

O'HANNA SUPER FUND

SUPERANNUATION FUND TRUST DEED



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This Deed is made by **Steve O'Hanna and Andrew McLeod** ("Trustee")

**BACKGROUND:**

The Trustee wishes to establish a self managed superannuation fund to be known by the name set out in Schedule 1 for the purpose of providing retirement benefits to members and the other benefits set out in the Rules in Schedule 2.

**OPERATIVE PROVISIONS:**

1. The Fund will come into operation or be treated as coming into operation on the Commencement Date set out in Schedule 1.
2. The Rules in Schedule ("the Rules") are to govern the operation of the Fund and the Fund is to be managed and administered in all respects according to the Rules.
3. The assets of the Fund are to be held by the Trustee upon trust to provide the benefits for Members and for the other persons claiming through them as set out in the Rules.
4. This Deed and the Rules are to be governed by the laws of the State set out in Schedule 1.



**SCHEDULE 1**

**COMMENCEMENT DATE: 24 JANUARY 2007**

**NAME OF THE FUND: O'HANNA SUPER FUND**

**THIS DEED IS GOVERNED BY THE LAWS OF THE STATE OF: QUEENSLAND**

**SCHEDULE 2**  
**RULES**  
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## 1. DEFINITIONS

1.1 Unless the contrary intention appears words and expressions used in these Rules and defined in the *Superannuation Industry (Supervision) Act 1993* or the *Superannuation Industry (Supervision) Regulations 1994* (as in force from time to time) have the same meaning in these Rules.

1.2 In these Rules except so far as the contrary intention appears:

"**account based pension**" means a pension paid from the Fund on terms that require that pension be paid from a separate account in the Fund;

"**binding nomination**" has the meaning given in Rule 9.4;

"**Contributions**" means amounts paid to or other property transferred to the Fund to provide benefits to Members or in respect of the Member on their death under these Rules excluding any amounts or property transferred from another superannuation entity under Rule 19;

"**Contributions Tax**" means any amount payable under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;

"**death benefit**" means the benefit referred to in Rule 7.3;

"**discretionary nomination**" has the meaning given in Rule 9.3;

"**Financial Year**" means a period of twelve months ending on the 30th June and any part of a period that may occur until termination of the Fund. Where these Rules are the first Rules for the fund the first Financial Year for the Fund is the period from the start of the Fund to the following 30 June;

"**Fund Deed**" means these Rules and the Deed to which they are attached as a Schedule;

"**the Fund**" or "**this Fund**" means the superannuation fund which is governed by and administered under these Rules and known by the name set out in the title to these Rules;

"**GST**" has the meaning given in the *'A New Tax System (Goods and Services Tax) Act 1999'*;

"**Income Tax Act**" means the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936* as the case may require;

"**Insurer**" means a life insurance company which has issued an insurance policy to the Trustee covering events which may happen to a Member or a group of Members;

"**Investment Manager**" means a person appointed in accordance with these Rules as Investment Manager for the whole of or any part of the assets of the Fund;

"**Member**" means a person who is a member of the Fund (see Rule 5);

"**Member's Account**" means the account set up for a Member under Rule 13.3(b);

**"Member's Pension Account"** means the account set up for a Member after they become entitled to be paid a benefit from which a Pension is to be paid;

**"Nominated Beneficiary"** means the person nominated by the Member to receive a benefit if the Member dies;

**"Pension"** means a benefit which is taken under the SIS Regulations to be a pension for the purposes of the SIS Act and any other benefit which may be paid from the Fund in the form of an income stream (and not a lump sum) without contravening any regulatory provision;

**"Regulator"** means APRA in relation to the regulatory provisions which are administered in relation to this Fund by APRA, means ASIC in relation to the regulatory provisions which are administered by ASIC and means the Commissioner of Taxation (or the delegate of the Commissioner of Taxation) in relation to the regulatory provisions that are administered in relation to this Fund by the Commissioner of Taxation;

**"regulatory provision"** has the meaning given in section 38A of the SIS Act;

**"Regulatory Requirements"** means each regulatory provision and the provisions of any other Act or of any regulations made under an Act regulating superannuation funds and the provision of benefits from a superannuation fund that apply to self managed superannuation funds which the Trustee decides are to be included in the Regulatory Requirements;

**"Retire d"** means the time when the retirement of a Member is taken to have occurred under Regulation 6.01 of the SIS Regulations or any substitute regulatory provision and "retirement" has the same meaning;

**"retirement benefit"** means the benefit referred to in Rule 7.2;

**"Rules"** and **"these Rules"** means the Rules in this Schedule as amended from time to time;

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

**"SIS Regulations"** means the regulations or any of the regulations from time to time made under the SIS Act;

**"Tax or Taxes"** means any tax payable by the Trustee with respect to the Fund under the Income Tax Act or under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, GST or any other tax, charge, levy, impost or duty (including any stamp duty) which may be payable by the Trustee with respect to the Fund or any part of it or with respect to any transaction which the Trustee may enter into with respect to the Fund, under any other law of the Commonwealth or under any law of any State or Territory of the Commonwealth;

**"Total and Permanent Disablement"** has the same meaning as is contained in any insurance policy taken out by the Trustee as Trustee of the Fund under which a benefit is payable if a Member covered by that policy suffers total and permanent disablement and any determination by the relevant insurer as to whether or not a Member is so disabled under the terms of that policy that a benefit is payable under the policy in respect of the total and permanent disablement of that Member will be final and binding on all interested persons for the purposes of these Rules. However if a Member is entitled to a benefit if they suffer total and permanent disablement and there is no insurance taken out by the Trustee covering the

Member for that contingency, or there is no relevant definition in the policy taken out by the Trustee, or if it is necessary to ensure compliance with the Regulatory Requirements that the Trustee consent to the determination or exercise the Trustee's own discretion in relation to the matter, then a Member will be deemed to suffer total and permanent disablement if the Member has in the opinion of the Trustee become incapacitated through illness, accident or injury to such an extent as to render it unlikely that the Member will be able to resume his or her usual occupation and the Trustee is also satisfied that as a result of the incapacity the Member is unlikely ever again to engage in gainful employment for which they are reasonably qualified by education, training or experience. Before forming that opinion, the Trustee must have regard to medical certificates, medical opinions, other medical evidence regarding the medical condition of the Member concerned and may have regard to any other reports or information which the Trustee considers appropriate in all the circumstances;

"Trustee" means the Trustee for the time being of the Fund.

1.3 In these Rules, unless contrary to or inconsistent with the context:

- (a) Words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) a gender includes every other gender;
- (b) References to acts and regulations and to other laws or codes include all variations and amendments to those acts, regulations, laws or codes and any acts, regulations or other laws passed or otherwise brought into operation in substitution for them;
- (c) References to an act includes all regulations and other legislative instruments under the act;
- (d) References to a clause, schedule, rule, or paragraph are to be construed as references to a clause, schedule, rule, or paragraph of or to this deed;
- (e) Headings, captions and titles used in the deed and these Rules are for convenience only and are not to be used to interpret the terms of these Rules;
- (f) References to a person include reference to a body corporate, association, firm, government or governmental authority;
- (g) References to a body include that body as reconstituted, renamed or replaced or if its powers or functions or relevant powers and functions are transferred to any other body or person that other body or person.

1.4 Unless otherwise expressly provided and subject to any requirements of the Regulatory Requirements, any question or dispute regarding the interpretation of the these Rules and of any rights, benefits, duties or liabilities arising under these Rules is to be decided by the Trustee and the decision of the Trustee is binding upon Members and all other persons who have an interest in the Fund.

1.5 If any provision of these Rules is held to be invalid in whole or in part or is required to be limited or read down in order to be valid or in order to comply with any of the Regulatory



Requirements, the provision is to be severed to the extent of the invalidity but the remaining parts of the provision will continue to be in full force and effect.

## **2. REGULATORY REQUIREMENTS**

- 2.1** The Fund is to be administered as a regulated superannuation fund and as a self managed superannuation fund. The Trustee must give the election referred to in section 19(4) SIS Act if it has not already been given in relation to the Fund.
- 2.2** The Trustee must ensure that the Fund satisfies the conditions for the Fund to be a self managed superannuation fund at all times.
- 2.3** The sole or primary purpose of the Fund is the provision of old age pensions.
- 2.4** Even though it may conflict with another provision of these Rules the Trustee must exercise all of the powers and discretions given to it under these Rules subject to the provisions, restrictions, limitations and requirements contained in the regulatory provisions.
- 2.5** The Trustee is authorised to do all acts, matters and things which are necessary or which the Trustee considers desirable to ensure that the Fund does not contravene any of the regulatory provisions.
- 2.6** If there is any conflict between anything in these Rules and any Regulatory Requirement, the provisions of the Regulatory Requirement are to prevail.
- 2.7** If any doubt or dispute arises as to the meaning, application or effect of any of the Regulatory Requirements the decision of the Trustee regarding that matter will be final and binding on all interested persons.
- 2.8** When applying any of the Regulatory Requirements the Trustee may have regard to any ruling, guideline, determination, circular or announcement relating to the interpretation, operation or administration of any of the Regulatory Requirements and may have regard to any changes to any of them which are proposed to be made.

## **3. THE FUND**

- 3.1** The assets of the Fund are vested in the Trustee and are to be controlled and administered by the Trustee in accordance with these Rules and must be administered in accordance with all relevant Regulatory Requirements.
- 3.2** The assets of the Fund will comprise:
- (a) Contributions and any other amounts paid or assets transferred to the Trustee to be held on the trusts set out in these Rules;
  - (b) the income arising from the investment of the Fund;
  - (c) any accretions to or profits on realisation of investments;
  - (d) any insurance policies or other assets or investments held as part of the assets of the Fund in accordance with these Rules.

**3.3** No part of the Fund is to be subject to the direction or control of an individual Member and nothing in these Rules entitles a Member to any specific assets of the Fund. The Trustee will determine which of the Fund's assets are to be realised to provide funds for any amount payable from the Fund whether as a benefit or as an expense.

**3.4** Until a Member becomes eligible to receive a benefit from the Fund, the Trustee must treat the Member's right to receive a benefit from the Fund as contingent upon the Member satisfying a condition of release and any other conditions which must be satisfied before a benefit can be paid to the Member under these Rules.

#### **4. THE TRUSTEE**

**4.1** Subject to Rule 4.2 the Trustee must either be individuals each of whom is a Member and each Member must be a Trustee or a body corporate in which each director is a member of the Fund and all of the Members are directors.

**4.2** If the Fund has only one Member the Trustee must either be the Member and one other person who is allowed to be a Trustee under section 17A (2) SIS Act or a body corporate in which the Member is the only director or which has 2 directors one of whom is the Member and the other is a person who is allowed to be a director under section 17A (2) SIS Act.

**4.3** Where a body corporate is Trustee a director may participate in exercising all powers, authorities and discretions conferred on the Trustee in relation to the Fund even though they may have a direct or indirect personal interest in the matter but they may choose to abstain from participating in the consideration of any matter in which they are interested.

**4.4** Subject to this Rule and to Rule 2:

(a) if the Trustee is a body corporate, the Trustee may retire and appoint another body corporate as Trustee or may appoint all of the Members as the Trustee;

(b) if individuals are the Trustee, they may:

(i) remove any of the individual trustees who cease to be a Member or otherwise cease to be allowed to be a trustee of the Fund under the Regulatory Requirements;

(ii) appoint any new Members as a trustee; and

(iii) appoint a body corporate as the Trustee in substitution for themselves.

**4.5** Any individual who is a Trustee will automatically cease to be a Trustee if they cease to be a Member of the Fund.

#### **5. MEMBERS**

**5.1** Anyone may apply to the Trustee to join the Fund. The application must be in writing in the form approved by the Trustee from time to time.

**5.2** The Trustee may require that an application for membership of the Fund be accompanied by the documents (including any relevant consents or approvals) and other information specified by the Trustee. If the Trustee is a corporation an applicant must also give to the

Trustee any required consent for them to be appointed as a director of the Trustee. If individuals are Trustees of the Fund, each applicant agrees to become a Trustee when they become a Member.

- 5.3** The Trustee may impose any conditions on admission of an applicant as it thinks fit and may accept or may refuse an application for membership in its absolute discretion and is not required to give any reason for any refusal to accept an application. The Trustee must not allow the number of Members to exceed the maximum number of members for a self managed superannuation fund.
- 5.4** A person becomes a Member from the date when his application is approved by the Trustee. The Trustee may make any arrangements it thinks fit with any employer or previous employer of the new member or with the trustee of any superannuation fund of which the new member is or was a member.
- 5.5** If after a person has become a Member any statement made or evidence submitted to the Trustee in support of or in connection with their application for membership is found to contain any mis-statement, error or mistake the Trustee may make any adjustments to the benefits to be provided by the Fund for that Member and/or the contributions (if any) to be paid to the Fund by or for that Member as it, in its absolute discretion, considers appropriate.
- 5.6** As long as the Member consents to the arrangement and the arrangement does not contravene any of the Regulatory Requirements, the Trustee may make any arrangements to vary the benefits or the contributions payable for a Member under these Rules or any other matter relating to the Member's interest in the Fund as the Trustee thinks fit. The Trustee must confirm any arrangements made under this Rule in writing to the Member and these Rules will, after the arrangement has been made, be read and construed in relation to that Member as if they were varied in accordance with the arrangement confirmed in writing under this Rule.
- 5.7** Everyone who becomes a Member will be deemed to have approved of and to be bound by the Fund Deed.

## **6. CONTRIBUTIONS**

- 6.1** The Trustee must not accept a Contribution to the Fund from any person (including a Member) if the Trustee would contravene any of the Regulatory Requirements by accepting the contribution.
- 6.2** Subject to Sub-rule 6.1, the Trustee may accept Contributions from anyone to be held by the Trustee for the purpose of providing benefits to Members or persons claiming through them under these Rules. The following provisions of this Rule are not to be construed as limiting this sub-rule 6.2 in any way.
- 6.3** A Member may make Contributions to the Fund, and the employer of a Member may make Contributions to the Fund.
- 6.4** Any other person who is not a Member or an employer of a Member may contribute any money or property for the purpose of providing benefits for a Member.

- 6.5 A Member may make Contributions for the purpose of providing benefits for their spouse or children.
- 6.6 Despite any other provision of this Rule if the Trustee at any time discovers that Contributions have inadvertently been received into the Fund in breach of any Regulatory Requirements, the Trustee must refund or retransfer those Contributions (less any charges reasonably referable to those contributions) and must make any necessary adjustment to the benefits for the Members.
- 6.7 The Trustee may decide to allow Members to roll over, transfer or allocate within the Fund for the benefit of their spouse an amount of the splittable contributions made by or for them ("Contribution Splitting Service"). If the Trustee decides to provide a Contribution Splitting Service a Member may apply to the Trustee to roll over, transfer or allocate within the Fund for the benefit of their spouse an amount of the splittable contributions made by or for them in the previous financial year up to the maximum splittable amount ("Splitting Application"). The Trustee may accept and give effect to a Splitting Application if the application complies with the relevant SIS Regulations and the Trustee is not precluded from accepting or acting on the application by those Regulations.

## 7. BENEFITS AND CASHING OF BENEFITS

### 7.1 General

#### 7.1.1 *Benefits only in accordance with the Regulatory Requirements*

Despite anything elsewhere in these Rules:

- (a) benefits may only be paid to a Member by being cashed or by being transferred or rolled over in accordance with the Regulatory Requirements;
- (b) A benefit must not be paid to a Member except at a time and to the extent that the Fund is permitted to pay the benefit under the Regulatory Requirements;
- (c) A benefit must be paid when and to the extent that the Fund must pay the benefit under the Regulatory Requirements;
- (d) A Member's unrestricted non preserved benefit may be cashed at any time and a Member's preserved and restricted non preserved benefit may be cashed by the Member as long as a relevant condition of release set out in the Regulatory Requirements has been satisfied;
- (e) A Member's benefit may not be cashed in favour of a person other than the Member unless the Regulatory Requirements allow payment to that other person; and
- (f) A Member's minimum benefits must be maintained in the Fund until they are cashed as benefits of the member or are rolled over or transferred as benefits of the Member.

### 7.1.2 *Payment to a Beneficiary who is not able to manage their affairs*

Where an amount is payable to or for the benefit of a person who is under a legal disability (such as a dependant who has not reached their majority, or a person who is unable to manage his or her affairs), the Trustee may pay that amount to the person who appears to the Trustee to have control of the affairs of the person who is under a legal disability ("Guardian") and the receipt of the Guardian for any money paid by the Trustee will be a good discharge to the Trustee for that money and the Trustee will not be bound to see to the application by the Guardian of any money paid to them for the benefit of the person who is under a legal disability.

### 7.1.3 *Postponement of Payment*

As long as the postponement does not contravene any of the Regulatory Requirements, the Trustee, at its discretion, to facilitate the orderly and efficient administration of the Fund:

- (a) may postpone the payment of any benefit for any period after an event which entitles a person to receive a benefit has occurred; and
- (b) may make or arrange for payments to be made at convenient times.

If any payment is postponed for more than three (3) months interest must be added at a rate determined by the Trustee.

### 7.1.4 *Transfer of Assets*

The Trustee, with the agreement of the Member or other person who is entitled to receive a benefit from the Fund, may pay all or any part of the benefit by transferring to that person any of the assets of the Fund. If the Trustee exercises this power the value to be placed on any assets which are transferred is to be the value determined at the date of transfer by the Trustee or at the discretion of the Trustee by an independent valuer appointed by the Trustee.

### 7.1.5 *Relief of Hardship*

Where a benefit is payable from the Fund for a Member the Trustee may pay part of the benefit before any or all of the proofs required by the Trustee for payment of the whole of the benefit have been produced to the Trustee where it considers that a payment should be made from the Fund for the relief of hardship of the Member or the Member's dependants.

### 7.1.6 *Trustee May Require Proofs*

The Trustee may require that a Member or his or her dependants or legal personal representative produce any evidence or proofs which the Trustee may reasonably need to establish their entitlement to be paid a benefit from the Fund including evidence of age, identity, death, health, or disability.

## 7.2 **Retirement Benefits**

### 7.2.1 A Member must be paid his or her retirement benefit if:

- (a) he or she has Retired and requests the Trustee to pay the benefit;

- (b) he or she has Retired and the Regulatory Requirements provide that his/her benefit must be cashed as soon as practicable; or
- (c) he or she requests the Trustee to pay the benefit and the Trustee would not contravene any regulatory provision if it agreed to the request and paid the benefit.

7.2.2 Unless the Member requests under Rule 7.2.3 for payment of a lump sum, the retirement benefit for a Member is a Pension or Pensions. The amount of the benefit is based on the balance of the Member's Account immediately before his or her retirement benefit starts to be paid.

7.2.3 A Member may request the Trustee to pay the whole or part of the balance in the Member's Account as a lump sum.

### **7.3 Death benefit**

7.3.1 A death benefit is payable from the fund if a Member dies before his or her retirement benefit starts to be paid. The death benefit is a Pension which is based on the balance in the Member's Account for the Member who has died. The person entitled to the benefit may request the Trustee to pay the whole or part of the balance in the Member's Account as a lump sum.

7.3.2 If the Member who has died has given a valid binding nomination the Trustee must pay the death benefit to the Nominated Beneficiary set out in the binding nomination.

In any other case the Trustee in its absolute discretion may pay the death benefit to any one or more of the following:

- (a) a Nominated Beneficiary,
- (b) a dependant of the Member ,
- (c) the legal personal representative of the Member; or
- (d) any other person to whom the Trustee is allowed to pay the benefit under the Regulatory Requirements.

### **7.4 Preservation age**

Without limiting Rule 7.2.1(c), a Member who reaches their preservation age but has not Retired, may request the Trustee to pay a non-commutable allocated pension or a non-commutable pension to them from the Fund or to pay any other benefit which the Regulatory Requirements allow the Trustee to pay to a person who reaches their preservation age. Any Pension or other benefit which is paid from the Fund under this Rule to a person who reaches his or her preservation age may only be paid with the consent of and on terms approved by the Trustee and the Trustee is not required to agree to any request made under this Rule. The amount of any Pension (including any non-commutable allocated pension or non-commutable pension) is to be based on the balance in the Member's Account immediately before the pension starts to be paid.

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**7.5 Transfer of amounts to the Member's Account**

Before paying a benefit, the Trustee must transfer to the Member's Account for the retiring or deceased Member the amount in any other account set up for the Member by the Trustee and the amount from any reserve account or any other general or unallocated account set up by the Trustee which the Trustee considers represents the equitable entitlement of that Member to the balance in the relevant Account.

**7.6 Total and Permanent Disablement benefit**

A Member who becomes totally and permanently disabled is entitled to a benefit which is a Pension based on the balance of the Member's Account immediately before their benefit starts to be paid.

**7.7 Withdrawal benefit**

If a Member ceases to be a Member of the Fund for any reason before a benefit starts to be paid to them, he or she is entitled to a Withdrawal benefit which is the balance in his or her Member's Account after transfer to that account from any reserve Account or any other general or unallocated account set up by the Trustee of the amount which the Trustee considers represents the equitable entitlement of that Member to the balance in the relevant Account but the amount of the Withdrawal benefit must not be less than the Member's minimum benefits.

**7.8 Additional Contributions after a benefit is payable**

If after a benefit has become payable to a Member further contributions are received by the Trustee for that Member the Trustee may transfer those additional contributions to the Member's Account for the Member as the Trustee thinks appropriate.

**7.9 Payment may be delayed until Insurance proceeds received**

Subject to the provisions in Rule 7.1 relating to postponement, the Trustee may delay payment of a benefit or part of a benefit or finalisation of the amount or terms of payment of a Pension until it receives payment of any amount payable under any insurance policies taken out by the Trustee for the purpose of providing some or all of the benefits payable or provided under these Rules covering the happening of an event affecting the retiring or deceased or disabled member or until a claim under a policy is finalised.

**7.10 Purchase of an Annuity**

A Member entitled to be paid a retirement benefit may request the Trustee to use the whole or part of the balance in his or her Member's or Member's Pension Account to purchase a benefit from a life insurance company or a registered organisation for the benefit of the Member which under the SIS Regulations is taken to be an annuity for the purposes of the SIS Act.

**7.11 Payment of benefits to Bank Account**

The Trustee may require anyone who is entitled to receive a benefit to give the Trustee details of a bank account into which payment of the benefit may be made and payment of the benefit to that account will discharge the Trustee.

## **7.12 Automatic Roll-Overs and Unclaimed Moneys**

The Trustee may pay a Member's benefit to an eligible roll-over Fund if the Regulatory Requirements allow the Trustee to do so and must transfer a benefit to an eligible rollover fund if required to do so under the Regulatory Requirements. The Trustee must deal with any unclaimed moneys in accordance with the provisions of the Regulatory Requirements dealing with unclaimed money.

## **7.13 Forfeited benefits**

To the extent that it is allowed to do so under the Regulatory Requirements, the Trustee may forfeit a benefit which is payable or contingently payable from the Fund to a Member where the Member or the person otherwise entitled to the benefit assigns charges or otherwise disposes of or attempts to assign, charge or otherwise dispose of that benefit or any part of it, or that benefit for any reason becomes payable to or vested in another person or the Trustee forms the opinion that the Member or other person entitled to the benefit is incapable of managing their affairs whether because of mental incapacity or physical infirmity. Any benefits forfeited under this Rule must be dealt with by the Trustee within the time and in the manner required by the Regulatory Requirements.

# **8. PENSIONS**

## **8.1 Pension Must Meet Pension Standards**

Despite anything elsewhere in these Rules, any Pension provided from the Fund may only be provided and paid on terms which under the SIS Regulations allow the benefit to be taken to be a pension for the purposes of the SIS Act or which otherwise do not contravene any regulatory provision.

## **8.2 Terms of pension**

The Trustee may provide a benefit from the Fund as a Pension on any terms unless any regulatory provision prohibits a pension on those terms being provided from the Fund to the proposed recipient. The Trustee must decide the terms on which a pension will be provided from the Fund before the pension starts to be paid. The terms on which a pension is being provided from the Fund (or the amended terms) must be set out in writing and given to the recipient of the pension before the first pension payment is made and at the time that any variation is made to a pension. Those written terms are to be treated as part of the rules of the Fund.

## **8.3 Member may request Trustee to pay a Pension on particular terms or to pay a lump sum**

A Member or other person entitled to be paid a Pension from the Fund may request the Trustee to pay it on any terms. However, a Pension may only be paid from the Fund on terms approved by the Trustee and the Trustee is not required to agree to any request made by a Member or other person entitled to be paid a benefit. A Member may request for their benefit (or part of their benefit) to be paid as a lump sum.



#### **8.4 Payment of a Pension**

As long as the requirements of the regulatory provisions are met the Trustee may pay the Pension at the times and in the amounts agreed with the person entitled to receive the Pension. A Pension is only payable in the amounts and on the dates approved by the Trustee.

#### **8.5 Account based Pensions**

Where an account based pension is to be paid the Trustee must pay the whole or the relevant proportion of the Member's Account into a Member's Pension Account set up for the Member and pay the Pension from that Pension Account.

**8.6** Despite anything elsewhere in these Rules, the Trustee may set up and keep any pension reserve accounts or other accounts in relation to the payment of a Pension from the Fund as it thinks fit having regard to the terms applying to the Pension and the interests of the Members in the Fund.

### **9. NOMINATION OF BENEFICIARIES**

#### **9.1 Nomination of Dependant to receive a Death benefit**

A Member at any time before payment or final payment of a benefit may nominate his or her legal personal representative or one or more dependants to receive his or her benefits if they die.

#### **9.2 Reversionary Beneficiaries**

A Member may also nominate a dependant or several dependants in succession to be the reversionary beneficiary for a Pension payable to or in respect of the Member.

#### **9.3 Discretionary nominations**

Unless the Member makes a binding nomination under Rule 9.4 a nomination under this Rule is a discretionary nomination, which will not in any way bind the Trustee in exercise of any of its discretions regarding payment of benefits under this Deed.

#### **9.4 Binding Nominations**

If, and only if, the Trustee has agreed that nominations may be given in respect of benefits payable from the Fund under this Rule 9.4 a Member may sign a nomination in the form required under sub-regulation 6.17A(6) of the SIS Regulations which requires the trustee to provide any benefits in respect of the Member on or after the Member's death to one or more dependants or to the legal personal representative as set out in the nomination (a "binding nomination"). A binding nomination ceases to have effect 3 years after the date it was first signed or last confirmed or amended. Unless the Trustee is satisfied that a nomination meets all of the requirements for a valid binding nomination set out in this sub-rule and in the Regulatory Requirements the Trustee must treat a nomination completed by a Member as a discretionary nomination.

## **9.5 Revocation of Nomination**

A Member, by notice in writing to the Trustee, may revoke any nomination made under this Rule at any time, and may, at the same time, but need not, substitute a new nomination.

## **10. ADMINISTRATION OF THE FUND**

### **10.1 Powers of the Trustee**

- 10.1.1 The Trustee has complete management and control of the Fund and everything connected with it and may execute any documents and do any things which it considers necessary for the purpose of securing the benefits to be provided by the Fund or carrying out its obligations under these Rules.
- 10.1.2 The Trustee in its absolute and uncontrolled discretion may exercise all or any of the authorities powers and discretions given to it under these Rules and may exercise those authorities powers and discretions from time to time and at any time or may refrain from exercising all or any of them from time to time or at all.
- 10.1.3 The Trustee may act on the advice or opinion of any professional person or expert even if the advice or opinion has not been obtained by the Trustee. The Trustee will not be responsible for any loss occasioned by acting on that advice in good faith as long as the Trustee is satisfied before acting on the advice that the advice is relevant to the circumstances of the Fund.
- 10.1.4 Whenever it is necessary for the Trustee to decide questions of fact it may act upon whatever proofs or presumptions as it may consider satisfactory whether they be strict legal proofs or legal presumptions or not.
- 10.1.5 The Trustee may open and operate any bank accounts which it thinks desirable. Cheques and other negotiable or transferable instruments and all receipts for money paid to the Fund must be signed in the manner which the Trustee may from time to time determines.
- 10.1.6 The Trustee may commence and prosecute legal proceedings of any kind and in any Court or tribunal and may abandon or settle any proceedings on any terms as the Trustee thinks fit. The Trustee may allow time for payment or satisfaction of any amounts due to the Fund.
- 10.1.7 The Trustee may insure against any liability of the Trustee (or any of the directors of a body corporate which is trustee of the Fund) in any way relating to the Fund or its administration, or the liability of the Fund to indemnify or reimburse the Trustee or its directors under Rule 10.3.2 below.

### **10.2 Appointment of Administrator and delegation by Trustees**

- 10.2.1 The Trustee may appoint someone to administer the Fund (an Administrator).
- 10.2.2 The Trustee may delegate to the Administrator on any terms which the Trustee thinks fit any of the powers, duties or discretions given to it by these Rules as long as it does not contravene any of the Regulatory Requirements by delegating those powers. The Trustee will not be liable for any loss occasioned by any omissions or acts of the Administrator to whom it delegates any powers, duties or discretions unless the omission or the acts resulted from fraud, wilful misconduct or a known breach of trust by the Trustee. The Trustee may at

any time revoke any delegation or vary the terms of any delegation of any of the Trustee's powers under this Rule.

- 10.2.3 The Trustee is not bound to act personally but may employ and pay accountants, actuaries, advisers, auditors, bankers, barristers, brokers, consultants, custodians, investment trustees, managers, solicitors and any other persons it may consider desirable for the proper administration of the Fund. The Trustee will not be liable for the neglect, default or misconduct of anyone engaged by it or for allowing trust funds or securities to remain in the custody or control of any person for any time however long unless that action is the result of fraud, wilful misconduct or a known breach of trust by the Trustee.

### 10.3 Liability and Indemnity

- 10.3.1 The Trustee (and any Director or officer of a Trustee which is a body corporate) will not be liable for any loss which may be suffered by the Fund or by any Member or by a person claiming an interest in the Fund as a result of any act or omission, mistake or error of judgment, or the exercise of any discretion or power conferred on the Trustee or the failure to exercise any discretion or power or any agreement made or document executed by or on behalf of the Trustee unless the loss is caused by:
- (a) the Trustee's own fraud, wilful misconduct or by the Trustee wilfully and knowingly being a party to a breach of trust; or
  - (b) the Trustee contravening a covenant contained or deemed by the Regulatory Requirements to be contained in these Rules; or
  - (c) the Trustee's failure to act honestly; or
  - (d) the Trustee's intentional or reckless failure to exercise the degree of care and diligence that the Trustee is required to exercise.
- 10.3.2 Subject to Rule 10.3.3 the Trustee (including each director of the Trustee while acting in that Trustee capacity) is entitled to be indemnified and reimbursed out of the Fund for any liability or loss which is incurred by the Trustee while acting as Trustee of the Fund including the costs of obtaining advice in relation to the performance of the duties and the exercise of the powers of the Trustee.
- 10.3.3 A Trustee (or any Director of a Trustee) is not entitled to be indemnified under Rule 10.3.2 against:
- (a) any loss arising from or in relation to a breach of trust where the Trustee failed to act honestly or intentionally or recklessly failed to exercise the degree of care and diligence that the Trustee was required to exercise; or
  - (b) any monetary penalty under a civil penalty order made under the SIS Act.
- 10.3.4 The rights to indemnity and limitations on liability set out above are subject to any limitations or restrictions set out in the Regulatory Requirements and the Trustee in addition to any other defence to any claim for any loss suffered by the Fund or a Member may rely upon any defence which is allowed under the Regulatory Requirements.

## **10.4 Remuneration and expenses**

- 10.4.1 The Trustee is not to be given any remuneration for acting as Trustee.
- 10.4.2 The Trustee must pay out of the Fund all expenses of and incidental to the management and administration of the Fund.
- 10.4.3 A Member or an entity in which a Member is a director, shareholder, partner or employee may be paid (as an expense of the Fund) any proper fees for services provided in connection with the Fund, and neither the individual or the entity can be required to account to the Fund for any of those fees.

## **10.5 Minutes and Records**

The Trustee must make and keep minutes of decisions made in relation to the Fund and must keep the other records which are required under the Regulatory Requirements to be kept in relation to the Fund and hold them for the period set out in the SIS Act.

## **10.6 Information to be provided by the Trustee**

The Trustee must give to applicants for membership, Members, employers and other superannuation entities (on transfer of the benefits of a Member) and to each person who makes an enquiry or complaint, all of the information which they must give to them under the Regulatory Requirements.

## **11. INVESTMENT STRATEGY AND CHOICE OF INVESTMENT STRATEGY**

### **11.1 Investment Strategy**

The Trustee must formulate and give effect to an investment strategy for the Fund that has regard to the whole of the circumstances of the Fund including but not limited to the matters set out in the Regulatory Requirements. The Trustee must give consideration to risk return liquidity and diversification when investing the Fund.

### **11.2 Investment Restrictions**

- 11.2.1 The Trustee or the Investment Manager must not invest any money forming part of the Fund unless the Trustee or the Investment Manager and any other party to any relevant investment transaction are dealing with each other at arms length in respect of the transaction or if they are not dealing with each other at arms length the terms and conditions of the transaction must be no more favourable to the other party than those which it would be reasonable to expect would apply if the parties were dealing at arms length in the same circumstances.
- 11.2.2 If the Trustee has invested any money of the Fund in in-house assets the Trustee must take all reasonable steps to ensure that the market value of the Fund's assets which are in-house assets does not at any time exceed the maximum permitted amount.

### **11.3 Appointment of Investment Manager**

The Trustee at its discretion may from time to time appoint an Investment Manager to provide on-going advice regarding the investment of the assets of the Fund or to invest the money of

the Fund or to manage the investments of the Fund or any of them but the Trustee must satisfy all of the Regulatory Requirements when it appoints an Investment Manager.

#### **11.4 Authorised Investments**

11.4.1 Money which is not immediately required for payment of benefits must be invested by the Trustee in accordance with the investment strategy for the Fund.

11.4.2 Subject to that strategy and to the restrictions in the Regulatory Requirements the Trustee may invest the Fund in:

- (a) any investment which is authorised by law for investment of Trust Funds;
- (b) any policy issued by a life insurance company;
- (c) any type of account with a bank or other deposit taking institution;
- (d) any security or other financial product;
- (e) real estate or any interest of any kind in real estate;
- (f) any loan whether secured (by a mortgage or a fixed or floating charge or by any other security at all) or unsecured and for any period or at call;
- (g) units in a pooled superannuation trust;
- (h) any other investments of any kind at all in which the Trustee could invest a fund if it was the beneficial owner of the Fund and which the Trustee considers an appropriate investment for the Fund.

In this Rule, "security" has the meaning given in s761A Corporations Act 2001 and "financial product" has the meaning given in subdivision B and C of Chapter 7 of the Corporations Act 2001.

11.4.3 The Trustee may also invest in any asset which is an in-house asset as long as the Trustee will not contravene any of the Regulatory Requirements by acquiring or continuing to hold that in-house asset.

11.4.4 The Trustee has the power, as the Trustee thinks fit:

- (a) to acquire, dispose of, exchange, encumber, lease, sub-lease, let, grant, release or vary any right or easement, or otherwise deal in any way at all with real property or any estate or interest in real property;
- (b) to acquire, dispose of, exchange, hire, lease, let, encumber or otherwise deal in any way at all with any personal property;
- (c) to repair or improve and do any acts or things to preserve any asset of the Fund;
- (d) take out and maintain any insurances over the assets of the Fund which the Trustee considers advisable.

11.4.5 Despite anything elsewhere in these Rules, the Trustee must comply with all of the relevant Regulatory Requirements when it invests on behalf of the Fund.

## 12. INSURANCE

12.1 As long as the Trustee does not contravene any of the Regulatory Requirements by taking out or holding the policy, the Trustee may arrange and take out any insurance covering the happening of any event affecting a Member for the purpose of providing benefits from the Fund.

12.2 For the purposes of taking out, increasing or otherwise varying any insurance the Trustee may from time to time require any Member to:

- (a) be medically examined;
- (b) submit other evidence of health habits and pastimes;
- (c) provide proof of age to the satisfaction of the Insurer; or
- (d) provide any other information or do any other thing which the Trustee or an Insurer may require for the purpose of any insurance.

## 13. ACCOUNTS

13.1 The Trustee must keep accounting records for the Fund which:

- (a) correctly record and explain all transactions of and the financial position of the Fund;
- (b) will enable the Trustee to prepare all accounts and financial statements for the Fund which must be prepared by it under the Regulatory Requirements; and
- (c) will enable the auditor to prepare reports which the auditor must give in relation to the Fund.

13.2 The Trustee must keep and maintain all other records which will enable the Trustee to administer the Fund in accordance with the requirements of these Rules and to give the accounts, reports and information to Members which the Trustee must give under the Regulatory Requirements.

13.3 Without in any way limiting the above, the Trustee must:

- (a) keep records of persons who become Members including the dates when a person starts and stops being a Member;
- (b) set up and keep an account for each Member (their "Member Account") recording all contributions made and any other amounts held for the benefit of that Member and amounts charged for the expenses of the Fund;
- (c) keep any other separate accounts relating to Members' benefits or entitlements which are required to be kept in order to comply with the Regulatory Requirements.

**13.4 Reserve accounts**

- 13.4.1 The Trustee may keep a general reserve account and transfer amounts to the general reserve as it thinks fit.
- 13.4.2 The Trustee may credit to a general reserve any earnings arising from the investment of the Fund as the Trustee thinks fit.
- 13.4.3 The Trustee may divide the general reserve into sub-accounts.
- 13.5 The Trustee may set up and keep any other general or reserve accounts for the Fund as it thinks fit.
- 13.6 The Trustee must formulate and give effect to a strategy for prudential management of each reserve account.
- 13.7 The Trustee may transfer amounts from any reserve account to Members Accounts and any other accounts as it thinks fit and may pay any expenses including taxes and insurance premiums from a reserve account.
- 13.8 The Trustee may keep a Foregone benefits reserve and subject to the Regulatory Requirements may transfer amounts from a Member's account to that reserve as it thinks appropriate.
- 13.9 At the time that a benefit is to be paid the Trustee may allocate amounts from any reserve Account to increase a Member's benefit entitlement.

**13.10 Other Accounts**

The Trustee in its absolute discretion may set up and keep any other accounts for the Fund as it thinks fit including any other or separate accounts for the interests of a Member in the Fund and any accounts for any sub-Fund or segment which is established within the Fund.

**13.11 Distribution of earnings**

- 13.11.1 The Trustee must after the end of each Financial year distribute the income profits and gains and any losses accruing or arising during the preceding Financial Year from the investment of the assets of the Fund to the credit of (or in the case of a loss or negative return by debit to) the Member accounts or any reserve accounts and other accounts set up by the Trustee on any basis which the Trustee decides is fair and reasonable.
- 13.11.2 In arriving at the profit or loss the Trustee must take into account:
- (a) the actual earnings of the Fund including all income and realised and unrealised gains or losses; and
  - (b) all losses and expenses incurred by the Fund including all taxation payable by the Fund or estimated to be payable by the Fund.
- 13.11.3 The Trustee may, in its absolute discretion, credit or debit any amount it thinks fit to a reserve account or to any other general account when determining the distribution of profits or losses for a financial year. The balance in a reserve account may be applied in supplementing the amounts credited to Members' accounts or may be used to pay taxation

liabilities imposed on the Fund or for the purpose of providing additional benefits to Members or their dependants or for any other purpose which the Trustee considers appropriate and equitable.

### **13.12 Financial Statements**

13.12.1 The Trustee must cause financial statements for the fund to be prepared for each Financial Year and must have those accounts and records of the Fund audited at the times and in the manner required by the Regulatory Requirements.

13.12.2 The Trustee, after obtaining any professional or expert advice it thinks appropriate, must determine accounting policies to be used in the preparation of the financial reports for the Fund, which comply with the Regulatory Requirements and which are appropriate to the needs of the Members.

## **14. AUDIT**

14.1 The Trustee must appoint an Auditor to audit the financial statements and records of the Fund.

14.2 The Trustee must request the Auditor to audit the accounts and statements of the Fund as at the end of each Financial Year and to provide an audit certificate in the form prescribed in the Regulatory Requirements within the period set out in those requirements. The Trustee must request the Auditor to provide any other reports or certificates which are required under the Regulatory Requirements.

14.3 The Trustee must give the Auditor access to all accounts and documents of the Fund under its control for the purpose of carrying out the audit and must provide any explanations regarding the affairs of the Fund which the Auditor may require.

## **15. TAXATION**

15.1 Despite anything elsewhere in these Rules and as long as it would not contravene any of the Regulatory Requirements by exercising the power, the Trustee:

- (a) may deduct from any Contribution, any income earned by the Fund, any capital gain realised in the Fund or from any payment out of the Fund any amount required to pay any Tax assessed or payable or anticipated to be payable in respect of that receipt or payment;
- (b) may pay from the assets of the Fund the amount of any Taxes assessed against or required to be paid by the Trustee in relation to the Fund or in relation to any Member's interest in the Fund (including any Tax levied on any of the assets of the Fund or on any transaction entered into by the Trustee in relation to the Fund) and if necessary for that purpose the Trustee may realise any asset of the Fund And convert it to cash;
- (c) in preparing the accounts (including the individual accounts for members of the Fund):
  - (i) may make provision for and set aside amounts for payment of any Taxes;



- (ii) may apply or deal with any taxation refunds, prepayments or advance payments of Tax, any refund of excess franking credits and any tax credits or rebates and make any adjustments to any provisions previously made by it in the accounts of the Fund for payment of Taxes as from time to time seem necessary or appropriate;
  - (d) may apply any amount provided in the accounts of the Fund for payment of Taxes in excess of the amount actually paid or payable for a particular year of income of the Fund towards payment of Taxes in a subsequent year or otherwise apply the amount of that excess for the benefit of the members as the Trustee thinks appropriate;
  - (e) in paying any benefit, may make any adjustment to the benefit which it considers appropriate to take account of any tax paid or assessed or expected to be payable or any advance payment of any Tax or any tax refund or tax credit which has or which is expected to be received in respect of the Member's interest in the Fund.
- 15.2** If Tax becomes payable by the Fund in relation to a Financial Year which has ended and any provision made in the accounts of the Fund for payment of that Tax is inadequate nothing in this Rule or elsewhere in these Rules is to be treated as requiring the Trustee to make retrospective adjustments to any benefits or entitlements of members or to make any other retrospective adjustment to the accounts for the Fund.
- 15.3** A Member must provide to the Trustee whatever information is required by the Trustee to satisfy its obligations under the Superannuation Contributions Tax (Assessment and Collection) Act.
- 15.4** Where a Member is entitled to object against an assessment of any tax levied against or paid by the Trustee in respect of the Fund or of the Member's interest in the Fund the Trustee must give to the Member on request all information relating to the Fund or the Member's interest in the Fund which the Member may reasonably require for the purpose of objecting against the assessment and of pursuing his or her objection against the assessment including any appeal against disallowance of his or her objection.
- 15.5** Where Contributions Tax or any other tax is assessed in respect of or in relation to a Member's interest in the Fund and the Trustee is entitled to object against that assessment the Member may request the Trustee to object against the assessment. The Trustee may refuse that request or may agree to lodge the objection and to pursue it and any appeal against disallowance of the objection on any terms or conditions including a condition that the Member pay the Trustee's reasonable costs of making and pursuing the objection and any appeal.
- 15.6** Where GST is payable by the Trustee or is charged to the Trustee for anything supplied in relation to the Fund, the Trustee may allocate that liability in any way it considers appropriate and may charge that liability to any Member Accounts, a reserve Account or otherwise as it thinks fit. The trustee may establish any accounts it may think necessary to record any liability for and payment of GST.

## 16. SPLITTING OF INTERESTS UNDER THE FAMILY LAW ACT

**16.1** In this clause "Family Law Superannuation Laws" means the provisions of the *Family Law Act 1975* and the Regulations made under that Act and the provisions of the *SIS Regulations* which relate to payment splits and the allocation of interests in superannuation funds between the parties to a marriage as in force from time to time and any substitute or further acts or regulations in force from time to time which allow superannuation interests to be allocated between the parties to a marriage.

Unless the context indicates otherwise, words and expressions used in this Rule and defined in the Family Law Superannuation Laws have the same meaning in this Rule.

**16.2** Despite anything in this Rule or elsewhere in this Deed the Trustee:

- (a) must exercise all of the powers held by it in relation to the provision of information to and the allocation of interests in the Fund between the parties to a marriage, subject to the provisions, restrictions, limitations and requirements contained in the Family Law Superannuation Laws;
- (b) is authorised to do all acts, matters and things which are necessary or which the Trustee considers desirable to ensure that the Trustee fully complies with and does not contravene any of the Family Law Superannuation Laws;
- (c) is authorised to do all acts, matters and things which are necessary or which the Trustee considers desirable to give effect to a Superannuation Agreement, a splitting order or a flag lifting agreement; and
- (d) may set up and keep any accounts within the Fund for the purpose of giving effect to a payment split or dealing with transferable benefits or otherwise in connection with the splitting or allocation of benefits under the Fund between the parties to a marriage as it thinks fit.

**16.3** If there is any conflict between any provision of these Rules and any provision of the Family Law Superannuation Laws, the provisions of the Family Law Superannuation Laws are to prevail.

**16.4** Subject to payment of any fee fixed by the Trustee under this Rule, the Trustee after receiving an application from an Eligible Person in the form prescribed by the Family Law Superannuation Laws and any other required document, must give to the applicant the information about the superannuation interest set out in the application which is required to be given under the Family Law Superannuation Laws.

**16.5** The Trustee must not disclose to any person any information which it is prohibited from disclosing to that person under the *Family Law Act 1975*.

**16.6** The Trustee may fix and charge an eligible person reasonable fees in relation to an application under Family Law Superannuation Laws for information about a superannuation interest.

**16.7** The Trustee may also fix and charge reasonable fees with respect to each of the following:

- (a) a payment split;

- (b) a payment flag;
- (c) a flag lifting under a flag lifting agreement that does not provide for a payment split;
- (d) an order terminating the operation of a payment flag;
- (e) any other thing done by the trustee in relation to a superannuation interest covered by a superannuation agreement, flag lifting agreement or splitting order.

## **17. FUND ACTUARY**

The Trustee, in its discretion, may appoint a Fund Actuary at any time as it thinks fit. The Trustee may at any time and must when required by the Regulatory Requirements arrange for the Fund Actuary to conduct an actuarial investigation of the Fund and prepare a report in writing to the Trustee regarding the position of the Fund and any certificates required to be given in relation to the Fund.

## **18. PRODUCT DISCLOSURE**

The Trustee must comply with all of the provisions of Chapter 7 of the Corporations Act 2001 which relate to the issuing of interests in the Fund and must, if required to do so under that Chapter, prepare and issue Product Disclosure Statements.

## **19. TRANSFER FROM OTHER FUNDS**

The Trustee in its discretion may make or carry into effect an arrangement with the trustees of another superannuation fund or other superannuation entity and/or any person who is a member or former member of another superannuation fund or entitled to a benefit from another superannuation entity ("beneficiary") under which an agreed sum or agreed assets are paid into or transferred to the Fund to provide benefits for the beneficiary and that person if he or she is not already a Member may be admitted as a Member and may be granted rights and benefits additional to or in place of those otherwise provided under these Rules as the Trustee may determine.

## **20. TRANSFER TO OTHER FUNDS**

- 20.1** Subject to Rule 20.4 and to any conditions and indemnities which the Trustee may require, and after receiving a request from a Member to do so, the Trustee may pay or transfer or cause to be paid or transferred to the trustee of another complying superannuation fund for the benefit of the Member making the request the Member's Withdrawal benefit or other amount determined by the Trustee in accordance with these Rules at the time the payment is made. The receipt of the Trustee of the receiving fund will be sufficient discharge to the Trustee from the trusts in this Deed in respect of the amount transferred and the Trustee will not in any way be responsible for the payment or disposal by the trustee of that other fund of the amounts paid or transferred to the other Fund.
- 20.2** Upon a Member's benefit being transferred and/or any policy on his life or other asset being assigned (as the case may be) the Member will have no further claim against the Fund for benefits which have been transferred.
- 20.3** The Trustee may transfer a benefit by transferring any of the Fund's assets. Any expenses associated with the transfer, including (but not limited to) stamp duty, brokerage fees and

commission, must be paid by the Member or the Employer or deducted from the amount transferred.

- 20.4** The Trustee must not transfer a benefit to another Superannuation Fund unless the relevant Member has given the Trustee his or her written consent to the transfer.

## **21. AMENDMENT OF DEED**

- 21.1** Subject to any limitations or restrictions upon the power of the Trustee to change these Rules which are contained in the Regulatory Requirements, the Trustee, at any time, may change the Deed and these Rules (including this sub-Rule) in any way. Without limiting the above, the Trustee may alter, add to, revoke or delete all or any of the trusts or other provisions of the Deed or these Rules. A change may be made by a Deed (Amending Deed) executed by the Trustee. Each change takes effect from the date of commencement which is set out in the Amending Deed or if no date of commencement is set out from the date of the Amending Deed.

- 21.2** Despite Rule 21.1 no change may be made to these Rules which may reduce or prejudice any benefits which have accrued to a Member (a "benefit reduction") unless the Regulatory Requirements allow the benefit reduction to be made.

## **22. TERMINATION OF FUND**

- 22.1** The trusts declared by this Deed must terminate and the Fund must be wound up if:

- (a) the Trustee decides that it is in the interests of the Members to terminate the Fund;  
or
- (b) there are no Members of the Fund and the Trustee resolves to terminate the Fund;  
or
- (c) under the Regulatory Requirements the Trustee must initiate winding up proceedings in accordance with the SIS Act.

- 22.2** If there are Members of the Fund at the date of termination or commencement of winding up, the Trustee must give notice to each Member that the Fund is to be wound up on a specified date (the Closing Date) and as from the Closing Date no further contributions (other than arrears) may be made to the Fund and that all arrears of contributions must be paid immediately. The Trustee at its discretion must deal with the benefits and entitlements which have accrued to Members under these Rules at the Closing Date in one or more of the following ways:

- (a) by paying a benefit to the Member or the dependants of the Member;
- (b) by rolling over the benefit within the superannuation system;
- (c) by transferring the benefit to another regulated superannuation fund (as long as the Trustees of that fund are required under the relevant Trust Deed to preserve the Preserved benefits included in the amount transferred and the relevant Member gives his consent in writing);

- 22.3** The Trustee may pay the benefits referred to in Rule 22.2 in any form and under any arrangements which the Trustee considers appropriate in the circumstances and every Member must accept the benefits allotted to him by the Trustee in full discharge of all claims in respect of the Fund and will have no further claims at all in respect of any rights or benefits under these Rules or otherwise in connection with or arising out of their interest in the Fund and all decisions of the Trustee with respect to any benefit will be final and conclusive.
- 22.4** If the Trustee decides to wind up the Fund under Rule 22.1(b) because there are no Members left in the Fund the assets of the Fund are to be distributed in any way allowed by the Regulatory Requirements and subject to those Requirements the Trustee in its discretion may distribute the assets remaining in the Fund to any former Members of the Fund or to any of the dependants or to the legal personal representative of any Member who has died or to any Employer as a refund of contributions.
- 22.5** If after the operation of the provisions set out earlier in this Rule any assets remain in the Fund ("surplus assets") the surplus assets are to be distributed to the Members or former Members of the Fund or their dependants or to the legal personal representatives of any deceased member or refunded to any relevant Employer or otherwise distributed in a manner allowed by the Regulatory Requirements as the Trustee in its discretion may decide.