

- 21.2 Any such amendment, addition or variation must be effected by a Deed executed by the Trustee and the Members with effect from a date (being a previous or future date) specified by the Trustee or if none is specified from the date the amendment is actually effected.
- 21.3 No amendment may alter adversely a Member's right or claim to accrued benefits or the amount of those accrued benefits unless:-
- 21.3.1 where required, the consent of the affected Member and/or the Regulator is obtained in accordance with the Relevant Law;
- 21.3.2 the alteration is necessary to comply with or is of a kind expressly permitted by the Relevant Law; or
- 21.3.3 the alteration is of a kind permitted by the Regulations.
- 21.4 The Trustee shall give to each Member such information or notice in respect of the amendment(s) as may be required by the Relevant Law.

22. MEMBERSHIP OF THE FUND

- 22.1 The Trustee may invite any Eligible Person to participate in the Fund.
- 22.2 Each Eligible Person invited to participate in the Fund shall apply in writing to the Trustee for admission to Membership of the Fund in a form prescribed by the Trustee.
- 22.3 The Trustee may accept or refuse any application for Membership in its absolute discretion and shall not be required to give any reason for any such refusal.
- 22.4 Subject to Clause 22.6, a person shall become a Member when the Trustee approves such application and Membership may be granted with effect from a date (being a previous or future date) specified by the Trustee or if none is specified from the date the application is actually approved. Before any contributions in respect of the newly approved Member are made, the Trustee shall provide a written statement advising of its acceptance of the Member's application.
- 22.5 Each Member by his application shall be deemed to have assented to and to have consented to be bound by the provisions of this Deed.
- 22.6 Upon being accepted as a Member of the Fund, the new Member shall be required to consent to:-
- 22.6.1 being appointed as a Trustee of the Fund where the Trustee is comprised of individuals; or
- 22.6.2 being appointed as a Director of the Trustee of the Fund where the Trustee is a constitutional corporation.
- 22.7 A Member shall cease to be a Member in the event of the first of the following:-
- 22.7.1 the Trustee determines that the Member has been paid all of his or her Benefits from the Fund;
- 22.7.2 where the Member dies, the Trustee determines that the deceased Member's Benefits have been paid to the deceased Member's Dependents or legal personal representative;
- 22.7.3 the Trustee determines that the Member's continued Membership would cause the Fund to cease complying with the Relevant Law; or
- 22.7.4 the Trustee determines on reasonable grounds that the Member should cease to be a Member.
- 22.8 The legal personal representative of:-
- 22.8.1 a deceased Member;
- 22.8.2 a Member who has lost legal capacity; or
- 22.8.3 a Member who has appointed that legal personal representative as their attorney under an enduring power of attorney,
- may exercise the Member's decision-making power as a Member and as a Trustee (where the Trustee of the Fund is comprised of individuals) on behalf of the Member, without the necessity of the legal personal representative being appointed as Trustee or a Member in place of that Member.

- 22.9 The legal personal representative of:-
- 22.9.1 a deceased Member;
 - 22.9.2 a Member who has lost legal capacity; or
 - 22.9.3 a Member who has appointed that legal personal representative as their attorney under an enduring power of attorney,
- shall not be entitled to revoke or vary a Binding Death Benefit Nomination or Reversionary Pension Nomination made by a Member or make such a Binding Death Benefit Nomination or Reversionary Pension Nomination on behalf of a Member.

23. CONTRIBUTIONS

23.1 PERSONS PERMITTED TO MAKE CONTRIBUTIONS

With the consent of the Trustee and subject to any provision of this Deed to the contrary, any person including:-

- 23.1.1 a Member;
- 23.1.2 an Employer;
- 23.1.3 any State, Territory or Federal government (including under the Federal government's co-contribution scheme); or
- 23.1.4 any other person permitted to make Contributions in respect of a Member under the Relevant Law,

may make Contributions to the Fund from time to time in respect of the Member.

23.2 ACCEPTANCE OF CONTRIBUTIONS

The Trustee may, in its discretion, accept Contributions made by or in respect of a Member in circumstances permitted by the Relevant Law.

23.3 REFUSAL OF EXCESS CONTRIBUTIONS

The Trustee may, but is not required to, refuse to accept some or all Contributions that it reasonably believes would cause the Member to exceed his or her Concessional Contributions Cap or Non-Concessional Contributions Cap.

23.4 ALLOCATION OF CONTRIBUTIONS

If the Trustee receives a contribution in a month, the Trustee must allocate the contribution to the relevant Member:-

- 23.4.1 within twenty-eight (28) days after the end of the month; or
- 23.4.2 if it is not reasonably practicable to allocate the contribution to the relevant Member within twenty-eight (28) days after the end of the month – within such longer period as is reasonable in the circumstances.

23.5 SPOUSE CONTRIBUTIONS SPLITTING

23.5.1 This Clause 23.5 does not apply to so much of a Member's Benefit in the Fund that is subject to a payment split or on which a payment flag is operating under Part VIIIB of the *Family Law Act 1975* (Cth).

23.5.2 A Member may, in a financial year, apply to the Trustee to rollover, transfer or allot an amount of his or her Benefits for the benefit of the Member's Spouse that is equal to the amount of Splittable Contributions made to the Fund by, for or on behalf of the Member in either:-

- 23.5.2.1 the last financial year that ended before the relevant application; or
- 23.5.2.2 the financial year the relevant application is made in where the Member's entire Benefits are to be rolled over, transferred or cashed in that year.

23.5.3 An application made under this Clause 23.5 is invalid:-

- 23.5.3.1 if in the financial year it is made:-

- 23.5.3.1.1 the Member has already made an application in respect of the relevant financial year; and
 - 23.5.3.1.2 the Trustee is either considering the application or has given effect to that application; or
- 23.5.3.2 if the amount of the Benefits to which the application relates exceeds the Maximum Splittable Amount; or
- 23.5.3.3 subject to Clause 23.5.4, if at the time of the application:–
 - 23.5.3.3.1 the Member's Spouse is aged between Preservation Age and 65 years; and
 - 23.5.3.3.2 the Member's Spouse satisfies the condition of release specified in Item 101 of Schedule 1 of the Regulations.
- 23.5.4 Despite Clause 23.5.3.3, an application is not invalid under that Clause if it includes a statement by the Member's Spouse to the effect that, at the time of the application, the Spouse:–
 - 23.5.4.1 is aged between Preservation Age and 65 years; and
 - 23.5.4.2 does not satisfy the condition of release specified in Item 101 of Schedule 1 of the Regulations.
- 23.5.5 The Member must specify in the application the amount of the Benefit the Member wishes to split for the benefit of the Member's Spouse, from the following:–
 - 23.5.5.1 the Member's Taxed Splittable Contributions;
 - 23.5.5.2 the Member's Untaxed Splittable Contributions;
 - 23.5.5.3 the Member's Untaxed Splittable Employer Contributions.
- 23.5.6 The Trustee may in its sole discretion accept an application made under Clause 23.5.2 if:–
 - 23.5.6.1 the application complies with Clauses 23.5.2 to 23.5.5; and
 - 23.5.6.2 the Trustee has no reason to believe that the statement referred to in Clause 23.5.4 is untrue; and
 - 23.5.6.3 the amount to which the application relates does not exceed the Maximum Splittable Amount for the relevant Financial Year.
- 23.5.7 Where the Trustee accepts an application under this Clause 23.5, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application roll over, transfer to an Approved Fund, or allot the amount of the Splittable Contribution that is the subject of the application for the benefit of the Member's Spouse.
- 23.5.8 Before the Trustee allots any amount under Clause 23.5.7 for the benefit of the Spouse:–
 - 23.5.8.1 where the Fund is a Self Managed Superannuation Fund, the Trustee must ensure that the definition of Self Managed Superannuation Fund is satisfied by appointing him or her as a director of the Trustee company or as an individual Trustee; and
 - 23.5.8.2 either, the Spouse must:–
 - 23.5.8.2.1 be a Member; or
 - 23.5.8.2.2 apply to become and be accepted as a Member.
- 23.5.9 If a Member requests a split of his or her Untaxed Splittable Contributions, Taxed Splittable Contributions or his or her Untaxed Splittable Employer Contributions the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the amount permitted by the Regulations.

23.6 RETURN OF CONTRIBUTIONS -**23.6.1 If Contributions are:-**

- 23.6.1.1 accepted by the Trustee in breach of the Relevant Law or this Deed;
- 23.6.1.2 accepted by or made to the Trustee by mistake; or
- 23.6.1.3 required to be returned to the contributor or another party by the Regulator or by order of a court or tribunal,

the Trustee must return such amount of the Contributions referred to above as determined by the Trustee or as required by the Regulator or order of a court or tribunal provided that the return of the Contributions and the amount of the Contributions determined by the Trustee to be returned are permitted by the Relevant Law.

- 23.6.2 For the avoidance of doubt, the Trustee is authorised to take into account any of the matters outlined in the Relevant Law, including Regulation 7.04(4)(b) of the Regulations where applicable, in determining the amount of the Contributions to be returned.

ACCOUNTS**24.1 ACCUMULATION ACCOUNTS**

An account shall be established and maintained for each Member or Beneficiary of the Fund (herein called the **Accumulation Account**).

24.1.1 Credits to Accumulation Accounts

The following amounts may be credited to the appropriate Accumulation Account:-

- 24.1.1.1 the transfer of credit amounts held in the name of a Member previously held in an Approved Fund;
- 24.1.1.2 a Directed Termination Payment made on the Member's behalf;
- 24.1.1.3 any Contributions made pursuant to this Deed;
- 24.1.1.4 the proceeds of any claim made on Insurance Cover;
- 24.1.1.5 transfers from the Operating Account;
- 24.1.1.6 transfers from any Reserve Account;
- 24.1.1.7 transfers from a Member's Pension account;
- 24.1.1.8 transfers, rollovers or allotments from an account held by a Member's Spouse in the Fund or any other Complying Superannuation Fund as permitted under the Relevant Law dealing with spouse contributions-splitting;
- 24.1.1.9 such other amounts as the Trustee shall determine from time to time and which shall not result in the Fund ceasing to be a Complying Superannuation Fund.

24.1.2 Debits to Accumulation Accounts

The following amounts may be debited to the appropriate Accumulation Account:-

- 24.1.2.1 transfers to an Approved Fund made at the written request of a Member;
- 24.1.2.2 transfers to the Operating Account;
- 24.1.2.3 transfers to any Reserve Account;
- 24.1.2.4 transfers to a Member's Pension account;
- 24.1.2.5 transfers, rollovers or allotments to an account held by a Member's Spouse in the Fund or any other Complying Superannuation Fund as permitted under the Relevant Law dealing with spouse contributions-splitting;
- 24.1.2.6 any costs or expenses incurred by the Trustee which are specific to a Member, including but not limited to Insurance Cover premiums and any other costs

- 24.1.2.7 payment of a Benefit (other than payment from a Pension Account) to a Member or the Dependants or Beneficiaries of that Member;
- 24.1.2.8 purchase of an Annuity in relation to a Member or Beneficiary;
- 24.1.2.9 any Taxation, costs, charges and expenses and provisions in respect of any of them as the Trustee may determine;
- 24.1.2.10 such other amounts as the Trustee shall determine from time to time.

24.1.3 Preservation and Cashing Restrictions

In keeping records for the Fund and its Members, the Trustee shall be required to maintain records to show in relation to a Members' Accumulation Account:-

- 24.1.3.1 the amount that is required to be preserved;
- 24.1.3.2 the amount that is a restricted non-preserved benefit; and
- 24.1.3.3 the amount is an unrestricted non-preserved benefit.

24.2 OPERATING ACCOUNT

An account shall be established and maintained through which all operating transactions for the Fund shall be conducted (herein called the **Operating Account**).

24.2.1 Credits to the Operating Account

The following amounts may be credited to the Operating Account:-

- 24.2.1.1 all income and profits derived from investments of the Fund as they arise (specifically excluding Benefits that have been rolled over or transferred into the Fund);
- 24.2.1.2 any unrealised gain arising from a revaluation of the assets of the Fund;
- 24.2.1.3 any adjustments necessarily or desirably made to a Member's accumulation account or a Member's Pension account;
- 24.2.1.4 any amount transferred from a Reserve Account;
- 24.2.1.5 the proceeds of any insurance policy which necessarily or desirably should not be transferred to a Member's accumulation account;
- 24.2.1.6 such other amounts as the Trustee shall determine from time to time.

24.2.2 Debits to the Operating Account

Subject to Clause 24.2.3, the following amounts may be debited to the Operating Account:-

- 24.2.2.1 any loss realised on the sale or disposal of any asset of the Fund;
- 24.2.2.2 any Taxation, costs, charges and expenses which have not been debited to a Member's accumulation account;
- 24.2.2.3 any unrealised loss arising from a revaluation of the assets of the Fund;
- 24.2.2.4 any costs or expenses incurred by the Trustee related to the purchase or continuance of any Insurance Cover for the benefit of any Member or a Dependant or Dependants of any Member which have not been debited to a Member's accumulation account;
- 24.2.2.5 any amount transferred to a Reserve Account;
- 24.2.2.6 such other amounts as the Trustee shall determine from time to time,

and, at the end of each financial year (or on an interim basis, if required), after having made all relevant credits and debits to the Operating Account, the Trustee, having regard to any requirement to create any provisions or reserves, shall determine the earnings rate (whether positive or negative) for the Fund and shall then transfer to (or from) the Accumulation Account

assets held by the Fund, or on such other basis as the Trustee determines to be fair and reasonable.

24.2.3 Multiple Operating Accounts

If the Trustee has provided to one or more Members or Beneficiaries investment choice in accordance with Clause 15, the Trustee shall create a separate Member's Operating Account or Beneficiary's Operating Account for each such Member or Beneficiary to facilitate the calculation of earning rate for the investment strategy or strategies chosen by such Members or Beneficiaries. The Trustee shall determine in its absolute discretion the amounts and type of debits which are to be borne by each separate Member's Operating Account or Beneficiary's Operating Account.

24.3 OPERATING RESERVE ACCOUNT

24.3.1 The Trustee may in its absolute discretion establish one or more operating reserve accounts (herein called "**Operating Reserve Account**") at any time and transfer to an Operating Reserve Account amounts derived from:-

- 24.3.1.1 a Member's accumulation account; or
- 24.3.1.2 a Member's Pension account; or
- 24.3.1.3 an Operating Account; or
- 24.3.1.4 another Operating Reserve Account; or
- 24.3.1.5 a Pension Reserve Account,

provided such transfers are permitted by the Relevant Law and provided that the resulting balance of a Member's accumulation account or a Member's Pension account does not fall below the minimum balance required to be maintained by the Relevant Law.

24.3.2 The Trustee may transfer an amount from an Operating Reserve Account and credit that amount to:-

- 24.3.2.1 a Member's accumulation account; or
- 24.3.2.2 a Member's Pension account; or
- 24.3.2.3 an Operating Account; or
- 24.3.2.4 another Operating Reserve Account; or
- 24.3.2.5 a Pension Reserve Account,

provided such transfers are permitted by the Relevant Law.

24.3.3 Funds standing to the credit of an Operating Reserve Account shall not be deemed to form part of any other Account.

24.3.4 Income earned on the funds held in an Operating Reserve Account shall be credited to that Operating Reserve Account.

24.4 PENSION RESERVE ACCOUNT

24.4.1 The Trustee may in its absolute discretion establish one or more pension reserve accounts (herein called "**Pension Reserve Accounts**") at any time and transfer to a Pension Reserve Account amounts derived from:-

- 24.4.1.1 a Member's accumulation account; or
- 24.4.1.2 a Member's Pension account; or
- 24.4.1.3 an Operating Account; or
- 24.4.1.4 an Operating Reserve Account; or
- 24.4.1.5 another Pension Reserve Account,

- 24.4.2 The Trustee may transfer an amount from a Pension Reserve Account and credit that amount to:—
- 24.4.2.1 a Member's accumulation account; or
 - 24.4.2.2 a Member's Pension account; or
 - 24.4.2.3 an Operating Account; or
 - 24.4.2.4 an Operating Reserve Account; or
 - 24.4.2.5 another Pension Reserve Account,
- provided such transfers are permitted by the Relevant Law.
- 24.4.3 Funds standing to the credit of a Pension Reserve Account shall not be deemed to form part of any other Account.
- 24.4.4 Income earned on the funds held in a Pension Reserve Account shall be credited to that Pension Reserve Account.

24.5 UNALLOCATED CONTRIBUTIONS ACCOUNT

- 24.5.1 The Trustee may in its absolute discretion establish one or more unallocated contributions accounts (herein called "**Unallocated Contributions Accounts**") at any time and transfer to an Unallocated Contributions Account amounts derived from:—
- 24.5.1.1 contributions made by or on behalf of a Member in circumstances permitted by the Regulations; and
 - 24.5.1.2 contributions in a form other than cash, including in-specie contributions, made by or on behalf of a Member,
- provided such transfers are permitted by Division 7.2 of the SIS Regulations and the Relevant Law.
- 24.5.2 The Trustee may transfer an amount from an Unallocated Contributions Account and credit that amount to:—
- 24.5.2.1 a Member's accumulation account; or
 - 24.5.2.2 a Member's Pension account; or
 - 24.5.2.3 an Operating Account; or
 - 24.5.2.4 an Operating Reserve Account; or
 - 24.5.2.5 another Unallocated Contributions Account,
- provided such transfers are permitted by Division 7.2 of the SIS Regulations and the Relevant Law.
- 24.5.3 Funds standing to the credit of an Unallocated Contributions Account shall not be deemed to form part of any other account.
- 24.5.4 Income earned on the funds held in an Unallocated Contributions Account shall be credited to that Unallocated Contributions Account.

BENEFITS RELATING TO PAYMENT SPLITS AND FLAGGING

25.1 PAYMENT SPLITS

If the Trustee receives a splitting agreement or court order under Part VIII B of the *Family Law Act 1975* (Cth), then so long as it has been properly served and subject to the Relevant Law, the Trustee may:—

- 25.1.1 adjust, vary or reduce any benefit payable or which may become payable from the Fund in respect of the relevant Member on such bases (including by commutation of any pension having regard to the advice of the Actuary) and at such times as the Trustee determines from time to time, to the extent permitted by the Relevant Law; and

25.2 RULES FOR PAYMENT SPLITS

The Trustee may make rules dealing with:–

25.2.1 the valuation of the interest of the Non-Member Spouse (including any adjustments); and

25.2.2 the timing of the calculation of the value of the interest of the Non-Member Spouse; and

25.2.3 other matters relating to the payment split and the Non-Member Spouse's interest in the Fund, as it determines from time to time subject to the Relevant Law.

25.3 DEFERRED PAYMENT SPLITS

If the Trustee is required by the Relevant Law or considers that it is appropriate to defer giving effect to a payment split, then so long as the splitting agreement or court order under Part VIII B of the *Family Law Act 1975* (Cth) has been served properly, the Trustee shall:–

25.3.1 record the existence of the notice of payment split; and

25.3.2 keep a record of the Non-Member Spouse's interest in the Fund on such bases (including a notional basis) and in such manner as the Trustee determines from time to time subject to the Relevant Law.

25.4 FLAGGING AGREEMENTS

If the Trustee receives a flagging agreement or court order Under Part VIII B of the *Family Law Act 1975* (Cth) that has been properly served, the Trustee shall:–

25.4.1 record the existence of the agreement or court order; and

25.4.2 defer payment of the benefit to or in respect of the Member until the agreement or Court Order is lifted.

26. STATEMENTS TO MEMBERS

26.1 To the extent required by the Relevant Law, the Trustee must give to each Member who is not a Pensioner a written statement each year setting out:–

26.1.1 the amount of any Benefit accrued in the Member's accumulation account at the commencement of the first day of the year of income to which the statement relates;

26.1.2 the amount of any Benefit accrued in the Member's accumulation account at the expiration of the last day of that year of income;

26.1.3 the method of determining the amount of the Benefit referred to in Clause 26.1.2;

26.1.4 the amount of contributions made in respect of the Member by the Member, any Participating

27. BENEFITS

27.1 ELECTION OF TYPE OF BENEFIT

When a Beneficiary becomes entitled and wishes, or is otherwise required, to receive a Benefit from the Fund, the Beneficiary shall provide to the Trustee a written instruction to advise how the Beneficiary wishes to receive the Benefit (**Benefit Election Form**). The Benefit Election Form is to be in a form substantially similar to Appendix 1 and is to advise the proportions or amounts of the Benefit which is to be received in the form of one or more of the following options:-

- 27.1.1 cash paid in the form of one or more lump sums;
- 27.1.2 one or more Pensions;
- 27.1.3 the purchase of one or more Annuities from an Annuity Provider;
- 27.1.4 the transfer of one or more assets from the Fund to the Beneficiary; or
- 27.1.5 any other method permitted by the Relevant Law.

27.2 PAYING BENEFITS

Subject to the Relevant Law and having regard to the Benefit Election Form but without being bound by it, the Trustee may provide a Benefit payable to a Beneficiary in one or more of the following forms:-

- 27.2.1 cash paid in the form of one or more lump sums;
- 27.2.2 one or more Pensions;
- 27.2.3 the purchase of one or more Annuities from an Annuity Provider;
- 27.2.4 the transfer of one or more assets from the Fund to the Beneficiary; or
- 27.2.5 any other method permitted by the Relevant Law.

27.3 FORFEITURE

- 27.3.1 To the extent permitted by the Relevant Law, a Member or Beneficiary forfeits the whole of his or her right, title or interest in and to any Benefit which may (but which has not already) become payable under this Deed if the Relevant Law permits and the Member or Beneficiary has purported to assign, alienate, charge or transfer all or part of it or if any other event occurs which results in another person becoming entitled to it.
- 27.3.2 A Member or Beneficiary may, by notice in writing served upon the Trustee, forfeit or decline to receive any Benefit (in part or whole) due or payable to that Member or Beneficiary, at any time (whether the Benefit is presently payable or prospectively payable) and such notice shall be irrevocable and binding on the Trustee.
- 27.3.3 Clause 27.3.1 and 27.3.2 has no effect to the extent that its operation would be contrary to the *Bankruptcy Act 1966* (Cth).
- 27.3.4 The Trustee may, but need not, apply all or part of a forfeited Benefit for the benefit of one or more of the Members (other than the Member whose Benefit is subject to the operation of Clause 27.3) or a Beneficiary and his or her Dependants as the Trustee considers appropriate and the Relevant Law permits.
- 27.3.5 If the Trustee determines that an event of forfeiture no longer applies to a Member or Beneficiary, the Trustee may pay all or part of the forfeited Benefit (less any amount applied under Clause 27.3.4) to or in respect of the Member or Beneficiary as the Trustee considers appropriate and the Relevant Law permits, provided that the Member or Beneficiary has not served a notice under Clause 27.3.2 on the Trustee.

27.4 RELEASE OF BENEFITS TO PAY EXCESS CONTRIBUTIONS TAX

27.4.1 Where the Trustee receives a Release Authority from or in respect of a Member, the Trustee must pay to the Member or the Commissioner of Taxation, as the case requires, within the time and in the manner prescribed by the Relevant Law, the least of the following amounts:-

- 27.4.1.1 if the Member or the Commissioner of Taxation requests the Trustee, in writing, to pay a specific amount in relation to the Release Authority – that amount;

27.4.1.2 the amount of Excess Concessional Contributions Tax or Excess Non-Concessional Contributions Tax stated in the Release Authority;

27.4.1.3 the sum of all of the Member's Benefits in the Fund.

27.4.2 The amount paid by the Trustee in accordance with this Clause 27.4 must be paid from the relevant Member's Benefits.

27.5 AUGMENTED DEATH BENEFIT

Provided a lump sum death benefit becomes payable to a Spouse, former Spouse or child of a deceased Member, the Trustee shall be entitled to increase such lump sum payment by the whole of an amount calculated under subdivision 295-G of ITAA 1997.

28. BENEFITS PAYABLE PRIOR TO ATTAINING AGE 65 ON RETIREMENT OR AT OTHER TIMES

28.1 EARLY RETIREMENT BENEFIT ENTITLEMENT

In the event of the Early Retirement (within the meaning of the Regulations) of a Member and not being entitled to a Benefit under any other provision of this Deed, a Benefit (hereinafter called an **Early Retirement Benefit**) shall be payable by the Trustee out of the Fund to that Member.

28.2 QUANTUM OF EARLY RETIREMENT BENEFIT

The Early Retirement Benefit that a Member is entitled to withdraw pursuant to Clause 28.1 shall comprise the amount standing to the credit of the Member's Accumulation Account at the time of becoming entitled to the Benefit pursuant to Clause 28.1.

28.3 SEVERE FINANCIAL HARDSHIP

The Trustee may pay a Benefit to a Member in the event that the Member is taken, by the Trustee acting in accordance with the Regulations, to be in severe financial hardship and the Trustee in determining the amount and form of the Benefit shall comply with the Relevant Law.

28.4 COMPASSIONATE GROUNDS

If the Regulator makes a determination in respect of a Member that an amount of his or her Benefit may be released on a compassionate ground, the Trustee shall pay a Benefit equal to an amount determined by the Regulator to that Member.

28.5 TRANSFERS OF NON-MEMBER SPOUSE INTERESTS

If the Trustee receives a splitting agreement or court order under Part VIIIB of the *Family Law Act 1975* (Cth), then:-

28.5.1 subject to the Relevant Law and on the written request of a Non-Member Spouse or otherwise,

28.7.2 The Member is entitled to the amount standing to the credit of the Member's accumulation account at the time of satisfying the condition of release so long as the amount paid does not exceed any limitation in the Relevant Law.

28.7.3 The Benefit will be payable in such form as required by the Relevant Law.

28.8 OTHER BENEFITS

In respect of any Benefit not otherwise specifically dealt with in this Deed:-

28.8.1 a Benefit is payable in the event of a condition of release, outlined in the Regulations, being satisfied by or in respect of the Member;

28.8.2 the Member is entitled to the amount standing to the credit of the Member's accumulation account at the time of satisfying the condition of release, unless a cashing restriction applies in respect of that condition of release in which case the Benefit will be payable in accordance with the relevant cashing restriction.

29. BENEFIT ON DEATH OF A MEMBER

29.1 BINDING DEATH BENEFIT NOMINATIONS

29.1.1 Subject to the remaining provisions of this Clause 29.1, a Member may direct the Trustee in a written notice (**Binding Death Benefit Nomination**) to pay, on or after the Member's death, the Member's Death Benefit which includes:-

29.1.1.1 the amount standing to the credit of the Member in the Member's accumulation account; and

29.1.1.2 the proceeds, if any, of any Insurance Cover effected on the life of the Member by the Trustee on behalf of the Fund and paid to the Fund,

to one or more of the Member's Dependants and/or legal personal representative as nominated by the Member, in the proportions or amounts, and in the form (whether as a lump sum or Pension) indicated by the Member in a Binding Death Benefit Nomination.

29.1.2 Subject to Clause 29.1.3, a Binding Death Benefit Nomination must be in a form approved by the Trustee from time to time and may take the form of that contained in Appendix 2.

29.1.3 A Binding Death Benefit Nomination must not require the Trustee to pay a Member's Death Benefit in breach of the Relevant Law, and is ineffective to the extent it so requires.

29.1.4 In order for the Binding Death Benefit Nomination to be legally binding on the Trustee, the Member must:-

29.1.4.1 arrange for two (2) adult persons, neither of whom have been nominated as a Beneficiary, to witness the Member's signature on the Binding Death Benefit Nomination; and

29.1.4.2 only nominate persons who are eligible under the Relevant Law to be a nominated Beneficiary.

29.1.5 In the event of the death of a Member who at the time of death was not in receipt of a Pension under this Deed, the Trustee must pay the Death Benefit to the person or persons nominated by the Member in accordance with the Binding Death Benefit Nomination provided by the Member to the Trustee (if any) to the extent that the nomination is effective.

29.1.6 In the event of the death of a Member who at the time of death was in receipt of a Pension under this Deed, the Trustee must pay the Death Benefit to the person or persons nominated by the Member in accordance with the Binding Death Benefit Nomination provided by the Member to the Trustee (if any) to the extent that the nomination is effective, unless the Member has made a Reversionary Beneficiary Nomination in respect of that pension, under which circumstances, the Trustee must pay the affected Pension to the Reversionary Beneficiary in accordance with the Member's Reversionary Pension Nomination.

29.1.7 If the Trustee has not received a Binding Death Benefit Nomination in respect of a Member, or to the extent that a Binding Death Benefit Nomination received in respect of the Member is ineffective, the Trustee shall pay the Death Benefit (or that part not effectively disposed of by the Binding Death Benefit Nomination) to:-

- 29.1.7.1 the Dependants and the legal personal representative(s) of the Member or such one or more of them to the exclusion of the other or others and in such manner and proportions as the Trustee shall determine in its absolute discretion and as is permitted by the Relevant Law; or
- 29.1.7.2 any individual or individuals as permitted by the Relevant Law, in the absolute discretion of the Trustee.
- 29.1.8 Where a Member has made a valid Binding Death Benefit Nomination in accordance with Clauses 29.1.1-29.1.4, the Trustee shall be bound to pay the Death Benefit of the Member in accordance with the Member's Binding Death Benefit Nomination and shall not be entitled to exercise its discretion in respect of the payment of such Death Benefit
- 29.1.9 A Binding Death Benefit Nomination shall be valid and binding for any period which is stated on the Binding Death Benefit Nomination and in the absence of a period of validity being stated, shall be valid and binding on the Trustee until such time the Binding Death Benefit Nomination is revoked by the Member.

29.2 PAYMENT OF BENEFIT

- 29.2.1 Where a Death Benefit is payable:-
 - 29.2.1.1 under Clause 29.1.5; or
 - 29.2.1.2 in accordance with a Binding Death Benefit Nomination that does not specify the form in which to pay the Death Benefit,

the Trustee shall pay the Death Benefit in one or more of the forms referred to in Clause 27.2, to be determined in the absolute discretion of the Trustee.
- 29.2.2 Where the Trustee is paying a Death Benefit to a Beneficiary in the form of a Pension or an Annuity, the Trustee must cash the Benefit as a lump sum to the Beneficiary when and to the extent required by the Relevant Law.

30. DISABILITY

30.1 TOTAL AND PERMANENT DISABLEMENT BENEFIT ENTITLEMENT

A Member shall not be treated as Totally and Permanently Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally and Permanently Disabled.

30.1.1 Quantum of Benefit

A Member who is entitled to a Total and Permanent Disablement Benefit shall be entitled to the following:-

- 30.1.1.1 the balance of the Member's Accumulation Account; and
- 30.1.1.2 the proceeds, if any, of any Insurance Cover effected to cover the Total and Permanent Disablement of the Member by the Trustee on behalf of the Fund and paid to the Fund.

30.1.2 Payment of Total and Permanent Disablement Benefit

The Benefit in respect of a Member who is entitled to a Total and Permanent Disablement Benefit shall be applied in one or more of the forms determined by the Trustee pursuant to Clause 27.2.

30.2 TOTAL BUT TEMPORARY DISABLEMENT BENEFIT ENTITLEMENT

A Member shall not be treated as Totally but Temporarily Disabled unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is Totally but Temporarily Disabled.

30.2.1 Quantum of Benefit

The Benefit in respect of a Member who is entitled to a Total but Temporary Disablement Benefit shall be comprised of:-

30.2.1.1 the proceeds, if any, of any Insurance Cover effected to cover the Total but Temporary Disablement of the Member by the Trustee on behalf of the Fund and paid to the Fund; and

30.2.1.2 such other amounts drawn from the credit balance of the Member's accumulation account provided that the amount so drawn does not exceed any limitations in relation to:-

30.2.1.2.1 income receivable by the Member under these circumstances; or

30.2.1.2.2 the resulting balance of the Member's accumulation account, imposed by the Relevant Law.

30.2.2 Payment of Total but Temporary Disablement Benefit

The Benefit in respect of a Member who is entitled to a Total but Temporary Disablement Benefit shall be applied in such form as permitted by the Relevant Law.

30.2.3 Temporary Cessation of Contributions

The payment of Contributions to the Fund by a Member or Employer (if any) may be suspended during such periods as the Member is deemed to be Totally but Temporarily Disabled.

30.2.4 Effect on Membership

The periods during which a Member is deemed to be Totally but Temporarily Disabled:-

30.2.4.1 shall be deemed to be periods when the Member continues to be a Member of the Fund; and

30.2.4.2 shall be included in determining the Member's period of Membership of the Fund; and

30.2.4.3 shall be included in determining any qualifying or eligibility period which may be required before a Member qualifies or becomes eligible to take out certain Insurance Cover.

30.2.5 Cessation of Total but Temporary Disablement

A Member shall not be treated as Totally but Temporarily Disabled upon the occurrence of one of the following events:-

30.2.5.1 the Member no longer meets the definition of Totally but Temporarily Disabled; or

33. ANNUITIES

- 33.1 If a Member or Beneficiary has advised the Trustee that all or part of a Benefit to which they are entitled is required to be paid as an Annuity, and such payment is not in breach of the Relevant Law, the Trustee shall arrange to purchase an Annuity from an Annuity Provider for the benefit of the Member or Beneficiary.
- 33.2 The amount required to purchase the Annuity shall be derived from the Member's accumulation account and shall not exceed the balance standing to the credit of that account provided that the Trustee has made all necessary adjustments to the balance of that account having regard to the transfer of any entitlement which the Member or Beneficiary may have to funds forming part of any other account.

34. PENSION BENEFITS - GENERAL PROVISIONS**34.1 ESTABLISHMENT OF PENSION ACCOUNT**

Where a Member or Beneficiary has become entitled to receive a Benefit and has elected to receive that Benefit in part or in full in the form of one or more types of Pension, the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which accounts the Trustee shall transfer amounts determined in accordance with this Deed.

34.2 OPERATION OF PENSION ACCOUNT

34.2.1 The following amounts shall be credited to the Pension Account of a Pensioner:—

- 34.2.1.1 any amount transferred under Clause 34.1;
- 34.2.1.2 any monies or assets paid or transferred to the Fund from any other Approved Fund which the Trustee considers it appropriate to credit;
- 34.2.1.3 the proceeds of any Insurance Cover effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
- 34.2.1.4 transfers from the Operating Account;
- 34.2.1.5 any other payments or components referred to in Item 202.2 of Schedule 2 to the Regulations;
- 34.2.1.6 any amount of financial assistance determined by the Trustee to be appropriate to credit;
- 34.2.1.7 such other amounts as the Trustee shall from time to time determine.

34.2.2 The following amounts are to be debited to the Pension Account of a Pensioner:—

- 34.2.2.1 any monies or assets paid or transferred from the Fund to any other Approved

34.2.2.10 any amount of levy determined by the Trustee to be appropriate to debit;

34.2.2.11 such other amounts as the Trustee shall from time to time determine.

34.3 METHOD OF PAYMENT OF PENSION

In relation to a Pension payable to a Pensioner or a Reversionary Beneficiary, the Trustee may transfer an asset of the Fund to the Pensioner or Reversionary Beneficiary in payment of some or all of the Pension provided that:-

34.3.1 a Pensioner or Reversionary Beneficiary requests such transfer, or consents to same, in writing;

34.3.2 the Relevant Law does not prohibit the proposed transfer;

34.3.3 the value attributed to the asset transferred is equivalent to the current market value of the asset; and

34.3.4 the Reversionary Pension Nomination (if any) does not prohibit commutation of the Pension.

34.4 SEGREGATION OF PENSION ASSETS

In relation to Pensions payable to Members and Beneficiaries, the Trustee may:-

34.4.1 segregate or set apart the assets which represent the Pension Accounts of the Members or Beneficiaries for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and

34.4.2 constitute the segregated assets as segregated current and non-current pension assets (as those terms are defined in ITAA 1997), and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non-current pension liabilities as the Trustee considers necessary for the purposes of ITAA 1997 or as the Relevant Law shall require.

34.5 BENEFIT ON DEATH OF PENSIONER

34.5.1 A Pensioner may direct the Trustee in a written notice at the time of establishing a Pension, or from time to time thereafter, to continue to pay on or after the Pensioner's death that Pension to a Reversionary Beneficiary nominated by the Pensioner (herein called "**Reversionary Pension Nomination**")

34.5.2 Where a Pensioner has made a Reversionary Pension Nomination in respect of a Pension, the Trustee shall be bound to pay the relevant Pension to the Reversionary Beneficiary nominated in the Reversionary Pension Nomination, in accordance with the terms of the Reversionary Pension Nomination.

34.5.3 A Reversionary Pension Nomination shall be valid and binding for any period which is stated on the Reversionary Pension Nomination and in the absence of a period of validity being stated, shall be valid and binding on the Trustee until such time the Reversionary Pension Nomination is revoked by the Member.

34.5.4 A Reversionary Pension Nomination must not require the Trustee to pay a Pensioner's Pension in breach of the Relevant Law, and is ineffective to the extent it so requires.

34.5.5 Subject to Clause 34.5.4 after the death of a Pensioner who was at the time of death still in receipt of a Pension paid from this Fund, the Trustee must pay the Pension to the person or persons nominated by the Pensioner in accordance with the Reversionary Pension Nomination provided by the Pensioner to the Trustee (if any) to the extent that the nomination is effective.

34.5.6 If the Trustee has not received a Reversionary Pension Nomination in respect of a Pensioner, or to the extent that a Reversionary Pension Nomination received in respect of the Pensioner is ineffective, the Trustee shall deal with the Pension in accordance with Clause 29.

34.5.7 Where a Member has made a valid Reversionary Pension Nomination in accordance with Clause 34.5.2-34.5.4, the Trustee shall be bound to pay the relevant Pension of the Member in accordance with the Member's Reversionary Pension Nomination and shall not be entitled to exercise its discretion in respect of the payment of such Pension.

34.6 SECURITY OF PENSION

The capital value of a Pension and the income from the Pension cannot be used by a person as security for a borrowing.

35. OPERATION OF PENSIONS

35.1 Where a Member is entitled to receive all or part of his or her Benefit in the form of a Pension the Trustee must determine the terms and conditions of the Pension.

35.2 Where a Pension is payable to a Member/Pensioner, the Trustee must pay or otherwise deal with the Pension in accordance with the terms and conditions of that Pension contained in the governing rules of the Fund including but not limited to this Deed, trustee resolutions or a pension agreement.

35.3 Where a Member has become entitled to receive a Benefit and has elected to receive that Benefit in full or part in the form of one or more types of Pension, that Member may, in respect of each Pension established, nominate in writing to the Trustee a Reversionary Beneficiary.

36. CHANGING BENEFIT TYPE**36.1 APPLICATION TO CONVERT TO PENSION**

36.1.1 If a lump sum benefit or part of a lump sum benefit becomes payable to or in respect of a Member or a Beneficiary and if the recipient of that lump sum benefit wishes to convert all or part of that lump sum benefit to one or more Pensions permitted under this Deed, then the Recipient shall tender a Benefit Election Notice (in a form similar or substantially similar to Appendix 1) to the Trustee:-

36.1.1.1 within 30 days of becoming entitled to the lump sum benefit; or

36.1.1.2 within 30 days of receiving advice from the Trustee of the entitlement arising,

whichever is the sooner.

36.1.2 Provided the election made by the Member or Beneficiary is not in breach of any provision of this Deed or of the Relevant Law, the Trustee shall immediately take such steps as are necessary to meet the requirements of the Benefit Election Notice received from the Member or Beneficiary.

36.2 APPLICATION TO COMMUTE TO A LUMP SUM

On the written application of a Pensioner or Reversionary Beneficiary, the Trustee may commute to a lump sum benefit the whole or any part of any type of Pension payable from the Fund to such Pensioner or Reversionary Beneficiary as applicable provided that the commutation of the Pension is permitted by the Relevant Law and the rules of the Pension, or the terms of the Reversionary Pension Nomination.

36.3 APPLICATION TO CONVERT AN ALLOCATED PENSION TO AN ACCOUNT-BASED PENSION

If a Pensioner requests the Trustee in writing to convert all or part of an Allocated Pension being paid to or in respect of the Pensioner into an Account-based Pension, the Trustee may at its discretion, subject to the Relevant Law, do whatever is necessary to give effect to that request.

37. TRANSFER OF ASSETS

The Trustee may with the agreement or at the request of a Member or Beneficiary to whom a Benefit is payable transfer any whole or part of one or more assets in specie, of equivalent value up to the amount of the Benefit in lieu of paying the whole or part of the amount otherwise payable provided that such transfer will not cause the Fund to fail to continue to be a complying superannuation fund and that such transfer is not in breach of the Relevant Law.

38. VESTING OF BENEFITS

The total amount of employer-financed benefits, which term shall include any productivity payment received in respect of any Member accruing to a Member of the Fund on or after the 1st July, 1986, and Member-financed benefits shall within the meaning of the Regulations vest in that Member on the day on which the benefits accrue and any amount arising directly or indirectly from contributions made by an Employer in relation to a Member in accordance with an award made or agreement certified by an industrial authority within the meaning of the Regulations shall likewise vest in the Member on that date being a date on or after the date of effect of the award or agreement.

39. PRESERVATION AND PORTABILITY OF BENEFITS

- 39.1 The amount of any benefit vested in any Member in accordance with Clause 38 shall be preserved in accordance with the Relevant Law.
- 39.2 Any amount transferred to the Fund in relation to any Member pursuant to this Deed which is required by the Relevant Law to be preserved shall be preserved.

40. TRANSFER TO ANOTHER FUND

In the event of a Member becoming eligible for Membership of another Approved Fund the Trustee may with the written consent of the Member permit, transfer or cause to be transferred to such other Approved Fund or to the Trustee of such other Approved Fund the whole or any part of the amount standing to the credit of that Member's Accumulation Account at the date of such transfer PROVIDED THAT the Fund to which such transfer is made shall be a Fund the terms and provisions of which comply with Relevant Law and prohibit payment of any Preserved Benefit PROVIDED ALWAYS THAT the Retiring Age and the age for payment of benefits under such Approved Fund shall not be earlier than that of this Fund except where an earlier age is allowed by the Relevant Law or approved by the Regulator as being:-

- 40.1 applicable to all Members of such other Approved Fund; or
- 40.2 common to a particular class of Members of such Approved Fund.

41. TRANSFER FROM ANOTHER FUND

The Trustee on such terms and conditions as it determines may receive from another Approved Fund monies or other assets in respect of a Member's interest in that other Approved Fund and shall apply the same for the purpose of providing Benefits for or in respect of that Member and shall advise the Member in writing and no such Benefit shall be paid otherwise than as is authorised by this Deed and the Relevant Law.

42. INTERNAL ROLLBACKS

The Trustee may, upon receiving a written request from a Member:-

- 42.1 retain an amount resulting from the commutation in whole or in part of a Pension payable to a Member from the Fund, after the commutation, for the purpose of providing Benefits to the Member or to Dependants and/or the legal personal representative of the Member in the event of the death of the Member; or
- 42.2 apply an amount resulting from the commutation in whole or in part of a Pension payable to a Member from the Fund immediately after the commutation, towards the provision of one or more other Pensions payable to the Member from the Fund; or
- 42.3 otherwise retain or apply any Superannuation Lump Sum of the Member as permitted by the Relevant Law,

in accordance with the Member's written request.

43. RETENTION OF BENEFIT IN FUND

Where a Member or Beneficiary does not require Benefits to be immediately paid, the Trustee may in its absolute discretion retain all or any part of any Benefit payable until:-

43.1 REQUEST

The Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary;

43.2 DEATH

The Member dies in which event it will be paid in accordance with Clause 29.1;

43.3 REQUIRED BY LAW

The provisions of the Relevant Law require the payment of the Benefit; or

43.4 DISCRETION

The Trustee elects for whatever reason to pay the Benefit to the Member, former Member or Beneficiary, whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of that Member's or Beneficiary's Accumulation Account or Accounts as at the date of payment PROVIDED HOWEVER that all Benefits must be paid in accordance with the Relevant Law.

44. UNCLAIMED BENEFITS

The Trustee must comply with the Relevant Law in relation to Benefits which the Relevant Law:-

- 44.1 treats as unclaimed money; or
- 44.2 requires to be transferred to another fund.

45. TERMINATION OF THE FUND

45.1 The Fund must be wound up on the happening of any of the following events:-

- 45.1.1 if there are no Members;
- 45.1.2 if the liabilities (excluding any liability for future Benefits payable to Members) of the Fund exceed the assets of the Fund;
- 45.1.3 for any reason the Trustee resolves to terminate the Fund.

45.2 Upon the occurrence of an event referred to in Clause 45.1, the Trustee must give notice in writing to Members (if any) and all Employers that the Fund will be wound up on a specified date.

45.3 Following the giving of the notices referred to in Clause 45.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:-

- 45.3.1 no further contributions, other than contributions due on or before the date specified in the notices referred to in Clause 45.2 may be accepted in respect of any Members; and
- 45.3.2 no new Members may be admitted to the Fund; and
- 45.3.3 as soon as practicable after the date specified in the notices referred to in Clause 45.2, the Trustee must make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the following payments:-
 - 45.3.3.1 Benefits which on or before giving the notices referred to in Clause 45.2 had become payable to a Member or the Member's Dependents; and
 - 45.3.3.2 transfer the remaining Benefits of all remaining Members of the Fund to other Approved Funds;
 - 45.3.3.3 if there are no Members and no liabilities in respect of the Fund, and there remains in the Fund an amount not applied or required for any other purpose, the Trustee must pay or apply the amount remaining for the benefit of any one or more persons who had been Members or Dependents of Members and in the shares and proportions and in the manner the Trustee determines subject to any direction received from the Regulator;
 - 45.3.3.4 where the amount of a Benefit payable to a Member includes a preserved benefit, the Trustee must only pay or transfer the amount of the preserved benefit to another Complying Superannuation Fund or Approved Fund;
 - 45.3.3.5 when all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed and any amount remaining in the Fund has been paid or applied in accordance with this Deed, the Fund is deemed to be dissolved.

46. STANDARDS FOR TRUSTEES AND MANAGERS

If the Trustee appoints an investment manager of the Fund, each such appointment shall be made in writing. The Trustee and any investment manager appointed shall observe the standards contained in the Relevant Law.

47. GOVERNING LAW

This Deed shall be governed and construed in accordance with the law of the State or Territory specified in the Schedule as the Governing Law.