



## **SMSF ESTABLISHMENT DEED**

### **TIMKOT SUPER FUND**

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# Trust Deed of TimKot Super Fund

Date of Establishment

25/11/2020

This deed is made by

TimKot Pty Ltd - ACN 646 035 001 of 41 Bligh Street, GYMPIE, QLD 4570, ('the Trustee').

## 1. Background

- A. The Trustee wishes to establish a Self Managed Superannuation Fund for the provision of superannuation benefits for those persons who become Members of the Fund and their Dependents.
- B. It is intended by this Deed to establish a Self Managed Superannuation Fund to be known as TimKot Super Fund (hereinafter called 'the Fund').
  1. The Trustee has agreed to act as the first trustee of the Fund.
  2. The Trustee will at all times maintain the Fund as a Complying Self Managed Superannuation Fund.

The Trustee HEREBY DECLARES that the terms of this Deed are as follows:

### 1. Name of the Fund

The trusts created by this Deed shall be TimKot Super Fund.

### 2. Establishment of the Fund

2.1 The Fund will be established as and from the date of this Deed.

2.2 The Fund will be managed, administered and applied in accordance with both this Deed, the Rules of the Fund and the Relevant Law.

### 3. Fund vested in Trustee

The Fund will be vested in the Trustee and:

3.1 will at all times be held, controlled and managed by the Trustee in accordance with this Deed, the Rules of the Fund and the Relevant Law; and

3.2 no Member will have any beneficial interest in the Fund or any asset of the Fund.

### 4. Regulated Superannuation Fund

4.1 Upon execution of this Deed the Trustee will elect for the Fund to be a Regulated Superannuation Fund.

**4.2 Either:**

4.2.1 the Trustee will be the sole trustee which is a constitutional corporation within the meaning of the Relevant Law; or

4.2.2 the primary purpose of the Fund will be to provide old age pensions for the members of the Fund upon their retirement and for any other purposes which may be permitted under the Relevant Law from time to time.

**5. Complying Self Managed Superannuation Fund**

The Trustee will do all things as may be necessary to establish and maintain the Fund as a Complying Self Managed Superannuation Fund.

**6. The Rules of the Fund**

The Rules of the Fund are those rules and schedules attached to this Deed and any amendment of or replacement of those rules or any other rule deemed by the SIS Act to be a governing rule of the Fund.

TimKot Super Fund

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Executed as a Deed

The Initial Trustee

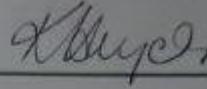
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Signed, Sealed and Delivered by TimKot Pty Ltd - ACN 646 035 001 by:



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Timothy Stephen Hayes  
Director



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Katalin Timea Maree Hayes  
Director

# The Rules of the Fund

## 1. Purpose of the Fund – Core and Ancillary Purposes

The Fund is to be maintained:

- 1.1 solely for one or more Core Purposes; or
- 1.2 solely for one or more Core Purposes and one or more Ancillary Purposes.

## 2. Trustee

### 2.1 Trustee Structure

The Trustee of the Fund may be a Corporate Trustee or one or more individuals but must be a Constitutional Corporation if the Sole or Primary purpose of the Fund is other than the provision of Old-Age Pensions and the Trustee and the Members shall take such action as is considered necessary and appropriate to ensure that every Trustee is constituted in a manner which complies with the Relevant Law including action relating to the filling of vacancies in accordance with Rule 2 and the eligibility, appointment, replacement, representation, removal and composition of every Trustee and the directors of a Corporate Trustee.

### 2.2 Appointment and Removal of Trustee

2.2.1 Subject to any requirements of the Relevant Law, the Members in accordance with the other provisions of the Rules may at anytime by written notice remove from office any Trustee and shall have the right at any time by deed to appoint a new, replacement or additional Trustee.

2.2.2 Notwithstanding Rule 2.2.1:

- (a) a Trustee appointed by the court or the Regulator shall not be removed by the Members; and
- (b) a Legal Personal Representative appointed as Trustee by reason of Rule 2.2.7(a) or Rule 14.9.1(a)(ii) shall not be removed until the Fund has paid the death benefit of the deceased Member in respect of whom the Legal Personal Representative has been appointed as Trustee.

2.2.3 A person or Corporate Trustee shall only be appointed as a Trustee if that person or Corporate Trustee and every director of the Corporate Trustee have first consented in writing to the appointment as Trustee. A person shall only be appointed as a director of a Corporate Trustee if that person has first consented to their appointment as director of a Corporate Trustee.

2.2.4 Each Trustee and every director of a Corporate Trustee upon appointment must:

- (a) agree in writing to be bound by the Deed and the Rules; and

- (b) complete a declaration in such form approved by the Regulator acknowledging that the duties and responsibilities as a Trustee or a director of a Corporate Trustee of the Fund is understood.

2.2.5 A Trustee will continue to hold office until:

- (a) the Trustee resigns by notice in writing to the Members and to any other Trustees;
- (b) if an individual, the Trustee dies;
- (c) if an individual, the Trustee is under a legal disability and is incapable of performing the duties of a Trustee;
- (d) the Trustee is a Disqualified Person;
- (e) the Fund would fail to satisfy the definition of self managed superannuation fund under the Relevant Law by reason of the Trustee continuing in that role;
- (f) subject to the Relevant Law, complying status of the Fund would be jeopardised or altered unless the Trustee ceased to act in that role
- (g) is removed from office by the Members pursuant to the provisions of the Rules or the Relevant Law;
- (h) is suspended or removed from office by the Regulator pursuant to the Relevant Law.

2.2.6 Any vacancy in the office of Trustee or in the directorship of a Corporate Trustee shall be filled as and when required by the Relevant Law but until and unless any vacancy is filled the continuing Trustee(s) or directors of a Corporate Trustee may continue to exercise the role and function of Trustee unless the requirements of Rule 14.9.1(a)(ii) apply. There shall be no obligation to fill any vacancy unless required by the Relevant Law if there is at least one Trustee or one director of a Corporate Trustee.

2.2.7 Notwithstanding Rule 2.2.6 and having regard to the requirements of Rule 14.9.1(a)(ii) but subject to Rule 2.2.8:

- (a) Where a Member dies and the Trustee is required to exercise a discretion regarding a death benefit to be paid in respect of that deceased Member, the Legal Personal Representative of the deceased Member shall be appointed as either a Trustee or a director of a Corporate Trustee;
- (b) where a Trustee being an individual or a director of a Corporate Trustee is under a legal disability, the Legal Personal Representative of the Trustee or the director shall replace that Trustee or director;
- (c) notwithstanding Rules 2.2.7(a) and Rule 2.2.7(b), if there is more than one Legal Personal Representative of the Trustee, the continuing Trustees shall determine which of the Legal Personal Representatives shall be appointed as Trustees provided always the continuing Trustees shall

appoint at least one Legal Personal Representative of the Member or Trustee, as the case may be, who has died or is under a legal disability;

- (d) A Corporate Trustee shall ensure that the constituent documents of the Corporate Trustee do not prohibit the Legal Personal Representative of a director of the Corporate Trustee who dies or is under a legal disability from replacing that director as a director of the Corporate Trustee.

2.2.8 Rule 2.2.7 does not apply:

- (a) to a Trustee or a director of a Corporate Trustee who dies or is under a legal disability who is not also a Member of the Fund;
- (b) where a continuing Trustee or a director of a Corporate Trustee is the sole Legal Personal Representative of a Trustee or a director of the Corporate Trustee who has died or is under a legal disability;
- (c) where a Legal Personal Representative does not consent to appointment as a Trustee or a director of a Corporate Trustee.

2.2.9 Any requirement under State Trust Law that:

- (a) an appointment of a Trustee, new Trustee, replacement Trustee or additional Trustee must be registered for that appointment to be effective is expressly excluded; and
- (b) the Fund must not have less than two Trustees or places a limit on the number of Trustees that may be appointed and is capable of being expressly excluded by these Rules is expressly excluded provided always that the Fund complies with the Relevant Law.

## **2.3 Transfer of Assets**

2.3.1 If a Trustee's office terminates, the outgoing Trustee must:

- (a) provide to any new or continuing Trustee all records, information and other property relating to the Fund in its control; and
- (b) do all things necessary to complete the appointment of a new Trustee.

2.3.2 If a new Trustee is appointed, then the new Trustee must do such things as is necessary to notify any person and provide such information as is relevant to the assets of the Fund in its control.

## **2.4 Trustee Meetings**

2.4.1 Any Trustee may at any time convene a Trustee meeting by notice to the other Trustees.

2.4.2 A Trustee meeting may be held by any technological means by which the Trustees are able simultaneously to hear each other and to participate in discussion.

2.4.3 Subject to these Rules the Trustees may meet together, adjourn and regulate their meetings as they think fit.

2.4.4 The Trustees may determine the quorum necessary for the conduct of business.

## **2.5 Decisions of Trustees**

2.5.1 Subject to compliance with Rule 2.5.5, business arising at a Trustee meeting will be decided by a majority of the Trustees present and voting and all such decisions of the Trustees shall be binding on all Trustees provided always that in making any decision the Trustees have regard to the covenants or obligations imposed on the Trustees under Rule 3 and the Relevant Law.

2.5.2 Where more than one Legal Personal Representative or parent or guardian of a Member has been appointed as a Trustee in place of that Member, those Legal Personal Representatives or parents or guardians as Trustees shall jointly vote for the purposes of any meeting and resolution.

2.5.3 Where a Trustee is a Member of the Fund and is also Trustee in place of another Member, the Trustee shall have a deliberative vote for the purposes of any meeting and resolution and an additional deliberative vote as Trustee in place of another Member.

2.5.4 Unless otherwise agreed, each Trustee has one vote for every one dollar of their Superannuation Entitlement in the Fund and, if the Trustee is a Trustee in place of another Member, one vote for every one dollar of that Member's Superannuation Entitlement in the Fund.

2.5.5 All decisions of the Trustee concerning the payment of a death benefit pursuant to Rule 14.9.7 in respect of a deceased Member require the prior written consent of the Legal Personal Representative of the deceased Member.

## **2.6 Written Resolutions**

A resolution in writing signed by a majority of the Trustees will:

2.6.1 have the same effect and validity as a resolution of the Trustees present and voting at a Trustees' meeting; and

2.6.2 be deemed to have been passed on the day on which the document was last signed by a Trustee, notwithstanding that the written resolution may have been signed in two or more counterparts and may be in the form of a copy or electronic transmission.

## **2.7 Conflict of Interest**

2.7.1 A Trustees or any director, employee, delegate, agent or other officer of the Trustees may be involved in the exercise of all powers, authorities and discretions conferred on the Trustees notwithstanding that they may have a conflict of interest or duty.

2.7.2 Every Trustee must disclose his interest to the other Trustees and all declarations must be recorded in the minutes of the relevant Trustees' meeting.

2.7.3 The failure by a Trustee to make disclosure under this **Rule 2.7** does not render void or voidable a contract or arrangement in which the Trustee has a direct or indirect interest.

2.7.4 A Trustee may vote in respect of a contract or arrangement or any other matter in which the Trustee or a relative or associate of the Trustee or the relative or associate of a director or shareholder of a Corporate Trustee has a direct or indirect interest.

## 2.8 **Validity of Acts of Trustees**

The acts of the Trustee will remain valid notwithstanding that it is subsequently discovered that there was a defect in the appointment of a person as a Trustee or an individual or body corporate appointed as a Trustee was or becomes a Disqualified Person.

## 2.9 **Constituent documents of a Corporate Trustee**

A Corporate Trustee must ensure that its constituent documents are consistent with the Rules and any requirements under the Relevant Law.

## 3. **Covenants of Trustees**

3.1 Each Trustee covenants:

3.1.1 to act honestly in all the Trustee's dealings with the Fund;

3.1.2 to exercise the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another person for whom the person felt morally bound to provide;

3.1.3 to ensure that the Trustee's duties and powers in respect of the Fund are performed and exercised in the best interests of Members;

3.1.4 to keep the money and other assets of the Fund separate:

(a) from any money and assets that are held by the Trustee personally; and

(b) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the fund;

3.1.5 not enter into any contract or do anything else that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;

3.1.6 to formulate, review regularly and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:

(a) the risk involved in making, holding and realising, and the likely return from, the Fund's investments, having regard to its objectives and its expected cash flow requirements;

- (b) 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;
  - (c) the liquidity of the Fund's investments, having regard to its expected cash flow requirements;
  - (d) the ability of the Fund to discharge its existing and prospective liabilities;
- 3.1.7 if there are any reserves of the Fund, to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- 3.1.8 to allow a beneficiary of the Fund access to any prescribed information or any prescribed documents;
- 3.1.9 to observe any additional covenants to be included in the Rules pursuant to the SIS Act.
- 3.2 Each director of a Corporate Trustee covenants to exercise a reasonable degree of care and diligence for the purposes of ensuring that the Corporate Trustee carries out the covenants referred to in Rule 3.1.

#### 4. Trustee's Powers

##### 4.1 All Powers

The Trustee will have power to do everything necessary or desirable to manage, administer and deal with the Fund and all proceedings, matters and things connected with the Fund in an efficient and economical manner in accordance with the Deed, the Rules and the Relevant Law and as if the Trustee was the legal and beneficial owner of the assets of the Fund, including:

- 4.1.1 **Deal with Fund assets:** entering into and executing all contracts, deeds and documents and doing all such matters and things considered expedient for the purpose of investing Fund monies and carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by the Deed and the Rules;
- 4.1.2 **Bank accounts:** the Trustee may open and operate by any means including electronically any account of any description with any financial institution and make regulations for the operation of such accounts and in accordance with those regulations to jointly or severally draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferrable instrument;
- 4.1.3 **Sign, authorise and approve:** determining who shall be entitled to sign, authorise and approve receipts, acceptances, endorsements, releases, promissory notes, bills of exchange and lading, cheques, negotiable and transferrable instruments, agreements, writings, contracts, documents or electronic transactions of any kind whatsoever;
- 4.1.4 **Fund obligations:** giving such undertakings and incurring all such obligations relating to the Fund as the Trustee thinks fit;

- 4.1.5 **Legal proceedings:** instituting, conducting, defending or abandoning, settling, compromising or submitting to arbitration any claim, proceedings, matter or thing relating to the Fund or to the rights of Members or other persons claiming to be entitled to be paid a Benefit from the Fund and allowing time for payment or satisfaction of any debts owed to or by the Fund;
- 4.1.6 **Vary investments:** the Trustee may at any time vary or realise an investment of any part of the Fund and reinvest money resulting from the realisation in any form of investment;
- 4.1.7 **Conduct businesses and profit making undertakings:** the Trustee may conduct and terminate any trade, business or profit making undertaking or scheme anywhere in the world, either alone, in partnership or by joint venture, and under any name as the Trustee thinks fit;
- 4.1.8 **Engage:** the Trustee may engage and pay remuneration to any person (including a Member or Trustee) in connection with anything required to be done pursuant to the Deed and the Rules and may remove or suspend any such person;
- 4.1.9 **Borrowing:** borrowing or raising any financial accommodation including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument for the purposes permitted by the Relevant Law (including for the purpose of investing in a limited recourse borrowing arrangement or an instalment warrant arrangement) and secure the borrowing or financial accommodation in such a manner and upon such terms and conditions and at such rate of interest as the Trustees determine and in particular, by assigning, pledging, charging or mortgaging all or any of the assets of the Fund;
- 4.1.10 **Lending:** lending money and securing the repayment of that money in any manner and upon any terms which the Trustee may consider advisable within the confines of the Relevant Law;
- 4.1.11 **Insurance:** insuring or re-insuring any risks, contingencies or liabilities of the Fund;
- 4.1.12 **Pay expenses:** paying out of the Fund all costs, taxes and expenses of the Fund, including the fees of any advisers or agents and the remuneration of persons appointed pursuant to the Rules;
- 4.1.13 **Discharge liabilities:** making and giving receipts and releases or discharges of any kind;
- 4.1.14 **Indemnification:** giving any guarantee, indemnity or undertaking to indemnify any person in respect of any claim, matter or thing relating to the Fund or to the rights of Members, or other persons entitled in respect of the Fund;
- 4.1.15 **Life Insurance Policies:** effecting life insurance policies for the purposes of providing benefits for Members including insurance policies over the life of a Member for the benefit of another Member;
- 4.1.16 **Mortgage Protection Insurance:** effecting mortgage protection insurance or like insurances to cover payment of borrowings by the Fund;

- 4.1.17 **Allocation of insurance premiums and proceeds:** entering into agreements with Members about the payment of insurance policy premiums and the allocation of insurance policy proceeds for any insurance policy not being an Individual Policy;
- 4.1.18 **Receive gifts or distributions:** receiving property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person and to hold these gifts according to the Rules and to administer such additions under these provisions;
- 4.1.19 **Payment of Benefits:** paying or applying a Benefit out of the Fund to persons entitled without being responsible for seeing to the application of payments made in the exercise of this or any other power vested in the Trustee by the Deed and the Rules;
- 4.1.20 **Delegation:** delegating in writing the exercise of all or any of the powers or discretionary authorities conferred on the Trustee and to execute any powers of attorney or other instruments necessary to effect such a delegation;
- 4.1.21 **To act on advice:** acting upon the advice of any legal practitioner, any medical practitioner, accountant, actuary, superannuation consultant or any investment or financial adviser or any other professional person without being liable to any Members or their Dependants or their Legal Personal Representative in respect of any act done by the Trustees in accordance with such advice;
- 4.1.22 **Charge a fee:** charging fees for doing anything permitted or required under the Relevant Law and for which a fee may be charged;
- 4.1.23 **Irrevocable election:** irrevocably electing that the Fund become a Regulated Superannuation Fund.

#### 4.2 **Absolute Discretion**

- 4.2.1 Save as expressly provided to the contrary in the Rules, the Trustee in the exercise of the authorities, powers and discretions given to it under the Deed and the Rules, has an absolute and unfettered discretion, and may from time to time exercise or enforce all or any of such powers, authorities and discretions, and will have power generally to do all such things as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under the Deed, the Rules and the Relevant Law.
- 4.2.2 The Trustee may, in its absolute discretion, waive any requirement of the Deed and the Rules in respect of any Member provided any such action does not cause a breach of the Relevant Law.

#### 4.3 **Delegation and Appointment of Attorney by Trustee and Appointment of Custodian**

- 4.3.1 The Trustee may delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustees and to execute any powers of attorney or other instruments necessary to effect such a delegation.
- 4.3.2 The Trustee may appoint one or more attorneys under power of attorney upon such terms as the Trustee thinks fit to perform any of the powers, authorities, duties or functions conferred on the Trustee by the Deed, Rules or by law. Any

such power of attorney will remain valid and effectual for the period nominated by the Trustee or until revoked by the Trustee.

- 4.3.3 The Trustee may appoint any person as custodian or nominee to hold legal title for any asset acquired or to be acquired by the Trustee in such terms as the Trustee thinks fit.

#### **4.4 Remuneration of the Trustee**

- 4.4.1 The Trustee will not receive any salary or remuneration from the Fund in respect of its services as Trustee unless permitted under the Relevant Law.

- 4.4.2 Subject to the Relevant Law, nothing in the Deed or the Rules will preclude any firm, corporation or partnership of which the Trustee or any of its directors is a partner, director, shareholder, related body corporate (as defined in the Corporations Act) or employee from being paid out of the Fund any proper fees or remuneration for professional or other services rendered by such firm, corporation or partnership in connection with the Fund.

#### **4.5 Inquiries and Complaints**

The Trustee must to the extent required by the Relevant Law establish arrangements to deal with inquiries or complaints about the operation or management of the Fund.

#### **4.6 Dependants and Other Beneficiaries**

The Trustee may exercise all its powers under the Deed, the Rules and the Relevant Law in respect of Dependants and any other person entitled to a Benefit. All such persons must comply with the provisions of the Rules and any direction of the Trustee in relation to the payment of any Benefit.

#### **4.7 Indemnity**

##### **4.7.1 Trustee's Responsibility**

Subject to **Rule 4.9**:

- (a) the Trustee is not personally responsible or liable in respect of the execution or purported or attempted execution of, or failure or neglect to exercise or carry out any of the Trustee's duties, authorities, powers or discretions;
- (b) the Trustee (and if a Corporate Trustee, each of its directors) is entitled to be indemnified out of the Fund against all liabilities incurred by the Trustee as the trustee of the Fund; and
- (c) the Trustee is entitled to a lien on, or may use the Fund for the indemnity and generally for the payment of all proper costs and expenses of performing the Trustee's duties under the Deed and the Rules unless prohibited by the Relevant Law.

**4.7.2 Trustee's Right of Indemnity and Exoneration**

- (a) The Trustee's right of indemnity is limited to the right described in **Rule 4.7.1**;
- (b) The Trustee has no right to indemnity or exoneration by any of the Members against any liability incurred by the Trustee as trustee of the Fund.

**4.8 Release**

The Trustee (and if a company, each of its directors) is released from all liabilities, losses, costs and expenses incurred in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in the Trustee or at law, including in respect of any payments made to any person whom the Trustee bona fide believes to be entitled to the payment and it is subsequently found that the person was not in fact so entitled.

**4.9 Limited Indemnity and Release**

Nothing in the Deed has the effect of giving the Trustee (and if a Corporate Trustee, each of its directors) an indemnity or release in respect of any liability:

- 4.9.1 for a breach of trust, where the Trustee fails to act honestly, or intentionally or recklessly fails to exercise, the degree of care and diligence that the Trustee was required to exercise; or
- 4.9.2 for a monetary penalty under a civil penalty order.

**4.10 Confidentiality**

The Trustee shall keep confidential all material and information concerning the administration and management of the Fund and concerning Members and their Dependents and only use that material and information in the administration and management of the Fund and unless required expressly in these Rules or by the Relevant Law shall not be obliged to give reasons for any decisions or acts or omissions of the Trustee.

**5. Membership**

**5.1 Admission**

The Trustee may in its absolute discretion admit to membership of the Fund any person who has lodged with the Trustee an application for membership in such form as the Trustee may require and may as a condition of admission require the person to enter into a written agreement with the Trustee imposing special conditions in respect of membership.

**5.2 Bound by the Deed and the Rules**

Every person admitted to membership of the Fund becomes a Member and is bound by the Deed and the Rules.

**5.3 Variation of Membership Terms**

The Trustee may, by written agreement with any Member, vary the terms and conditions applicable to that Member's membership of the Fund, including the contributions and benefits payable to or in respect of the Member.

**5.4 Information to Members**

The Trustee must, as soon as practicable after the admission of a Member, and at such other times as is required by the Relevant Law give to that Member and any other entitled person any information and details about the Fund required by the Relevant Law .

**5.5 Information from Members**

5.5.1 Every Member and Dependant must provide such information and documents, submit to such medical examinations, and generally do such things as the Trustee considers necessary to administer the Fund and for the Trustee to otherwise be satisfied that such person is entitled to a Benefit from the Fund. The Trustee may suspend the payment of any Benefit if any Member or Dependant fails to supply all or any of such information and documents.

5.5.2 Where information or a document is not furnished within six (6) months of the first request, the Benefit payable to or for such Member or Dependent may cease or may be transferred in part or in whole in such amounts as shall be determined by the Trustee to an Eligible Fund.

**5.6 Person to Receive a Reversionary Pension**

Subject to the Rules and the Relevant Law, the Trustee must admit a person as a Member where that person will be paid a pension from the Fund as a consequence of the death of another Member.

**5.7 Cessation of Membership**

A person ceases to be a Member of the fund when:

5.7.1 when the Member dies;

5.7.2 all Benefits which are or may be payable under these Rules in respect of the Member have been paid;

5.7.3 a transfer of the balance of their Member Account is made to an Eligible Fund;

5.7.4 the Trustee requires a Member to cease membership of the Fund to comply with the Relevant Law;

5.7.5 the Trustees determine that a Member is no longer required to be recognised as a Member of the Fund;

5.7.6 after the Member has been accepted into membership by the Trustees and the balance of the Member Account of the Member has a nil balance and the Trustees determine that the Member is not to continue to be recognised as a Member of the Fund;

5.7.7 the Trustees shall otherwise reasonably determine.

## **5.8 Closure of Membership**

In order that the Fund obtains, retains or maintains a duty exemption or nominal assessment of duty obtained under the laws of any State or Territory to the transfer of an asset to the Fund when the asset was first acquired by the Trustee and held for the benefit of particular Members of the Fund at that time, the Trustee may close the membership of the Fund to new members permanently or until such time as such asset has been used to pay Benefits to those Members. The Trustee shall do all things and execute all such necessary deeds or documents to give effect to the closure to new members.

## **6. Contributions to the Fund**

### **6.1 The Trustee:**

6.1.1 may accept contributions for the benefit of a Member from the Member or from any other person and which includes

- (a) government co-contribution;
- (b) child contributions;
- (c) spouse contributions;
- (d) the whole or part of any Shortfall Component in respect of any employee or Member received from the Commissioner of Taxation;
- (e) Splittable Contributions; and
- (f) any Downsizer Contributions as defined and provided in the Relevant Law;

6.1.2 must not accept any contribution if, in the opinion of the Trustee, the acceptance of the contribution would be in breach of the Relevant Law;

6.1.3 may allocate, record or treat the whole or part of a contribution in a manner not prohibited by the Relevant Law including the allocation of the whole or part of a contribution to a reserve; and

6.1.4 may refuse to accept part or all of any contributions as the Trustee deems appropriate.

### **6.2 Form of Contributions**

6.2.1 Subject to the Relevant Law, contributions may be made either in money or by in specie transfer of assets not prohibited by the Relevant Law.

6.2.2 If a contribution is made by an in specie transfer:

- (a) the amount of the transfer will be the market value of the asset determined by the Trustee at the time of its transfer;

- (b) any other terms and conditions of the transfer will be as determined by the Trustee; and
- (c) in the event that the Trustee wishes to restrict the Benefits arising from the assets transferred to the Fund under this Rule to particular Members, the Trustee shall either proceed under Rule 7.4 to hold the assets specifically to provide Benefits for those Members, or, if those Members are the only Members of the Fund at the time of transfer, the Trustee may close the membership of the Fund to new members under Rule 5.8.

### 6.3 Splittable Contributions

The Trustee may allow Splittable Contributions and a Member may request that the Trustee allocate the whole or part of that contribution to any other Member or person so long as any other transfer or allocation is in accordance with the Relevant Law.

### 6.4 Contribution Repayment or Release

The Trustees may repay the whole or any part of a contribution and any associated earnings to a Member but only if the repayment is not in breach of the Relevant Law. The Trustees may repay a contribution which at the time of making the payment was not intended to be a contribution. The Trustees must repay the whole or part of a contribution and any associated earnings to the Member if directed by the Regulator. The Trustees may deduct from the repayment any liabilities or expenses incurred or provision for liabilities or expenses in relation to the contribution. If excess contributions are received by the Fund and the Trustees receive a release authority under the Relevant Law, then the Trustees may release funds and pay Excess Contributions Tax in accordance with the release authority and the Relevant Law.

## 7. Investments

### 7.1 Investment Strategy

The Trustee must formulate in writing, give effect to and review regularly an investment strategy that complies with the requirements of Rule 3.1 and the Relevant Law.

### 7.2 Authorised Investments

- 7.2.1 Subject to the Relevant Law, the Trustee may directly or indirectly invest in any investment which the Trustee considers appropriate all or so much of the assets of the Fund not required immediately for the payment of Benefits or other amounts authorised by the Rules.
- 7.2.2 Without restricting the generality of Rule 7.2.1, the Trustee may invest alone, in partnership or jointly with any other entity in:
  - (a) any investment authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust funds;
  - (b) the acquisition of any interest in real or personal property, and the improvement or extension of that property;
  - (c) any mortgage on freehold or leasehold property situated in Australia or elsewhere;

- (d) any deposit with any bank, building society, other financial institution or any person or organisation whatsoever and at such rate of interest and upon such terms as the Trustee may deem reasonable;
- (e) the making of any loan to any entity (except to a Member or a relative of a Member) with or without security, and at such rate of interest and upon such terms as the Trustee considers reasonable;
- (f) the acquisition of foreign currencies, commodity contracts, hedging contracts or futures contracts of any kind quoted on a recognised stock exchange;
- (g) the acquisition of shares or stock of any class or description, or of any type of bond, mortgage, debenture, note option, warrant, derivative or other like security in any company or trust fund, society, unincorporated association or other entity in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up, and whether secured or unsecured, registered or unregistered;
- (h) the acquisition of, or subscription for, any unit or interest in any unit trust established or situated anywhere in the world, and whether such units or interests are fully paid up or whether their issue involves any contingent or reserve liability;
- (i) the acquisition of any financial product (including instalment warrants or other derivative) over any assets in which the Trustee is authorised to invest;
- (j) the acquisition of any precious metals, coins, stamps, works of art, antiques and any other precious objects;
- (k) the acquisition of any insurance policy or annuity of any kind whatsoever and wherever made;
- (l) the discounting of loans, mortgages, contracts, hire purchase agreements or leases;
- (m) the acquisition of digital currency, cryptocurrency and such other similar or like digital assets;
- (n) bills of exchange, bill of lading, promissory notes or other negotiable or transferable instruments; and
- (o) Any other investment the Trustee considers appropriate.

### 7.3 Power to Sell and Vary Investments

The Trustee may sell or otherwise dispose of any investments and to vary and transpose any investments into other investments authorised by the Rules.

**7.4 Assets Specific to a Member**

7.4.1 The Trustees, with the agreement of the Member concerned, may invest in or acquire certain identifiable investments or assets for the benefit of any Member and to make a specific investment for the benefit of any Member providing that such investment complies with the investment strategy of the Trustees and shall hold such assets for the specific benefit of the Member concerned and which shall be recorded in the Member's account.

7.4.2 Notwithstanding anything contained in the Rules, any asset held for the specific benefit of a Member shall be segregated from other assets of the Fund and shall not be transferred out of the Member's account and no other person shall obtain an interest in the asset unless:

- (a) the asset is being transferred to the Member as payment of a Benefit in specie to the Member;
- (b) the asset is being sold and the proceeds are to be paid to the Member as payment of a Benefit; or
- (c) the transfer of the asset does not affect any duty exemption or nominal assessment of duty obtained under the laws of any State or Territory to the transfer of the asset to the Fund when the asset was first acquired by the Trustees.

**7.5 Restrictions on Member Contributed Property.**

7.5.1 Notwithstanding any other provision in the Rules to the contrary, where the Trustee acquires Member Contributed Property:

- (a) either:
  - (i) the Transferor of the Member Contributed Property must be the only Member of the Fund and the Trustees must not admit any further Members to the Fund whilst the Fund holds the Member Contributed Property; or
  - (ii) the Member Contributed Property must be used solely for the benefit of the Transferor; and
- (b) any Member Contributed Property must be used solely for the purpose of providing a retirement benefit to the Transferor; and
- (c) to which the preceding Rules apply:
  - (i) must be held by the Trustees specifically for the benefit of the Transferor as a Member of the Fund; and
  - (ii) cannot be pooled with any property held for another Member of the Fund; and
  - (iii) no other Member of the Fund can obtain an interest in the Member Contributed Property.

**7.6 Gifts and Distributions**

7.6.1 Subject to the Relevant Law, the Trustee may accept gifts or distributions made to the Fund from any person or organisation whatsoever.

7.6.2 The Trustee may allocate such gifts or distributions to any Account of the Fund for any purpose as it sees fit.

**7.7 Investment Income**

The Trustee must at the Review Date:

7.7.1 value all of the assets of the Fund; and

7.7.2 determine the net income and net capital gains of the Fund (whether realised or unrealised) for the period since the last Review Date, after deducting any capital losses, expenses and Taxes as the Trustee considers appropriate.

**7.8 Fund Earning Rate**

At the Review Date, the Trustee must determine the rate at which the income of the Fund is to be credited or debited to Member Accounts and other Accounts and reserves established by the Trustee, having regard to:

7.8.1 the amount of income for the Financial Year ending on the relevant Review Date;

7.8.2 the amount of income expected for the subsequent Financial Year;

7.8.3 the amount of income credited to the Member's Accounts in previous Financial Years;

7.8.4 the amount of Taxes, costs and other liabilities of the Fund;

7.8.5 investment strategies of the Fund; and

7.8.6 any other matters the Trustee considers relevant.

**7.9 Interim Fund Earning Rate**

During a Financial Year, the Trustee may determine an interim rate at which the income of the Fund is to be credited or debited to any Member Account for the purpose of calculating the Member's entitlement to Benefits.

**8. Borrowing - section 67A and 67B of the SIS Act Arrangements**

Pursuant to **Rule 4.1.9** and subject to the Relevant Law, the Trustee may:

8.1 borrow monies for the purposes of acquiring asset(s); and

8.2 authorise a charge to be given over asset(s) to be acquired.

## 9. Estate Planning

### 9.1 Non-Binding Death Benefit Nomination

- 9.1.1 A Member may, in writing, notify the Trustee of the manner in which the Member would prefer their Benefit to be distributed upon the Member's death (**'Non-Binding Death Benefit Nomination'**)
- 9.1.2 The Trustee need not comply with a Non-Binding Death Benefit Nomination.
- 9.1.3 A Member may vary or revoke a Non-Binding Death Benefit Nomination at any time.

### 9.2 Binding Death Benefit Nomination

- 9.2.1 A Member may at any time in writing (the form and content of which writing need not comply with the Relevant Law and which writing may be contained within a testamentary instrument and which may be given to the Trustees after the Member's death and which does not need to be given by the Member personally) direct the Trustee about the manner in which the Member's Benefit is to be distributed upon their death and the beneficiaries to whom it is to be paid (being persons who would be Dependants and the Member's Legal Personal Representative and any other person authorised by the Relevant Law) and, if to more than one person, in what proportions (**'Binding Death Benefit Nomination'**).
- 9.2.2 A Member may:
  - (a) confirm, vary or revoke a Binding Death Benefit Nomination at any time;
  - (b) elect that all or some (as specified by the Member in the nomination) of the directions in the Binding Death Benefit Nomination shall be binding upon the Trustee.
- 9.2.3 A Binding Death Benefit Nomination need not contain an express statement that a direction is binding to be binding and it shall be sufficient if it uses words or language that satisfy the Trustee that the direction was intended by the Member to be binding.
- 9.2.4 A Binding Death Benefit Nomination may:
  - (a) be lapsing or non-lapsing as to the whole or part;
  - (b) specify a period or date after which a direction is to be no longer binding but is to otherwise remain valid;
  - (c) specify a period or date after which it lapses as to the whole or part;
  - (d) contain conditions which must be satisfied or met in order for a Benefit to be paid;
  - (e) specify the type, amount and proportion of different components of Benefit to be paid;

- (f) specify whether or not a pension including a reversionary pension is to be provided;
- (g) revoke, vary or replace a nomination or direction about the continuation of pension as a reversionary pension upon death of the Member
- (h) specify the circumstances in which directions intended to be binding are to be treated as no longer binding including but not limited to:
  - (i) the marriage, separation, divorce or death of a beneficiary;
  - (ii) the marriage, separation, divorce of the Member;
  - (iii) where a beneficiary consents;
- (i) specify payment of a Benefit to a trust in which the beneficiaries are limited to those persons who are the Member's Dependants for the purposes of section 302-195 of the Income Tax Assessment Act 1997.

9.2.5 Unless expressed to the contrary, a Binding Death Benefit Nomination requiring a Benefit to be paid to a spouse of a Member will be revoked if proceedings have commenced, or will be commenced, under the *Family Law Act 1975* (Cth) or similar laws seeking a dissolution of the marriage between that Member and the spouse.

9.2.6 Notwithstanding this Rule 9.2, any notice in writing concerning the payment of a Member's Benefit upon their death prepared by a Member pursuant to Rules governing the operation and administration of the Fund prior to the adoption of these Rules shall continue to have full force and effect unless and until it lapses or is subsequently revoked, modified, amended or varied.

### 9.3 Member Directed Superannuation Benefit Plan

9.3.1 The Trustees and a Member may enter into an agreement in writing about the payment of a Benefit to beneficiaries upon the Member's death and which include terms and conditions of the type set out in Rules 9.2.4. (**'Member Directed Superannuation Benefit Plan'**).

9.3.2 The terms of a Member Directed Superannuation Benefit Plan shall form part of these Rules as between Member and the Trustees and shall be read together with the Rules as follows:

- (a) subject to the Relevant Law, the Member Directed Superannuation Benefit Plan prevails over any Binding Death Benefit Nomination made under Rule 9.2 unless the Binding Death Benefit Nomination expressly revokes or replaces the Member Directed Superannuation Benefit Plan made under this Rule 9.3;
- (b) the Member Directed Superannuation Benefit Plan replaces any previous Member Directed Superannuation Benefit Plan made under this Rule;
- (c) any previous Binding Death Benefit Nomination given under Rule 9.2 is to be treated as not in effect for the purposes of Rule 9.2 and Rule 14.9.3;

- (d) the terms of the Member Directed Superannuation Benefit Plan are to prevail if there is any inconsistency between the Member Directed Superannuation Benefit Plan and the Rules; and
- (e) if part of an Member Directed Superannuation Benefit Plan is invalid because a beneficiary is not eligible to receive a Benefit under the Relevant Law then that part of the Benefit shall be distributed in accordance with Rule 14.9.7.

9.3.3 A Member may confirm, vary or revoke a Member Directed Superannuation Benefit Plan.

#### **9.4 Reversionary Pension**

Subject to the Relevant Law and Rule 14.9.6, the Trustee must comply with any terms and conditions contained in a pension or a Binding Death Benefit Nomination or a Member Directed Superannuation Benefit Plan made under these Rules or any equivalent Rule contained in prior Rules concerning the continuation or otherwise of a pension as a reversionary pension upon death of the Member.

#### **9.5 Consistency of Estate Planning**

The Trustee must ensure that there is consistency as between all of:

- 9.5.1 a Non-Binding Death Benefit Nomination (**Rule 9.1**);
  - 9.5.2 a Binding Death Benefit Nomination (**Rule 9.2**);
  - 9.5.3 a Member Directed Superannuation Benefit Plan (**Rule 9.3**); and
  - 9.5.4 the terms and conditions of any pension (**Rule 9.4 and Rule 14.5**);
- made by or in place for a Member.

### **10. Fund Accounts**

#### **10.1 Fund Accounts**

The Trustee must keep Accounts and reserves that the Trustee considers appropriate for the purpose of administering the Fund and calculating the Benefit payable to each Member.

#### **10.2 Member Accounts**

The Trustee must keep separate Accounts for each Member and if necessary, separate Accounts for the purposes of:

- 10.2.1 differentiating between contributions made by a Member and contributions made by others for the benefit of the Member;
- 10.2.2 differentiating between a Member's preserved and non-preserved benefits;
- 10.2.3 calculating the tax free and taxable components of a Member's Benefit within the meaning of the Relevant Law;

- 10.2.4 identifying particular assets which are funding a Member's pension;
- 10.2.5 enabling Members to have one or more pensions; and
- 10.2.6 any other purpose as the Trustee considers appropriate.

### **10.3 Crediting and Debiting Member Accounts**

The Trustee will credit or debit (as the case may be) each Member's Accounts with:

- 10.3.1 contributions received from the Member or for the benefit of the Member;
- 10.3.2 income or losses of the Fund as determined by the Trustee;
- 10.3.3 amounts transferred to or from a reserve of the Fund;
- 10.3.4 amounts transferred to or from an Eligible Fund;
- 10.3.5 the amount of any Splittable Contributions as agreed between the Member and the Trustee;
- 10.3.6 the amount of any payment split that the Trustee is required to apply in accordance with the *Family Law Act 1975 (Part VIII B)*;
- 10.3.7 any Taxes, expenses or liabilities in relation to the contributions received in respect of the Member;
- 10.3.8 any Taxes, expenses or liabilities of the Fund that the Trustee considers appropriate;
- 10.3.9 any Benefit paid to the Member or any other person as approved by the Trustee;
- 10.3.10 any premiums and other expenses of any insurance policies in respect of the Member
- 10.3.11 any proceeds of insurance effected for the benefit of the Member;
- 10.3.12 any other amount which shall be credited or debited for the purposes of the Rules; and
- 10.3.13 any other amounts that the Trustee considers appropriate.

### **10.4 Reserves**

The Trustee may establish and maintain the following reserve accounts:

- 10.4.1 a Reserve for smoothing any fluctuations in the value and earnings of investments of the Fund;
- 10.4.2 a Taxation Reserve for making provision for any existing or prospective liability for Taxes or any other liability;
- 10.4.3 such Reserves or liability accounts to assist the Trustee to identify the value of assets that may be exchanged or segregated as either current pension assets,

non-current pension assets or that are dealt with as a different sub-fund, segment or partition; and

- 10.4.4 such other reserves and accounts for any other purpose the Trustee considers appropriate.

## **11. Fund Expenses and Taxation**

### **11.1 Expenses**

11.1.1 Except as otherwise provided, all expenses relating to the establishment, administration, operation or winding up of the Fund will be borne by the Fund and paid by the Trustee out of the assets of the Fund.

11.1.2 The Trustee may debit Member Accounts, reserves and any other Accounts as it considers appropriate to reflect the payment, or the provision of expenses and notwithstanding anything expressed or implied to the contrary in the Rules, the expenses of the Fund shall be distributed in a fair and reasonable manner as between all Members and in determining what is fair and reasonable the Trustee may have regard to whether such expenses were to the benefit or detriment of some or one, but not all, of the Members.

### **11.2 Taxes**

11.2.1 The Trustee must pay all Taxes assessed to the Fund.

11.2.2 The Trustee may deduct from a Member's Account, a reserve or any other Account any Taxes referable to:

- (a) contributions made to the Fund for the benefit of a Member;
- (b) earnings attributed to a Member's Account;
- (c) any Benefit from which the Trustee considers Taxes may be payable.

11.2.3 The Trustee may deduct from a Member's Account any Excess Contributions Tax payable by that Member in accordance with **Rule 6.4**.

11.2.4 Subject to the Relevant Law the Trustee may allocate any refund of Taxes to a Member's Account, reserve or other Account.

## **12. Records and Reports**

### **12.1 Records and Accounts to be kept**

The Trustee must in such manner and form and at such time as required by the Relevant Law:

12.1.1 keep full and comprehensive minutes of meetings;

12.1.2 keep account of all moneys received by or for, and disbursed from, the Fund and of all dealings of the Fund;

- 12.1.3 collect and promptly pay into a bank or other account of the Fund all moneys due to the Fund;
- 12.1.4 keep appropriate records, books and accounts, having regard to the requirements of the Relevant Law;
- 12.1.5 make suitable arrangements for the custody of documents relating to the investments of the Fund;
- 12.1.6 details of any order or agreement for a payment split that the Trustee is required to apply in accordance with the Family Law Act 1975 (Part VIIIB); and
- 12.1.7 prepare accounts, returns and statements in relation to the Fund as at the end of the Financial Year.

## **12.2 Audit**

The Trustee must appoint an Auditor to audit the accounts and statements of the Fund and to report in writing to the Trustee in respect of such audit within the time specified by the Relevant Law.

## **12.3 Inspection of records**

The Trustee must allow Members to inspect such documents and information as required by the Relevant Law.

## **12.4 Report to Regulator**

The Trustee shall provide to the Regulator such reports required from time to time by the Relevant Law. The Trustee shall give to the Regulator notice of changes to the Fund in such form and in such manner as specified by the Relevant Law that the Trustee must give to the Regulator.

# **13. Transfers of Benefits**

## **13.1 Transfers within the Fund**

The Trustee with the consent of the Member may pay or transfer in the form money or assets of the Fund or a combination of both all or part of the Member's interest or entitlement in the Fund to another Member's Account provided that:

- 13.1.1 the payment or transfer is not prohibited by the Relevant Law;
- 13.1.2 the Member shall be deemed to have consented to payment or transfer if the payment or transfer is required by the Relevant Law; and
- 13.1.3 the payment or transfer is made in accordance with the provisions, if any, of the Relevant Law.

## **13.2 Transfers to Other Funds**

Subject to the Rules and the Relevant Law, the Trustee may pay or transfer to an Eligible Fund all or part of a Member's interest or entitlement to benefits in the Fund on such terms and conditions determined by the Trustee:

- 13.2.1 when requested by the Member;
- 13.2.2 when permitted or required by the Relevant Law whether or not requested or consented by the Member and the Member shall be deemed to have consented to such payment or transfer; and
- 13.2.3 such payment or transfer may be in the form of money or assets of the Fund or a combination of both.

### 13.3 Benefits Cease

If there is a payment or transfer made under Rule 13.2:

- 13.3.1 the payment or transfer will satisfy the Member's interest or entitlement to those benefits to the extent of the amount paid or transferred;
- 13.3.2 the receipt of the payment or transfer by the trustee of the Eligible Fund will discharge the Trustee with respect to any liabilities referable to the amount paid or transferred; and
- 13.3.3 after the payment or transfer, the Trustee will not be responsible for the future application of the particular amount.

### 13.4 Transfers from Other Funds

- 13.4.1 Upon a Member's requests, the Trustee may accept a payment or transfer of money or assets from an Eligible Fund:
  - (a) on such terms and conditions imposed by the Eligible Fund;
  - (b) on such terms and conditions determined by the Trustee; and
  - (c) which is not prohibited by the Relevant Law.
- 13.4.2 The Trustee shall have regard to the provisions governing the preservation of benefits in the Eligible Fund to ensure that any Benefit arising from the assets transferred will only be paid to or in respect of the Member in circumstances similar to those provided for in the provisions governing the Eligible Fund:
  - (a) where the Eligible Fund is an overseas pension scheme or foreign superannuation fund, to the extent required by foreign law; and
  - (b) to extent required by the Relevant Law.
- 13.4.3 Subject to the requirements of this Rule 13.4 and the Relevant Law, the Trustee will credit the Member's Accounts in the manner agreed between the Trustee and the Member with the money or assets paid or transferred under this **Rule 13.4**.

### 13.5 Transfers from UK Registered Pension Schemes

- 13.5.1 Notwithstanding Rule 14, this Rule 13.5 applies to Recognised Transfer Amounts accepted by the Trustees pursuant to Rule 13.4 from a registered pension scheme in the United Kingdom:

- (a) subject to this Rule, a Member is only entitled to receive a Benefit sourced from a Recognised Transfer Amount when the Member is permitted by the UK Regulations;
- (b) the Trustees must not pay a Benefit sourced from a Recognised Transfer Amount to a Member any earlier than would be payable if pension rule 1 of section 165 of the Finance Act 2004 (United Kingdom) applied;
- (c) this Rule 13.5 may be amended only if, after the amendment, the amended Rule would continue to comply with the QROPS Requirements;
- (d) a Recognised Transfer Amount may be transferred to an Eligible Fund in accordance with Rule 13.2 only where the provisions governing the Eligible Fund contain provisions to the same effect as this Rule 13.6 in respect of a Recognised Transfer Amount;
- (e) the Trustees must do all necessary things to comply with the QROPS Requirements including but not limited to the Benefits Tax Relief Test and the Pension Age Test.

## **14. Benefits**

### **14.1 When Payable**

14.1.1 Subject to the Relevant Law and these Rules, a Benefit may be paid when:

- (a) the Member has reached the Preservation Age;
- (b) the Member has reached the Retirement Age;
- (c) the Member has ceased to be Gainfully Employed;
- (d) the Member suffers Temporary Incapacity; or
- (e) the Member suffers Permanent Incapacity.
- (f) the Member suffers from a Terminal Medical Condition;
- (g) the Member has died;
- (h) compassionate grounds;
- (i) a First Home Super Saver Scheme benefit as provided in the Relevant Law; or
- (j) such other events or circumstance allow a Benefit to be paid.

14.1.2 A Benefit must be paid by the Trustee if required under the Relevant Law.

### **14.2 Method of Payment**

14.2.1 A Benefit may be paid:

- (a) in a lump sum;

- (b) by way of one or more pensions;
- (c) by an in specie transfer of assets of the Fund;
- (d) in any other way permitted by the Relevant Law; or
- (e) as a combination of any of the above.

14.2.2 The Trustee may pay the whole or part of a Benefit by the payment or transfer of money or assets of the Fund but must pay a Benefit in a particular way if required by the Relevant Law.

#### 14.3 Payment Conditions

14.3.1 The Trustee may impose any reasonable conditions regarding payment of Benefits, such as requiring a Member or the Member's Legal Personal Representative to produce evidence of entitlement.

14.3.2 A Benefit must not be paid if doing so would result in the Fund not complying with the Relevant Law.

#### 14.4 Lump Sum

14.4.1 The Trustee may, at its discretion, pay a lump sum Benefit if requested by a Member.

14.4.2 The lump sum Benefit may be paid:

- (a) in money as a single payment or in instalments; or
- (b) by way of an in specie transfer of assets of the Fund of equivalent value, with the value determined on an arms' length basis at the date of transfer.

14.4.3 Subject to **Rule 14.4.4**, the amount of any lump sum Benefit must not:

- (a) exceed the balance of the Member's Accounts; or
- (a) be less than any amount required under the Relevant Law.

14.4.4 Subject to the Trustee's discretion, in addition to any lump sum Benefit paid under **Rule 14.4.2**, the Trustee may pay an amount from a reserve of the Fund to a Member.

#### 14.5 Pension

14.5.1 The Trustee may, at its discretion, pay a pension if requested by a Member.

14.5.2 Subject to the Relevant Law and **Rule 14.6**, a pension will be paid subject to the following:

- (a) payment shall be in such amounts and on such terms and conditions as agreed in writing by Trustee and the Member;
- (b) a pension may include a nomination or direction about the continuation of the pension as a reversionary pension upon death of the Member;

- (c) a pension may be subject to or varied by a Binding Death Benefit Nomination made under Rule 9.2 or Member Directed Superannuation Plan made under Rule 9.3;
- (d) the Trustee with the consent of the Member may at any time vary the terms and conditions of a pension including a variation which adds, removes or replaces any nomination or direction about the continuation of the pension as a reversionary pension upon death of the Member;
- (e) a variation of a pension shall not create a new pension unless expressly provided otherwise in writing;
- (f) the terms and conditions of a pension shall form part of the Rules.

#### 14.6 Pension Conditions

- 14.6.1 Any standards with respect to the payment of pensions contained in the Relevant Law are incorporated in, and form part of the Rules.
- 14.6.2 Any pension paid to a Member must be provided pursuant to any standards contained in the Relevant Law.
- 14.6.3 In providing a pension to a Member, and subject to **Rule 14.6.1** and the Trustee's discretion, the Trustee may apply any amount from the Member's Account and/or a reserve of the Fund.
- 14.6.4 If a pension is also an Asset Test Exempt Pension, the relevant provisions of the Social Security Act 1991 or the Veterans' Entitlements Act 1986 apply to the extent of any inconsistency to ensure the pension qualifies or continues to qualify as an Asset Test Exempt Pension.

#### 14.7 Recommencement of a Ceased Pension

Where a pension has ceased because any minimum pension payment requirement of the Relevant Law has not been satisfied then that pension shall re-commence on the same terms and conditions as the ceased pension on the first day of July following the day that the pension ceased.

#### 14.8 Commutation

- 14.8.1 The Trustee may, at its discretion, commute a part of the whole of a Benefit if requested by a Member but if a Benefit is subject to a cashing restriction the Trustee shall ensure the Benefit is only commuted in accordance with the Relevant Law.
- 14.8.2 The Trustee must not commute a part or the whole of a Benefit if the commutation will cause the Fund to breach the Relevant Law.
- 14.8.3 Any commutation amount may be applied by the Trustee:
  - (a) to pay a lump sum Benefit to the Member;
  - (b) to pay one or more pensions to the Member;

- (c) be allocated to the Member's Accounts; or
- (d) in any way not prohibited by the Relevant Law.

#### 14.9 Death Benefits

- 14.9.1 Upon the death of a Member but subject to any Binding Death Benefit Nomination or a Member Directed Superannuation Benefit Plan:
- (a) the Trustee shall not exercise any discretion or power concerning the payment of a death benefit unless:
    - (i) the prior written consent of the Legal Personal Representative of the deceased Member has been obtained to the manner and form of payment and to whom payment is to be made; or
    - (ii) the Legal Personal Representative of the deceased Member is a Trustee or director of a Corporate Trustee;
  - (b) the Trustee may continue to pay to the Legal Personal Representative any pension paid to the deceased Member
  - (c) the Trustees may pay or transfer a death benefit to an Eligible Fund for payment to a Dependant in a manner permitted by the Relevant Law;
  - (d) the Trustees may transfer a death benefit to a trust in which the beneficiaries of such trust are limited to those persons who are Dependents for the purposes of section 302-195 of the Tax Act.
- 14.9.2 The Trustee may comply with a Non-Binding Death Benefit Nomination of a Member made under Rule 9.1 or any equivalent Rule contained in prior Rules provided that the payment is permitted by the Relevant Law.
- 14.9.3 The Trustee must comply with a Binding Death Benefit Nomination of a Member made under Rule 9.2 or any equivalent Rule contained in prior Rules provided that the payment is permitted by the Relevant Law.
- 14.9.4 The Trustee must comply with a Member Directed Superannuation Benefit Plan of a Member made under Rule 9.3 or any equivalent Rule contained in prior Rules provided that the payment is permitted by the Relevant Law.
- 14.9.5 The whole or part of a Member's Benefit payable on death which is not subject to or is not permitted to be paid pursuant to a Binding Death Benefit Nomination or a Member Directed Superannuation Benefit Plan shall be paid by the Trustee in accordance with Rule 14.9.7 and Rule 14.9.8.
- 14.9.6 Subject to the Relevant Law and notwithstanding Rule 9.5, if there is any inconsistency between a pension or a Binding Death Benefit Nomination or a Member Directed Superannuation Benefit Plan made under the Rules or any equivalent Rule contained in prior Rules, the terms and conditions of whichever of the pension or Binding Death Benefit Nomination or Member Directed Superannuation Benefit Plan is the later made will prevail.

14.9.7 Subject to Rule 14.9.3 and Rule 14.9.4 and the Relevant Law, the Trustee must distribute the balance of the Member's Accounts as a death benefit in such manner, form or type and in such proportions as the Trustee may in the absolute discretion of the Trustee decide to:

- (a) one or more Dependants; or
- (b) the Legal Personal Representative; or
- (c) any other persons permitted by the Relevant Law; or
- (d) a combination of any of the above.

14.9.8 Subject to Rule 14.9.6, if the terms and conditions of a pension payable to the Member include a reversion to another person then the Trustee must pay the pension in accordance with **Rule 9.4**.

14.9.9 Subject to the Relevant Law, and notwithstanding any other provision of this **Rule 14.9**, the Trustee may in its absolute discretion pay an additional amount from other Accounts and/or reserve, to the Legal Personal Representative or one or more of the deceased's Dependants.

14.9.10 Any additional amount paid as contemplated in **Rule 14.9.9** will not form part of the Member's death benefit.

#### 14.10 Suspension of Benefit

The Trustee may suspend, alter or withhold any Benefit where a Member or Dependand:

14.10.1 fails to provide any information or to do anything contemplated by Rule 5.5.1 or if provided is carelessly incorrect, or deliberately misleading; or

14.10.2 otherwise fails to comply with the other provisions of the Rules or the requirements of the Relevant Law.

#### 14.11 Preserved Benefits

Nothing in the Deed or Rules requires or permits the payment of a Benefit to a Member where the Relevant Law requires that Benefit to be preserved.

### 15. Family Law Splitting and Flagging

#### 15.1 Complying with Agreements and Orders

15.1.1 The Trustee shall only be obliged to comply with any request for information, agreement or order made under Part VIII B of the Family Law Act 1975 to the extent permitted or required by the Relevant Law.

15.1.2 The Trustee may impose a fee for the administrative costs associated with complying with an agreement or order made under Part VIII B of the Family Law Act 1975 and such fee shall be payable by such persons and in such proportions as prescribed by the Relevant Law or Part VIII B of the Family Law Act 1975. The Trustee may add interest, at a rate the Trustee determines, to any unpaid fee

that the Trustees impose and may debit the interest to a Benefit or interest that the relevant Member or person deemed to be a Member has in the Fund.

15.1.3 Nothing in the Rules shall impose a duty or obligation upon the Trustees to admit as a Member of the Fund any person being a party to an agreement or order made under Part VIII B of the Family Law Act 1975 who is not already a Member of the Fund and the Trustee may transfer to an Eligible Fund any Benefit to which such person is entitled.

15.1.4 Notwithstanding anything contained in the Rules, a Benefit payable to a Member or Dependant under the Rules shall be subject to any agreement or order made under Part VIII B of the Family Law Act 1975 applying to that Benefit.

## 15.2 Information Request

The Trustee upon written application for information about a superannuation interest by an eligible person in the manner prescribed by Part VIII B of the Family Law Act 1975 (Cth) together with such other properly completed prescribed supporting documentation and upon the payment of any fee permitted to be imposed by the Trustee will provide information about the superannuation interest in the prescribed form.

## 16. Termination of the Fund

### 16.1 Termination

The Fund will be terminated on such date determined by the Trustee if the Regulator requires the Fund to be terminated or if the Trustee resolves to terminate the Fund in any of the following circumstances:

16.1.1 the Trustee decides to terminate the Fund;

16.1.2 there are no Members in the Fund; or

16.1.3 if all the Members request the Trustee to terminate the Fund.

### 16.2 Application of Assets

Subject to the Relevant Law, the Trustee must apply the assets of the Fund to the extent that there are sufficient assets to do so in the following priority:

16.2.1 towards the costs of administering and winding up the Fund;

16.2.2 in paying or transferring a Member's Benefit in accordance with these Rules;

16.2.3 any remaining amounts to be paid by the Trustee to Members, Dependents, former Members, deceased Members or Legal Personal Representatives, in such proportions as the Trustee in its discretion determines is appropriate; and

the receipt by any person of any amount under this **Rule 16.2** will be in full discharge of any claims in respect of the Fund.

## 17. Alteration of the Deed and Rules

### 17.1 Amendment

Subject to Rule 17.2 and Rule 17.3, the Trustee may by deed at any time and from time to time amend all or any of the provisions of the Deed or these Rules (including this Rule 17.1), provided that the amendment does not:

17.1.1 vary the main purpose of the Deed and Rules being:

- (a) to establish a Regulated Superannuation Fund; and
- (b) to provide benefits to Members on retirement or to the Dependants of Members in the event of death before retirement of the Member; or

17.1.2 have the effect of reducing any Benefit that has accrued or has become payable to a Member before the amendment taking effect unless:

- (a) the reduction is required due to tax payable on income of the Fund;
- (b) the reduction is required to enable compliance with the Relevant Law;
- (c) the reduction is approved in writing by the affected Members; or
- (d) the Regulator has approved the reduction in writing.

### 17.2 Amendment Restrictions

Notwithstanding Rule 17.1 and subject to Rule 17.3, no amendment of all or any of the provisions of the Deed or the Rules shall be made by the Trustee:

17.2.1 which would permit the sole or primary purpose of the Fund to be other than the provision of Old-Age Pensions while the Trustee is one or more individuals; or

17.2.2 which would permit the Trustee to be other than a Constitutional Corporation while the sole or primary purpose of the Fund is other than the provision of Old-Age Pensions; or

17.2.3 without the consent in writing of the Legal Personal Representative of a deceased Member if the death benefit payable in respect of the deceased Member has not been paid.

### 17.3 Amendments requiring Consent of Members and Others

Notwithstanding Rule 17.1, no amendment of all or any of the provisions of the Deed or the Rules shall be made by the Trustee except with the written personal consent of Members or, if a Member is unable to give written personal consent, with the written consent of the Legal Personal Representative and all of the Dependants of that Member:

17.3.1 which would have the effect of amending Rule 17.2 or Rule 17.3;

17.3.2 which would have the effect of altering the existing terms and conditions of:

- (a) a pension payable to the Member or their Dependants;
- (b) a Binding Death Benefit Nomination made by the Member; or
- (c) a Member Directed Superannuation Benefit Plan;

17.3.3 which would have the effect of amending Rule 13.5 if to do so resulted in the Fund failing to comply with the QROPS Requirements;

17.3.4 which would have the effect of changing the restrictions contained in Rule 7.5 when the Trustee holds Member Contributed Property.

#### 17.4 Amendments Subject to the Relevant Law

Notwithstanding anything in this Rule, the Deed and the Rules cannot be amended if the amendment is contrary to the Relevant Law.

#### 17.5 Trustee Act 1936 (SA)

The provisions of section 35B of the Trustee Act 1936 (SA) shall not apply.

### 18. Definitions

In the Deed and Rules unless the contrary intention appears:

**'Account'** means an account established by the Trustee for the purpose of administering the Fund or calculating the Benefit payable in respect of a Member or for any other purpose under the Deed or Rules;

**'Ancillary Purposes'** means those purposes that are defined in section 62 of the SIS Act;

**'Asset Test Exempt Pension'** means a pension that is exempt from or excluded from the assets test in whole or part under the Social Security Act 1991 or the Veterans' Entitlements Act 1986 (and any applicable regulations);

**'Auditor'** means an approved smsf auditor within the meaning of subsection 10(1) of the SIS Act, who is appointed for the purposes of auditing the Fund;

**'Benefit'** means the benefits payable or that may be payable to or for a Member or their Dependants or any other person under the Deed, Rules or the Relevant Law;

**'Complying Self Managed Superannuation Fund'** means a Fund that satisfies the requirements of section 42A of the SIS Act;

**'Constitutional Corporation'** means a trading or financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Commonwealth of Australia Constitution Act);

**'Core Purposes'** means those purposes for which the Fund is established that are defined in section 62 of the SIS Act;

**'Corporate Trustee'** means a body corporate that is a Trustee of the Fund and includes a Constitutional Corporation;

**'Deed'** means the Deed establishing the Fund and as amended;

**'Dependant'** means:

- (a) a Member's spouse, but if there is more than one person who fits that description, the Trustee shall determine which one or more persons are to be treated as the Member's spouse;
- (b) a Member's child including any person who in the Trustee's opinion is maintained as a child by the Member; or
- (c) any other person with whom the Trustee considers the Member has an interdependency relationship as defined in section 10A of the SIS Act;

**'Disqualified Person'** has the same meaning as in section 120 of the SIS Act;

**'Eligible Fund'** means a superannuation fund, an approved deposit fund, an eligible rollover fund, a rollover annuity, or any other like fund or annuity which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not, in the opinion of the Trustee, be in breach of the Relevant Law;

**'Excess Contributions Tax'** means any tax imposed by reason of the *Superannuation (Excess Concessional Contributions Tax) Act 2007 (Cth)* or the *Superannuation (Excess Non-Concessional Contributions Tax) Act 2006 (Cth)* or successor legislation;

**'Financial Year'** means a period of twelve (12) months ending on 30 June or such other period ending on a date determined by the Trustee;

**'Gainfully Employed'** means employed or self-employed for gain or reward in any business, trade, profession, occupation, vocation or calling on a full time or part time basis and **'Gainful Employment'** has a corresponding meaning;

**'Fund'** means all of the assets from time to time held by the Trustee upon the trusts contained in the Deed;

**'Individual Policy'**, in relation to a Member, means a life insurance policy or an interest in a group life insurance policy which the Trustees have nominated as being held specifically for the purpose of providing benefits in respect of that Member and which may include an insurance policy over the life of a person other than that Member;

**'Legal Personal Representative'** in relation to a Member or a Trustee being an individual means a person who:

- (a) the executor of a Will or administrator of the estate of a deceased Member including any person named as the executor in a Will of the deceased Member even though no grant of representation has issued or is required to administer the estate of the deceased Member provided the Trustees are satisfied that it is the last Will of the deceased Member; or
- (b) holds an enduring power of attorney granted by a Member or the Trustee; or
- (c) has been appointed by law to act as the legal personal representative of a Member or a Trustee but does not include any person appointed under the laws of bankruptcy;

**'Member'** means a person who has been admitted to membership of the Fund and who has not ceased to be a Member of the Fund and any person required by the Relevant Law to be treated as a Member of the Fund and, where the context permits, includes:

- (a) the Legal Personal Representative of a Member under a legal disability; or
- (b) a parent or guardian of a Member under a legal disability by reason of age and who does not have a Legal Personal Representative;

**'Member Contributed Property'** means dutiable property for the purposes of the Duties Act 1997 (NSW) and the Duties Act 2008 (WA) which is transferred to the Trustee by a Transferor and, in respect of which property, duty has been assessed and paid under either section 62A of the Duties Act 1997 (NSW) or section 122 of the Duties Act 2008 (WA) and includes the proceeds of the sale of the whole or part of any such property;

**'Old-Age Pension'** means an old age pension for the purposes of paragraph 51(xxiii) of the Commonwealth of Australia Constitution Act;

**'Permanent Incapacity'** in relation to a Member has the same meaning as that contained in any insurance policy effected to cover Permanent Incapacity of the Member and in force at the time of the incapacity or where there is no such insurance policy means ill-health (whether physical or mental) which the Trustee after having regard to the requirements of the Relevant Law is reasonably satisfied the Member is unlikely to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;

**'Preservation Age'** means:

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

**'QROPS Requirements'** means any requirements under laws relating to superannuation funds that the Fund must satisfy to be a qualifying recognised overseas pension scheme under section 169 of the Finance Act 2004 (United Kingdom);

**'Recognised Transfer Amount'** means the amount transferred to the Fund or a previous superannuation arrangement in respect of a Member as a recognised transfer under section 169 of the Finance Act 2004 (United Kingdom);

**'Regulated Superannuation Fund'** has the same meaning as contained in section 19 of the SIS Act;

**'Regulator'** means the Commissioner of Taxation or any person or entity appointed to regulate a Self Managed Superannuation Fund as defined in section 10(1) of the SIS Act and in respect of Recognised Transfer Amounts means the Board of Inland Revenue and HM Revenue & Customs of the United Kingdom;

**'Relevant Law'** means:

- (a) the *Superannuation Industry (Supervision) Act 1993 (Cth)* (**'SIS Act'**);
- (b) the *Income Tax Assessment Act 1997 (Cth)* (**'Tax Act'**);
- (c) the *Corporations Act 2001 (Cth)* (**'Corporations Act'**);
- (d) any successor acts and all Regulations made pursuant to the above Acts;
- (e) in respect of Recognised Transfer Amounts such parts of the UK Regulations which the Fund must satisfy in order for the Fund to satisfy QROPS Requirements;
- (f) any other legislation, requirements, standards, guidelines, rulings or announcements which must be complied with or that the Trustee considers desirable to comply with in order for the Fund to be a regulated and complying superannuation fund;

**'Review Date'** means the final day of each Financial Year and/or any other date the Trustee determines in its absolute discretion;

**'Retirement Age'** means:

- (a) age 65; or
- (b) such other age at which benefits can generally be paid from a regulated superannuation fund under the Relevant Law even if a Member has not ceased Gainful Employment;

**'Shortfall Component'** has the same meaning as that contained in the Superannuation Guarantee (Administration) Act 1992;

**'Splittable Contribution'** means a spouse contributions-splitting amount as defined in SIS Regulation 6.42;

**'State Trust Law'** means whichever of the Trustee Act 1958 (VIC), the Trustee Act 1925 (NSW), the Trustees Act 1962 (WA), the Trusts Act 1973 (QLD), the Trustee Act 1936 (SA), 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;

**'Superannuation Entitlement'** in relation to a Member generally means the total amount of all superannuation lump sums that could be payable to the Member by the Fund at any time or it is such other interest as defined in section 995-1(1) of the Tax Act as determined by the Trustee with reference to section 307-200 of the Tax Act;

**'Taxes'** includes income tax (including capital gains tax) land tax, goods and services tax, stamp duty and any other taxes or duties;

**'Temporary Incapacity'** in relation to a Member who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental) that caused the Member to cease to be Gainfully Employed or which

otherwise qualifies as temporary disablement (or its equivalent) under the Relevant Law but does not constitute Permanent Incapacity;

**'Terminal Medical Condition'** has the meaning given by SIS Regulation 6.01A;

**'Transferor'** means a Member or Members together who transfer Member Contributed Property to the Trustee;

**'Trustee'** or **'Trustees'** means the Trustee(s) for the time being of the Fund and where the context permits includes the director of a Corporate Trustee which is a Trustee; and

**'UK Regulations'** means the Finance Act 2004 (United Kingdom) and regulations made by the Board of Inland Revenue of the United Kingdom.

## 19. Interpretation

In the Deed and Rules unless it is otherwise stated:

19.1 the **singular** includes the plural and vice versa;

19.2 a **gender** includes all other genders;

19.3 a reference to a **person** includes any company, partnership, joint venture, trust, association, government, or public authority and vice versa;

19.4 a reference to a **person** that comprises two or more persons means those persons jointly and severally;

19.5 a reference to **amend** includes to add to, modify, vary, replace or delete and **amendment** and **amending** have corresponding meanings;

19.6 a reference to a **document** is to that document as amended, novated, supplemented, varied or replaced from time to time and includes any annexures, schedules and appendices to that document, except to the extent prohibited by that document;

19.7 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;

19.8 a reference to **pay** includes to credit or distribute;

19.9 any term used but undefined in the Rules which is defined in the Relevant Law has the same meaning that it has in the Relevant Law;

19.10 the **headings** and sub-headings are for convenience only and do not affect the interpretation of these Rules.

## 20. Compliance with the Relevant Law

### 20.1 Inconsistency

If there is any inconsistency between the provisions of the Deed, the Rules and the Relevant Law, the Relevant Law will prevail to the extent of any such inconsistency.

**20.2 Power to Act in Accordance with Relevant Law**

The Trustee has the power to do, or omit to do, all acts and things as the Trustee considers necessary for the Fund to be a Complying Self Managed Superannuation Fund.

**20.3 Deemed Inclusion of Relevant Law**

Notwithstanding any provision of the Deed or the Rules, all the provisions of the Relevant Law that must be included in the Deed and the Rules from time to time in order for the Fund to be a Complying Self Managed Superannuation Fund under the Relevant Law are deemed to be included in the Deed and the Rules as if every such provision was set out in the Deed and the Rules but only for so long as that deemed inclusion is necessary for the Fund to be a Complying Self Managed Superannuation Fund under the Relevant Law.

**21. General**

**21.1 Failure to enforce rights**

The failure or omission of the Trustee to enforce or require strict compliance with a provision of the Deed or the Rules does not affect or impair the Trustee's right to subsequently enforce or require strict compliance with that provision or to avail itself of any remedies it may have in respect of any breach of that provision.

**21.2 Preservation of rights**

All rights given to a Member under the Deed or the Rules are cumulative of each other and in addition to and do not abrogate, limit or reduce any other rights that beneficiary may have at law, under any other agreement, or otherwise.

**21.3 Further assurance**

The Trustee must promptly execute all documents and do all things to effect, perfect or complete the Deed and all transactions incidental to it.

**21.4 Governing law**

The Deed and Rules are governed by the laws of the State or Territory nominated in the Deed and the Commonwealth of Australia but if no laws of a State or Territory is nominated in the Deed shall be the laws of the State or Territory nominated by the Trustee by resolution or deed. The Trustee may at any time by resolution or deed nominate that the laws of a different State or Territory will apply.

**21.5 Severance**

Subject to **Rule 17.4**, a provision of the Deed or the Rules that is invalid or unenforceable must be severed. All other provisions of the Deed and the Rules continue to be valid and enforceable in accordance with their terms.