administered by another person under any law dealing with the intellectually disabled; or
- (c) suffering from a mental illness or is mentally disabled and who is liable to have their affairs administered by another person under any law dealing with mental health or the mentally disabled;

**Legal Personal Representative** means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person;

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

**Mandated Employer Contributions** means contributions required to be made by, or on behalf of, an Employer that are equal to the sum of:

- (a) the contributions to be made by, or on behalf of, the Employer to the Fund in relation to a Member, that:
  - (i) reduce the Employer's potential liability under section 5 of the Superannuation Guarantee Charge Act 1992; or
  - (ii) are payments of shortfall components under the Superannuation Guarantee (Administration) Act 1992; and
- (b) the contributions (other than contributions specified in (i)) to be made by, or on behalf of, the Employer to the Fund in relation to a Member in or towards satisfaction of the Employer's obligation to make contributions for the Member under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority;

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

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale; and
- (b) that the sale occurred after proper marketing of the asset; and
- (c) that the buyer and the seller acted knowledgeably and prudentially in relation to the sale; **section 10**

**Member** means any person who has become a member of the Fund in accordance with these Rules and who has not ceased to be a Member, and:

- (a) where the Fund is a Self Managed Superannuation Fund; or
- (b) in all other cases, unless the Trustee declares otherwise by resolution in writing,

includes a person who receives a Pension, or who has deferred his or her entitlement to receive a benefit from the Fund; **section 10**

**Membership Application** means a written application to be admitted as a Member in a form which the Trustee approves;

**Member-contributed NSW Property** means dutiable property for the purposes of the Duties Act 1997 (New South Wales), which is transferred to the Trustee of the Fund by a Transferor and, in respect of which property, stamp duty has been assessed and paid under section 62A of the Duties Act 1997 (New South Wales), and includes the proceeds of the sale of the whole or part of any such property;

**Member-contributed WA Property** means dutiable property for the purposes of the Duties Act 2008 (Western Australia), which is transferred for consideration to the Trustee of the Fund by a Transferor and, in respect of which property, stamp duty has been assessed and paid under section 122 of the Duties Act 2008 (Western Australia), and includes the proceeds of the sale of the whole or part of any such property;

**Minimum Benefit** means all of a Member's benefits in the Fund;

**Non-lapsing Binding Nomination** means a nomination, the form of which is approved by the Trustee and which complies with Rule 5.5(a);

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

- (a) cannot be commuted;
- (b) is paid at least monthly;

does not have a residual capital value; and

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

**Non-concessional Contribution** has the meaning given in the Income Tax Assessment Act 1997; **section 995-1 and section 292-90**

**Non-member Spouse** means a person who is the non-member spouse in relation to a Payment Split; **Reg 1.03**

**Normal Retirement Benefit** is the benefit to which a Member who meets the criteria set out in Rules 5.2(a) or 5.2(b) is entitled and which is calculated in accordance with Rules 5.3(b) and 5.3(c);

**Normal Retirement Date**, subject to the Act or Regulations, means the earlier of:

- (a) the date on which the relevant Member ceases to be Gainfully Employed; or
- (b) the date on which the relevant Member attains the age of 65 years;

**Old-age Pension** has the meaning in paragraph 51(xxiii) of the Constitution; **section 10**

**Ownership Interest** has the meaning given by section 118-130 of the Income Tax Assessment Act 1997;

**Part 8 Associate**, in relation to an Entity has the meanings given in Subdivision B of Part 8 of the Act;

**Part-time Basis** means Gainfully Employed for at least 40 hours in a period of 30 consecutive days during a Year of Income;

**Part-time Equivalent Level** means Gainfully Employed for at least 240 hours in the last preceding Year of Income;

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

**Pension**, except in the expression **Old-age Pension**, includes a benefit provided by the Fund, if the benefit is taken, under the Regulations, to be a pension for the purposes of the Act; **section 10**

**Pension Date** means the date on which payment of a Pension commences;

**Pension Period** means a period in years, nominated by the primary beneficiary which is equal to one only of:

- (a) the primary beneficiary's life expectancy on the Pension Date;
- (b) if the Pension Date is after 19 September 2004 and before 1 January 2006, the primary beneficiary's life expectancy calculated, as if the primary beneficiary were up to 5 years younger on the Pension Date;

- (c) any amount up to and including the difference between the primary beneficiary's age in whole years at the Pension Date and 100, so long as that amount is not less than the primary beneficiary's life expectancy;
- (d) the life expectancy of the primary beneficiary's Spouse on the Pension Date, if the Pension is one that reverts to a surviving Spouse on the death of the primary beneficiary; or
- (e) the life expectancy of the primary beneficiary's Spouse calculated as if the spouse were up to 5 years younger on the Pension Date, if the Pension is one that reverts to a surviving Spouse on the death of the primary beneficiary,

rounded up to the nearest whole number;

**Personal Interest** means an interest of a person being, or arising out of, or which could arise out of any one or any combination of more than one of:

- (a) a position as Trustee, director of a Corporate Trustee or a Member;
- (b) any office, position or employment held in or relating to the Fund or a Member;
- (c) any office, position or employment held in or relating to any person, company, body corporate, association or partnership;
- (d) membership of, or an interest in, or relating to, any company, trust, body corporate, association or partnership;
- (e) any relationship as debtor or creditor to any person, trust, company, body corporate, association or partnership;
- (f) any transaction or instrument to which any person is a party or is in any way interested;
- (g) without limitation, any other interest or duty to another person which conflicts with, or may possibly conflict with, another obligation,

regardless of whether the relevant person is acting personally or in another capacity and/or whether the person is acting in more than one capacity at a relevant time.

**Post-June 83 Component** has the meaning given by Section 27A of the Income Tax Assessment Act 1936;

**Preservation Age** means:

- (a) for a person born before 1 July 1960--55 years; or
- (b) for a person born during the year 1 July 1960 to 30 June 1961--56 years; or
- (c) for a person born during the year 1 July 1961 to 30 June 1962--57 years; or
- (d) for a person born during the year 1 July 1962 to 30 June 1963--58 years; or
- (e) for a person born during the year 1 July 1963 to 30 June 1964--59 years; or
- (f) for a person born after 30 June 1964--60 years.

**Preserved Benefits** means the total of all benefits and entitlements standing to the credit of the Member's Benefit Account, less the sum of:

- (a) Restricted Non-preserved Benefits; and
- (b) Unrestricted Non-preserved Benefits;

**Primary Production Business** has the meaning given by the Income Tax Assessment Act 1997;

**PDS** or **Product Disclosure Statement** has the meaning given by the Corporations Act;

**Regulated Superannuation Fund** means a Superannuation Fund which has a trustee and:

- (a) the trustee is a Constitutional Corporation as required by its trust deed or governing rules; or
- (b) the trust deed or governing rules provide that the sole or primary purpose of the fund is the provision of Old-age Pensions,
- (c) and in relation to which the trustee has elected in writing in a form approved by the Regulator that the Act will apply to the fund; **section 10 section 19**

**Regulations** means the Superannuation Industry (Supervision) Regulations 1994;

**Regulator** means the body having the responsibility for administering the Act and the activities of the Fund and includes APRA, ASIC or the Taxation Commissioner; **section 10**

**Related Party** means any of the following:

- (a) a Member;

- (b) a Standard Employer Sponsor;
- (c) a Part 8 Associate of a person or entity referred to in paragraph (a) or (b); or
- (d) a Non-member Spouse with a Superannuation Interest;

**Related Trust** means a trust over which a Member or a Standard Employer Sponsor has Control, other than an Excluded Instalment Trust;

**Relative** of an individual (except in Rule 1.6) means the following:

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or Adopted Child of the individual or of his or her Spouse;
- (b) the Spouse of the individual or of any other individual referred to in paragraph (a),

and for the purposes of paragraph (a), if one individual is the child of another individual because of the definition of Child in these Rules, relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual;

**Relevant Law** means the Act and Regulations, the Tax Act, the Corporations Act and any other laws governing the provision of superannuation and retirement benefits in Australia, from time to time and any regulations made under them;

**Restricted Non-preserved Benefits** means the total of the amount of any restricted non-preserved benefits that are received from another Regulated Superannuation Fund, a Retirement Savings Account established under the Retirement Savings Account Act 1997, or an EPSSS;

**Retire** means:

- (a) where a person has reached their preservation age and is less than 60 years, an arrangement under which the Member was Gainfully Employed has come to an end and the Trustee is reasonably satisfied that the Member intends never again to become Gainfully Employed on at least a Part-time Basis;
- (b) where a person is at least aged 60 years and less than 65 years, an arrangement under which the Member was Gainfully Employed ceased on or after the Member's 60th birthday;
- (c) where a person is at least aged 65 years, this definition is not relevant, as other provisions govern the permissibility or compulsion to take superannuation benefits;

**Retirement Phase** has the meaning given in the Income Tax Assessment Act 1997; **section 995-1 and section 307-80**

**Reversionary Pension** means a Pension which continues to be paid to one or more reversionary beneficiaries after the death of the Member who was receiving that Pension immediately before his or her death;

**RSA or Retirement Savings Account** has the meaning given in the Act; **section 10 and section 8 of the Retirement Savings Accounts Act 1997**

**Self Managed Superannuation Fund or SMSF**, has the meaning in Rule 1.6;

**Splittable Contribution** has the meaning given in Rule 6.4(a);

**Splitting Order** means a splitting order under Part VIIIB of the Family Law Act 1975;

**Spouse** of a person includes:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of Section 22B of the Acts Interpretation Act 1901 (Cth) as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple; **section 10**

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

**Superannuation Fund** means:

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

**Superannuation Interest** means a beneficial interest in the Fund; **section 10**

**Superannuation Lump Sum** has the meaning given by subsection 995-1(1) of the Tax Act;

**Tax Act** means, as the case requires, the Income Tax Assessment Act 1936, or the Income Tax Assessment Act 1997;

**Taxation Commissioner** means the person appointed or acting as the Commissioner of Taxation under the Taxation Administration Act 1953;

**Temporary Incapacity** means ill-health (whether physical or mental) that caused a Member to cease to be Gainfully Employed but does not constitute Total and Permanent Disablement;

**Terminal Illness Benefit** means a benefit payable under Rule 5.3(f);

**Terminally Ill** means a condition that the Member is suffering, which two medical practitioners (at least one of these a specialist) certify would, in the normal course, result in death within a period of 24 months;

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

**Total and Permanent Disablement Benefit** means a benefit payable under Rule 5.3(d);

**Total and Temporary Disablement Benefit** means a benefit payable under Rule 5.3(e);

**Transfer Balance Cap** has the meaning given in the Income Tax Assessment Act 1997; **section 995-1 and section 294-35 and section 294-185**

**Transferor** means a Member who transfers Member-contributed WA Property or Member-contributed NSW Property to the Trustee in its capacity as trustee of the Fund;

**Trustee** means the first Trustee of the Fund and / or any other person appointed as an addition to or replacement or substitute for that person. The Trustee may be one or more persons at any time;

**Unrestricted Non-preserved Benefits** means the sum of:

- (a) the total of the Member's Unrestricted Non-preserved Contributions;
- (b) the amount of the Member's Preserved Benefits and Restricted Non-preserved Benefits which have met a Condition of Release and have a nil Cashing Restriction;
- (c) the amount of unrestricted non-preserved benefits received by the Fund in respect of the Member on or after the day on which the Fund becomes a Regulated Superannuation Fund; and
- (d) the investment earnings on the amounts specified in paragraphs (a) and (c) for the period before 1 July 1999,

less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the amounts in (a) to (d) above at the relevant time;

**Unrestricted Non-preserved Contributions** means the amounts (other than an amount that is a CGT Exempt Component as defined in the Tax Act):

- (a) that will be taken by section 27D of the Tax Act as in force before 1 July 2007 to have been expended out of Eligible Termination Payments within the meaning of that section; and
- (b) that have been received from sources other than:
  - (i) superannuation funds;
  - (ii) Approved Deposit Funds within the meaning of the Act or the Occupational Superannuation Standards Act 1987 as in force immediately before the commencement of section 5 of the Occupational Superannuation Standards Amendment Act 1993; or
  - (iii) deferred annuities within the meaning of Rule 5 or the Occupational Superannuation Standards Regulations; or
  - (iv) Retirement Savings Accounts established in accordance with the Retirement Savings Accounts Act 1997;

**Year of Income** means the period from 1 July of a calendar year to 30 June of the following calendar year, unless any other period applicable to the Fund is, for the purposes of the Tax Act, a year of income of the Fund. **section 10**

**For further information please contact your accountant, financial planner, lawyer or other advisor or go to [www.ato.gov.au](http://www.ato.gov.au).**