

**SUPERANNUATION FUND  
TRUST DEED**

**Sunderasan Family  
Super Fund**

Date of Deed:..... (insert date of execution)

Our ref: 5670:122067 (SMSF2012-13)



Level 1, 290 Coventry Street (PO Box 2085)  
South Melbourne Vic 3205  
Ph: (03) 9092 9400 Fax: (03) 9092 9440  
dba@dbalawyers.com.au www.dbalawyers.com.au  
DBA Lawyers Pty Ltd ACN 120 513 037

**THIS DEED** is made on:..... (insert date of execution)

**BY:** **KLVS PTY LTD** ACN 159 319 534 care of 29 Regent Street, Summer Hill, New South Wales 2130 ('Trustee')

**RECITALS:**

- A The Trustee establishes the superannuation fund known as 'Sunderasan Family Super Fund' ('Fund') on execution of this Deed, in accordance with this Deed as a self managed superannuation fund with the flexibility of becoming another type of superannuation fund.
- B The Trustee has agreed to act as trustee of the Fund and will hold the Fund's property on trust in accordance with this Deed and the attached governing rules ('Governing Rules').
- C Subject to rule 1, the purpose of the Fund is to provide superannuation benefits to Members, and in the event of their death, for their Dependants and to act for any other purposes as permitted from time to time under the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth).
- D The Trustee desires to maintain the Fund as a complying superannuation fund under the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

**PROVISIONS:**

- 1. The Trustee establishes the Fund as a trust to be administered in accordance with this Deed and the Governing Rules.
- 2. The Trustee confirms that it will act as the initial Trustee of the Fund in accordance with this Deed and the Governing Rules.
- 3. This Deed and the Governing Rules are varied in accordance with rule 24. This Deed and the Governing Rules are subject to the definitions in rule 29.

**EXECUTED** as a deed.

EXECUTED by **KLVS PTY LTD** ACN )  
 159 319 534 in accordance with s 127 of the )  
*Corporations Act 2001* (Cth): )  
 )

-----  
*Signature of* DIRECTOR / SECRETARY

-----  
*Signature of* DIRECTOR

-----  
*Name of signing officeholder*

-----  
*Name of signing officeholder*

## SMSF GOVERNING RULES

Rule	PART A — RULES	Page
1.	FUND PURPOSE .....	1
2.	FUND ASSETS .....	1
3.	TRUSTEE .....	1
4.	TRUSTEE'S DUTIES.....	8
5.	INDEMNITIES .....	9
6.	INVESTMENT .....	10
7.	POWERS.....	14
8.	MEMBERSHIP .....	19
9.	CONTRIBUTIONS.....	21
10.	BENEFITS.....	23
11.	LUMP SUMS .....	28
12.	ACCOUNT-BASED PENSIONS.....	28
13.	TRANSITION TO RETIREMENT INCOME STREAMS .....	29
14.	ALLOCATED PENSIONS .....	29
15.	MARKET LINKED PENSIONS.....	30
16.	TEMPORARY INCAPACITY INCOME STREAMS .....	31
17.	MISCELLANEOUS BENEFITS.....	32
18.	DEATH BENEFITS .....	33
19.	BINDING DEATH BENEFIT NOMINATIONS .....	35
20.	VESTING AND MEMBERSHIP CLASSES.....	36
21.	ACCOUNTS AND ADMINISTRATION.....	37
22.	TRANSFERS, ROLL-OVERS AND INTERNAL ROLL-OVERS.....	39
23.	DISCLOSURE, RECORDS AND AUDITORS .....	41
24.	VARIATION .....	42
25.	WIND UP .....	43
26.	IMPLIED STANDARDS .....	44
27.	APPLICABLE LAW.....	45
28.	INTERPRETATION.....	45
29.	DEFINITIONS .....	45
30.	SEVERANCE .....	60

## PART B — FORMS

Form 1 .....	APPLICATION FOR MEMBERSHIP
Form 2 .....	NOTIFICATION TO CONTRIBUTING EMPLOYER

This documentation has been prepared by DBA Lawyers Pty Ltd on instructions contained in the order form. DBA Lawyers provides no advice to the parties involved with the Fund unless it is requested to do so in writing. As superannuation and taxation laws are subject to continual change and substantial penalties can be imposed for any contravention, expert advice should be obtained wherever in doubt. Unless the Trustee subscribes to the Annual Update Service (refer <http://www.dbalawyers.com.au/annual-update-service>) there is no obligation on DBA Lawyers to notify you in respect of any change that may be required to the Governing Rules. Except to the extent required by law, we disclaim all and any liability arising in any manner that does not relate to the documentation prepared on our specific instructions.

## **1. Fund Purpose**

- 1.1 While the Trustee is not a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Old-Age Pensions to Members and, on their death, to their Dependants.
- 1.2 While the Trustee is a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Benefits to Members and, on their death, to their Dependants.
- 1.3 Subject to the Standards, this Fund is not intended to be a Defined Benefit Fund, and the Trustee shall not:
- (a) operate the Fund as if the Fund were a Defined Benefit Fund;
  - (b) accept a Member who would be a Defined Benefit Member; or
  - (c) convert a Member to a Defined Benefit Member, or the Fund to a Defined Benefit Fund;
- and the Trustee shall reject or disregard any applicant, Member, contribution or any other event that would otherwise cause the Fund to become a Defined Benefit Fund.
- 1.4 The Fund is intended to be an SMSF. However, during any period that the Fund's status is such that it is no longer an SMSF and is a Small APRA Fund or another type of fund permitted under the Standards, these Governing Rules shall be read subject to the Fund's status at the relevant time.

## **2. Fund Assets**

- 2.1 The assets of the Fund shall consist of all the cash, investments, insurances and other rights or entitlements held in trust by the Trustee under these Governing Rules and shall include:
- (a) any money or assets transferred into the Fund;
  - (b) any contribution (in money or kind) made to the Fund; and
  - (c) all profits, accumulations and Earnings of the Fund net of any Disbursements.
- 2.2 Subject to rule 6.2, a Member is not entitled to any specific asset belonging to the Fund and the Trustee shall have an absolute discretion in determining which assets are applied to provide funds for any amount which becomes payable in respect of a particular Member.
- 2.3 Every outgoing Trustee shall use its best endeavours, at the request of an incoming Trustee, to transfer its title to the assets of the Fund to the incoming Trustee and to assist the incoming Trustee to gain control of the Fund.

## **3. Trustee**

### **3.1 Trustee**

The Fund shall be vested in the Trustee and the Trustee shall hold the Fund assets subject to these Governing Rules. The Trustee shall be such natural persons, Corporate Trustee, RSE Licensee, acting trustee, substitute trustee, successor co-trustee, replacement trustee or other person or company permitted or required to act as a trustee of the Fund from time to time by the Standards. Subject to section 17A of the SISA, the Trustee may be one individual.

## 3.2 Appointment

- (a) Subject to the Standards, one or more Members who either individually or in total have aggregate Account balances attributable to them that are greater than half of the total value of all Account balances in the Fund attributable to Members may, by deed, written resolution or other written instrument appoint a Trustee who consents to that appointment in writing. In relation to the appointment of a Trustee, subject to rule 8.9(b), the LPR:
- (i) of a deceased Member in respect of whom an Interest remains in the Fund may exercise the decision making power that the deceased Member could have exercised had he or she been alive; and
  - (ii) of a Member under a legal disability may exercise the decision making power for the legally disabled Member, whether the legal disability is because of age or otherwise.
- (b) If the Trustee is a Corporate Trustee, the appointment of a director of a Corporate Trustee (whether as a successor director or otherwise) shall be in accordance with the Company Rules unless the Standards prescribe otherwise.
- (c) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period that the Fund is an SMSF, each individual Trustee or each director of a Corporate Trustee shall:
- (i) not be a Disqualified Person;
  - (ii) be a Member of the Fund and satisfy any eligibility criteria to be an individual trustee or director of a Corporate Trustee as prescribed by the Standards;
  - (iii) satisfy such alternative test that is permitted by the Standards providing for such situations as:
    - (A) single Member SMSFs;
    - (B) if a Member has died, even if no nomination has been made by that Member in accordance with rule 3.3 or, if the Trustee is a Corporate Trustee, under the Company Rules;
    - (C) if a Member suffers from a legal disability (including a person under a legal disability because of age), even if no nomination has been made by that Member in accordance with rule 3.3 or, if the Trustee is a Corporate Trustee, under the Company Rules;
    - (D) if a Member is under a legal disability due to age and does not have an LPR;
    - (E) if a Member has appointed an LPR under an enduring power of attorney; or
    - (F) if a Benefit in the Fund is subject to a Payment Split or a Non-Member Spouse interest has been created pursuant to the SISR for a Non-Member Spouse who was not a Member of the Fund immediately before the operative time for the Payment Split; or
  - (iv) satisfy such other requirements permitted by the Standards or the Regulator.

- (d) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period that the Fund is a Small APRA Fund the Trustee shall:
  - (i) be an RSE Licensee authorised to act as trustee of the Fund; or
  - (ii) satisfy such other requirements permitted by the Standards or the Regulator.
- (e) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period that the Fund is not an SMSF or a Small APRA Fund, the Trustee shall satisfy such requirements prescribed by the Standards or the Regulator in relation to the Trustee and the decision making of the Trustee.
- (f) The Regulator may appoint an acting trustee in accordance with the Standards on such terms and conditions as the Regulator may specify.

### 3.3 **Successor Trustee**

- (a) A Successor Trustee's appointment is only effective as provided by rule 3.3(e), and a nomination under rule 3.3(b) alone is not effective to appoint a Successor Trustee.
- (b) A Member who is an individual Trustee ('**Nominating Member**') may, by providing a nomination to the other Trustees, seek to appoint or remove:
  - (i) their LPR to act as Trustee ('**Successor Trustee**') in the Nominating Member's place in the event of the Nominating Member's death or during any period that the Nominating Member is under a legal disability, subject to rule 3.9(b); or
  - (ii) a single natural person to act as Trustee ('**Successor Trustee**') in the Nominating Member's place in the event of the Nominating Member's death or during any period that the Nominating Member is under a legal disability;

provided that any nominated Successor Trustee is not a Disqualified Person and the appointment would not cause the Fund to cease being an SMSF.
- (c) A nomination made under this rule 3.3 must:
  - (i) be in writing;
  - (ii) be signed and dated by the Nominating Member in the presence of two adult witnesses, neither of whom is nominated therein as the Successor Trustee or is an LPR of the Nominating Member; and
  - (iii) contain a declaration signed and dated by both of the witnesses stating that the nomination was signed by the Nominating Member in their presence.
- (d) A nomination made under this rule 3.3 is revoked if:
  - (i) the Nominating Member makes a new nomination;
  - (ii) the Nominating Member revokes their nomination by providing written notice of the revocation to the other Trustees; or
  - (iii) a Corporate Trustee is appointed as Trustee of the Fund.
- (e) The appointment of a Successor Trustee shall only become effective and the Successor Trustee shall become a Trustee of the Fund when, following the death or legal disability of the Nominating Member, the Successor Trustee has consented to their appointment in writing (and, if the Successor Trustee has

been nominated because they are the LPR of the Nominating Member, when every person who is required to act as LPR has consented to their appointment in writing), provided:

- (i) the Successor Trustee is not under a legal disability or a Disqualified Person (and for the avoidance of doubt, if the Successor Trustee has been nominated because they are the LPR of the Nominating Member, provided every person who is required to act as LPR is not under a legal disability or a Disqualified Person); and
  - (ii) the appointment of the Successor Trustee would not cause the Fund to cease being an SMSF.
- (f) For the avoidance of doubt, if a Successor Trustee dies or comes under a legal disability before the death or legal disability of the Nominating Member, the deceased or legally disabled Successor Trustee's LPR may not become a Trustee of the Fund by virtue of being the LPR of that Successor Trustee.
- (g) In addition to any other circumstances in which the office of a Trustee becomes vacant under these Governing Rules, the office of a Trustee which is held by a Successor Trustee shall also cease on the expiration of six months less one day after the occurrence of the following events:
- (i) if the Nominating Member has died and the Successor Trustee has been appointed because they are the LPR of the Nominating Member — Benefits in respect of the Nominating Member's Interest commence to be payable; or
  - (ii) if the Successor Trustee holds office as a Trustee because of the legal disability of the Nominating Member — the Nominating Member ceases to be under a legal disability, in which case the Nominating Member shall again become a Trustee;

unless the Successor Trustee can remain a Trustee without causing the Fund to cease being an SMSF.

### 3.4 **Vacancy**

Subject to the Standards:

- (a) the office of a Trustee, or in the case of an individual Trustee, the office of that individual Trustee shall become vacant if:
  - (i) the Trustee resigns as trustee by executing a deed, written resolution or other instrument or in some other manner authorised by the Standards;
  - (ii) where the Trustee is a natural person, the Trustee dies;
  - (iii) where the Trustee is a natural person, the Trustee comes under a legal disability and an appointment of Successor Trustee in place of that Trustee is made in accordance with rule 3.3;
  - (iv) the Trustee becomes a Disqualified Person, unless that person can continue in office by compliance with guidelines of the Regulator or otherwise in accordance with the Standards;
  - (v) subject to the Standards and this rule, Members who either individually or in total have aggregate Account balances greater than half of the total value of all Account balances in the Fund attributable to Members, may by deed, written resolution or other written instrument, remove an individual Trustee, Corporate Trustee or RSE

Licensee as the case may be. In relation to the removal of a Trustee, subject to rule 8.9(b), the LPR:

- (A) of a deceased Member in respect of whom an Interest remains in the Fund may exercise the decision making power that the deceased Member could have exercised had he or she been alive; and
  - (B) of a Member under a legal disability may exercise the decision making power for the legally disabled Member, whether the legal disability is because of age or otherwise.
- (vi) where the Fund is an SMSF, an individual Trustee or a Corporate Trustee can no longer comply with the requirements of being a trustee of such a fund (unless that person or company can continue in office by compliance with guidelines of the Regulator or otherwise in accordance with the Standards for any extended period);
  - (vii) where the Fund is a Small APRA Fund, the RSE Licensee can no longer satisfy the requirements of being a trustee of a Small APRA Fund (unless the Trustee can continue in office by compliance with guidelines of the Regulator or otherwise in accordance with the Standards); or
  - (viii) where the Fund is another type of fund, the Trustee can no longer comply with the requirements of being a trustee of such a fund (unless the Trustee can continue in office by compliance with the guidelines of the Regulator or otherwise in accordance with the Standards); and
- (b) if any of the events described in rule 3.4(a) occur, either of the following applies:
    - (i) in the case that the Trustee comprised individual trustees: the office may be filled within a short period if a Successor Trustee has been validly appointed under rule 3.3(e); or
    - (ii) if rule 3.4(b)(i) does not apply, the vacancy shall be filled as soon as practicable if the vacancy causes or would in the short-term cause the Fund to cease being an SMSF, Small APRA Fund or another type of fund as the case may be.

### 3.5 **Appointor power not fiduciary**

To the greatest extent permitted the Standards, the powers in rules 3.2(a), 3.2(b) and 3.4(a)(v) are not fiduciary powers, and may be exercised without any requirement to act in good faith or consider the interests of any other person or entity.

### 3.6 **Queensland Law**

If the applicable laws in rule 27 are those of Queensland, any change of trustee is subject to part 2 of the *Trusts Act 1973* (Qld) except that a sole trustee may act and a resigning or departing trustee is fully discharged even where only one trustee remains.

### 3.7 **Notification and Declaration Requirements**

If required by the Standards and subject to rule 23, a declaration, notification or other document prescribed by the Standards shall be completed and lodged with the Regulator or retained with the Fund's records within the required time on a change in the office of Trustee or change in the directorship of a Corporate Trustee.



### 3.8 Decisions — Individual Trustees

- (a) If the Trustee comprises two individuals, trustee decisions shall at first instance require majority approval, with each trustee having one vote, and if there is any deadlock in making any decision, each trustee's vote shall be weighted in relation to the value of each of their respective total Account balances (if any) in the Fund and the decision of the trustee with the greatest overall weighting shall prevail, unless the Standards prescribe otherwise.
- (b) If the Trustee comprises three or more individuals, trustee decisions shall at first instance require majority approval, with each trustee having one vote, and if there is any deadlock in making any decision, each trustee's vote shall be weighted in relation to the value of each of their respective total Account balances (if any) in the Fund and the decision of the trustee(s) with the greatest overall weighting shall prevail, unless the Standards prescribe otherwise.

### 3.9 Decisions — Successor Trustees and LPRs

- (a) The following shall have the same voting rights as the Nominating Member or Member would otherwise have had as Trustee:
  - (i) a Successor Trustee appointed as a Trustee in accordance with rule 3.3; or
  - (ii) an LPR appointed as a Trustee in place of a Member in any other circumstance.
- (b) If the LPR acting as Trustee, whether as Successor Trustee or otherwise, is comprised of more than one person, whether acting jointly or jointly and severally, then:
  - (i) those persons shall jointly be entitled to only one vote as Trustee; and
  - (ii) in the event of a deadlock in making any decision, the LPR's joint vote shall only be weighted once under rule 3.8 in relation to the value of the Account balance of the Nominating Member or Member, as the case requires, whom the LPR acts as Trustee in place of.
- (c) Notwithstanding rule 3.9(a), if:
  - (i) a Successor Trustee appointed in accordance with rule 3.3 continues to be, and is permitted to be, a Trustee of the Fund after the events described in rules 3.3(g)(i) and 3.3(g)(ii) in the manner contemplated by rule 3.3(g); or
  - (ii) an LPR appointed as Trustee in place of a Member in any other circumstance continues to be, and is permitted to be, a Trustee of the Fund after, as the case requires:
    - (A) Benefits in respect of the deceased Member's Interest commence to be payable;
    - (B) the Member ceases to be under a legal disability; or
    - (C) the LPR ceases to hold an enduring power of attorney in respect of the Member;

then that Trustee shall, after the relevant event, have the ordinary voting rights of any Trustee as provided for in rule 3.8.

### 3.10 **Meetings — Individual Trustees**

Trustees may communicate with each other and meet together for the dispatch of business and adjourn and otherwise regulate their business as they think fit and, unless the Standards prescribe otherwise:

- (a) the Trustees may confer or communicate via any means as the Trustees consider appropriate including any electronic or other means. Subject to rules 3.10(c) and 3.10(d), a resolution passed by such a conference or communication method shall be effective, notwithstanding that the Trustees may not be present together in the same place at the same time;
- (b) if there is any interruption to a conference of Trustees, the Trustees have a discretion to determine that the interruption constitutes an adjournment of the conference until the time communications are reconnected or the Trustees determine;
- (c) a resolution may be confirmed by written, electronic or other means as the Trustees approve; and
- (d) if all the Trustees have signed, passed or otherwise acknowledged a resolution which may be in a document or separate documents (including in a manner permitted by rule 3.10(c)) containing a statement that they are in favour of a resolution, that resolution shall be taken to have been passed at the time at which the document was signed, passed or otherwise acknowledged by the last Trustee required to sign, pass or otherwise acknowledge that document.

### 3.11 **Decisions and Meetings — Corporate Trustees**

If the Trustee is a Corporate Trustee, Trustee decisions and meetings shall be in accordance with the Company Rules unless the Standards prescribe otherwise.

### 3.12 **Remuneration**

Subject to rule 3.13 (the object of which is to, where applicable, prevent the Fund from ceasing to be an SMSF), both a director of a Corporate Trustee and an individual who is a Trustee may be remunerated from the Fund. An RSE Licensee or acting trustee shall be entitled to its normal fees, charges and commissions including any amounts authorised by legislation.

### 3.13 **Limitations on remuneration**

Subject to rule 5 and the Standards:

- (a) during any period that the Fund is an SMSF, neither a director of a Corporate Trustee nor an individual who is a Trustee shall be entitled to receive remuneration from the Fund for their services unless remuneration would not cause the Fund to cease to be an SMSF;
- (b) subject to rule 3.13(a), any individual Trustee or director of a Corporate Trustee engaged in any profession or business may, notwithstanding their office, act in a professional capacity, and shall be entitled to charge and be paid not more than a commercial rate for all professional and other charges for any business or work or act done by them, their firm, or their company, in connection with the Fund including acts which a Trustee could have done personally, and in particular, a director of a Corporate Trustee or an individual who is a Trustee ('**Service Provider**') may be remunerated if:
  - (i) the Service Provider performs the duties or services other than in the capacity of Trustee; and
  - (ii) the Service Provider is appropriately qualified, and holds all necessary licences, to perform the duties or services; and

- (iii) the Service Provider performs the duties or services in the ordinary course of a business, carried on by the Service Provider, of performing similar duties or services for the public; and
  - (iv) the remuneration is no more favourable to the Service Provider than that which it is reasonable to expect would apply if the Service Provider were dealing with the relevant other party at arm's length in the same circumstances; and
- (c) subject to rules 3.13(a) and 3.13(b), an individual Trustee or a director of a Corporate Trustee shall not be required to make an election between professional charges and any commission or fees otherwise authorised by the Members, statute or a court of law.

### 3.14 **Vesting assets on a change of trustee**

A change of Trustee including the appointment or removal of a Successor Trustee made in accordance with this rule 3 whether by deed, resolution or otherwise is sufficient to effect such a change (whether an appointment, resignation or other change) and vest the Fund's assets in the name of the new or continuing Trustees or Successor Trustees, as the case may be, without any further need for any document evidencing that change to be registered or stamped with any government or similar body or any further action unless such a requirement cannot be excluded under the Trustee Law or other Applicable Law of the relevant State or Territory.

## 4. **Trustee's Duties**

### 4.1 The Trustee must:

- (a) act honestly in relation to all matters concerning the Fund;
- (b) exercise, in relation to all matters concerning the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with assets of another for whom that person felt morally bound to provide;
- (c) ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;
- (d) keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally;
  - (ii) that are money or assets of an employer or an associate; or
  - (iii) that are otherwise not part of the Fund;
- (e) not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising its functions and powers;
- (f) formulate, review regularly and give effect to one or more investment strategies that have regard to the whole of the circumstances of the Fund and the circumstances of particular Members including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the investments of the Fund having regard to the Fund's objectives and expected cash flow requirements;

- (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to the Fund's expected cash flow requirements; and
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are reserves, formulate and give effect to one or more strategies for the prudential management of any reserves held by the Fund consistent with the Fund's investment strategies and its capacity to discharge its liabilities, whether actual or contingent, as and when they fall due;
  - (h) provide Members with access to any prescribed information and prescribed documents in accordance with the Standards; and
  - (i) ensure that such other duties or covenants that a trustee of the Fund must comply with under the Standards from time to time, including preparation of a derivatives risk statement and related documentation, are complied with.

4.2 To the greatest extent permitted by the Standards, unless they are a Member, a Reversionary Pensioner or are nominated in a BDBN, all other persons:

- (a) are not beneficiaries in respect of the Fund and do not have any cause of action or any rights to enforce against the Trustee; and
- (b) do not have any legal or beneficial interest, asset or property in respect of the Fund, whether contingent, vested or otherwise.

## 5. Indemnities

5.1 Subject to the Standards, the Trustee and its directors or officers shall not be liable or responsible for any loss:

- (a) arising from a breach of trust or otherwise, unless the Trustee and its directors or officers:
  - (i) failed to act honestly in a matter concerning the Fund; or
  - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence the Trustee and its directors or officers were required to exercise;
- (b) suffered as a result of relying on any professional advice or assistance, provided that the Trustee was acting in good faith;
- (c) suffered as a result of the delegation in good faith of any function, discretion, duty or obligation;
- (d) resulting from the Trustee complying with the Standards notwithstanding that the act or omission may constitute a breach of trust or non-compliance with the express provisions of these Governing Rules;
- (e) suffered by the Fund or any Member as a result of:
  - (i) no or insufficient or inadequate insurance being obtained by the Trustee, whether the loss was foreseeable or not; or

- (ii) an insurer failing to pay, in whole or in part, an amount in respect of an insurance cover for whatever reason; or
- (f) suffered by the Fund or any Member as a result of an honest mistaken payment or overpayment to any person or entity;

unless the Standards require that the Trustee and its directors or officers must remain liable or responsible for the act or omission resulting in the loss if the act or omission gave rise to a monetary penalty under the civil penalty order provisions of the Standards or otherwise.

5.2 The Trustee shall:

- (a) be fully indemnified out of the Fund for the costs of managing and administering the Fund and all other liabilities incurred by or on behalf of the Fund as required by the Standards;
- (b) be indemnified and discharged even if, after a change of Trustee, there remains a sole Trustee; and
- (c) have a lien on and may use the assets of the Fund to satisfy this indemnity unless prohibited by regulations 13.13 or 13.14, Part 5 of the SISR or otherwise by the Standards.

5.3 A Member or beneficiary is not liable and is not required to indemnify the Trustee against any liability, costs or damages howsoever arising in respect of the Trustee or the Fund, even if there is a deficiency of Fund assets.

5.4 Unless otherwise agreed between interested parties, the Trustee's costs of obtaining advice, including legal, accounting, investment, financial, actuarial or other advice and all related assistance and information in respect of the Fund shall be met by the Fund.

## 6. Investment

### 6.1 Fund Investments

- (a) Subject to rules 2 and 4 and the Standards, the Trustee has power to invest and shall ensure that all of the assets of the Fund are invested in such appropriate investments, in Australia or elsewhere, as the Trustee thinks fit including, without limitation:
  - (i) any investment taken to be prudent under Trustee Law;
  - (ii) on deposit or on loan, with or without security, at such rate of interest and upon such terms as the Trustee may consider reasonable;
  - (iii) the purchase or acquisition of any tangible or intangible property, whether it be:
    - (A) real property (whether located in Australia or overseas); or
    - (B) personal property, including (but not limited to) any chattels, machinery, plant, stock-in-trade, patents, trade marks, registered designs and copyrights or any interest in them;
  - (iv) the giving or taking of leases, licences or options over real or personal property or any interest in respect of them;
  - (v) the discounting of loans, mortgages, contracts, hire purchase agreements or leases;

- (vi) the purchase or acquisition in any way of shares or stock (of any class or description) or of any type of bond, mortgage, debenture, note, option, instalment warrant, hedge, foreign exchange or currency, futures or derivative contract, contract for difference or other like security or arrangement in or in respect of a company, other entity or asset, whether listed or unlisted and whether it is fully or partly paid up and whether secured or unsecured, registered or unregistered;
  - (vii) on deposit with or on loan to any bank, building society, credit co-operative or other financial institution and in any type of account, whether secured or not and the Trustee is empowered to open and operate accounts accordingly;
  - (viii) in financial instruments and the Trustee may draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, cheque, bank bill or other negotiable or transferable instrument;
  - (ix) any mortgage or other security on freehold, leasehold or any other form of property even though the amount of the loan may exceed two-thirds of the value of the property and whether or not a report or valuation has been obtained on the value of the property;
  - (x) any policy or annuity whether by proposal, purchase or otherwise, and any choses in action, and any interests for life or any lesser term or in reversion;
  - (xi) the purchase or acquisition of or subscription for any interest in a trust, including any unit or sub-unit in any unit, fixed or hybrid trust, whether listed or unlisted, whether held individually or jointly and whether the units or sub-units are fully or partly paid up or whether their issue involves any other interest whether contingent or not;
  - (xii) any business (including a business of property development, primary production or similar trading enterprise) including any direct or indirect interest in any business and if a Trustee has invested in a business the Trustee may, to the extent permitted by the Standards, carry on the business or employ persons to carry on the business on behalf of the Trustee; and
  - (xiii) any other investments which are acceptable under the Standards.
- (b) The Trustee shall not be empowered or authorised to:
- (i) make loans or give any other financial assistance using the resources of the Fund to a Member or a relative of a Member;
  - (ii) make loans to, make investments in or enter into Leases over assets of the Fund with a related party or related trust of the Fund that would cause the loan, investment or Lease to exceed the level permitted by the Standards, subject to rule 6.1(b)(i);
  - (iii) subject to rule 7.3(k), borrow money on behalf of the Fund; or
  - (iv) acquire assets, including any insurance policy, from an Employer, a Member, a related trust or any other related party;
- unless authorised by the Standards and only to the extent (if any) allowed by the Standards.
- (c) Subject to the Standards, the Trustee is permitted to recognise as an asset a future income tax benefit, despite it generating no income.
- (d) To the greatest extent permitted by the Standards and rule 4.1(f):

- (i) the Trustee may invest in an undiversified portfolio, including where the investment is a single asset; and
  - (ii) the Trustee may make any freehold, leasehold or other investment in property without generating rental income from that property.
- (e) In relation to any asset owned by the Trustee, the Trustee is permitted to:
- (i) wholly own or partly own the asset (where the other owner or owners is or are any other persons or entities); and
  - (ii) own the asset or have the asset registered as:
    - (A) joint tenants;
    - (B) tenants in common; or
    - (C) any other form of ownership that does not contravene the Standards.

## 6.2 Separately Identifiable Assets

- (a) The Trustee may deal with specific assets of the Fund in respect of particular Members on a temporary or permanent basis in accordance with rules 6.2(b) or 6.2(c) respectively.
- (b) The Trustee may segregate an asset of the Fund on a temporary basis as follows:
  - (i) acquire and maintain any specific assets for the purposes of supporting any Interest or of paying any Benefit and acquire and deal with any asset, insurance, annuities or similar arrangements for any Member;
  - (ii) establish, change or discontinue any sub-fund, portfolio, account or class of Membership (**'Sub-Account'**) within the Fund with separately identifiable assets, Members and liabilities with Interests in such part only held by the Members in that Sub-Account or class of Membership as may be the case;
  - (iii) alter, exchange and segregate certain assets from other assets and deal with the Fund as different Sub-Accounts, segments or partitions in respect of certain assets as the Trustee determines and deal with liabilities accordingly;
  - (iv) reallocate, alter or exchange a segregated asset from one Sub-Account to another Sub-Account regardless of whether any or all of the Sub-Accounts are supporting a Pension and regardless of whether one Sub-Account is for the benefit of one Member and the other Sub-Account is for the benefit of another Member;
  - (v) apply, without obtaining any of the consents required by Trustee Law, any part of the Fund in its actual condition or state of investment in or toward satisfaction of any Benefit as the Trustee thinks fit; and
  - (vi) if a specific asset is held for a Member, Sub-Account or a class of Members, reflect the value of the asset and the Earnings on such asset in the Accounts for that Member, Sub-Account or class of Members or such other Accounts as the Trustee determines.
- (c) Notwithstanding any other provisions in these Governing Rules, the Trustee may quarantine any asset of the Fund on an ongoing basis as follows:

- (i) the Trustee may establish any Sub-Account or class of Membership within the Fund with separately identifiable assets and Members and the Trustee shall record such assets in the Accounts of the Members of the particular Sub-Account or class of Membership and deal with liabilities accordingly;
  - (ii) the Earnings on such assets shall only be reflected in the Sub-Accounts for those Members for whom the particular asset is held. Any Taxes and expenses payable in respect of the particular asset shall be debited to the Sub-Accounts of those Members for whom the asset or investment is held; and
  - (iii) such assets shall not be transferred out of the Sub-Accounts of those Members under rule 22 or otherwise, other than for the purpose of providing a Benefit to those Members in accordance with these Governing Rules.
- (d) Notwithstanding any other provisions in these Governing Rules, the Trustee may accept property from a person (**'Transferor'**) who is a Member of the Fund if the Trustee complies with the following:
- (i) if the Transferor is the only member of the Fund or the property is held by the Trustee solely for the benefit of the Transferor; and
  - (ii) the property is used solely for the purpose of providing a retirement benefit to the Transferor.
- (e) Property is held solely for the benefit of the Transferor if:
- (i) the property is held specifically for the benefit of the Transferor, as a Member of the Fund; and
  - (ii) the property (or proceeds of sale of the property) cannot be pooled with property held for another Member of the Fund; and
  - (iii) no other Member of the Fund can obtain an interest in the property (or the proceeds of sale of the property).
- (f) Notwithstanding any other provisions in these Governing Rules, a transfer of property from a person (**'Transferor'**) to the custodian of the Trustee of the Fund may be accepted in respect of a Member if:
- (i) the Transferor is the only member of the Fund; or
  - (ii) the property is used solely for the purpose of providing a retirement benefit to the Transferor.
- (g) Notwithstanding rule 24, the Trustee may resolve that any of rules 6.2(d), 6.2(e) and 6.2(f) apply to the property being acquired and if such a resolution is made such rules irrevocably apply in respect of the property until the Fund is wound up.
- (h) The Trustee may ascertain and fix the value of the assets of the Fund and the liabilities to which the Fund is committed in accordance with the Standards, and every ascertainment or fixing of value made under this rule shall bind all persons who are or may become interested in the Fund, including persons who do not have legal capacity and persons who are not yet Members.



## 7. Powers

- 7.1 The Trustee has an absolute discretion in carrying out any acts, matters and things it deems expedient for the purposes of the Fund. In the exercise of the powers, authorities and discretions conferred on the Trustee by law and these Governing Rules, the Trustee shall have an absolute and uncontrolled discretion to exercise or refrain from exercising all powers, authorities and discretions.
- 7.2 Unless otherwise required under these Governing Rules or under the Standards, the Trustee is not obliged to give reasons for its acts or omissions.
- 7.3 The Trustee has the power, having regard to the Fund's status at the relevant time, to do anything that a trustee of a superannuation fund is permitted to do under the Standards and at law, including the power to:
- (a) invest money, assets or resources of the Fund in such appropriate investments, in Australia or elsewhere, as the Trustee thinks fit;
  - (b) settle, compromise, commence, carry on or defend proceedings or submit to arbitration or mediation any claims, matters or things relating to these Governing Rules or the rights of any Member including in any court, tribunal or other forum or medium the Trustee considers appropriate;
  - (c) purchase an interest in an Approved Fund to provide all or part of a pension or annuity or to provide all or a part of the Pension payable in respect of a Member and the pension or annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the Member in accordance with the Standards;
  - (d) pay all Disbursements;
  - (e) sell, vary, improve, renovate or repair any investment and may exchange any investment for another investment;
  - (f) commence, acquire or carry on any business (including a business of property development, trading in securities, primary production or similar trading enterprise) including being involved or owning a direct or indirect interest in any business and if the Trustee has any interest in any business the Trustee is empowered to manage that interest as it deems appropriate and may, to the extent permitted by the Standards, employ moneys, resources and persons to carry on the business on behalf of the Trustee;
  - (g) set aside out of the Fund from time to time such amount of money as is sufficient, in the Trustee's opinion, to meet any debt or obligation due or accruing;
  - (h) pay calls on shares or stock or units forming part of the Fund and to accept transfers of shares or Securities;
  - (i) assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures or other Securities modifying any rights, privileges or interest in relation to the Fund and to agree to and concur in any scheme of arrangement for the increase or reduction of the value or amount of the same in the capital of any company, trust or other investment in which any shares, stock, debentures or other Securities forming any part of the Fund for the time being may be invested or agree to or concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose;
  - (j) subject to rules 6.1(b)(i) and 6.1(b)(ii), lend money and provide similar financial assistance and to secure the repayment of it in any manner and upon such

terms and conditions, including with or without security or with or without interest, as the Trustee determines;

(k) subject to the Standards, borrow money from any persons, firms, corporations, bodies, associations or governmental or municipal bodies, including a related party:

(i) to apply for the acquisition of an asset where:

- (A) the asset or a replacement for that asset ('**Asset**') is held on trust for the benefit of the Trustee until the Trustee acquires legal ownership of the Asset and the term **Asset** includes any real or personal property and real estate or an interest relating to real estate purchased under an 'off-the-plan' arrangement;
- (B) the Asset is one which the Trustee is not prohibited from acquiring under the Standards;
- (C) the rights of the lender against the Trustee for default on the borrowing and any charges related thereto are limited to the Asset;
- (D) if the Trustee has a right relating to the Asset, the rights of the lender against the Trustee for the Trustee's exercise of its right are limited to rights relating to the Asset;
- (E) the borrowing complies with any other requirement under the Standards; and
- (F) the borrowing takes place on such terms and conditions including with or without security or interest as the Trustee deems fit and to give, or to authorise the giving of security by mortgage, charge (whether fixed or floating) or otherwise in respect of the Asset. The rights of the mortgagee or chargee shall take priority in all respects over the rights of the Members and beneficiaries hereunder and all other persons whomsoever;

(ii) to acquire an Asset where the borrowing otherwise complies with such rules relating to a borrowing by a trustee of a regulated superannuation fund as may be provided under the Standards including without limitation having regard to the following:

- (A) the purpose of the borrowing, which in addition to acquiring an Asset, may also cover repairs and maintenance;
- (B) refinancing of a borrowing (including any accrued interest thereon);
- (C) limiting the rights of the lender or any other person in respect of the borrowing against the Trustee in respect of the Asset;
- (D) what is a collection of assets;
- (E) what constitutes a replacement asset;
- (F) where more than one borrowing arrangement may be involved to acquire the same Asset or where more than one borrowing arrangement may be involved to acquire different Assets; and
- (G) any other relevant matter; or

- (iii) to pay Benefits or to settle Securities as provided for under the Standards;
- (l) indemnify or undertake to indemnify anyone or any body in respect of any claims, matters or things relating to the Fund or to the rights of Members in respect of the Fund;
- (m) insure or re-insure any risks, contingencies, penalties, costs, audits, investigations, investments or liabilities in respect of the Trustee, the Fund, the Members, any assets of the Fund or any other matter with any insurance company, mortgage insurance company, re-insurance company, financial institution or any other entity willing to accept or underwrite such risks as the Trustee determines;
- (n) underwrite or sub-underwrite any risks, contingencies or liabilities including any under a superannuation arrangement conducted by an Employer if there exists the possibility of transfers of Employees to the Fund;
- (o) procure the registration or recognition of the Trustee or the Fund in any overseas country or jurisdiction including to become registered as a qualifying recognised overseas pension scheme, a qualifying retirement plan or similar arrangement and the Trustee is empowered to attend to any associated action, matter or thing including the provision of any undertaking, disclosure of information or entering into any arrangements or agreements that the Trustee considers appropriate;
- (p) subject to rule 1.3, complete any election or perform any act as required by the Standards, including changing the status of the Fund to or from an SMSF to a Small APRA Fund or other type of Approved Fund, accumulation, pension or any other type of fund permitted or required by the Standards;
- (q) open any account or accounts with any bank or financial or other institution and to operate such an account or accounts and to draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque, bank bill or other negotiable or transferable instrument;
- (r) raise any money in any lawful manner including by way of drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note, derivative or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund;
- (s) subject to the Standards, give or authorise the giving of security by way of mortgage, charge, guarantee, indemnity or otherwise in respect of any asset of the Fund;
- (t) subject to the Standards, pay for or reimburse the reasonable expenses of a Trustee, Member or other person incurred in relation to the Fund's operations (including expenses for supplies, services or travel costs) and for the avoidance of doubt, these events will not constitute a loan, borrowing, financial assistance, financial accommodation or a contribution;
- (u) generally do any other act or thing as the Trustee considers necessary or expedient in respect of the management and administration of the Fund and to further the interests of the Fund; and
- (v) to enter into any derivatives contract or purchase or sell or deal in any derivatives product, and otherwise to do and perform all things such as to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world.

7.4 The Trustee may exercise any power or discretion even if this gives rise to a conflict of interest. For the avoidance of doubt, the Trustee may exercise any power or discretion even if:

- (a) the Trustee;
- (b) any person being a director or shareholder of a Trustee;
- (c) any person being a relative of a Trustee; or
- (d) any person being a relative of a director or shareholder of a Trustee (if the Trustee is a corporate trustee);

has or may have a direct or indirect interest, whether:

- (e) in his/her personal capacity;
- (f) as a shareholder or director or as a relative of the Trustee;
- (g) as a relative of a director or shareholder of a Trustee;
- (h) as member or partner of any company or partnership; or
- (i) as a beneficiary of any trust including any discretionary, unit or hybrid trust);

in the mode or the result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and even if the Trustee or director of a corporate Trustee is a sole Trustee or director.

7.5 The Trustee may:

- (a) take out and maintain insurance or self-insure in respect of any risks and liabilities including:
  - (i) on the lives and medical conditions of any Member (including a Terminal Medical Condition or trauma or similar event);
  - (ii) Total and Permanent Disablement, whether the cover is 'own occupation' or 'any occupation' notwithstanding that the circumstances of a payout under 'own occupation' may not satisfy the permanent incapacity condition of release in the SISR;
  - (iii) Temporary Incapacity or income protection;
  - (iv) in order to provide Benefits to Members and, on their death, to their Dependants or LPR including a Pension Funded by Assurance; and
  - (v) in respect of the Fund's assets, liabilities, operations and risks.
- (b) transfer any insurance policy, annuity contract or other similar entitlement in the Fund in favour of a Member in respect of any Benefit entitlement under these Governing Rules and the Trustee may determine the value, if any, that is attributable to the entitlement transferred;
- (c) reduce or abandon insurance cover in relation to a Member who consents thereto or whose age, ill health or other circumstances makes it too costly or impracticable to effect or continue such cover; and
- (d) meet the cost of insurance out of any Account in the Fund including a Member or reserve Account.

7.6 The Trustee may withhold Tax from any Benefit, contributions, amounts allocated from a reserve Account, Earnings, gains, assets, Disbursement or other payment received,

receivable or paid or payable by the Fund and obtain and furnish any information and deal in or pay any Tax.

- 7.7 The Trustee may pay any Tax liability of a Member in respect of contributions received by the Trustee on the Member's behalf if permitted by the Standards.
- 7.8 The Trustee may obtain and, subject to its discretion, act (or refrain from acting) on any advice or obtain any assistance as it considers appropriate.
- 7.9 Subject to the Standards and these Governing Rules, the Trustee may pay an amount or transfer assets to or in favour of a Member and the Trustee may accept an amount or assets directly or indirectly from a Member or any other party (if an amount is paid or assets are transferred to another party) provided its consent is obtained in respect of any such payment, receipt or transfer.
- 7.10 Subject to the Standards, the Trustee may restrict, limit or fetter its powers, discretions or duties. Moreover, the Trustee may delegate any functions, duties, discretions or obligations, including the holding of title to the assets of the Fund, to any person, entity, organisation, custodian, agent, nominee or bare trustee to exercise or undertake on behalf of the Trustee by power of attorney (whether enduring or otherwise), resolution, deed or otherwise for any purpose and with any powers, conditions, limitations, authorities or discretions as it thinks fit, provided that any custodian or investment manager is appointed in writing. Similarly, the Trustee may remove, replace or suspend any person or organisation as it considers appropriate.
- 7.11 Subject to rule 8.5 and the Standards, the Trustee is empowered to comply with and do all things necessary to give effect to orders, agreements or arrangements (whether formal or informal) including:
- (a) splitting orders, Payment Splits or interest splits;
  - (b) binding financial agreements and any superannuation agreements;
  - (c) flagging orders or flag-lifting agreements; and
  - (d) any similar orders or agreements whether for married or de facto relationships made pursuant to the Family Law Act or similar law.
- 7.12 The Trustee is empowered to do or refrain from doing any other such thing as is necessary in order to comply with such orders, agreements or arrangements referred to in or contemplated by rule 7.11, and the Trustee shall, subject to the Standards, be entitled to charge reasonable fees and charges for such acts, matters or things.
- 7.13 Subject to the Standards, in the event that any Member of the Fund makes any claim, assertion, complaint, demand, request or otherwise in relation to the Fund or the Trustee that, in the Trustee's opinion, is of little or no substance, even if the matter does not involve any legal action or third party, the Trustee can recover any reasonable expense or cost in relation to the administration, dispute resolution or any dealing in relation to that Member from their Interest in the Fund and shall not be under any obligation to notify that Member or any other Member of the Fund or person in relation thereto.
- 7.14 If the terms and conditions of a Benefit provided by this Fund are not expressly prescribed in these Governing Rules either in whole or in part, the Trustee shall determine the terms and conditions under which that Benefit is provided. The Trustee must ensure that at least the minimum terms and conditions of the Standards relating to that type of Benefit are complied with.
- 7.15 The Trustee shall not discriminate against any person on the grounds of that person's sex or marital status or in any other manner that would infringe the *Sex Discrimination Act 1984* (Cth) or any other Australian law (including state or territory law) concerned with discrimination.

- 7.16 Subject to the Standards, the Trustee may determine that any of its discretions or powers, or instances of the exercise of its discretions or powers:
- (a) have effect on a current, retrospective or prospective basis; or
  - (b) are subject to one or more limitations or fetters.

## **8. Membership**

### **8.1 Eligibility**

Subject to rules 1.3, 3 and 8.2 and the Standards, the Trustee may admit any one or more of the following applicants to Membership:

- (a) a person under a legal disability, including a person under a legal disability because of age;
- (b) a person under 65 years of age, including a person who is or who is not Gainfully Employed;
- (c) subject to rules 9.3 and 9.4, a person 65 years of age or older;
- (d) subject to rule 8.5, a Spouse who becomes entitled to a Benefit or Interest in the Fund under an order or agreement made pursuant to the Family Law Act;
- (e) subject to rule 8.6, a Spouse who is entitled to contributions-splitting;
- (f) an Eligible Spouse; or
- (g) any other person authorised under the Standards.

### **8.2 Requirements for Membership**

The Trustee shall only admit an applicant for Membership:

- (a) If the applicant:
  - (i) has provided an Application for Membership Form to the Trustee, unless the Trustee determines that the applicant may apply for Membership by such other means as the Trustee considers appropriate, including without limitation a verbal request by the applicant to the Trustee; and
  - (ii) is, subject to rule 3.2, not a Disqualified Person and they intend to be appointed as an individual trustee or director of a Corporate Trustee, as the case may be, of the Fund; or
- (b) if the applicant (or person to be appointed as an individual trustee or director of a Corporate Trustee in place of the applicant under rule 8.2(a)(i)) and the Trustee of the Fund satisfy such other requirements as are prescribed by the Standards or the Regulator.

### **8.3 No minimum Interest**

Subject to these Governing Rules including rule 8.8, a person who has or will have a nil or negative Interest in the Fund or whose Interest is reduced to nil or becomes negative:

- (a) may be admitted for Membership by the Trustee; or
- (b) in the case of an existing Member — continues to be a Member until the Trustee determines otherwise.

#### 8.4 **Conditional admission**

The Trustee may admit an applicant as a Member of the Fund and attach special conditions to their Membership or Interest in the Fund.

#### 8.5 **Family Law — New Interests**

Despite any other provision of these Governing Rules and unless the Trustee determines otherwise in relation to a request under regulation 7A.05 of the SISR, a new interest in the Fund shall not be created for a Non-Member Spouse.

#### 8.6 **Spouse Contributions-Splitting**

Despite any other provision of these Governing Rules, if a Member requests the Trustee under any spouse contributions-splitting provisions of the Standards to create a new interest in the Fund for a Spouse, the Trustee may refuse to create the interest.

#### 8.7 **Evidence**

Each applicant for Membership and each Member shall give to the Trustee full and accurate information and produce such documents and other evidence, including submitting to health checks, medical checks and other tests, as the Trustee may reasonably and lawfully require from time to time in connection with their Membership of the Fund.

#### 8.8 **Cessation**

Subject to the Standards and the Trustee's discretion to determine otherwise, a Member shall cease to be a Member of the Fund upon the earliest to occur of the following:

- (a) in relation to that Member's death — when all of the deceased Member's Interest has been paid or otherwise applied by the Fund towards the Beneficiaries of the deceased Member or the Member's LPR or both and this rule 8.8(a) shall take priority over rule 8.3;
- (b) when the Trustee determines that their continued Membership may cause the Fund to become another type of fund;
- (c) when the Trustee requires that a Member cease their Membership of the Fund to comply with the Standards;
- (d) when the Member is required to cease their Membership of the Fund to comply with the Family Law Act or an order or agreement made pursuant to that Act;
- (e) if the Standards require cessation of Membership, then at such time as the Standards require; or
- (f) when the Trustee shall otherwise reasonably determine.

#### 8.9 **Interest of a deceased or legally disabled Member**

- (a) If a Member is deceased or under a legal disability:
  - (i) the Trustee shall continue to be bound by these Governing Rules in respect of the remaining Interest of a Member who is deceased or under a legal disability; and
  - (ii) the LPR of the Member who is deceased or under a legal disability may exercise the powers that the Member could have exercised as a Member had he or she been alive or not under a legal disability, as the case requires;

until all of the deceased Member's Interest has been paid or otherwise applied by the Trustee towards the Beneficiaries of the deceased Member or the

deceased Member's LPR or both or until the Member ceases to be under a legal disability, as the case requires, but subject to rules 8.3 and 8.8.

- (b) If the LPR exercising the powers of a deceased Member or a Member under a legal disability is comprised of more than one person, whether acting jointly or jointly and severally, then the persons comprising the LPR shall jointly have one vote only in any decision making by the Members and that vote shall only be weighted once in relation to the value of the deceased Member's Interest or the Account balance of the Member under a legal disability, as the case requires.

#### 8.10 **Members bound by Governing Rules**

Members shall be bound by these Governing Rules even though they have not read or obtained a copy of same upon becoming a Member of the Fund.

#### 8.11 **Members appoint Trustee**

Each Member appoints the Trustee as his or her attorney to do anything permitted or required by these Governing Rules or the Standards until the Member provides notice in writing otherwise.

### **9. Contributions**

9.1 The Trustee may, in respect of one or more Members, accept contributions to the Fund by an Eligible Contributor only if and to the extent that the contributions are permitted under the Governing Rules and the Standards, but is under no obligation to do so. These contributions may include:

- (a) money;
- (b) Securities listed on a prescribed stock exchange in Australia or elsewhere that are authorised by the Standards, subject to rule 6.1(b)(iv);
- (c) business real property, as that term is defined under the Standards;
- (d) units or shares in a related trust or related company that are permitted to be acquired under the Standards;
- (e) money or assets that have been paid or transferred to another person or entity, the result of which is to offset a liability or pay an expense of the Fund; and
- (f) any other asset or benefit conferred upon the Fund, subject to rule 6.1(b)(iv).

9.2 Subject to the Standards, the Trustee may accept contributions made in respect of a Member who has not reached 65 years of age.

9.3 The Trustee may, subject to the Standards, accept contributions made in respect of a Member who has reached 65 years of age but not reached 75 years of age if:

- (a) the contributions are Mandated Employer Contributions;
- (b) the Member has been Gainfully Employed on at least a Part-Time Basis in respect of the Financial Year in which the Trustee accepts those contributions; or
- (c) the contributions are otherwise permitted by the Standards.

9.4 The Trustee may accept contributions made on behalf of a Member who has reached 75 years of age if:

- (a) the contributions are Mandated Employer Contributions; or



(b) the contributions are otherwise permitted by the Standards.

9.5 The Trustee may not accept any contribution:

- (a) if the Member's tax file number has not been provided to the Trustee, unless it is provided within 30 days of the Trustee receiving the contribution;
- (b) if the non-concessional contributions in a financial year in respect of the Member exceeds:
  - (i) if the Member is 64 or less on 1 July of the financial year — three times the amount of the Non-Concessional Contributions Cap; or
  - (ii) if the Member is 65 but less than 75 on 1 July of the financial year — the Non-Concessional Contributions Cap; or
- (c) in such other circumstances as prescribed by the Standards.

9.6 If the Trustee receives an amount that is inconsistent with rule 9.5, then the Trustee shall, as required by the Standards, return the amount to the Member within 30 days of the Trustee becoming aware that the amount was received in a manner inconsistent with rule 9.5 unless:

- (a) if the amount received is inconsistent with rule 9.5(a) — the Member's tax file number is quoted to the Trustee within 30 days of the amount being received by the Trustee;
- (b) if the amount received is inconsistent with rule 9.5(b) — a valid notice under section 290-170 of the ITAA 1997 is received by the Trustee within 30 days of this amount being received by the Trustee; and

the Trustee may adjust the amount that is returned to the contributor as permitted by the SISR. A reference to 30 days in this rule includes such further period permitted under the Standards.

9.7 An Eligible Contributor is not bound to make any contribution to the Fund unless the Eligible Contributor is bound to make the contribution in accordance with a separate contribution agreement between the Trustee and the Eligible Contributor.

9.8 Contributions by an Eligible Contributor shall only be made to the Fund in amounts and at times acceptable to the Trustee. The Trustee may request that an Eligible Contributor provide such information or documentary evidence as the Trustee considers relevant in order to determine whether the tendered contribution may be accepted by the Fund.

9.9 Subject to the Standards, where a Member has exceeded their Concessional Contributions Cap by up to \$10,000 (or other prescribed amount under the ITAA 1997), the Trustee may refund the approved amount of the contribution that is in excess of the contributions cap to the Commissioner (or such other entity), provided:

- (a) all steps required by the Standards have been completed (including the receipt by the Trustee of an appropriate release authority from the ATO); and
- (b) it is the first time the Member has exceeded their Concessional Contributions Cap (unless the Standards allow otherwise).

9.10 Subject to the Standards, the Trustee is authorised to take action as specified under rule 9.11 when any of the following occurs:

- (a) a Member requests that the Trustee repay or reject the whole or part of a contribution;
- (b) a contribution is paid to the Trustee by mistake;

- (c) a contribution or part of a contribution exceeds a Member's Concessional Contributions Cap (or any other cap so allowed by the Standards);
- (d) a contribution is paid to the Trustee, that, in the Trustee's opinion, could prejudice the Fund's ability to comply with the Standards;
- (e) a contribution is paid to the Trustee, that, in the Trustee's opinion, could cause the Fund to become another type of fund; or
- (f) a contribution is paid to the Trustee that may otherwise be rejected or returned in accordance with the Standards.

9.11 Subject to the Standards, without limiting the actions the Trustee may take, when any of the events described under rule 9.10 occur, the Trustee may reject or repay any amount or contribution to the relevant contributor (or such other person or entity as permitted by the Standards), and the rejection or repayment may be in whole or in part, and the Trustee may adjust the amount that is rejected or repaid as permitted by the Standards to take into account any costs, Earnings and Taxes as it determines appropriate.

#### 9.12 **Contribution Reserve**

Subject to the Standards, the Trustee may establish a contribution reserve or any other type of unallocated contributions account for contributions pending allocation to a Member. Contributions so held should generally be allocated within 28 days following the end of the month in which the contribution was made. A reference to 28 days in this rule includes such further period permitted under the Standards.

## 10. **Benefits**

### 10.1 **Benefit Election**

If a Member becomes entitled to the payment of a Benefit from the Fund, the Member may, subject to the Standards, elect to receive their Benefit in one or more of the following types:

- (a) one or more Lump Sums;
- (b) one or more Pensions;
- (c) one or more Temporary Incapacity Income Streams;
- (d) one or more Miscellaneous Benefits, if the Member has satisfied the specific criteria relevant to each Miscellaneous Benefit elected by the Member;
- (e) one or more annuities acquired from one or more Approved Funds; or
- (f) any other type of Benefit permitted by these Governing Rules or the Standards;

unless the Benefit must be provided in some other form under the Standards and provided that the sum of all Benefits does not exceed the Member's total Interest in the Fund.

### 10.2 **Requirements of Election**

- (a) Unless the Trustee determines otherwise, an election under rule 10.1 shall be in writing and indicate the desired amount or extent that a Lump Sum, Pension or any other Benefit contemplated in rule 10.1, as the case may be, is sought to be received and must be provided to the Trustee before the Benefit commences to be paid or within such further period as the Trustee permits.

- (b) The Trustee may waive any requirement in rule 10.2(a) and may approve an election on a current, retrospective or prospective basis.
- (c) A Member may specify in any election relating to a Pension whether or not it is intended to be a Reversionary Pension and, if so, subject to rule 18.1(h), to whom and what other terms or conditions the Member would wish the Pension to be subject to.

### 10.3 **Trustee's discretion**

If a Trustee receives a request to provide a Benefit to a Member or to make some other payment, the Trustee shall, subject to the Standards and any BDBN, determine the following:

- (a) whether such Benefit will be provided by the Fund;
- (b) whether such Benefit will be paid to the Member or on behalf of the Member in favour of another person or entity in accordance with rule 10.10(c) or otherwise;
- (c) the amount of the Benefit and which Account the Benefit is to be paid out of;
- (d) if relevant, the commencement day of the Benefit and the timing and frequency of any payment or payments, as the case may be;
- (e) whether a Pension commences to be payable and, if so, whether such a Pension will be reversionary and the amount of Pension that may be withdrawn each financial year; and
- (f) any other characteristics;

provided that any such determination is subject to any specific requirements that the Benefit be provided in a particular manner or form necessary to comply with the Standards. Should the Trustee determine that such a Benefit will not be provided or, in the case of a Benefit other than a single Lump Sum, continued, the request by the Member may be disregarded and the Trustee may, subject to the Standards, commute a Pension back into accumulation at any time it determines.

### 10.4 **Proportioning of Interest and Benefits**

- (a) If required by the Standards, where the Trustee determines to provide a Benefit to a Member or to make some other payment, the Trustee shall:
  - (i) calculate the proportions of the value of the Member's Interest (excluding the value of that part of the Member's Interest that is, at the time of calculation, used to provide a Pension) that the Tax Free Component and Taxable Component represent; and
  - (ii) apply those proportions to the amount of the Member's Interest used to provide the Benefit;

so that the Tax Free Component and the Taxable Component of the Benefit (and, in the case of a Pension, each payment made from the Pension) correspond to the proportions those components comprise in the Member's Interest as provided in rule 10.4(a)(i).

- (b) The relevant time for determining the value of the Member's Interest and the amounts of the Tax Free Component and the Taxable Component that comprise that Interest is:
  - (i) if the Benefit to be provided by the Trustee is a Pension — when the Pension commences;

- (ii) if the Benefit to be provided by the Trustee is a Lump Sum — just before the Lump Sum is provided to the Member;
  - (iii) if the Benefit is a Lump Sum that arises from the commutation of all or part of a Pension — when the Pension commenced; or
  - (iv) at such other time as required by the Standards.
- (c) Rule 10.4(a) shall not apply, or shall apply in a modified manner, to the following:
- (i) an amount transferred in accordance with rule 22.6(b);
  - (ii) an allotment of a splittable contribution under rule 22.4;
  - (iii) a government co-contribution Benefit;
  - (iv) a superannuation guarantee Benefit;
  - (v) a Lump Sum that is a Disability Superannuation Benefit;
  - (vi) a Lump Sum with an element untaxed; or
  - (vii) in any other case provided by the Standards.

#### 10.5 **Death Benefits**

Upon the death of a Member, the payment of the deceased Member's Interest shall be in accordance with rules 18 and 19.

#### 10.6 **Preservation of Interest**

The Trustee shall ensure, to the extent that an Interest is required to be preserved under the Standards, that:

- (a) the Interest is preserved in the Fund;
- (b) the Interest is transferred to an Approved Fund; or
- (c) the Interest is transferred to a Member or the Commissioner in accordance with rule 22.6(b);

in accordance with the Standards and the Trustee may make all determinations, notifications and elections in relation to the components or amounts of such Interest and may treat all or part of a Member's Interest as preserved even though such amount is not required to be preserved by the Standards.

#### 10.7 **Form of Benefits**

A Benefit may be paid either in money or in any other form of assets provided that the Benefit is paid in accordance with the Standards.

#### 10.8 **Member's Debt**

Subject to rule 10.6, if a Member owes money to the Trustee or to a Contributing Employer or its associate, the Trustee may, subject to the Standards, reduce the Member's Interest by the outstanding debt.

#### 10.9 **Insurance Proceeds**

Any Insurance Proceeds received in respect of a Member may, subject to the Standards, be equal to the amount (if any) paid or obtained by the Trustee in respect of any insurance or assurance policy or arrangement undertaken in respect of a Member and any other amount including any taxation benefit or saving to which the Trustee is

entitled, less any amount credited from that amount to any other Account. The Trustee may retain insurance in respect of a Member's Account, a reserve Account or such other Account or provision as the Trustee determines. The Trustee is authorised to make all decisions regarding any Insurance Proceeds.

#### 10.10 Discharge

- (a) This rule is subject to rule 10.11.
- (b) The payment of all of a Member's Interest to or on behalf of a Member or a transfer to an Approved Fund of all of a Member's Interest shall be in full and final satisfaction and discharge of the Trustee's and the Fund's obligations in respect of that Member and all of their rights, entitlements and interests in the Fund, unless the Member continues to be a Member of the Fund after the payment of all of their Interest in accordance with rule 8.3 but subject to rule 8.8(a).
- (c) If any Benefit is payable to a person who lacks legal capacity, is a Disqualified Person or in such other circumstances the Trustee determines appropriate ('**Recipient**'), the Trustee may, subject to the Standards, pay a Benefit to the Recipient, the Recipient's Beneficiary, parent, guardian, LPR or may establish a trust for the Recipient with a suitable trustee that may include the Trustee ('**Payee**') and pay a Benefit to the Recipient's trust.
- (d) Where a Benefit is paid to a Payee in accordance with rule 10.10(c), it shall be subject to such terms and provisions as the Trustee determines, with the associated costs being payable out of the Benefit, and:
  - (i) if the Payee is a professional person or carrying on a business, the Payee shall be entitled, subject to rule 3.12, to act as Payee and to charge fees accordingly;
  - (ii) the Payee shall be entitled to pay or apply the Benefit or any part of it (including by directly paying for an expense or cost) at any time for the Recipient's advancement, maintenance, education or general well-being until they no longer lack legal capacity or are a Disqualified Person or for such period as the Trustee otherwise determines; and
  - (iii) the receipt by the Payee shall be a complete and final discharge to the Trustee for the application or payment.

#### 10.11 Overpayment of Benefit

- (a) If an overpayment of any Benefit is made to or in respect of a Member, the Trustee may, subject to the Standards:
  - (i) reduce the Member's Benefit or remaining Interest in the Fund by the amount of the overpayment;
  - (ii) recover any amounts overpaid to the Member or any other party that has received the Benefit; or
  - (iii) undertake any such other measures to rectify the overpayment as the Trustee sees fit.
- (b) If an overpayment of any Benefit occurs, rule 5.1(f) applies.

#### 10.12 Asset-Test Exempt Pension

Unless the Trustee has agreed in writing with a Member that this rule does not apply in respect of that Member, during any period in which a Benefit is provided as a Pension that is an Asset-Test Exempt Pension:

- (a) the Trustee shall ensure that it complies with any requirement of the Social Security Legislation necessary to retain its status as an Asset-Test Exempt Pension during any period it is provided as an Asset-Test Exempt Pension;
- (b) the applicable provisions of the Social Security Legislation, as relevant, apply to the extent of any inconsistency in preference to any applicable provision of the SISA and the SISR relating to the provision or commutation of that Pension to ensure the Pension qualifies as an Asset-Test Exempt Pension; and
- (c) the annual rate of indexation, if applicable, of that Pension shall be limited by the maximum rate set by the Social Security Legislation and shall be fixed for the duration of the pension and shall not be varied unless variation is authorised by the Social Security Legislation or the Regulator.

#### 10.13 **Reduction in minimum and maximum payments and other changes**

- (a) Despite anything else in these Governing Rules or any documentation setting out the terms and conditions of a Benefit, a Benefit provided by the Trustee shall be subject to any change under the Standards applicable to that type of Benefit, including:
  - (i) a change to any minimum or maximum annual payment prescribed for that type of Benefit (including, for the avoidance of doubt, a reduction in a minimum payment or increase in a maximum payment which it is not in fact necessary to adopt in order to comply with the Standards); and
  - (ii) a change to any term or condition that must apply to the Benefit in order for the Benefit to comply with the Standards;

and to the extent of any inconsistency between this rule and any other provision of these Governing Rules or any documentation setting out the terms and conditions of the Benefit, this rule shall prevail.

- (b) A change under the Standards includes, without limitation, a change effected by way of temporary modification declaration or in any other manner having regard to the definition of Standards in rule 29.76.

#### 10.14 **Variation of Benefit**

The Trustee may pay an amount or adjust (by increasing or decreasing) a Member's Interest or any Account in the Fund for any Taxes, tax credits, tax deductions, rebates, offsets, reserves or other entitlements in relation to a Member including, without limitation, any deduction entitlements under section 295-470 of the ITAA 1997 (deductions for future liability to pay benefits) in respect of the death or disablement of a Member or under section 295-485 of the ITAA 1997 (anti-detriment deduction) but is not required to do so.

#### 10.15 **Pensions and reversion**

The Trustee may, subject to the Standards, determine in respect of any Pension (including a Transition to Retirement Income Stream) to:

- (a) revert the Pension even though it has been commenced as a non-reversionary pension;
- (b) convert a reversionary pension into a non-reversionary pension;
- (c) ensure a Pension satisfies the requirements of an auto-reversionary Pension;
- (d) convert a Pension into a different type of Pension; and
- (e) commute and roll over a Pension to another Benefit.

#### 10.16 **Declaration of trust**

The Trustee may pay a Benefit by declaring a trust in respect of a specified amount of a Benefit or specified assets such that the recipient becomes absolutely entitled to the Benefit. Such a declaration of trust may be oral or recorded in written form by deed or any other method.

### **11. Lump Sums**

#### 11.1 **Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 1.1 and rule 10.

#### 11.2 **Regular Benefits**

If a Member:

- (a) Retires;
- (b) attains 65 years of age; or
- (c) is otherwise entitled to a Lump Sum in accordance with the Standards;

the Member is entitled to receive a Lump Sum.

#### 11.3 **Death Benefits**

If a Member dies, a Beneficiary or the deceased Member's LPR is entitled to receive a Lump Sum.

#### 11.4 **Disability Superannuation Benefit**

If a Member becomes Totally and Permanently Disabled, the Member is entitled to receive a Lump Sum.

#### 11.5 **Variation**

A Member's Lump Sum may be varied by the Trustee utilising an amount in any other Account to fund such a Benefit.

### **12. Account-Based Pensions**

#### 12.1 **Trustee Discretion**

Applications by Members for the commencement and payment of a Pension under this rule are subject to rule 10.

#### 12.2 **Regular Benefits**

If a Member:

- (a) Retires;
- (b) attains 65 years of age; or
- (c) is otherwise entitled to an Account-Based Pension in accordance with the Standards;

the Member is entitled to receive an Account-Based Pension.

### 12.3 **Death Benefits**

Subject to rule 18.1(h), if a Member dies, a Beneficiary is entitled to receive an Account-Based Pension from the Member's Benefit by way of reversion or a new Account-Based Pension.

### 12.4 **Disability Superannuation Benefits**

If a Member becomes Totally and Permanently Disabled, the Member is entitled to receive an Account-Based Pension.

### 12.5 **Commutation and Variation**

Subject to rules 1.1, 22 and 29.2 and the Standards:

- (a) the Trustee may commute or transfer the whole or any part of an Account-Based Pension to a Lump Sum or any other Benefit permitted by the Standards at any time; and
- (b) an Account-Based Pension may be varied by the Trustee as permitted by the Standards.

## 13. **Transition to Retirement Income Streams**

### 13.1 **Trustee Discretion**

Applications by Members for the commencement and payment of a Pension under this rule are subject to rule 10.

### 13.2 **Regular Benefits**

A Member is entitled to receive a Transition to Retirement Income Stream on or after attaining Preservation Age.

### 13.3 **Progression to Account-Based Pension**

A Transition to Retirement Income Stream becomes an Account-Based Pension on satisfying rule 12.2 or 12.4 or if the Member dies as contemplated in rule 12.3.

### 13.4 **Commutation and Variation**

Subject to the limitations in rules 1.1, 22 and 29.85 and the Standards:

- (a) the Trustee may commute the whole or any part of a Transition to Retirement Income Stream to a Lump Sum or any other Benefit permitted by the Standards at any time; and
- (b) a Transition to Retirement Income Stream may be varied by the Trustee as permitted by the Standards.

## 14. **Allocated Pensions**

### 14.1 **Restriction on Commencement**

- (a) Applications by Members for the commencement of a Pension under this rule are subject to rule 10.
- (b) A Member may not, unless permitted by the Standards, commence to receive an Allocated Pension or a Non-Commutable Allocated Pension after 19 September 2007.



#### 14.2 **Pensions Commenced before 20 September 2007**

A Member may continue to be paid an Allocated Pension or a Non-Commutable Allocated Pension which was commenced before 20 September 2007.

#### 14.3 **Non-Commutable Allocated Pensions**

A Non-Commutable Allocated Pension which was commenced before 20 September 2007 becomes an Allocated Pension if the Member:

- (a) Retires;
- (b) attains 65 years of age;
- (c) becomes Totally and Permanently Disabled;
- (d) dies as contemplated in rule 14.4; or
- (e) is otherwise entitled to an Allocated Pension in accordance with the Standards.

#### 14.4 **Death Benefits**

Subject to rule 18.1(h), if a Member dies, a Beneficiary is entitled to receive an Allocated Pension from the Member's Benefit by way of reversion.

#### 14.5 **Conversion**

Subject to rules 1.1 and 22 and the Standards:

- (a) the Trustee may commence to pay an existing Allocated Pension as an Account-Based Pension without the Member commuting or transferring their existing Allocated Pension, subject to the Standards; and
- (b) the Trustee may commence to pay an existing Non-Commutable Allocated Pension as a Transition to Retirement Income Stream without the Member commuting or transferring their existing Non-Commutable Allocated Pension, subject to the Standards.

#### 14.6 **Commutation and Variation**

Subject to rules 1.1, 22 and 29.4 and the Standards:

- (a) the Trustee may commute or transfer the whole or any part of an Allocated Pension to a Lump Sum or any other Benefit permitted by the Standards at any time; and
- (b) an Allocated Pension or a Non-Commutable Allocated Pension may be varied by the Trustee as permitted by the Standards.

### 15. **Market Linked Pensions**

#### 15.1 **Restriction on Commencement**

- (a) Applications by Members for the commencement of a Pension under this rule are subject to rule 10.
- (b) A Member may not, unless permitted by the Governing Rules and the Standards, commence to receive a Market Linked Pension or a Non-Commutable Pension after 19 September 2007.
- (c) A Member may commence to receive a Market Linked Pension or a Non-Commutable Pension after 19 September 2007 if:

- (i) it is purchased with a roll-over Benefit that resulted from the commutation of a pension that meets the standards of subregulation 1.06 (2), (7) or (8) of the SISR; or
- (ii) the Member is otherwise permitted under the Standards to commence to receive a Market Linked Pension or a Non-Commutable Pension.

## 15.2 Pensions Commenced before 20 September 2007

A Member may continue to be paid a Market Linked Pension or a Non-Commutable Pension which was commenced before 20 September 2007.

## 15.3 Non-Commutable Pensions

A Non-Commutable Pension which was commenced before 20 September 2007 becomes a Market Linked Pension if the Member:

- (a) Retires;
- (b) attains 65 years of age;
- (c) becomes Totally and Permanently Disabled;
- (d) dies as contemplated in rule 15.4; or
- (e) is otherwise entitled to a Market Linked Pension in accordance with the Standards.

## 15.4 Death Benefits

Subject to rule 18.1(h), if a Member dies, a Beneficiary is entitled to receive a Market Linked Pension from the Member's Benefit by way of reversion.

## 15.5 Commutation and Variation

Subject to the limitations in rules 1.1, 22 and 29.49(a)(iv) and the Standards:

- (a) the Trustee may commute the whole or any part of a Market Linked Pension or a Non-Commutable Pension to a Lump Sum or any other Benefit permitted by the Standards at any time; and
- (b) a Market Linked Pension or a Non-Commutable Pension may be varied by the Trustee utilising an amount in any other Account to fund such a Pension.

# 16. Temporary Incapacity Income Streams

## 16.1 Trustee discretion

Applications by Members for the payment of a Pension under this rule are subject to rule 10.

## 16.2 Regular Benefits

If a Member:

- (a) suffers Temporary Incapacity; or
- (b) is otherwise entitled to a Temporary Incapacity Income Stream in accordance with the Standards;

the Trustee may pay a Member a Temporary Incapacity Income Stream for such period and amount as determined by the Trustee. The Trustee may vary or cease an income

stream as it considers appropriate to ensure it complies with the Minimum Benefit rules and the Standards.

## **17. Miscellaneous Benefits**

### **17.1 Trustee discretion**

Applications by Members for the payment of a Benefit under this rule are subject to rule 10.

### **17.2 Other Benefits**

The Trustee may pay a Benefit to the Member to the extent permitted by the Standards, having regard to rule 7.14, if:

- (a) the Trustee determines that a Member is entitled to a Benefit not otherwise specified in these Governing Rules; and
- (b) the Benefit is permitted under the Standards.

### **17.3 Terminal Medical Condition**

If the Trustee determines that a Member has a Terminal Medical Condition, the Member is entitled to receive a Benefit allowed by the SISR.

### **17.4 Severe Financial Hardship**

If the Trustee determines that a Member is suffering severe financial hardship as prescribed by the SISR, the Member is entitled to receive a Benefit allowed by the SISR.

### **17.5 Compassionate Grounds**

If the Regulator determines that a Member is eligible for a payment from the Fund on compassionate grounds, the Member is entitled to receive any such Benefit allowed by the SISR.

### **17.6 Temporary Residency**

If a Member who is a temporary resident of Australia permanently departs Australia in circumstances as prescribed by the SISR and requests in writing the release of their Benefits, the Member is entitled to such Benefits as allowed under the SISR in respect of cessation of temporary residency.

### **17.7 Small Balances**

If a Member's Gainful Employment with a standard employer-sponsor of the Fund is terminated and the Member's preserved Interest at the time of termination is less than:

- (a) \$200; or
- (b) such other amount prescribed by the SISR;

the Member is entitled to a Benefit as permitted under rule 10.1.

### **17.8 Release Authority**

If authorised by a release authority, the Trustee may pay an amount to a Member in accordance with rule 22.6(b).

## 18. Death Benefits

### 18.1 Payment of Benefit on Death

- (a) This rule 18 is subject to rules 10, 19 and 23.4.
- (b) Upon the death of a Member:
  - (i) if required by the Standards, the Trustee must pay or commence to pay the deceased Member's Interest as soon as practicable; and
  - (ii) the Trustee may only transfer or roll-over the deceased Member's Interest to an Approved Fund for the purposes of payment if permitted by the Standards.
- (c) In paying a Benefit under rule 18, the Trustee:
  - (i) shall have regard to but shall not be bound by any non-binding nomination by the Member;
  - (ii) shall pay a deceased Member's Interest in favour of either or a combination of the following:
    - (A) the deceased Member's LPR; or
    - (B) one or more of the deceased Member's Dependants (including one or more Preferred Dependants);
  - (iii) shall, if unable to find either an LPR or a Dependant of the deceased Member, pay the deceased Member's Interest to an individual selected by the Trustee; and
  - (iv) may pay a deceased Member's Interest in favour of such other person (including any natural person, company, association or body) as the Standards or the Regulator permits.
- (d) The Trustee shall determine whether a Benefit paid under rule 18 in respect of a deceased Member's Interest should be any one or more of the following types:
  - (i) a single Lump Sum;
  - (ii) an interim Lump Sum and a final Lump Sum, the total of which shall not exceed the Interest of the deceased Member in the Fund;
  - (iii) one or more Pensions;
  - (iv) one or more annuities acquired from one or more Approved Funds; or
  - (v) any other form permitted by the Standards.
- (e) The Trustee may, subject to rule 10.4, make any determination relating to the type, amount and the value of any particular assets or reserves in the Fund that will fund a Benefit paid under rule 18.
- (f) If a Benefit is paid under rule 18 as a Pension, the Trustee may determine the type of Pension, whether it is commutable or not, whether it is reversionary or not, and the Trustee may attach such other conditions to such Benefit as the Trustee determines.
- (g) If required by the Standards, the remaining balance of a Pension or Reversionary Pension that was being paid prior to a deceased Member's death which is paid as a Benefit under rule 18 shall commence to be paid or be paid

out of the Fund, as the case may be, within the maximum period required by the Standards.

- (h) Unless otherwise permitted by the Standards, a Benefit paid under rule 18 to a Dependant who is a Child of a Member shall be paid as a Lump Sum unless:
  - (i) the Child has not reached 18 years of age; or
  - (ii) the Child has reached 18 years of age and:
    - (A) is, at the time of the deceased Member's death, financially dependent upon the deceased Member and has not reached 25 years of age, provided that the Pension is paid to the Child as a Lump Sum on the earlier of the following:
      - (1) the day on which the Pension is commuted or the term of the Pension expires (unless the Pension is rolled-over to commence a new Pension); and
      - (2) the day on which the Child attains 25 years of age; or
    - (B) has a disability of the kind described in section 8(1) of the *Disability Services Act 1986* (Cth).
- (i) The Trustee may deal with a deceased Member's Interest either:
  - (i) in accordance with rule 22.7 to the extent required by the Standards; or
  - (ii) in any manner as the Trustee determines in its absolute discretion provided that the payment or application is in accordance with the Standards.

## 18.2 Evidence

The Trustee may require such evidence as it considers necessary in order to determine whether a person is entitled to the payment of a Benefit under these Governing Rules, including by submitting to such tests or producing such documentation as the Trustee reasonably requires.

## 18.3 Anti-detriment payments

- (a) If a Benefit is paid under rule 18 as a Lump Sum to a deceased Member's:
  - (i) LPR — to the extent to which the persons in rule 18.3(a)(ii) can reasonably be expected to benefit from the Member's estate; or
  - (ii) to a person who was a Spouse or Child of a deceased Member at the time of death or payment,

the Trustee may increase the Lump Sum by the Tax Saving Amount.

- (b) Subject to the Standards, the Trustee may make any adjustment to any Account in the Fund including any other Member's Interest in order to increase a Lump Sum in accordance with rule 18.3(a) and the Trustee may in doing so rely on, in addition to any other power or rule, rules 21.4, 23.4 and 6.1(c).

## **19. Binding Death Benefit Nominations**

### **19.1 Making a BDBN**

A Member may, prior to their death, make a BDBN which the Trustee is bound to follow. The Member may specify in such BDBN matters including:

- (a) that their Interest is to be paid on their death to one or more of that Member's Dependants or LPR or both, to the exclusion of any other Dependant or LPR;
- (b) subject to rule 10.4(a), the proportion of the Member's Interest, the value, the particular assets, any specified part or amount, the Accounts or the reserves in the Fund that will be used to pay the Interest to the persons in rule 19.1(a); and
- (c) whether the amount is to be paid to each person in rule 19.1(a) as a Lump Sum, Pension or combination of Lump Sum and Pension and, if a Pension is provided (subject to rule 18.1(h) and the ability to pay a Pension to a Dependant on death under the Standards) the type of Pension, whether it is commutable or not and whether it is reversionary or not, and the Member may attach further limitations and conditions on the Pension.

### **19.2 Form of BDBN**

A BDBN must:

- (a) be in writing;
- (b) be signed and dated by the Member in the presence of two adult witnesses, neither of whom is mentioned as a Dependant in the BDBN or is an LPR of the Member; and
- (c) contain a declaration signed and dated by both of the witnesses stating that the BDBN was signed by the Member in their presence.

### **19.3 Binding on Trustee**

The Trustee shall be bound on and after the death of a Member to comply with the instructions set out in a Member's BDBN, irrespective of whether, prior to the Member's death, the Trustee had approved the BDBN. Further, a BDBN overrides a Reversionary Pension nomination.

### **19.4 Revocation**

A Member may revoke a BDBN made at any time prior to that Member's death by:

- (a) making a new BDBN that revokes any prior BDBN; or
- (b) notifying the Trustee in writing that the Member revokes their BDBN,

and a revocation renders a BDBN void and inoperative in its entirety.

### **19.5 Non-lapsing BDBNs**

- (a) If the Fund is an SMSF, a BDBN shall, subject to any terms and conditions contained in the BDBN which may otherwise render it void or inoperative, continue in full force and effect until it is revoked in accordance with rule 19.4, regardless of the time period that has elapsed since the execution date of that BDBN and despite the maximum duration of three years being specified in regulation 6.17A(7) of the SISR (which is applicable only to superannuation funds that are not SMSFs).

- (b) Despite rule 19.5(a), a Member may expressly direct that a BDBN expires after a certain time period. If the BDBN does not expressly state an expiry time period, rule 19.5(a) applies.

## 19.6 **Enduring Power of Attorney**

A person appointed as an attorney under an Enduring Power of Attorney may make, vary or revoke a BDBN on behalf of a Member provided the Enduring Power of Attorney does not expressly preclude same. This provision is for clarity and does not limit the Governing Rules in any other respect especially having regard to rules 28.1(a) and 29.46.

## 19.7 **BDBNs Subject to the Standards**

A BDBN will be rendered invalid to the extent that compliance with the BDBN would:

- (a) result in a contravention of the Standards that would cause the Trustee or the Fund to suffer a penalty or commit an offence; or
- (b) result in a deceased Member's Interest or any part thereof being paid:
  - (i) to a person who is neither a Dependant nor an LPR of that deceased Member unless this is not prohibited by the Standards; or
  - (ii) as a Pension or a reversionary Pension to a Child of a deceased Member, unless the exception in rule 18.1(h) applies or the Standards otherwise permit;

and for the avoidance of doubt, if the Fund is an SMSF then a BDBN is not rendered invalid to the extent that it does not satisfy any requirement expressed in regulation 6.17A(7) of the SISR (which is applicable only to superannuation funds that are not SMSFs).

## 19.8 **Disclaiming**

A Beneficiary may disclaim all or part of any entitlement that they may otherwise become entitled to receive in respect of a BDBN within 60 days of being notified by the Trustee of their interest or such further period approved by the Trustee. The Trustee may reject a disclaimer by a Beneficiary and determine whether a disclaimer applies in respect of a Beneficiary's entitlement in whole or in part.

## 20. **Vesting and Membership Classes**

20.1 Subject to the Standards, no Interest in respect of a Member, other than a Minimum Benefit, shall vest in a Member or a Dependant after the happening of any of the following events:

- (a) the Member committing an act of bankruptcy or becoming an insolvent person under administration;
- (b) the Member assigning, securing or charging their Interest in the Fund (or attempting to do so); or
- (c) the Member's Interest whether by their own act, operation of law, an order of any court or otherwise becoming payable to or vested in any other person, company, government or other organisation;

and the Trustee shall be empowered to pay or apply any amount covered by this rule 20 in any manner as the Trustee determines in its absolute discretion from time to time provided that the payment or application is in accordance with the Standards.

- 20.2 Subject to rules 6.2(c) to 6.2(f), the Trustee may, in its discretion and subject to the Standards, establish, maintain or terminate:
- (a) classes of Membership; or
  - (b) vesting of contributions or Interests.
- 20.3 Rule 20.1 shall not apply to any Interest that has already vested in a Member or that constitutes a Minimum Benefit.

## **21. Accounts and Administration**

### **21.1 Establishment of Accounts**

The Trustee may establish any Account the Trustee deems appropriate, including, without limitation:

- (a) a Member or Employer accumulation Account;
- (b) a Pension Account;
- (c) a reserve Account (including, without limitation, a Pension reserve, investment reserve, contribution reserve (including a reserve described in rule 9.12), insurance reserve and sundry reserve); and
- (d) any other Account, including any Sub-Account.

### **21.2 Trustee to Maintain Accounts**

- (a) The Trustee shall ensure that the Accounts are properly maintained and may set policies and procedures for recording movements in respect of the Accounts.
- (b) Subject to the Standards, the Accounts established by the Trustee shall be managed by the Trustee. The Trustee may determine what amounts are transferred in to and out of an Account and make all other decisions including what assets are used to fund an Account. The Accounts may contain such amounts as follows:
  - (i) Member and Employer accumulation Account: which may include contributions made by or in respect of a Member (as applicable) in accordance with rule 9, transfers, allocations, allotments or roll-overs in respect of a Member in accordance with rule 22 and amounts from any other source permitted under the Standards;
  - (ii) Pension Account: assets funding a Pension;
  - (iii) reserve Account: the Trustee may access and obtain amounts for a reserve Account from contributions, Earnings, transfers and roll-overs under rule 22 and from any other source permitted under the Standards; and
  - (iv) any other Account: any amount which the Trustee determines.
- (c) The Trustee may manage a reserve Account for any purpose permitted under the Standards, including:
  - (i) to fund the payment of a Pension (including maintaining any solvency or other reserve to satisfy a current or non-current Pension liability);
  - (ii) to supplement any Account of any Member or class of Membership;



- (iii) to accumulate amounts from Earnings and other sources to manage investment fluctuations and to utilise such reserves to supplement Earnings or for any other purpose that the Trustee determines;
- (iv) to make a provision (including a provision under rule 23.4) for or to fund the payment of a Benefit on the death of a Member to their LPR or Dependants, including to fund a Tax Saving Amount;
- (v) to fund the payment of a Temporary Incapacity Income Stream or the payment of a Benefit on Total and Permanent Disablement;
- (vi) to make provision for and to pay Disbursements;
- (vii) to manage contributions to the Fund and assist in allocating such contributions to the relevant Member or class of Members and to the relevant period; and
- (viii) to fund any other expense or liability or for any other purpose permitted under the Standards.

### 21.3 Earnings

- (a) Earnings may be credited or debited to any Account, unless supplemented by an allocation of an amount from a reserve Account or the Trustee determines otherwise, provided that:
  - (i) credits shall not total an amount greater than Earnings in a period; and
  - (ii) the debits shall not total an amount greater than Earnings in a period.
- (b) Earnings may be debited or credited to the Accounts, as the case may require, in respect of each Financial Year or in respect of such other period as the Trustee determines.
- (c) The Trustee may make any assumption, determination or estimate in crediting or debiting any Earnings.
- (d) Subject to the Standards, the Trustee may determine not to apply any further Earnings to or in respect of a Member on a request made by the Member to the Trustee in writing. A Member may withdraw a prior request at any time after which the Trustee may apply Earnings to or in respect of that Member at the Trustee's discretion.
- (e) In the exercise of its discretion in determining allocations of Earnings to each Account under this rule, the Trustee shall have regard to the Standards and:
  - (i) the amount in each Account and the period the amount has been in the Fund;
  - (ii) any assets held in respect of a Member or class of Membership under rule 6.2 and any net income or loss from those assets;
  - (iii) length of Membership, investment strategies and any professional or expert advice;
  - (iv) the level of the Fund's reserves; and
  - (v) the exchange and segregation of the assets of the Fund, if any, as assets set aside to meet Pension liabilities of the Fund whether under rule 6.2 or for other purposes of the Fund and the extent to which Earnings are attributable to those assets;

and the Trustee may have regard to such other matters the Trustee considers appropriate from time to time.

#### **21.4 Applying Reserves**

- (a) The Trustee may apply all or any part of a reserve Account for any purpose permitted under the Standards in respect of any Member or class of Membership or the Fund generally, including without limitation funding a Tax Saving Amount.
- (b) In making a determination to apply an amount from a reserve Account under rule 21.4(a), the Trustee shall first take into consideration any implications such an application may have for a Member's Concessional Contributions Cap or Non-Concessional Contributions Cap.

## **22. Transfers, Roll-Overs and Internal Roll-Overs**

### **22.1 Transfers and Roll-Overs into and within the Fund**

- (a) Subject to the Standards, the Trustee may, upon the written request of an Eligible Contributor, allow an Asset Transfer to be made in respect of a Member into or within the Fund. The Trustee may in its discretion waive the requirement for a request to be in writing.
- (b) An Asset Transfer may with the Trustee's consent be made from another Approved Fund, or an Account or Interest within the Fund, as the case may be.
- (c) The Trustee shall not accept a directed termination payment unless permitted by the Standards.

### **22.2 Transfers and Roll-Overs from the Fund**

- (a) Subject to the Standards, the Trustee must, upon receiving a written request from a Member or, if the Trustee otherwise determines, allow an Asset Transfer to be made in respect of a Member from the Fund within the time required by the Standards, unless the Fund is an SMSF in which case the Trustee may allow or refuse such an Asset Transfer on receipt of a request from a Member.
- (b) The Trustee may refuse to allow an Asset Transfer to an Approved Fund that is not a complying superannuation fund or one that the Trustee reasonably suspects may not be a complying fund.
- (c) An Asset Transfer may be made with Notional Assets passing from another Approved Fund, or an Account or Interest within the Fund, as the case may be.
- (d) In addition to any other power to withhold amounts, the Trustee shall withhold an amount from an excess untaxed roll-over amount if withholding tax is payable on the amount, unless otherwise required by the Standards.

### **22.3 Recording of Transfers and Roll-Overs to Interests in the Fund**

In the event of the receipt of an Asset Transfer or the undertaking of an allotment in accordance with this rule, the Trustee shall ensure the Accounts are appropriately adjusted to comply with the Standards.

### **22.4 Spouse Contributions-Splitting**

- (a) Subject to rule 8.6, this rule 22 and the Standards, the Trustee may, upon receiving a request from a Member, allot all or some of a splittable contribution that is a concessional contribution made by or in respect of the Member to or in

respect of that Member's Spouse, provided that such allotment does not exceed the maximum amount that may be allotted as prescribed by the Standards.

- (b) Subject to the Standards, where a splittable contribution is allotted to a Member's Spouse in accordance with rule 22.4(a), the entire amount allotted to the Member's Spouse will form part of the Taxable Component of the Interest of the Member's Spouse.

#### 22.5 **Written Request Requirement**

- (a) A written request received from a Member must contain such information prescribed by the Standards to enable an Asset Transfer both to and from an Interest, an Account or an Approved Fund under this rule.
- (b) Before allowing an Asset Transfer, the Trustee shall request such further information and documents as prescribed by the Standards as is necessary to facilitate the Asset Transfer if this is not provided by the Member in their written request. The Trustee may request an independent valuation report from an expert and such other evidence it determines.
- (c) The Trustee may, subject to the Standards, undertake an Asset Transfer even though the Member has not completed a written request or complied with this rule 22.

#### 22.6 **Mandatory Transfers, Roll-Overs and Release Authorities**

- (a) Subject to the Standards, the Trustee may facilitate an Asset Transfer in respect of a Benefit which is required to be paid to or in respect of a Member of the Fund to an Approved Fund, an Account or as a Benefit determined by the Trustee if a Member has failed to provide instructions in relation to the Asset Transfer within a reasonable time period of the Benefit first becoming payable.
- (b) If the Trustee is given a release authority with which the Trustee is required to comply under sections 292-415 or 292-467 of the ITAA 1997 or section 292-80C of the *Income Tax (Transitional Provisions) Act 1997* (Cth) or as otherwise authorised under the Standards, the Trustee shall, if required, facilitate an Asset Transfer in favour of the Commissioner or the Member, as the case requires, within 30 days after receiving the release authority or as otherwise required by the Standards.
- (c) If the Trustee is permitted under the Standards, the Trustee may, following the request by a Member, facilitate an Asset Transfer to or in favour of a Member to enable them to manage their contribution caps.

#### 22.7 **Unclaimed Money**

The Trustee must comply with any Standards relating to unclaimed money where a payment is required to be made in respect of a Member who cannot be located after the Trustee has made reasonable efforts and inquiries.

#### 22.8 **Discharge on Transfer**

The receipt by the trustee of an Approved Fund of an Asset Transfer shall be a complete and final discharge to the Trustee and the Fund in respect of any liability to the Member in relation to their Benefit or the amount or value of the assets subject to that Asset Transfer.

#### 22.9 **Proportioning of Asset Transfer**

If the Trustee determines to allow an Asset Transfer, rule 10.4 shall apply to the Asset Transfer (except an Asset Transfer effected under rule 22.6(b)) if required by the

Standards as if the reference to Benefit in that rule was a reference to the Asset Transfer.

## **23. Disclosure, Records and Auditors**

### **23.1 Notifications and Disclosure of Information**

The Trustee shall cause any notifications and information to be provided by or in respect of the Fund, as required from time to time by the Standards, including the following if necessary:

- (a) an appropriate notification upon a person becoming (including a product disclosure statement, if required) or ceasing to be a Member;
- (b) changes to the office of Trustee or directors of a Corporate Trustee;
- (c) annual disclosures at the end of each Financial Year (or relevant period) in respect of a Member, the Fund or other person;
- (d) changes to these Governing Rules, including the name of the Fund;
- (e) contact and other details for the Fund;
- (f) a copy of these Governing Rules, which shall be available for inspection by each Member and any LPR of a Member, including a deceased Member; and
- (g) any other information specified by the Standards which must be provided to or may be requested by a Member, Employer, Regulator or any other person or entity at least once a year or at such other times as the Standards may prescribe.

### **23.2 Records and Record Keeping**

The Trustee shall:

- (a) cause proper records to be maintained, and shall cause the relevant notifications and annual or other returns to be lodged with the Regulator, the Members and any other relevant authority in accordance with the Standards;
- (b) keep a record of all Trustee minutes and decisions relating to the Fund for a period of at least ten years, or such longer period as may be required by the Standards;
- (c) keep a record of the Fund's Accounts, financial statements and returns for a period of at least five years, or such longer period as may be required by the Standards;
- (d) keep a record of any notice, declaration or election made or given by the Trustee or a Member in relation to any matter of the Fund for such period as required by the Standards; and
- (e) ensure compliance with duties provided under the Standards relating to superannuation data and payment matters.

### **23.3 Financial Statements**

- (a) The Trustee shall cause financial statements and any other required statement to be prepared as soon as practicable after the end of each Financial Year and at any other time as required by the Standards.

- (b) The Trustee may make any determination regarding the Fund's financial statements including whether to record the financial statements at cost or market value and whether the Fund is to be a reporting or non-reporting entity.

#### 23.4 Provisions

- (a) The Trustee may make provision or adjustment in the Accounts for, among other things:
  - (i) any Disbursements, liabilities, depreciation and amortisation;
  - (ii) Taxes, tax credits, rebates, offsets including any provision for future income tax benefit or provision for deferred income tax; and
  - (iii) any other provision or adjustment the Trustee considers appropriate.
- (b) The Trustee may make any estimate or adjustment it deems appropriate in valuing any amount under rule 23.4(a).
- (c) The Trustee may make provisions or adjustments in the Accounts as appropriate for a future income tax benefit, including for the purpose of appropriately recording the value of a future income tax benefit.

#### 23.5 Auditor

The Trustee must appoint an Auditor for each Financial Year or as required under the Standards within the time required by the Standards to:

- (a) audit the financial statements and the records of the Fund requiring audit;
- (b) report in writing to the Trustee; and
- (c) perform any related function.

### 24. Variation

24.1 The Trustee may at any time, by deed or written resolution, vary these Governing Rules and such variation shall apply on the date of variation or on a prospective or retrospective basis (including any provisions deemed to be included under rule 26) subject to rules 24.2 to 24.5.

24.2 Any variation to these Governing Rules shall continue to ensure that:

- (a) the Trustee of the Fund is a Corporate Trustee; or
- (b) the sole or primary purpose of the Fund is the provision of Old-Age Pensions.

24.3 No variation shall reduce a Member's Interest accrued before the date of the amendment unless the Trustee has the written consent of any Member whose Interest would be reduced or adversely affected.

24.4 Despite rule 24.3, a variation may reduce a Member's Interest accrued before the date of the amendment without obtaining the Member's consent if:

- (a) the reduction in Interest is required because of, and does not exceed the value of, any additional Tax payable on the Fund's Earnings due to such things as changes in Taxation laws;
- (b) the reduction is required to enable the Fund to comply with the Standards or the Regulator provides its written approval to the reduction; or
- (c) the variation is otherwise authorised by the Standards;

and the Trustee need not observe any of the conditions in Trustee Law which may otherwise apply to the amendment or to the process of making the amendment.

- 24.5 A variation must not change or revoke a Member's prior BDBN without that Member's prior written consent.
- 24.6 A variation may implement conditions that:
- (a) restrict future variations; or
  - (b) require the consent of a third party.

## 25. Wind up

25.1 The Trustee shall wind up and terminate the Fund in the manner provided by this rule when any of the following events occur:

- (a) an agreement to wind up the Fund is made between all Members, the LPR of any deceased Member (in respect of whom an Interest remains in the Fund) and the LPR of any Member under a legal disability, subject to rule 8.9(b);
- (b) the Trustee decides that the continuation of the Fund is not reasonably justified; or
- (c) the Fund is required to be wound up to comply with the Standards.

25.2 The termination shall take effect on a date ('**Wind up Date**') which is the date on which the first of the events described in rule 25.1 occurs, unless:

- (a) if the relevant event was the event referred to in rule 25.1(a) — all the Members, the LPR of any deceased Member (in respect of whom an Interest remains in the Fund) and the LPR of any Member under a legal disability; or
- (b) if the relevant event was another event referred to in rule 25.1(b) — the Trustee;

determines that the termination shall take effect on some other date, which may be on a prospective or retrospective basis.

25.3 The Trustee shall close the Membership of the Fund on the Wind up Date and determine the amount or value of assets available for satisfying the amount credited to the Accounts of each Member after taking into account and making necessary provisions for the Disbursements and losses related to winding up and finalising the Fund.

25.4 The Trustee:

- (a) shall roll-over or transfer to an Approved Fund any Interest of a Member that the Trustee cannot pay to the Member that can be satisfied by the amount determined under rule 25.3 in respect of each Member and any applicable reserve or surplus;
- (b) may make any adjustment to each Member's Interest and any applicable reserve or surplus on account of any surplus or deficiency arising during the course of and before finalising the winding up of the Fund; and
- (c) may pay to each Member any Benefit that the Member requests, provided that:
  - (i) the Trustee shall not roll-over or transfer a Member's Interest (or a part of it) if such a payment, roll-over or transfer would be inconsistent with the Standards; and

- (ii) the Trustee may maintain any Interest in respect of a Member after the Fund is wound up subject to similar trusts as contained in these Governing Rules or roll-over or transfer the Member's Interest to an Approved Fund until the Member is entitled to be paid their Interest.
- 25.5 Where any amount remains after the winding up and roll-over or transfer of Interests (as contemplated in rule 25.4), the amount so remaining shall, subject to the Standards, be paid to any person who has ever been a Member or to any other person or entity that the Trustee chooses in the proportions the Trustee considers reasonable and equitable.
- 25.6 The Fund shall be administered and the assets distributed or paid upon a winding up so that the Fund does not infringe the Standards. Without limiting actions the Trustee may take in relation to a wind up, the Trustee may:
  - (a) pre-pay expenses, Taxes or outgoings to facilitate a wind up prior to the end of a Financial Year;
  - (b) transfer an asset, including a life insurance policy or similar right that has no value to a Member; and
  - (c) make other decisions for the effective winding up of the Fund.
- 25.7 The payment, roll-over or transfer of a Member's Interest or other amount in accordance with this rule shall, subject to the Standards, be a complete and final discharge of the Trustee and the Fund in respect of that Member.

## **26. Implied Standards**

- 26.1 This rule 26 shall have a paramount effect to ensure that these Governing Rules and the Fund comply with the Standards. To the extent that the Standards:
  - (a) empower the Trustee to do or not to do something that the Trustee would not otherwise have power to do;
  - (b) require the Governing Rules to contain a provision that is not contained or to not contain a provision which the Governing Rules do contain;
  - (c) require compliance by the Trustee with the minimum requirements of the Standards; or
  - (d) impose a less onerous requirement than these Governing Rules;those provisions shall, having regard to the Fund's status at the relevant time, be implied as part of these Governing Rules and to the extent of any inconsistency prevail over the express provisions of these Governing Rules.
- 26.2 If rule 26.1 no longer requires a provision referred to in rule 26.1 to override the provisions of these Governing Rules, then that provision shall cease to have effect.
- 26.3 The Trustee is not to be taken to be in breach of these Governing Rules if the Trustee is in breach of a provision implied by rule 26.1 if the contravention of the Standards is waived or is not enforced by the Regulator or any competent jurisdiction.
- 26.4 Despite rule 26.1 the Trustee may, after taking the advice of a lawyer experienced in superannuation, by resolution declare that any provision which would otherwise be implied by rule 26 shall not be so implied.
- 26.5 Rule 26.1 shall apply on a prospective basis from the date of commencement of these Governing Rules or, for any standard that applies after that time, the date the relevant standard commences to operate, as the case may be. However, the Trustee may

decide that the Standards shall apply on a retrospective basis or in an amended way, either in whole or in part.

## **27. Applicable Law**

27.1 These Governing Rules shall be construed in accordance with the laws of the state or territory in which the Trustee resides or, if applicable, has its registered office and the Commonwealth of Australia and to the extent the courts and tribunals of those jurisdictions have application to the Fund, their jurisdictions shall be exclusive except to the extent that the parties to a proceeding agree to another jurisdiction. If the Trustee comprises individuals who reside in different jurisdictions, the applicable Australian state or territory is, unless the parties agree otherwise, the one where the Members with the largest total Account balances reside.

## **28. Interpretation**

28.1 In these Governing Rules, unless the context otherwise requires or the Trustee determines otherwise:

- (a) a reference to any person, company, association or body includes a reference to its respective authorised officers, agents, delegates, successors, assigns, LPR, executors and administrators;
- (b) references to any provision of these Governing Rules, law, regulation, temporary modification order, ruling, circular or guideline are references to same as amended, consolidated, supplemented or replaced from time to time;
- (c) words importing any one gender include all genders and words importing the singular include the plural and vice versa;
- (d) a reference to a rule can be a reference to a distinct rule, sub-rule, paragraph, sub-paragraph or the like to simplify references throughout these Governing Rules;
- (e) the table of contents and headings shall not be taken into account in the interpretation of these Governing Rules;
- (f) if any question or dispute arises in respect of the Fund or in respect of the interpretation of the Governing Rules, the Trustee's decision on the matter shall be final and binding;
- (g) references to the age of a Member or other person shall be read subject to the Standards, and if any stated age is inconsistent with the Standards, then the age in the Standards prevails;
- (h) a reference to a word or term in these Governing Rules, if that word or term has a defined meaning under the Standards but no express meaning in these Governing Rules, has the same meaning as given by the Standards; and
- (i) the use of a list in these Governing Rules, accompanied by the word include, includes or including shall operate without limiting the other items or examples that may apply but are not expressly listed.

## **29. Definitions**

The following words shall, unless the Trustee determines otherwise or the context requires otherwise, have the meanings shown below:



29.1 **Account** means a record of amounts held by the Trustee in the Fund;

29.2 **Account-Based Pension** means a Pension:

- (a) that cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Member or of another Reversionary Beneficiary;
- (b) that neither the capital value of nor the income from the Pension can be used as security for a borrowing;
- (c) that does not permit the capital supporting the Pension to be added to by way of contribution or roll-over after the Pension has commenced;
- (d) that is paid at least annually; and
- (e) the total payments in a year (including any payments made under a Payment Split but excluding amounts rolled over) in which there is an Account balance in respect of the Member, are at least the amount calculated under clause 1 of Schedule 7 of the SISR;

or that otherwise complies with regulations 1.06(9A)(a), 1.06(9A)(c), 1.06(9A)(d), 1.06(9B) and 1.07D of the SISR or such parts of the Standards as govern account-based pensions;

29.3 **Actuary** means a practising member of the Institute of Actuaries of Australia or any other actuary approved by the Standards;

29.4 **Allocated Pension** means a Pension:

- (a) that commenced before 20 September 2007 and:
  - (i) that cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Member or of another Reversionary Beneficiary;
  - (ii) that neither the capital value of nor the income from the Pension can be used as security for a borrowing;
  - (iii) that is paid at least annually; and
  - (iv) in respect of payments from the Pension:
    - (A) for a Pension that has a commencement day on or after 22 December 1992 and before 1 January 2006 — the payments in a year (excluding payments by way of commutation but including any payments made under a Payment Split) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the SISR; or
    - (B) for a Pension that has a commencement day on or after 1 January 2006 — the payments in a year (excluding payments by way of commutation but including any payments made under a Payment Split) are not larger or smaller in total than the respective maximum and minimum limits for the year calculated in accordance with either Schedule 1A or 1AAB of the SISR;
- (v) that otherwise complies with regulations 1.06(1A), 1.06(4), 1.06(5), 1.06(9B) and 1.07A of the SISR and the Standards relating to allocated pensions; or

- (b) that commences on or after 20 September 2007 and otherwise complies with such parts of the Standards as govern allocated pensions;

29.5 **Approved Fund** means:

- (a) a superannuation fund (including this Fund, an SMSF, a Small APRA Fund and any other type of fund);
- (b) an eligible roll-over fund;
- (c) a retirement savings account;
- (d) the Superannuation Holding Accounts Special Account;
- (e) an insurance company;
- (f) a registered organisation or similar entity; or
- (g) any other fund, entity or arrangement that is recognised under the Standards including a pension fund, annuity arrangement, life assurance or insurance policy;
- (h) a MySuper account;
- (i) any other fund, entity or arrangement which, among other things, can accept a transfer, allocation, allotment or roll-over from the Fund of a Member's Interest or is authorised to transfer, allocate, allot or roll-over a Member's Interest to or in respect of the Fund in accordance with the Standards;

29.6 **APRA** means the Australian Prudential Regulation Authority, and its authorised officers;

29.7 **Asset-Test Exempt Pension** means a Pension that is exempt from the assets test or income test in whole or in part under the Social Security Legislation;

29.8 **Asset Transfer** means a transfer, allocation, allotment or roll-over (including an internal roll-over amount or the commutation or roll-over of a Pension) made with money, assets or a deemed amount or value of assets ('**Notional Assets**') and may be in respect of a Member, class of Members or a period of time;

29.9 **ATO** means the Australian Taxation Office, the Commissioner or, alternatively, some other official or body empowered with the administration of SMSFs and any of their authorised officers;

29.10 **Auditor** means an auditor who is:

- (a) registered under the *Corporations Act 2001* (Cth);
- (b) a member or, if the Standards require, a fellow of:
  - (i) CPA Australia;
  - (ii) The Institute of Chartered Accountants in Australia;
  - (iii) the National Tax and Accountants Association Ltd;
  - (iv) the Institute of Public Accountants; or
  - (v) the Association of Taxation and Management Accountants;

and if the Standards require, the member or fellow must be appropriately registered;

- (c) an Auditor-General of the Commonwealth, a State or Territory; or

- (d) a person that otherwise qualifies to act as an auditor under the Standards;
- 29.11 **BDBN** means a written direction binding the Trustee as to the payment of all or part of an Interest on or after the death of a Member that complies with rule 19 and **Binding Death Benefit Nomination** has a corresponding meaning;
- 29.12 **Beneficiary**, upon the death of a Member, means a Dependant, a trustee for a Dependant, a Reversionary Beneficiary or other beneficiary who is entitled to Benefits in respect of a Member's participation in the Fund under rules 18, 19 or otherwise and **Beneficiaries** has a corresponding meaning;
- 29.13 **Benefit** means any amount paid or payable by the Fund to or in respect of a Member including a Lump Sum, a Pension, a Miscellaneous Benefit, a Temporary Incapacity Income Stream and any other payment under these Governing Rules but excludes a Defined Benefit Pension;
- 29.14 **Child** in relation to a Member includes, subject to the Standards;
- (a) an adopted child, a stepchild or an ex-nuptial child of the Member;
- (b) a child of the Member's Spouse; and
- (c) someone who is a child of the Member within the meaning of the *Family Law Act 1975* (Cth);
- 29.15 **Commissioner** means the Federal Commissioner of Taxation authorised under the *Taxation Administration Act 1953* (Cth) or any other Commonwealth law;
- 29.16 **Company Rules** means the articles of association, constitution or governing rules of a Corporate Trustee;
- 29.17 **Concessional Contributions Cap** means the relevant concessional contributions limit applicable to the Member as prescribed for the relevant Financial Year by the Standards;
- 29.18 **Contributing Employer** means, unless the Trustee determines otherwise, an employer who (or whose associate) employs a Member but only for so long as the employer (or associate) is eligible to contribute to the Fund in respect of that employment or for so long as the Member remains a Member of the fund, and the Trustee may notify the Contributing Employer that it may contribute to the Fund with the Notification to Contributing Employer Form;
- 29.19 **Corporate Trustee** means a trading or financial corporation formed within the limits of the Commonwealth under the jurisdiction of the Commonwealth under section 51(xx) of the *Commonwealth of Australia Constitution Act* eligible to act as a trustee of a regulated superannuation fund in accordance with the Standards;
- 29.20 **Defined Benefit Fund** means a fund:
- (a) that has at least one Defined Benefit Member; and
- (b) some or all of the contributions to which (out of which, together with earnings on those contributions, the Benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual member but are paid into and accumulated in a fund in the form of an aggregate amount;
- 29.21 **Defined Benefit Member** means a Member entitled, on retirement or termination of their employment, to be paid a Benefit defined, wholly or in part, by reference to either or both of the following:
- (a) the amount of:

- (i) the Member's salary at a particular date, being the date of the termination of the Member's employment or of the Member's Retirement or an earlier date; or
    - (ii) the Member's salary averaged over a period before Retirement; or
  - (b) a specified amount;
- 29.22 **Defined Benefit Pension** means a pension under section 10 of the SISA, other than:
- (a) a Pension Funded by Assurance;
  - (b) an Account-Based Pension (including a Transition to Retirement Income Stream);
  - (c) an Allocated Pension (including a Non-Commutable Allocated Pension);
  - (d) a Market Linked Pension (including a Non-Commutable Pension); or
  - (e) any other Pension excluded from the definition of defined benefit pension in Division 9.2B of the SISR;
- 29.23 **Dependant** in relation to a Member means, in the opinion of the Trustee, any one or more of the following:
- (a) the Spouse of the Member;
  - (b) any Child of the Member;
  - (c) any person with whom the Member has an interdependency relationship as prescribed in the Standards;
  - (d) any other person who is financially dependent upon the Member or if the Member is deceased, was financially dependent upon the deceased Member at or after the time of the deceased Member's death; and
  - (e) any other person who would be regarded as a dependant under the Standards at the relevant date;
- 29.24 **Disability Superannuation Benefit** means a Benefit paid if a Member suffers Total and Permanent Disablement;
- 29.25 **Disbursements** means, unless the Trustee determines otherwise:
- (a) the direct costs of establishing, administering, managing, operating and terminating the Fund; and
  - (b) any administrative, insurance or Taxation costs which are or which relate to those direct costs;
- 29.26 **Disqualified Person** means, subject to the Standards:
- (a) an individual who:
    - (i) is an insolvent under administration;
    - (ii) has been disqualified by the Regulator;
    - (iii) has at any time been the subject of a civil penalty order made under the Standards; or
    - (iv) has at any time been convicted of an offence involving dishonest conduct anywhere in the world; or

- (b) a body corporate which:
  - (i) has an individual who is a Disqualified Person as a director;
  - (ii) has had a receiver or receiver and manager appointed in respect of assets beneficially owned by the body;
  - (iii) has had an official manager, deputy official manager or administrator appointed in respect of the body;
  - (iv) has had a provisional liquidator appointed in respect of the body; or
  - (v) has begun to be wound up; or
- (c) any natural person who, or body corporate or other entity which, is otherwise prohibited under the Standards from acting as Trustee of the Fund;

29.27 **Earnings** means the positive or negative amount which the Trustee determines to be the income of the Fund less Disbursements (or any part thereof) either:

- (a) for a Financial Year; or
- (b) for any other period for which the Trustee may declare Earnings,

which may exclude amounts ('**Excluded Amounts**') determined by the Trustee to be treated as capital and include amounts ('**Included Amounts**') which the Trustee has determined to be income (including any profit or gain) which but for that determination would not be included in Earnings where Excluded Amounts and Included Amounts may be ordinary income, statutory income, assessable income, non-assessable income, exempt income or non-assessable non-exempt income or have other taxation attributes and may be positive or negative and may be due to timing or permanent differences or other adjustments and Earnings may also reflect unrealised gains or losses and notional amounts or assets including any franking credit, foreign tax credit, tax offset, rebate or similar advantage or disadvantage;

29.28 **Eligible Contributor** means:

- (a) a Member;
- (b) a Relevant Spouse in respect of an Eligible Spouse;
- (c) an Employer or an associate of an Employer;
- (d) the Government, Regulator or similar entity or organisation; and
- (e) any other contributor permitted, under the Standards, to make contributions, transfers, allocations, allotments or roll-overs to or in respect of the Fund;

29.29 **Eligible Spouse** means the Spouse of either:

- (a) a Member; or
- (b) another person, if permitted by the Standards;

on whose behalf contributions can be made to the Fund in accordance with the Standards and **Relevant Spouse** means the Spouse of that Member or person, as the case may be;

29.30 **Employee** means a person who is Gainfully Employed by an Employer;

29.31 **Employer** means a Contributing Employer or such other employer authorised by the Trustee to make contributions in respect of a Member who is an Employee;

- 29.32 **Family Law Act** means the *Family Law Act 1975* (Cth) and any applicable regulations relating thereto;
- 29.33 **Financial Year** means a continuous 12 month period with a 30 June year end unless the Trustee is permitted to adopt a different 12 month period by the Standards and includes part of a Financial Year, as applicable;
- 29.34 **Form** means the appropriate form in Part B of these Governing Rules. However, the Trustee may use or accept any document providing similar information or waive the requirement of completing a form;
- 29.35 **Full-Time Basis** means at least 30 hours each week or such other time or conditions as are prescribed as full-time by the Standards;
- 29.36 **Fund** means the fund governed by these Governing Rules;
- 29.37 **Funded by Assurance** means wholly determined by reference to policies of life assurance purchased or obtained by the Trustee solely for the purposes of providing Benefits to Members;
- 29.38 **Gainfully Employed** means employed or self-employed for gain or reward in any work, business, trade, profession, vocation, calling, occupation or employment within the meaning of the term gainfully employed in the Standards, and **Gainful Employment** has a corresponding meaning;
- 29.39 **Governing Rules** means these rules (including any deemed provision under rule 26) and the Forms and includes if relevant any former rules, deed or document governing the establishment and operation of the Fund as amended from time to time;
- 29.40 **Insurance Proceeds** means the proceeds of any insurance cover received by the Fund (including proceeds from insurance under rule 7.5), that are to be used to fund a Benefit (including any Pension Funded by Assurance) or for any other purpose the Trustee considers appropriate;
- 29.41 **Interest** means every amount, Benefit or entitlement a Member holds, or in the case of a deceased Member every amount, Benefit or entitlement held in respect of that deceased Member in the Fund within the meaning of that term in the ITAA 1997. Subject to the Standards, if a Member receives one or more Pensions from the Fund, then each Pension is a separate Interest;
- 29.42 **ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth) and any applicable regulations relating thereto;
- 29.43 **ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth) and any applicable regulations relating thereto;
- 29.44 **Lease** means a lease arrangement as defined in the SISA;
- 29.45 **Life Expectancy Term** means, in relation to a Market Linked Pension:
- (a) if the Market Linked Pension commenced before 20 September 2007:
    - (i) the life expectancy of the Member on the commencement day of the Pension;
    - (ii) the life expectancy of the Member on the commencement day calculated, at the option of the Member, as if the Member were up to five years younger on the commencement day;
    - (iii) if the Pension has a commencement day on or after 1 January 2006, a period that is not less than the period available under rule 29.45(a)(i) and not more than the greater of the following periods:

- (A) the maximum period available under rule 29.45(a)(ii);
  - (B) the period of years equal to the number that is the difference between the age attained by the Member at their most recent birthday before the commencement day, and 100; or
- (iv) if the Pension has a Reversionary Pensioner who is a Spouse of the Member and the Spouse has a life expectancy greater than the Member and a period has not been nominated under rules 29.45(a)(i), 29.45(a)(ii) or 29.45(a)(iii):
- (A) the life expectancy of the Spouse on the commencement day of the Pension; or
  - (B) the life expectancy of the Spouse calculated, at the option of the Member, as if the Spouse were up to five years younger on the commencement day of the Pension; or
  - (C) if the Pension has a commencement day on or after 1 January 2006, a period that is not less than the period available under rule 29.45(a)(iv)(A) and not more than the greater of the following periods:
    - (1) the maximum period available under either rule 29.45(a)(iv)(B); and
    - (2) the period of years equal to the number that is the difference between the age attained by the Spouse at their most recent birthday before the commencement day, and 100;

rounded up to the next whole number if the relevant life expectancy is not a whole number;

- (b) in accordance with regulation 1.06(1B) of the SISR, if the Market Linked Pension commences on or after 20 September 2007, the Life Expectancy Term shall be a term calculated under 29.45(a), provided that the term chosen will not cause the minimum payment standards under Schedule 7 of the SISR to be contravened in any Financial Year of payment of the Market Linked Pension; or
- (c) such other term as permitted or required by the Standards;

29.46 **LPR** means the executor of the will or administrator of the estate of a deceased person, the trustee or administrator of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person, but excludes the legal personal representative of a Disqualified Person, and LPR includes a person who is an executor of the most recent validly made will of a person where the person has not yet died and **Legal Personal Representative** has a corresponding meaning;

29.47 **Lump Sum** means a Benefit or any component of it paid otherwise than as a Pension in accordance with these Governing Rules;

29.48 **Mandated Employer Contribution** means any contribution made pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth), any shortfall component, any contribution made under an industrial award or prescribed agreement or any other contribution requiring similar treatment under the Standards;

29.49 **Market Linked Pension** means a Pension:

- (a) that commenced before 20 September 2007:

- (i) that is paid at least annually to the Member or to a Reversionary Beneficiary throughout a period equal to the Life Expectancy Term;
- (ii) that the total amount of Pension payments in a year (excluding payments by way of commutation but including any payments made under a Payment Split) is determined in accordance with Schedule 6 of the SISR;
- (iii) that does not have a residual capital value;
- (iv) that cannot be commuted except:
  - (A) if the commutation is made within six months after the commencement day of the Pension and the Pension is not funded from the commutation of an annuity or another Pension as prescribed by regulation 1.06(8)(d)(i) of the SISR;
  - (B) on the death of the Member or Reversionary Beneficiary, by payment of:
    - (1) a Lump Sum or a new Pension to one or more dependants of either the Member or Reversionary Beneficiary;
    - (2) a Lump Sum to the LPR of either the Member or Reversionary Beneficiary; or
    - (3) if, after making reasonable enquiries, the Trustee is unable to find a person mentioned in rules 29.49(a)(iv)(B)(1) or 29.49(a)(iv)(B)(2), a Lump Sum to another individual;

provided that if the Member has opted for a Life Expectancy Term under rule 29.45(a)(iv), the Pension cannot be commuted until the death of both the Member and the Member's Spouse;
  - (C) if the Lump Sum resulting from the commutation is transferred directly to the purchase of another Benefit as prescribed by regulation 1.06(8)(d)(iv) of the SISR;
  - (D) to pay a superannuation contributions surcharge;
  - (E) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
  - (F) for the purpose of paying an amount to give effect to a transfer in accordance with rule 22.6(b);
- (v) that on reversion does not have a reversionary component greater than 100% of the Account balance immediately before the reversion;
- (vi) that if commuted, the commutation amount cannot exceed the Account balance immediately before the commutation;
- (vii) that can only be transferred:
  - (A) on the death of the Member, to one of the Dependants of the Member or to the LPR of the Member; or



- (B) on the death of the Reversionary Beneficiary, to one of the Dependants of the Reversionary Beneficiary or to the LPR of the Reversionary Beneficiary;
  - (viii) that the capital value of the Pension and the income from it cannot be used as security for a borrowing; and
  - (ix) that otherwise complies with regulations 1.06(1A), 1.06(8), 1.06(9), 1.06(9B), 1.06(10) and 1.07C of the SISR and the Standards relating to Market Linked Pensions; or
- (b) that commences on or after 20 September 2007 in accordance with regulation 1.06(1B) of the SISR and:
- (i) that is purchased with a roll-over superannuation Benefit that resulted from the commutation of an annuity or another Pension as prescribed by regulation 1.06(1B)(b) of the SISR;
  - (ii) that complies with regulation 1.06(9A) of the SISR; and
  - (iii) that complies with rule 29.49(a), except that regulation 1.06(1A) of the SISR does not apply; or
- (c) that otherwise complies with such parts of the Standards as govern Market Linked Pensions;
- 29.50 **Member** means a person who has been admitted by the Trustee as a member of the Fund in accordance with these Governing Rules and includes a deceased person who was a Member of the Fund immediately prior to his or her death and in respect of whom an Interest remains in the Fund and **Membership** has a corresponding meaning and the Trustee may, subject to the Standards, determine that a person is not a Member for all or certain circumstances even though he or she may have an Interest;
- 29.51 **Minimum Benefit** means the Member's minimum Interest which is required to be maintained in the Fund or another Approved Fund in accordance with the Standards;
- 29.52 **Miscellaneous Benefit** means a Benefit arising in the circumstances described in rule 17;
- 29.53 **Non-Commutable Allocated Pension** means an Allocated Pension:
- (a) that commenced before 20 September 2007 and:
    - (i) that, if commuted, the resulting Lump Sum cannot be cashed unless:
      - (A) the purpose of the commutation is:
        - (1) to cash an unrestricted non-preserved benefit;
        - (2) to pay a superannuation contributions surcharge;
        - (3) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
        - (4) to ensure that a payment for the purpose of giving effect to a transfer in accordance with rule 22.6(b);
      - (B) before commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits under the SISR is 'Nil'; and
    - (ii) the Pension otherwise complies with the SISR and the Standards relating to Non-Commutable Allocated Pensions; or

- (b) that commences on or after 20 September 2007 and otherwise complies with such parts of the Standards as govern Non-Commutable Allocated Pensions;
- 29.54 **Non-Commutable Pension** means a Pension:
- (a) that commenced before 20 September 2007 and:
- (i) that meets the Standards in relation to Market Linked Pensions, as the case may be;
- (ii) if the Pension is commuted under rule 29.49(a)(iv)(A), the resulting Lump Sum cannot be cashed unless:
- (A) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or
- (B) before commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits under the SISR is 'Nil'; and
- (iii) the Pension otherwise complies with the SISR and the Standards relating to the payment of Non-Commutable Pensions; or
- (b) that commences on or after 20 September 2007 and otherwise complies with such parts of the Standards as govern Non-Commutable Pensions;
- 29.55 **Non-Concessional Contributions Cap** means the relevant non-concessional contributions limit applicable to the Member as prescribed for the relevant Financial Year by the SISR;
- 29.56 **Non-Member Spouse** has the same meaning as that term has under the Family Law Act;
- 29.57 **Old-Age Pension** has the same meaning as that term has for the purposes of section 51(xxiii) of the *Commonwealth of Australia Constitution Act*;
- 29.58 **Part-Time Basis** means, in relation to a Financial Year, Gainful Employment for at least 40 hours in a period of not more than 30 consecutive days in that Financial Year or such other time or conditions as are prescribed as part-time by the Standards;
- 29.59 **Part-Time Employment** means Gainful Employment for at least 10 hours and less than 30 hours each week or such other time or conditions as are prescribed as full-time by the Standards;
- 29.60 **Payment Split** has the same meaning as that term has under the Family Law Act or as agreed to by the parties in an agreement contemplated by that Act;
- 29.61 **Pension** means a periodic payment prescribed or permitted by the Standards and, except if these Governing Rules state otherwise, includes an annuity or pension which is a reversionary annuity or Reversionary Pension, and **Income Stream** has a corresponding meaning;
- 29.62 **Pension Age** has the same meaning given to that term in the Social Security Legislation or such other age acceptable to the Trustee provided that it is permitted under the Standards;
- 29.63 **Preferred Dependant** means, in respect of a Benefit paid as a result of a Member's death, a Dependant nominated by that Member in their Application for Membership Form or in a subsequent written notification to the Trustee that has not since been revoked or amended and that does not bind the Trustee's discretion;

29.64 **Preservation Age** means, in relation to the Member's date of birth, the following age:

<b>Date of Birth</b>	<b>Preservation Age</b>
Before 1 July 1960	55 years
During the year 1 July 1960 to 30 June 1961	56 years
During the year 1 July 1961 to 30 June 1962	57 years
During the year 1 July 1962 to 30 June 1963	58 years
During the year 1 July 1963 to 30 June 1964	59 years
After 30 June 1964	60 years

or such other age prescribed as such by the Standards for the payment of all or part of a Member's Interest from the Fund on Retirement where the Trustee must be satisfied that the Member has ceased Gainful Employment and intends to never again become Gainfully Employed;

29.65 **Regulator** means:

- (a) in respect of SMSFs, the ATO; and
- (b) in respect of Small APRA Funds and other types of funds, the APRA; and

as the case requires includes the Australian Securities and Investment Commission, the Department of Family and Community Services (also known as Centrelink and formerly the Department of Social Security) or, alternatively, some other body or official empowered under the law dealing with the administration of SMSFs or, if the Trustee determines, Small APRA Funds or some other type of fund;

29.66 **Retire** means:

- (a) in the case of a Member who has reached a Preservation Age that is less than 60 — if:
  - (i) an arrangement under which the Member was Gainfully Employed has come to an end; and
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed on a Full-Time Basis or engage in Part-Time Employment; or
- (b) in the case of a Member who has attained age 60 — if an arrangement under which a Member was Gainfully Employed has come to an end and:
  - (i) the Member attained that age on or before the ending of the employment; or
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed on a Full-Time Basis or engage in Part-Time Employment; or
- (c) in such other manner as may be prescribed by the Standards,

and **Retirement** has a corresponding meaning;

29.67 **Reversionary Pension** means a Pension payable to a Beneficiary who succeeds to the entitlement of a Member to a Pension, and includes a Pension that satisfies the requirements of an auto-reversionary Pension, and **Reversionary Beneficiary** and **Reversionary Pensioner** have corresponding meanings;

- 29.68 **RSE Licensee** has the meaning given by the Standards;
- 29.69 **Securities** means securities as defined in section 92 of the *Corporations Act 2001* (Cth) and securities approved by the Trustee in any foreign country;
- 29.70 **SISA** means the *Superannuation Industry (Supervision) Act 1993* (Cth);
- 29.71 **SISR** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth);
- 29.72 **Small APRA Fund** means a fund with fewer than five members with an RSE Licensee and that otherwise complies with the Standards in relation to such funds;
- 29.73 **SMSF** has the same meaning as the term 'self managed superannuation fund' in the Standards;
- 29.74 **Social Security Legislation** means the *Social Security Act 1991* (Cth), the *Veterans' Entitlement Act 1986* (Cth) and any applicable regulations, rulings or guidelines made pursuant thereto, as relevant;
- 29.75 **Spouse** in relation to a Member includes, subject to the Standards:
- (a) another person (whether of the same sex or a different sex) with whom the Member is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* (Cth) as a kind of relationship prescribed for the purposes of that section; and
  - (b) another person who, although not legally married to the Member:
    - (i) lives with the Member; or
    - (ii) had lived with the Member immediately prior to the Member's death;
- on a genuine domestic basis in a relationship as a couple and if there is more than one Spouse the Trustee shall determine which spouse is entitled to be treated as the Spouse exclusively or, alternatively, how they are to share the entitlement of a Spouse between them;
- 29.76 **Standards** means any relevant provisions in or proposed changes to the following as the context requires:
- (a) any applicable provisions in the SISA and the SISR;
  - (b) any applicable provisions in the ITAA 1936, the ITAA 1997 and any applicable regulations made pursuant thereto which must be complied with so that:
    - (i) the Fund obtains concessional tax treatment; and
    - (ii) an Employer or Member retains any entitlement to a tax deduction unless the Employer or Member, as the case may be, elects or chooses not to take a tax deduction;
  - (c) any applicable provisions in the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Bankruptcy Act 1966* (Cth), the *Corporations Act 2001* (Cth), the Social Security Legislation, the Family Law Act and any applicable regulations made pursuant thereto;
  - (d) any applicable Trustee Law which may impact on the Fund but excluding any Trustee Law which imposes any obligation on the Trustee to have regard to any matters aside from the obligations contained in these Governing Rules in:
    - (i) exercising powers of investment granted under these Governing Rules;

- (ii) exercising any other power granted under these Governing Rules, including without limitation a power to vary the Governing Rules or change the Trustee;
- (iii) complying with an obligation contained in these Governing Rules; or
- (iv) relating to vesting of assets on a change of trustee or on any other matter required to effect a change of trustee or variation of these Governing Rules;

unless the Trustee Law cannot lawfully be so excluded;

- (e) any applicable rule of common law, equity or legal or administrative requirement;
- (f) if the Trustee considers it appropriate, any other applicable provision regulating or relating to superannuation funds, including any explanatory statement or explanatory memorandum accompanying any bill or instrument which enacts any of the provisions referred to in rules 29.76(a) to 29.76(e);
- (g) if the Trustee considers it appropriate, any other applicable ruling, interpretation, circular, pronouncement, statement or direction of the Regulator in respect of the provisions referred to in rules 29.76(a) to 29.76(f);

29.77 **Taxable Component** has the same meaning as it does in the ITAA 1997;

29.78 **Taxes** includes any liability or provision for a liability for a tax, surcharge, duty, excise, levy, goods and services tax including any additional penalty or tax (including any liability for tax on a contribution or allocation of reserves made in excess of the relevant contribution limits prescribed by the Standards including any excess concessional contributions tax or excess non-concessional contributions tax unless the Member must or nominates to pay the liability) or, if the Trustee determines, any similar liability or provision, and **Tax** and **Taxation** have corresponding meanings;

29.79 **Tax Free Component** has the same meaning as it does in the ITAA 1997;

29.80 **Tax Saving Amount** in relation to a deceased Member's Interest means the amount in excess of the deceased Member's actual Interest that the Trustee could have paid if no tax had been payable on amounts that have been included as assessable income at any time under Subdivision 295-C of the ITAA 1997 or the former section 274 of the ITAA 1936, having regard to:

- (a) amounts included in the assessable income of the Fund;
- (b) amounts included in the assessable income of any other fund, trust or superannuation or retirement entity or account of which the deceased Member was a member or in which he or she held any interest;
- (c) the amount of any foregone earnings (whether including or excluding expenses) that could be expected to have accrued if no tax had been payable on the amounts described in paragraphs (a) and (b) of this rule;
- (d) such other amounts or factors as may be permitted under the Standards; and
- (e) to the extent that the amounts form part of the deceased Member's Interest in the Fund. The Trustee shall determine the value of any Tax Saving Amount in accordance with the Standards and if the Standards prescribe or recognise more than one method for this purpose, the Trustee may adopt a method it considers appropriate;

29.81 **Temporary Incapacity** means physical or mental ill-health that has caused the Member to cease Gainful Employment (including a Member who has ceased to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed) or

which otherwise qualifies as Temporary Incapacity (or its equivalent) under the SISR which does not qualify as permanent incapacity under the SISR;

29.82 **Temporary Incapacity Income Stream** means a Benefit that:

- (a) cannot be commuted;
- (b) is paid at least monthly;
- (c) does not have a residual capital value; and
- (d) is such that the total amount paid each month is fixed or varies only:
  - (i) for the purpose of complying with the SISA and the SISR; and
  - (ii) during any period of 12 months by a rate not exceeding either:
    - (A) 5% per annum; or
    - (B) the rate of increase in the last Consumer Price Index (All Capital Cities) for a quarter to be published by the Australian Statistician before the end of that period of 12 months compared with the Consumer Price Index (All Capital Cities) published for the same quarter in the preceding year;

or that otherwise complies with such parts of the Standards as govern such income streams;

29.83 **Terminal Medical Condition** in relation to a person means a condition where the following circumstances exist:

- (a) two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period ('**Certification Period**') that ends not more than 12 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person; and
- (c) for each of the certificates, the Certification Period has not ended;
- (d) or as otherwise defined under the Standards;

29.84 **Total and Permanent Disablement** means, in relation to a Member:

- (a) if the Member has ceased to be Gainfully Employed, ill-health (whether physical or mental) if the trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience; or
- (b) any other circumstances which are acceptable to the Trustee and are acceptable under the Standards;

and **Totally and Permanently Disabled** has a corresponding meaning;

29.85 **Transition to Retirement Income Stream** means an Account-Based Pension:

- (a) that complies with the following:
  - (i) allows total payments (including under a Payment Split) made in a Financial Year to amount to no more than 10% of the Pension Account balance;

- (A) on 1 July in the Financial Year in which the payment is made; or
  - (B) if that year is the year in which the Pension commences, then on the commencement day; and
- (ii) if commuted, the resulting Lump Sum of which cannot be cashed unless:
- (A) the purpose of the commutation is:
    - (1) to cash an unrestricted non-preserved benefit; or
    - (2) to pay a superannuation contributions surcharge; or
    - (3) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
    - (4) to ensure that a payment may be made for the purpose of giving effect to a transfer in accordance with rule 22.6(b); or
  - (B) before commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits under the SISR is 'Nil'; or
  - (C) the purpose of the commutation is to satisfy an obligation to pay an amount to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth); or
- (b) that otherwise complies with such parts of the Standards as govern transition to retirement income streams;

29.86 **Trustee** means the trustee who holds office as trustee of the Fund as replaced or substituted from time to time and shall, in the case of a Corporate Trustee and as the context requires, include a director of a Corporate Trustee, but does not include a person who has merely been nominated as a Successor Trustee under rule 3.3(b) and has not been appointed under rule 3.3(e); and

29.87 **Trustee Law** means whichever of the *Trustee Act 1958* (Vic), the *Trustee Act 1925* (NSW), the *Trusts Act 1973* (Qld), the *Trustee Act 1936* (SA), the *Trustees Act 1962* (WA), the *Trustee Act 1898* (Tas), the *Trustee Act 1925* (ACT) and the *Trustee Act* (NT) apply to the Fund or any other Commonwealth, State or Territory legislation of like effect that may apply.

## 30. Severance

These Governing Rules are and shall be construed as severable and so if any provision or any part of a provision shall, at any time, be found or declared void or invalid then the remaining part of that provision, if any, and all other provisions of these Governing Rules shall remain valid, binding and enforceable.

# PART B (Forms)

## FORM 1

### Application for Membership

To the Trustee of the Fund.

<b>FULL NAME</b>		<b>TAX FILE No.</b>	
<b>ADDRESS</b>			
<b>OCCUPATION</b>		<b>DATE OF BIRTH</b>	

I apply for admission as a Member of the Fund and, in consideration of my admission as a Member:

1. I confirm that I am a trustee or a director of a corporate trustee unless I am specifically excepted from this requirement under the Standards (eg, due to a legal disability such as under 18 years or being of unsound mind). I accept the responsibilities and liabilities of being a trustee or a director of a corporate trustee to a superannuation fund.
2. I agree to be bound by the provisions of the Fund's Governing Rules. I acknowledge that the expressions and meanings in this Application are identical to those used in the Governing Rules.
3. I undertake to provide any relevant information or documentary evidence and agree to submit to health and medical tests as requested from time to time by the Trustee related to my Membership of the Fund.
4. I nominate the following, each being my LPR and/or a Preferred Dependant (eg, spouse, children and/or a person who is financially dependent on me or in an interdependency relationship with me), to be paid any Interest that I have in the Fund on my death in the designated proportions. I understand that this non-binding nomination does not bind the Trustee and is overridden by any binding death benefit nomination in respect of my Interest on my death:

<b>NAME</b>	<b>RELATIONSHIP</b>	<b>% OF INTEREST</b>

5. I acknowledge that the Trustee may collect my tax file number ('TFN') under the Standards.
6. I understand that the Trustee will only use the TFN for legal purposes. This includes finding or identifying my superannuation Interest if other information is insufficient, and calculating tax on any eligible termination payment I may be entitled to.
7. I understand that it is not an offence to omit my TFN from this application. But if I do omit to provide it now or later, contributions may not be able to be made by me or on my behalf to the Fund. I may also pay more tax on my Interest (ie, my entitlement in the Fund) than I would otherwise have to pay (but which may be later credited to a later assessment of tax) and I may lose Interests which are more difficult to find or to amalgamate with other Interests I am entitled to.
8. I acknowledge that the Trustee may provide any TFN disclosed to the Trustee to the trustee of any other superannuation fund to which my Interest is transferred in the future or to the Australian Taxation Office. However, I understand that my TFN will not be passed on in the event I direct the Trustee in writing not to disclose my TFN and, in any event, my TFN will be treated as confidential in accordance with the *Privacy Act 1988* (Cth).
9. I authorise the Trustee to retain and store information on my behalf despite any contrary provision in any privacy legislation.
10. I declare that the information I provide to the Trustee will be true and correct. I acknowledge that it is my responsibility to inform the trustee of any error or changes regarding these matters.

<b>SIGNATURE</b>	<b>DATE</b>



FORM 2

## Notification to Contributing Employer

From the Trustee:

<b>FUND NAME</b>	
<b>TRUSTEE NAME</b>	
<b>TRUSTEE ADDRESS</b>	

To an Employer:

<b>EMPLOYER'S NAME</b>	
<b>EMPLOYER'S ADDRESS</b>	

The Trustee wishes to notify the Employer that:

1. the Fund is a resident regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cth) ('SISA');
2. the Trustee is not subject to a direction from the Australian Prudential Regulation Authority or the Australian Taxation Office pursuant to section 63 of the SISA that would prevent the Trustee accepting employer or other contributions;
3. the Trustee has not been subject to such a direction before or since the date of this application; and
4. the Trustee will accept contributions from the Employer;

and the Employer is noted as a **Contributing Employer** to the Fund.

<b>DATE</b>	
<b>SIGNED BY THE TRUSTEE</b>	