

**SUPERANNUATION FUND  
TRUST DEED**

**Balmer  
Superannuation Fund**

Date of Deed: 13<sup>th</sup> June 2006

Our ref: 1856:61621



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SR health of <b>South Australia</b> <b>6/06</b>

THIS DEED is made on **13<sup>th</sup> June 2006**

BY: **RUSSELL BALMER** and **ANN PATRICIA BALMER**  
 Park, South Australia 5091 ('Trustee')

**RECITALS:**

- A The Trustee established the Balmer Superannuation Fund ('Fund') on the date shown above, in accordance with the 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 the Deed (incorporating the attached rules in Part A and Forms in Part B).
- 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 Dependents 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 the Deed.
- 2. The Trustee confirms that it will act as the initial Trustee of the Fund in accordance with the Deed.
- 3. The Deed shall be varied in accordance with rule 25. The Deed shall be subject to the definitions in rule 28.
- 4. The Deed shall be construed in accordance with the laws of the state or territory in which the Trustee resides 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 individual with the largest total Account balance resides.
- 5. The recitals form an operative part of the Deed.

**EXECUTED** as a deed.

SIGNED SEALED AND DELIVERED by )  
**RUSSELL BALMER** in the presence of the )  
 following witness: )  
*Russell Balmer* )  
*Ann Patricia Balmer* )

SIGNED SEALED AND DELIVERED by ANN )  
**PATRICIA BALMER** in the presence of the )  
 following witness: )  
*Ann Patricia Balmer* )

*Ann Patricia Balmer*



## Rule

## PART A — RULES

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## PART B — FORMS

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

This documentation has been prepared by DBA Butler Pty Ltd, Lawyers ('DBA') on its instructions contained in the order form. DBA provides no advice to the parties establishing the Fund or the person ordering 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 breach, expert advice should be obtained wherever in doubt. 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.

## FUND PURPOSE

1.
  - 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.
2.
  - 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 the provisions of this Deed 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 rules 8.3(e), 8.3(f) and 8.5, 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 shall be applied to provide funds for any amount which becomes payable in respect of a particular Member.
  - 2.3. Every outgoing Trustee, including a Trustee whose departure gives rise to a vacancy in the office of Trustee as contemplated in rule 4.6(a), shall use its best endeavours at the request of an incoming Trustee to assist an incoming Trustee to own and to gain control of the Fund.

## IMPLIED STANDARDS

3.
  - 3.1. This rule 3 shall have a paramount effect to ensure that this Deed and the Fund complies with the Standards. To the extent that the Standards:
    - (a) empower the Trustee to do something that the Trustee would not otherwise have power to do;
    - (b) require compliance by the Trustee with the minimum requirements of the Standards; or
    - (c) impose a less onerous requirement than this Deed;

- those provisions shall, having regard to the Fund's status at the relevant time (eg, as an SMSF, a Small APRA Fund or any other type of fund), be implied as part of this Deed and to the extent of any inconsistency prevail over the express provisions of this Deed.
- 3.2. If rule 3.1 no longer requires a provision referred to in rule 3.1 to override the provisions of this Deed, then that provision shall cease to have effect.
- 3.3. The Trustee is not to be taken to be in breach of this Deed if the Trustee is in breach of a provision implied by rule 3.1 if the contravention of the Standards is waived or is not enforced by the Regulator or any competent jurisdiction.
- 3.4. Despite rule 3.1 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 3 shall not be so implied.
- 3.5. Rule 3.1 shall apply on a prospective basis from the date of commencement of this Deed 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.

## **TRUSTEE**

- 4.
- 4.1. **Trustee**
- The Fund shall be vested in the Trustee and the Trustee shall hold the Fund assets subject to the provisions of this Deed. The Trustee shall, subject to the Standards, be such individuals, Corporate Trustee, Approved Trustee, Acting Trustee or other person or company permitted or required to act as a trustee of the Fund from time to time.

### 4.2. **Decisions — Individual Trustees**

If the Trustee comprises:

- (a) no more than two individuals, trustee decisions shall require unanimous approval;  
or
- (b) more than two individuals, trustee decisions shall require majority approval;  
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 unless the Standards prescribe otherwise.

### 4.3. **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 by resolution approve including any electronic means, and a resolution passed by such a conference or communication method shall, notwithstanding that the Trustees are not present together in the same place at the same time, be deemed to have been passed at a Trustees' meeting held on the day on which and the time at which the conference or communication was last held;
- (b) if there is any interruption to a conference of Trustees using any of the means set out in rule 4.3(a), 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) minutes of any conference or Trustees' meeting may be confirmed by facsimile, email or by such other means as the Trustees by resolution approve; and
- (d) if all the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees in the terms set out in the document, a resolution in those terms shall be taken to have been passed at a Trustees' meeting held at the time at which the document was signed by the last Trustee required to sign that document.

#### 4.4. Decisions and Meetings — Corporate Trustees

Where the Trustee comprises a Corporate Trustee, Trustee decisions and meetings shall be in accordance with the articles of association, constitution or governing rules of the Corporate Trustee unless the Standards prescribe otherwise.

#### 4.5. Appointment

- (a) 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 or written resolution, appoint a Trustee who is not a Disqualified Person and who has consented to that appointment in writing. Subject to rule 4.5(c), the LPR of a deceased Member or a Member under a legal disability may exercise the decision making in relation to the appointment of a Trustee, which may include the LPR.

- (b) A Member who is an individual Trustee may, by deed or other written instrument, nominate an LPR to act as a Trustee ('**Successor Trustee**') in the event of the Trustee's death or the Trustee coming under a legal disability. This nomination is subject to the LPR consenting in writing to the appointment (whether at the time of nomination or appointment) as Successor Trustee, and the appointment is effective up to the first of the following event occurs:

- (i) the Successor Trustee resigns by giving written notice to the other trustees;
- (ii) Benefits in respect of the Member commence to be payable in the event of the Member's death; or
- (iii) the Member ceases to be under a legal disability.

Any Successor Trustee shall have the same voting rights as the Member would have otherwise had as Trustee or Member, as the case may be.

- (c) Subject to the Standards and the Trustee's discretion to determine otherwise, during any period that the Fund is an SMSF (including any period that it can continue to be recognised as such a fund despite any permissible breach of the rules relating to the definition of an SMSF) each individual trustee or each director of a Corporate Trustee shall:

- (i) satisfy any eligibility criteria prescribed by the Standards; or
- (ii) satisfy such alternative test that is permitted by the Standards covering such situations as:
  - (1) single Member SMSFs;
  - (2) if a Member has died;
  - (3) if a Member is a minor, a parent or guardian can represent the Member;



- (4) if a Member suffers from a legal disability (including a person under a legal disability due to age); or
- (5) if a Member has appointed an LPR under an enduring power of attorney or other instrument or legal authority recognised by the Standards; or
- (iii) 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 (including any period during which it can continue to be recognised as such a fund despite any permissible breach of the rules relating to a Small APRA Fund) the Trustee shall:
  - (i) be an Approved Trustee 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 (including any period during which it can continue to be recognised as such a fund despite any permissible breach of the rules relating to that relevant type of Fund) the Trustee shall satisfy such of the requirements prescribed by the Standards or the Regulator in relation to the Trustee and the decision making of the Trustee.
- (f) Subject to the Standards, the Regulator may appoint an Acting Trustee on such terms and conditions as the Regulator may specify.

#### 4.6. Vacancy

Subject to the Standards, the office of a Trustee shall:

- (a) become vacant if:
  - (i) the Trustee resigns as trustee by executing a deed or written resolution or in some other manner authorised by the Standards;
  - (ii) 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;
  - (iii) 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 or written resolution, remove an individual trustee, Corporate Trustee or Approved Trustee as the case may be, from office;
  - (iv) if 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); or
  - (v) if the Fund is a Small APRA Fund, the Approved Trustee 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; and
- (b) if necessary to comply with the Standards, be filled as soon as practicable on any vacancy.

**4.7. Trustee Remuneration**

Subject to rule 6 and the Standards:

- (a) the Trustee shall not be entitled to receive remuneration from the Fund for its services unless remuneration is permitted under the Standards;
- (b) subject to rule 4.7(a), any trustee engaged in any profession or business may, notwithstanding their office of Trustee, 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
- (c) subject to rule 4.7(a), a 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 and an Approved Trustee or acting trustee shall be entitled to its normal fees, charges and commissions including any amounts authorised by legislation.

**TRUSTEE'S DUTIES**

**5. 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 Members;
- (d) keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that is held by the Trustee personally;
  - (ii) that is money or assets of an employer or an associate; or
  - (iii) that is 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 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) 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, where necessary under the Standards, a derivatives risk statement and related documentation is prepared and complied with.

### **TRUSTEE'S INDEMNITY**

#### **6.**

- 6.1. 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 loss was caused by the Trustee's own fraud or dishonesty;
  - (b) suffered as a result of relying on any professional advice or assistance provided the Trustee was acting in good faith;
  - (c) suffered as a result of the delegation in good faith of any function, 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 this Deed; or
  - (e) suffered by the Fund or any Member as a result of:
    - (i) no or insufficient or inadequate insurance being effected by the Trustee, whether the loss was foreseeable or not; or
    - (ii) an insurer failing to pay out on an insurance policy, in whole or in part, 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.
- 6.2. 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; and
  - (b) have a lien on and may use the assets of the Fund to satisfy this indemnity unless prohibited by regulation 13.13 or 13.14 or Part 5 of the SISR or otherwise by the Standards.
- 6.3. 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 shall be met by the Fund.

## INVESTMENT

7.

7.1. Subject to rules 2 and 5 and the Standards, the Trustee 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:

- (a) any investment taken to be prudent under Trustee Law;
  - (b) any mortgage or other security on freehold or leasehold 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;
  - (c) on deposit or on loan, with or without security, at such rate of interest and upon such terms as the Trustee may consider reasonable;
  - (d) the purchase or acquisition of any real or personal property and in particular (but not limited to) any chattels, machinery, plant, stock-in-trade, patents, trade marks, registered designs and copyrights or any interest in them;
  - (e) the giving or taking of leases, licences or options over real or personal property or any interest in respect of them;
  - (f) the discounting of loans, mortgages, contracts, hire purchase agreements or leases;
  - (g) 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, or other like security or arrangement in or in respect of a company, other entity, asset or risk, whether listed or unlisted and whether it is fully or partly paid up and whether secured or unsecured, registered or unregistered;
  - (h) 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;
  - (i) in financial instruments and the Trustee may draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument;
  - (j) 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;
  - (k) the purchase or acquisition of or subscription for any unit or sub-unit in any unit 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 contingent or reserve liability;
  - (l) any business (including a business of primary production) 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; or
  - (m) any other investments which are acceptable under the Standards.
- 7.2. The Trustee shall not be empowered or authorised to:

- (a) make loans to a Member or a relative of a Member;
- (b) borrow money on behalf of the Fund;
- (c) acquire assets, including any insurance policy, from a Member, a related party or a related trust; or

- (d) make loans, Leases or investments to or in an Employer, Member, a related party or a related trust;
- unless authorised by the Standards and only to the extent (if any) allowed by the Standards.

## **POWERS**

### **8.**

- 8.1. 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 the provisions of this Deed, the Trustee shall have an absolute and uncontrolled discretion to exercise or refrain from exercising all powers, authorities and discretions.

- 8.2. Unless otherwise required under this Deed or under the Standards, the Trustee is not obliged to give reasons for its actions or omissions.

- 8.3. The Trustee has the power, having regard to the Fund's status at the relevant time (eg, as an SMSF, a Small APRA Fund or any other type of fund), to do anything that a trustee of a superannuation fund can do under the Standards and at law including the power to:

- (a) settle, compromise, commence, carry on or defend proceedings or submit to arbitration any claims, matters or things relating to the provisions of this Deed or the rights of any Member;
- (b) 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;
- (c) pay all Disbursements;
- (d) sell, vary, improve, renovate or repair any investment and may exchange any investment for another investment;
- (e) acquire and maintain any specific assets or money for the purposes of paying any Benefit and acquire and deal with any insurance, annuities or similar arrangements for any Member;
- (f) establish any sub-fund or class of membership within the Fund with separately identifiable assets, Members and liabilities with such Members only having an interest in that part;
- (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 rule 7.2, lend money and to provide similar financial assistance and to secure the repayment of it in any manner and upon such terms and conditions,

- (k) including with or without security or with or without interest, as the Trustee determines;
  - (k) subject to rule 7.2, borrow money and obtain similar financial assistance to pay Benefits or to settle Securities or for any other purposes permitted 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 or liabilities of the Fund with any insurance company, mortgage insurance company, re-insurance company, any other entity willing to accept or underwrite the risk or other fund 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 Trustee or the Fund to be registered or recognised in any country or place outside the jurisdiction of its place of incorporation or establishment, as the case may be;
  - (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; or
  - (q) 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.
- 8.4. The Trustee may exercise any of its powers or rights even if the Trustee is an Employer or a Member, an associate of an Employer or a Member, a related party or related trust or has a direct or personal interest in or benefit in the exercise of the power or right provided that the power or right is exercised in good faith and is in accordance with the Standards.

- 8.5. The Trustee may:
- (a) take or 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 entitlement in the Fund or in the Benefits as the Trustee thinks fit; and
  - (b) 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 taking or application 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 ascertained.

- 8.6. The Trustee may:
- (a) take out and maintain insurance over risks and liabilities in respect of the Fund including insurance:
    - (i) on the lives, disability and working capacity of Members;
    - (ii) in respect of the Fund's assets or trustee liabilities; and
    - (iii) in order to provide Benefits to Members and on their death to their Dependents or LPR;

- (b) transfer any insurance policy, annuity contract or other similar entitlement in the Fund to a Member in respect of any Benefit entitlement under the provisions of this Deed 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 the Fund unless otherwise agreed between interested parties.
- 8.7. The Trustee may withhold Tax from any benefit, contributions, earnings, gains, assets 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.
- 8.8. 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.
- 8.9. Subject to the Standards and this Deed, 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 or transfer.
- 8.10. Subject to the Standards, the Trustee may delegate any functions, duties, discretions or obligations to any person, entity, custodian or organisation by power of attorney, resolution or otherwise for any purposes and with any powers, 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.
- 8.11. Subject to the Standards, the Trustee shall comply with orders, agreements or arrangements (whether formal or informal) including:
- (a) splitting orders;
  - (b) Payment Splits;
  - (c) flagging orders;
  - (d) superannuation agreements;
  - (e) binding financial agreements;
  - (f) flag-lifting agreements; and
  - (g) similar orders or agreements, made pursuant to the Family Law Act, any such equivalent legislation for de facto relationships, or any such equivalent law in a recognised foreign jurisdiction.
- 8.12. Subject to rule 9.3 and the Standards, the Trustee shall:
- (a) adjust such Accounts, flag or split any amount or share of a Member's interest in the Fund;
  - (b) give effect to a Payment Split;
  - (c) admit as a Member a spouse of an existing Member (including a Non-Member Spouse);
  - (d) transfer a Member to another Approved Fund;
  - (e) prepare and send such notifications; and
  - (f) do or refrain from doing any other such thing as is necessary in order to comply with such orders, agreements or arrangements made pursuant to the Family Law

Act, any such equivalent legislation for de facto relationships, or any such equivalent law in a recognised foreign jurisdiction, and the Trustee shall, subject to the Standards, be entitled to charge reasonable fees and charges for such acts, matters and things.

- 8.13. 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 discretion, is frivolous, vexatious, fanciful or of little or no substance, even if the matter does not involve any legal action or third party, the Trustee can recover any expense or cost in relation to the administration, dispute resolution or any dealing in relation to that Member from their Account or 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.

- 8.14. If the terms and conditions of a Benefit provided by this Fund are not expressly prescribed in this Deed 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.

- 8.15. 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.

## MEMBERSHIP

9. **9.1. Eligibility**  
Subject to rules 1.3, 4 and 9.2 and the Standards, the Trustee may admit any one or more of the following applicants to Membership:

- (a) a child under 18 years or someone who does not have legal capacity;
- (b) a person under 65 years of age, including a person who is or who is not Gainfully Employed;
- (c) a person 65 years of age or older, where the Trustee will be able to retain all of the Member's Benefits within the Fund under the Standards upon admission into Membership;
- (d) an Eligible Spouse;
- (e) subject to rule 9.3, 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;
- (f) subject to rule 9.4, a Spouse who is entitled to contributions-splitting; or
- (g) any other person authorised under the Standards.

**9.2. Requirements for Membership**

The Trustee shall only admit an applicant for Membership:

- (a)
  - (i) if, subject to rule 9.6, the applicant has provided an Application for Membership Form to the Trustee; and
  - (ii) if the Fund is an SMSF, the applicant or, if relevant, someone else on the applicant's behalf, is not a Disqualified Person and they intend to be appointed as Trustee or director of a Corporate Trustee, as the case may be, of the Fund; or



(b) if the applicant, anyone to be appointed under rule 9.2(a) and the Fund satisfy such other requirements as are prescribed by the Standards or the Regulator.

**9.3. Family Law – New Interests**

Despite any other provision of this Deed 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.

**9.4. Spouse Contributions-Splitting**

Despite any other provision of this Deed, 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.

**9.5. Evidence**

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

**9.6. Discretion without formal application**

The Trustee may admit a person as a Member even though they have not completed a formal application or complied with rules 9.2 and 9.5.

**9.7. Conditional admission**

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

**9.8. 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) when the Trustee determines that they have been paid all of their Benefit from the Fund;
- (b) in relation to that Member's death; when the Trustee determines that all of the deceased Member's Benefit has been paid or otherwise applied by the Fund towards the Beneficiaries of the deceased Member;
- (c) when the Trustee determines that their continued membership may cause the Fund to become another type of fund with more onerous requirements including a public offer superannuation fund;
- (d) when the Trustee requires that a Member cease their membership of the Fund to comply with the Standards;
- (e) when the Trustee determines that a Member or Beneficiary who is entitled to a Pension is no longer required to be recognised as a Member of the Fund;
- (f) when the Member is required to cease their membership of the Fund to comply with the Family Law Act or an agreement made pursuant to that Act;
- (g) if the Standards require cessation of membership, then at such time that the Standards require; or
- (h) when the Trustee shall otherwise reasonably determine.

**9.9. Notification to Trustee**

A Member shall notify the Trustee when:

- (a) they reach age 65, where the Member is not Gainfully Employed to at least a Part-Time Equivalent Level;
- (b) they cease to be Gainfully Employed to at least a Part-time Equivalent Level, where the Member has attained age 65;
- (c) they reach age 75; or
- (d) the Member considers that another compulsory condition of release under the Standards has been satisfied.

**9.10. Members bound by Deed**

Members shall be bound by the provisions of this Deed even though they have not read or obtained a copy of same upon becoming a Member of the Fund.

**CONTRIBUTIONS**

**10.**

**10.1.** The Trustee may accept contributions to the Fund of:

- (a) money;
  - (b) securities listed on a prescribed stock exchange in Australia or elsewhere that are authorised by the Standards, subject to rule 7.2(c); or
  - (c) other assets subject to rule 7.2(c);
- in respect of one or more Members by an Eligible Contributor only if the contributions are permitted under the Standards, but is under no obligation to do so.

**10.2.** 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.

**10.3.** Contributions by an Eligible Contributor shall only be made to the Fund in amounts and at times acceptable to the Trustee.

**10.4.** The Trustee is authorised:

- (a) to reject any amount, in full or in part, tendered as a contribution to the Fund and, to return to the contributor, the whole or any part of the contribution, as the case may be, which, in the Trustee's opinion, could prejudice the Fund's ability to comply with the Standards, including any contribution which exceeds the relevant maximum deductible contribution limit applicable to the Member as prescribed in respect of the relevant Financial Year by the Standards or for any other reason without being bound to give any reason for its rejection; and
- (b) to request information or documentary evidence to ensure the contributor is eligible to contribute to the Fund if the information provided in the application for membership of a Member is, in the Trustee's opinion, insufficient for these purposes.

- 10.5. Contributions shall be rejected by the Trustee if:
- (a) the Trustee considers the contributions may cause the Fund to become another type of fund with more onerous requirements including a Defined Benefit Fund or public offer superannuation fund; or
  - (b) they would result in a breach of the Standards.
- 10.6. Subject to the Standards, the Trustee may hold rejected contributions and other amounts which do not form part of the Fund as a bare trustee for the contributor or the person otherwise entitled to the amounts.
- 10.7. Subject to the Standards, the Trustee may accept contributions made in respect of a Member who has not reached 65 years of age.
- 10.8. 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 not yet reached 70 years and the Member has been Gainfully Employed on at least a Part-Time Basis in respect of the Financial Year the Trustee accepts those contributions;
  - (c) the Member has reached 70 years and the Member is Gainfully Employed on at least a Part-Time Basis and the contributions are made by the Member; or
  - (d) it is otherwise permitted by the Standards.
- 10.9. 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 permissible under the Standards.

## **BENEFITS**

### **11.**

#### **11.1. Benefit election**

Subject to rule 11.4, if a Member becomes entitled to 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 Non-Commutable 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 this Deed 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 total sum of balances of the Member's Accounts.

**11.2. Requirements of election**

Unless the Trustee determines otherwise, an election under rule 11.1 shall be in writing and indicate the desired amount or extent that a Lump Sum, Pension or any other Benefit contemplated in rule 11.1, 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. 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, to whom and under what other terms or conditions the Member would wish the Pension to be subject to.

**11.3. Trustee's discretion**

If a Trustee receives a request to provide a Benefit to a Member, the Trustee shall, subject to the Standards and any Binding Nomination, determine the following:

- (a) whether such Benefit will be provided by the Fund to the Member as requested;
- (b) the amount of the Benefit;
- (c) the timing and frequency of any payment or payments, as the case may be;
- (d) if relevant, the commencement day of the Benefit;
- (e) whether the Benefit is paid out of an Accumulation Account, a Pension Reserve Account, Insurance Proceeds, or any other Account or Benefit allowed or required under the Standards; and
- (f) any other characteristics necessary to provide the Benefit under the Standards; provided that any such determination is subject to any specific requirements that the Benefit be provided in a particular manner or form. Should the Trustee determine that such a Benefit will not be provided, the request by the Member may be disregarded.

**11.4. Mandatory commencement of Benefit**

- (a) If required by the Standards, the Trustee shall pay, commence to pay, transfer or roll-over to an Approved Fund for the purposes of payment, Benefits as soon as is practicable if:
  - (i) the Member reaches 65 years of age and the Member is not Gainfully Employed on at least the Part-Time Equivalent Level; or
  - (ii) the Member had on 30 June 2004 reached 75 years of age and the Member is not Gainfully Employed on a Full-Time Basis; or
  - (iii) the Member has reached 75 years of age, and the Member's 75<sup>th</sup> birthday occurs on or after 1 July 2004; or
  - (iv) as otherwise required by the Standards;and the Benefits are not 'post-65 employer-financed benefits' under the Standards if Mandated Employer Contributions may, in the Trustee's opinion, still be made in respect of the Member.
- (b) If the amount is a 'post-65 employer-financed benefit', the Trustee shall, as and when required by the Standards, pay, commence to pay or transfer to an Approved Fund for the purposes of payment of such Benefit, as soon as is practicable, when Mandated Employer Contributions to the Fund or any other Approved Fund cease to be made, and are not liable to be made, in respect of the Member or as otherwise required by the Standards.
- (c) Upon the death of a Member, if required by the Standards, the Trustee shall pay, commence to pay or transfer to an Approved Fund for the purposes of payment, the deceased Member's Benefit as soon as practicable pursuant to rule 19 and rule 20.

- (d) A Benefit paid under rules 11.4(a), 11.4(b) and 11.4(c) shall be any one or more of the following types:
  - (i) a single Lump Sum;
  - (ii) an interim Lump Sum and a final Lump Sum, both of which shall not exceed the amount ascertained in accordance with the Standards;
  - (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.

**11.5. Preservation of Benefits**

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

- (a) the Benefit is preserved in the Fund; or
- (b) the Benefit is transferred to an Approved Fund; in accordance with the Standards and the Trustee may make all determinations, notifications and elections in relation to the components or amounts of such Benefits and may treat all or part of a Member's Benefit as preserved even though such amount is not required to be preserved by the Standards.

**11.6. 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.

**11.7. Member's debt**

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 Benefit by the Member's outstanding debt.

**11.8. 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.

**11.9. Discharge**

- (a) This rule is subject to rule 11.10.
- (b) The payment of all Benefits to or on behalf of a Member or a transfer to an Approved Fund of all Benefits 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.
- (c) If any Benefit is payable to a person who lacks legal capacity or is a Disqualified Person ('**Recipient**'), the Trustee may, subject to the Standards, pay a Benefit to the Recipient's Beneficiary, parent, guardian, or authorised attorney, or may establish a trust for the Recipient with a suitable trustee ('**Payee**') and pay a benefit to the Recipient's trust. Where such a payment is made to a Payee, it shall be subject to such terms and provisions as the Trustee determines, with associated costs of same being payable out of any Benefit, and:

- (i) if the Payee is a professional person or carrying on a business, the Payee shall be entitled, subject to rule 4.7, 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 at any time for the Recipient's advancement, maintenance, education or general well-being until they are no longer lack legal capacity or are a Disqualified Person; and
- (iii) the receipt by the Payee shall be a complete and final discharge to the Trustee for the application or payment.

**11.10. Overpayment of Benefit**

Despite anything to the contrary in rule 11.9, if an overpayment is made in relation to the payment of any Benefit to or in respect of a Member, the Trustee shall, subject to the Standards:

- (a) reduce the Member's Benefit by the amount of the overpayment;
- (b) recover any amounts overpaid to the Member or any other party that has received the Benefit; or
- (c) undertake any other such measures to rectify the overpayment as the Trustee sees fit.

**11.11. Asset-Test Exempt Pension**

During any period 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 SISAs 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.

## **LUMP SUMS**

**12.**

**12.1. Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 1.1 and rule 11.

**12.2. 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.

**12.3. Death Benefits**

If a Member dies, a Beneficiary is entitled to receive a Lump Sum.

**12.4. Total and Permanent Disablement Benefits**

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

**12.5. Variation**

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

**ALLOCATED PENSIONS**

**13.**

**13.1. Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 11.

**13.2. Regular Benefits**

If a Member:

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

**13.3. Non-Commutable Allocated Pensions**

A Member is entitled to an Allocated Pension upon attaining Preservation Age if the Pension is paid as a Non-Commutable Allocated Pension.

**13.4. Death Benefits**

If a Member dies, a Beneficiary is entitled to receive an Allocated Pension from the Member's Benefit.

**13.5. Total and Permanent Disablement Benefits**

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

**13.6. Commutation and Variation**

Subject to rule 1.1 and the Standards:

- (a) the Trustee may commute 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 may be varied by the Trustee utilising an amount in any other Account to fund such a Pension.

## **MARKET LINKED PENSIONS**

### **14.**

#### **14.1. Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 11.

#### **14.2. Regular Benefits**

If a Member:

- (a) Retires;
  - (b) attains 65 years of age; or
  - (c) is otherwise entitled to a Market Linked Pension in accordance with the Standards;
- the Member is entitled to receive a Market Linked Pension.

#### **14.3. Non-Commutable Pensions**

A Member is entitled to a Market Linked Pension upon attaining Preservation Age if the Market Linked Pension is paid as a Non-Commutable Pension.

#### **14.4. Death Benefits**

If a Member dies, a Beneficiary is entitled to receive a Market Linked Pension from the Member's Benefit.

#### **14.5. Total and Permanent Disablement Benefits**

If a Member becomes Totally and Permanently Disabled, the Member is entitled to receive a Market Linked Pension.

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

Subject to the limitations in rules 1.1 and 28.50(a)(iv) and the Standards:

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

## **LIFE PENSIONS**

### **15.**

#### **15.1. Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 11.

#### **15.2. Regular Benefits**

- (a) If a Member:
  - (i) Retires;



- (ii) attains age 65; or
  - (iii) is otherwise entitled to a Life Pension in accordance with the Standards; and
  - (iv) provision has been made for the payment of a Life Pension in accordance with the Standards;
- the Member is entitled to receive a Life Pension.
- (b) If:
    - (i) a Member terminates Gainful Employment with an Employer; and
    - (ii) the Employer, or an associate of the Employer, has contributed to the Fund in relation to the Member;
- the Member is entitled to a non-commutable Lifetime Pension. This Pension shall be restricted in that it cannot be commuted except if such commutation is allowed under the Standards as govern non-commutable Lifetime Pensions.

**15.3. Non-Commutable Pensions**

A Member is entitled to a Life Pension upon attaining Preservation Age if the Pension is paid as a Non-Commutable Pension.

**15.4. Death Benefits**

If a Member dies, a Beneficiary is entitled to a Life Pension from the Member's Benefit.

**15.5. Total and Permanent Disablement Benefits**

If a Member becomes Totally and Permanently Disabled, the Member is entitled to a Life Pension.

**15.6. Initial default Pension**

The first annual amount of a Life Pension (including a Non-Commutable Pension paid as a Lifetime Pension) paid by the Fund shall be the Lifetime Pension Amount unless the Trustee determines otherwise based on the advice of an Actuary.

**15.7. Commutation and Variation**

Subject to rule 15.2(b) and the Standards, a Life Pension or a Non-Commutable Pension (other than a Market Linked Pension) may be varied or commuted by the Trustee on the advice of an Actuary.

**FLEXI-PENSIONS**

**16.**

**16.1. Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 11.

**16.2. Regular Benefits**

If a Member:

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

the Member is entitled to receive a Flexi-Pension.

**16.3. Death Benefits**

If a Member dies, a Beneficiary is, subject to the Standards, entitled to receive a Flexi-Pension from the Member's Benefit.

**16.4. Total and Permanent Disablement Benefits**

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

**16.5. Commutation and Variation**

Subject to rules 1.1 and 28.33(a)(v)(2) and the Standards:

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

**NON-COMMUTABLE INCOME STREAMS**

**17.**

**17.1. Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 11.

**17.2. Regular Benefits**

If a Member:

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

the Member is entitled to receive a Non-Commutable Income Stream.

**MISCELLANEOUS BENEFITS**

**18.**

**18.1. Trustee discretion**

Applications by Members for Benefits under this rule are subject to rule 11.

**18.2. Other Benefits**

If:

- (a) the Trustee determines that a Member is entitled to a Benefit not otherwise specified in this Deed; and
- (b) the Benefit is permitted under the Standards;

the Trustee may pay such a Benefit to the Member to the extent permitted by the Standards, having regard to rule 8.14.

**18.3. 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 payment of such amount allowed by the SISR.

**18.4. 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 payment allowed by the SISR.

**18.5. 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.

**18.6. Small Balances**

If a Member's Gainful Employment with a standard employer-sponsor of the Fund is terminated and the Member's preserved Benefit 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 11.1.

**DEPENDANTS AND SUCCESSION**

**19.**

Subject to rule 20, the Trustee may on or after the death of a Member in respect of the deceased Member's Benefit:

- (a) make any determination relating to the type, amount and the value of any particular assets or reserves in the Fund that will fund the Benefit and the amount or proportion of different components in any Benefit and whether the Benefit is to be a Lump Sum or a Pension or both, and if a Pension is provided 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, and the Trustee shall:
  - (i) have regard to but shall not be bound by any nomination by the Member; and
  - (ii) pay a Member's Benefit in favour of either or both of the following:
    - (1) the Member's LPR; or
    - (2) one or more of the Member's Dependants (including one or more Preferred Dependants);
- provided that if the Trustee has not, after making reasonable enquiries, found either an LPR, or a Dependant of the Member, pay the Member's Benefit to an individual selected by the Trustee; or
- (iii) pay a Member's Benefit in favour of such other person (including any company, association or body) as the Standards or the Regulator permits; or

- (b) deal with the Benefit either:
  - (i) in accordance with rule 23.7 to the extent required by the Standards; or
  - (ii) by cancelling the Benefit and crediting the value of it to the Accumulation Reserve Account in accordance with rule 22.11 to the extent permitted by the Standards;if rule 19 or rule 20 does not apply.

## **BINDING NOMINATIONS**

### **20.**

#### **20.1. Establishment of Binding Nominations**

A Member may, prior to their death, provide the Trustee with a Binding Nomination. The Member may specify in such Binding Nomination:

- (a) that all or a specified part, proportion or amount of their Benefit is to be paid on their death to one or more of that Member's Dependants or LPR, to the exclusion of any other Dependant or LPR;
- (b) the proportion of the Member's Benefit or the value or particular assets, accounts or reserves in the Fund that will fund the Benefit payable to the persons in rule 20.1(a);
- (c) whether the amount is to be paid to each person in rule 20.1(a) as a Lump Sum or as a Pension and, if a Pension is provided, the type of Pension, whether it is commutable or not and whether it is reversionary or not; and
- (d) any matter, other than what is covered in rules 20.1(a) to 20.1(c), to which the Trustee may consent.

#### **20.2. Requirements for Binding Nominations**

A Binding Nomination 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 or LPR in the Binding Nomination; and
- (c) contain a declaration signed and dated by both the witnesses stating that the Binding Nomination was signed by the Member in their presence.

#### **20.3. Binding Nomination shall bind Trustee**

Subject to rule 20.6, the Trustee shall be bound, on or after the death of a Member, to comply with the instructions set out in a valid Binding Nomination (or a copy thereof) that has been received by the Trustee from that Member.

#### **20.4. Revocation of Binding Nominations**

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

- (a) preparing a new Binding Nomination and providing it to the Trustee, and this shall have the effect of revoking in its entirety and rendering completely inoperative any prior dated Binding Nomination of that Member; or
- (b) notifying the Trustee in writing that the Member revokes their Binding Nomination, and this shall have the effect of revoking in its entirety and rendering completely inoperative any prior dated Binding Nomination of that Member.

**20.5. Self Managed Superannuation Funds**

If the Fund is an SMSF, a Binding Nomination shall, subject to any terms and conditions contained in the Binding Nomination which may otherwise render it void or inoperative, continue in full force and effect until it is revoked in accordance with rule 20.4, regardless of the time period that has elapsed since the execution date of that Binding Nomination and despite the maximum duration of three years being specified in regulation 6.17A(7) of the SISR (which is applicable to Binding Nominations in relation to superannuation funds that are not SMSFs).

**20.6. Binding Nominations subject to the Standards**

The Trustee shall not be bound to comply with a Binding Nomination to the extent that to do so would:

- (a) result in a breach of the Standards that would cause the Trustee or the Fund to suffer a penalty or commit an offence; or
- (b) result in a Member's Benefit or any part thereof being paid to a person who is, in the Trustee's reasonable opinion, neither a Dependant nor an LPR of that Member; and such Binding Nomination will be rendered invalid to the extent that it causes such penalty or offence, or results in a Member's Benefit being paid to a person who is neither a Dependant nor the LPR of that Member, as the case may be.

**VESTING AND MEMBERSHIP CLASSES**

**21.**

21.1. Subject to the rule 21.3 and the Standards, no Benefit in respect of a Member 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 Benefit in the Fund (or attempting to do so); or
- (c) the Member's Benefit 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 clause 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.

21.2. 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 benefits; and the Trustee may continue to apply such provisions in respect of any Member or class of Members.

21.3. Rule 21.1 shall not apply to any Benefit that has already vested in a Member or that constitutes a Minimum Benefit.

## ACCOUNTS

22.

22.1. **Trustee to keep**

The Trustee shall keep the Accounts and ensure these are properly maintained.

22.2. **Financial Statements**

The Trustee shall cause a profit and loss Account and any other required financial statements to be prepared as soon as practicable after the end of each Financial Year and at any other times if necessary.

22.3. **Provisions**

(a) The Trustee may make provision or adjustment in the Accounts for all Disbursements, liabilities, Taxes, tax credits, rebates, offsets, depreciation, amortisation or revaluations as the Trustee considers appropriate.

(b) The Trustee may alter, exchange and segregate current pension assets from non-current pension assets and deal with the Fund as different sub-funds, segments or partitions and account for same in accordance with this Deed.

(c) The Trustee may adjust a Member's Benefit or any Account in the Fund for any Taxes, tax credits, tax deductions, rebates, offsets or other entitlements in relation to a Member including, without limitation, any deduction entitlements under sections 279B and 279D of the ITAA 1936 in respect of the death or disablement of a Member. The Trustee may make any estimate or adjustment it deems appropriate in valuing any such amount.

22.4. **Earnings**

(a) Earnings may be credited or debited to any Account provided that:

(i) the credits shall not total an amount greater than Earnings in a period as ascertained in the Accounts; and

(ii) the debits shall not total an amount greater than Earnings in the event Earnings are negative unless the Trustee determines otherwise.

(b) The Trustee shall have regard to, amongst other things:

(i) the Standards;

(ii) the amount in each Account, including any reserves;

(iii) any assets held in respect of a Member or class of Membership under rules 8.3(e), 8.3(f) and 8.5 and any income earned from those assets;

(iv) length of membership;

(v) investment strategies;

(vi) any professional or expert advice; and

(vii) the exchange and segregation of the assets of the Fund, if any, as assets set aside to meet pension liabilities of the Fund or for other purposes of the Fund and the extent to which Earnings are attributable to those assets; in the exercise of its discretion in determining allocations of Earnings to each Account under this rule.

- (c) If upon the expiry of 12 months after the end of a relevant Financial Year there are Earnings remaining to be allocated by the Trustee, the Trustee shall allocate such Earnings to each Account in the Fund. The allocation to an Account shall be a pro-rata allocation, based on the balance in the relevant Account compared to the total value of the Fund less the value of all unallocated Earnings.
- (d) Earnings may be debited or credited, as the case may require, in respect of each Financial Year or in respect of such other period as the Trustee determines.
- (e) The Trustee may make a reasonable estimate in crediting or debiting any Earnings, as the case may be, before final Accounts or financial statements are available to the Trustee after the end of a Financial Year.
- (f) A Member may notify the Trustee if they are already in excess of their applicable RBL or if the crediting or application of Earnings in respect of that Member would result in them exceeding their applicable RBL. Subject to the Standards the Trustee may elect to not credit or apply any further Earnings to or in respect of such Member unless that Member withdraws their prior notification.

#### 22.5. Reserves

- The Trustee may establish and maintain in its own name or otherwise under its control and subject to such rules and procedures as it may specify from time to time the following Accounts:
- (a) an Accumulation Reserve Account which may receive credits in the circumstances outlined in rule 22.11;
  - (b) such reserve Accounts or liability Accounts as may assist the Trustee to identify the value of assets that may have been 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
  - (c) such other Accounts, including a Pension Reserve Account and such other reserves as the Trustee considers appropriate from time to time including, without limitation, one or more miscellaneous and investment reserve accounts.

#### 22.6. Calculations relating to pension liabilities

In:

- (a) determining income earned from assets under this rule;
  - (b) attributing Earnings to assets set aside to meet pension liabilities of the Fund or for other purposes of the Fund for the purposes of this rule; or
  - (c) identifying values to be credited to Accounts set up in accordance with this rule;
- the Trustee may determine that any debit or credit to an Account or other adjustment that impacts on the Accounts, Disbursements or financial position of the Fund is to be included or excluded, as the case may be, in the absolute discretion of the Trustee, from such determination, attribution or identification and the Trustee shall not be bound to either explain or give reasons for its determination, attribution or identification unless required to do so by the Standards.

#### 22.7. Pension Reserve Account

The Trustee may credit a Pension Reserve Account with:

- (a) contributions (if any) by or on behalf of a Member to the Fund, including any contribution that exceeds the relevant Member's maximum contribution limit as prescribed in any Financial Year by the Standards;
- (b) sums received and held in accordance with rule 23.1;
- (c) allocations of Earnings;

- (d) allocations which may be made from time to time in the Trustee's absolute discretion from the Accumulation Reserve Account or such other account or reserves as the Trustee determines;
  - (e) Insurance Proceeds received in respect of a Member;
  - (f) such other amounts as may, in the opinion of the Trustee, be properly credited to the Pension Reserve Account in respect of a Member; and
  - (g) subject to the Standards, any credit to a Member's Accumulation Account or any credit to the Accumulation Reserve Account or any other account or reserve that can be transferred to the credit of the Pension Reserve Account in accordance with the Standards if a Life Pension or other Pension is to be paid to the Member and the Trustee determines that an anticipated Member's Life Pension or other Pension requires further funding;
- and the Trustee may debit this Account to pay or provide for any amounts that, in the opinion of the Trustee, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts provided that the payment or provision is in accordance with Standards.

**22.8. Members' Accounts**

The Trustee may establish and maintain in the name of each Member:

- (a) an Accumulation Account to which, unless the Trustee determines otherwise, shall be credited:
  - (i) contributions (if any) by or on behalf of the Member to the Fund including any contribution which exceeds the relevant Member's maximum contribution limit as prescribed in any Financial Year by the Standards;
  - (ii) sums received and held in accordance with rule 23.1;
  - (iii) allocations of Earnings;
  - (iv) allocations which may be made from time to time in the Trustee's absolute discretion from the Accumulation Reserve Account or such other account or reserves as the Trustee determines; and
  - (v) such other amounts as may in the opinion of the Trustee properly be credited to the Member's Account(s) in respect of the Member;provided that the amounts have not already been credited to the Pension Reserve Account in accordance with rule 22.7; and
- (b) such other Accounts as the Trustee considers appropriate from time to time; and the Trustee may debit these Accounts to pay or provide for any amounts that, in the opinion of the Trustee, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts provided that the payment or provision is in accordance with the Standards including the Standards that apply to small account balances.

**22.9. Treatment of asset contributions**

If a specific asset is contributed by or in respect of a Member, the value of the asset shall be credited to the Member's Accumulation Account or such other Account as the Trustee determines subject to rule 2.2.

**22.10. Members' credit Accounts**

Subject to the Standards, the Trustee may open a Member's credit Account on a temporary basis if a Member has become absolutely entitled to a Benefit but the Benefit has not been



paid or applied to the Member such as in circumstances contemplated under rule 11.3 or otherwise. Unless the Trustee otherwise determines, once a Member has become absolutely entitled to a Benefit then it may no longer be posted to the Member's Accumulation Account or Accumulation Reserve Account.

#### 22.11. Credits to Accumulation Reserve Account

Any Account of a Member established and maintained in accordance with rule 22.8 or the Insurance Proceeds in respect of a Member may be reduced with the amount of the reduction then credited to the Accumulation Reserve Account in the Trustee's absolute discretion including in circumstances if:

- (a) the Trustee considers that it is in the interests of the Members that the credit should take place;
  - (b) a Benefit is paid to a Member or is otherwise satisfied in full and any residual balance (which does not form part of the Benefit) remains in the Member's Accumulation Account;
  - (c) the amount is subject to rule 19(b)(ii); or
  - (d) the amount is subject to rule 21.1;
- provided that the reduction concerned does not form a Minimum Benefit or contravene the Standards.

#### 22.12. Other Accounts

The Trustee may credit other Accounts, including reserve accounts with:

- (a) contributions (if any) by or on behalf of a Member to the Fund including any contribution which exceeds the relevant Member's maximum contribution limit as prescribed in any Financial Year by the Standards;
  - (b) sums received and held in accordance with rule 23.1;
  - (c) allocations of Earnings;
  - (d) allocations which may be made from time to time in the Trustee's absolute discretion from the Accumulation Reserve Account or such other account or reserves as the Trustee determines;
  - (e) Insurance Proceeds received in respect of a Member; and
  - (f) such other amounts as may in the opinion of the Trustee properly be credited to the relevant Account in respect of a Member;
- and the Trustee may debit this Account to pay or provide for any amounts that, in the opinion of the Trustee, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts, including any payment to an Employer of a Member, provided that the payment or provision is in accordance with the Standards.

### **TRANSFERS, ROLL-OVERS AND INTERNAL ROLL-OVERS**

#### 23.

##### 23.1. Transfers and Roll-Overs into the Fund

Subject to the Standards, the Trustee may, upon the written request of an Eligible Contributor or, if the Trustee otherwise determines, allow a transfer, allocation, allotment or roll-over (including an internal roll-over amount or the commutation or roll-over of a Pension) ('Asset Transfer') to be made in respect of a Member into or within the Fund. An Asset Transfer may be made with money, assets or a deemed amount or value of assets ('Notional Assets')

passing from another Approved Fund, or an Account or Benefit within the Fund, as the case may be.

**23.2. Transfers and Roll-Overs from the Fund**

Subject to the Standards the Trustee may, 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 or within the Fund. An Asset Transfer may be made with Notional Assets passing from another Approved Fund, or an Account or Benefit within the Fund, as the case may be.

**23.3. Recording of Transfers and Roll-Overs to Benefits 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.

**23.4. Spouse Contributions-Splitting**

Subject to rule 9.4, this rule and the Standards the Trustee may, upon receiving a request from a Member, allot all or some of a splittable contribution made in respect of the Member to or in respect of that Member's Spouse.

**23.5. Written Request Requirement**

- (a) A single written request received from a Member is sufficient to enable an Asset Transfer both to and from a Benefit, an Account or an Approved Fund under this rule.
- (b) 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 23.

**23.6. Mandatory Transfers and Roll-Overs**

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.

**23.7. Unclaimed money**

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

**23.8. 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.

**DISCLOSURE, RECORDS AND AUDITORS**

**24.**

**24.1. 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) annual disclosures at the end of each Financial Year (or relevant period) in respect of a Member, the Fund or other person;
- (c) changes to the provisions of this Deed;
- (d) a copy of this Deed which shall be available for inspection by each Member; and
- (e) the information specified by the Standards which 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.

**24.2. 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 10 years; and
- (c) keep a record of the Fund's Accounts, financial statements and returns for a period of at least five years.

**24.3. Auditor**

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

- (a) audit the financial statements and the records of the Fund requiring audit; and
- (b) report in writing to the Trustees; within the time required by the Standards.

**VARIATION**

**25.**

The Trustee may at any time, by deed or written resolution, vary this Deed on a prospective or retrospective basis (including any provisions deemed to be included under rule 3) subject to the following:

- (a) any amendment to this Deed shall continue to ensure that:
  - (i) the Trustee of the Fund is a Corporate Trustee; or
  - (ii) the sole or primary purpose of the Fund is the provision of Old-Age Pensions;
- (b) no amendment shall reduce a Member's Benefit accrued before the date of the amendment unless the Trustee has the written consent of any Member whose Benefit would be reduced or adversely affected; and
- (c) despite rule 25(b), an amendment may reduce a Member's Benefit accrued before the date of the amendment without obtaining the Member's consent if:
  - (i) the reduction in Benefits is required because of, and does not exceed the value of, any additional Tax payable on the Fund's income due to such things as changes in Taxation laws;

- (ii) the reduction is required to enable the Fund to comply with the Standards or the Regulator provides its written approval to the reduction; or
- (iii) the amendment 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.

### **WINDING-UP**

**26.**

26.1. The Trustee shall wind-up and terminate the Fund in the manner provided by this rule when the first of the following events occurs:

- (a) agreement to wind-up the Fund is obtained between all Members and Beneficiaries of any unpaid Benefit within the Fund of any deceased Member;
- (b) the Trustee decides that the continuation of the Fund is not reasonably justified;
- (c) the Fund is required to be wound-up to comply with the Standards; or
- (d) there are no Benefits payable to or in respect of any Member, deceased or otherwise, within the Fund; and the date when the first of the above events occurs, shall be referred to as the Wind-up Date.

26.2.

The Trustee shall close the membership of the Fund on the Wind-up Date and determine the amount or value of assets available, subject to rule 22.8, 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.

26.3.

The Trustee:

- (a) shall roll-over or transfer to an Approved Fund any Benefit of a Member that the Trustee cannot pay to the Member that can be satisfied by the amount determined under rule 26.2 in respect of each Member and any applicable reserve or surplus;
- (b) may make any adjustment to each Member's Benefit 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:
- (d) the Trustee shall not roll-over or transfer a Member's Benefit (or a part of it) if such a payment, roll-over or transfer would be inconsistent with the Standards; and
- (e) the Trustee may maintain any Benefit in respect of a Member after the Fund is wound-up subject to similar trusts as contained in this Deed or roll-over or transfer the Member's Benefit to an Approved Fund until the Member is entitled to be paid their Benefit.

26.4.

Where any amount remains after the winding-up and roll-over or transfer of Benefits (as contemplated in rule 26.3), 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.

26.5.

The Fund shall be administered and the assets distributed or paid upon a winding-up so that the Fund does not infringe the Standards.

26.6.

The payment, roll-over or transfer of a Member's Benefit 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.

## INTERPRETATION

27. In this Deed, unless the context otherwise requires or the Trustee determines otherwise:
- 27.1. 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;
- 27.2. references to any provision of the Deed, law, regulation, temporary modification order, ruling, circular or guideline are references to same as amended, consolidated, supplemented or replaced from time to time;
- 27.3. words importing any one gender include all genders and words importing the singular include the plural and vice versa;
- 27.4. 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 this Deed;
- 27.5. the table of contents and headings shall not be taken into account in the interpretation of this Deed;
- 27.6. if any question or dispute arises in respect of the Fund or in respect of the interpretation of the Deed, the Trustee's decision on the matter shall be final and binding;
- 27.7. 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; and
- 27.8. a reference to a word or term in this Deed, if that word or term has a defined meaning under the Standards but no express meaning in this Deed, has the same meaning as given by the Standards.

## DEFINITIONS

28. The following words shall, unless the Trustee determines otherwise or the context requires otherwise, have the meanings shown below:
- 28.1. **Account** means an account (including any reserve account) in the books of account of the Fund;
- 28.2. **Accumulation Account** means an Account established and maintained under rule 22.8;
- 28.3. **Accumulation Reserve Account** means the Accounts described in rules 22.5 and 22.11;
- 28.4. **Acting Trustee** has the same meaning given to it in the Standards;
- 28.5. **Actuary** means a practising member of the Institute of Actuaries of Australia or any other actuary approved by the Standards;
- 28.6. **Allocated Pension** means a Pension:
- (a)
- (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:

(1) 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

(2) 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 following:

(A) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006 - the respective maximum and minimum limits for the year calculated in accordance with either Schedule 1A or Schedule 1AAB of the SISR; and

(B) for payments made on or after 1 July 2006 – the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB of the SISR; or

(b) that otherwise complies with regulations 1.06(4), 1.06(5) and 1.07A of the SISR and the Standards relating to Allocated Pensions; or

(c) that otherwise complies with such parts of the Standards as govern Allocated Pensions;

28.7. **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;

which, among other things, can accept a transfer, allocation, allotment or roll-over from the Fund of a Member's Benefit or is authorised to transfer, allocate, allot or roll-over a Member's Benefit to or in respect of the Fund in accordance with the Standards;

28.8. **Approved Trustee** has the same meaning as that term is defined in the Standards;

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

28.10. **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;

28.11. **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;

28.12. **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 National Institute of Accountants; or
  - (v) the Association of Taxation and Management Accountants;
- (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;
- 28.13. **Beneficiary** means a Dependant, a trustee for a Dependant, a Member's LPR, a Reversionary Beneficiary or other beneficiary who is entitled to Benefits in respect of a Member's participation in the Fund under rules 19, 20 or otherwise and **Beneficiaries** has a corresponding meaning;
- 28.14. **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 Non-Commutable Income Stream and any other payment under the provisions of this Deed but excludes a Defined Benefit Pension;
- 28.15. **Binding Nomination** means a written direction binding the Trustee as to the payment of all or part of a Benefit on or after the death of a Member that complies with rule 20;
- 28.16. **Commissioner** means the Federal Commissioner of Taxation authorised under the *Taxation Administration Act 1953* (Cth) or any other Commonwealth law;
- 28.17. **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;
- 28.18. **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;
- 28.19. **Deed** means the attached provisions, these rules (including any deemed provision under rule 3) and the Forms, including if relevant any former deed or document governing the establishment and operation of the Fund as amended from time to time;
- 28.20. **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;
- 28.21. **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;
- 28.22. **Defined Benefit Pension** means a pension under section 10 of the SISA, other than:
- (a) a pension Funded by Assurance; or
  - (b) an Allocated Pension; or
  - (c) a Market Linked Pension; or
  - (d) any other pension excluded from the definition of defined benefit pension in Division 9.2B of the SISR;
- 28.23. **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 including any step-child, any ex-nuptial child and any adopted child;
  - (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 Member at or after the time of the Member's death; and
  - (e) any other person who would be regarded as a dependant under the Standards at the relevant date;
- 28.24. **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;
- 28.25. **Disqualified Person** means, subject to the Standards:
- (a) an individual who:
    - (i) has died;
    - (ii) is an insolvent under administration;
    - (iii) has been disqualified by the Regulator;
    - (iv) has at any time been the subject of a civil penalty order made under the Standards; or
    - (v) 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;
- 28.26. **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 positive or negative and may be due to timing or permanent differences or other adjustments and Earnings may also reflect unrealised gains or losses;
- 28.27. **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;
- 28.28. **Eligible Spouse** means the Spouse of whichever of:
- (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;
- 28.29. **Employee** means a person who is Gainfully Employed by an Employer;
- 28.30. **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;
- 28.31. **Family Law Act** means the *Family Law Act 1975* (Cth) and any applicable regulations relating thereto, or unless the Trustee determines otherwise, such equivalent legislation for de facto relationships of any recognised State, Territory or foreign jurisdiction;
- 28.32. **Financial Year** means a fiscal year with a 30 June year end unless the Trustee is permitted to adopt a different Financial Year end by the Standards;
- 28.33. **Flexi-Pension** means a Pension Funded by Assurance:
- (a)
    - (i) that the size of the Pension in a year is fixed, allowing for variation only as specified in this Deed or to allow payments to be made under a Payment Split;

- (ii) that on reversion or commutation, does not have a reversionary component greater than 100% of the Benefit that was payable before the reversion or commutation;
  - (iii) that the Pension cannot be transferred to another person other than to a Reversionary Beneficiary on the death of the Member or of another Reversionary Beneficiary;
  - (iv) that the capital value of the Pension and the income from it, cannot be used as security for a borrowing;
  - (v) that except in relation to payments, by way of commutation, for superannuation contributions surcharge:
    - (1) variation in payment from year to year does not exceed, in any year, the average rate of increase of the CPI in the preceding three years; and
    - (2) the conversion to a Lump Sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under Schedule 1B of the SISR to the Pension as if the commencement day were the day on which the commutation occurs;
  - (vi) that payments in accordance with the contracted size are made at least annually;
  - (vii) that may, subject to the Standards, have a residual capital value; and
  - (viii) that otherwise complies with regulations 1.06(6) and 1.07B of the SISR and the Standards relating to Flexi-Pensions; or
  - (b) that otherwise complies with such parts of the Standards as govern Flexi-Pensions;
- 28.34. **Form** means the appropriate form in Part B of this Deed. However, the Trustee may use or accept any document providing similar information or waive the requirement of requiring a form to be completed;
- 28.35. **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;
- 28.36. **Fund** means the fund governed by this Deed;
- 28.37. **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;
- 28.38. **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;
- 28.39. **Insurance Proceeds** means the proceeds of an insurance policy received by the Fund in respect of a Member as a result of:
  - (a) death;
  - (b) Total and Permanent Disablement;
  - (c) Temporary Incapacity; or
  - (d) any other event;

that is to be used to fund a Benefit (including any Pension Funded by Assurance) or for any other purpose the Trustee considers appropriate;

28.40. **ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth) and any applicable regulations relating thereto;

28.41. **ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth) and any applicable regulations relating thereto;

28.42. **Lease** means a lease arrangement as defined in the SIS(A);

28.43. **Life Expectancy Term** means, in relation to a Market Linked Pension or a Term Pension, either:

(a)

(i) the life expectancy of the Member on the commencement day of the Pension; or

(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; or

(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 28.43(a)(i) and not more than the greater of the following periods:

(1) the maximum period available under rule 28.43(a)(ii);

(2) 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 28.43(a)(i), 28.43(a)(ii) or 28.43(a)(iii):

(1) the life expectancy of the Spouse on the commencement day of the Pension; or

(2) 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

(3) 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 28.43(a)(iv)(1) and not more than the greater of the following periods:

(A) the maximum period available under either rule 28.43(a)(iv)(2); and

(B) 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; or

(b) such other term as permitted or required by the Standards;

28.44. **Life Pension** means a Lifetime Pension or a Tern Pension, as the case may be;

28.45. **Lifetime Pension** means a Pension Funded by Assurance:

- (a)
- (i) that is paid at least annually for the life of a Member and, if there is a Reversionary Beneficiary, for such time as the Pension must be paid to comply with the Standards;
  - (ii) that the size of the Pension in a year is fixed, allowing for variation only:
    - (1) as specified in this Deed;
    - (2) to allow commutation to pay a superannuation contributions surcharge; or
    - (3) to allow an amount to be paid under a Payment Split and reasonable fees in respect of the Payment Split to be charged;
  - (iii) that, if indexed, is indexed in accordance with the SISR;
  - (iv) that does not have a residual capital value;
  - (v) that cannot be commuted except:
    - (1) if the pension is not funded from the commutation of an annuity or a Pension as prescribed by regulation 1.06(2)(e)(i) of the SISR and the commutation is made within six months after the commencement day of the Pension;
    - (2) if the commutation is made to the benefit of a Reversionary Beneficiary on the death of the Member and the death occurs within a period being the lesser of:
      - (A) the life expectancy of the Member in receipt of the Pension as at the commencement day of the Pension, rounded up to the next whole number if the life expectancy is not a whole number; or
      - (B) 20 years;
    - (3) if the Lump Sum resulting from the commutation is transferred directly for the purpose of purchasing another benefit as prescribed by regulation 1.06(2)(e)(iii) of the SISR;
    - (4) to pay a superannuation contributions surcharge; or
    - (5) to give effect to an entitlement of a Non-Member Spouse under a Payment Split;
  - (vi) that on reversion or commutation does not have a reversionary component greater than 100% of the Benefit that was payable before the reversion or the commutation;
  - (vii) that cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Member or of another 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(2), 1.06(3) and 1.07B of the SISR and the Standards relating to Lifetime Pensions; or
- (b) that otherwise complies with such parts of the Standards as govern Lifetime Pensions;

28.46. **Lifetime Pension Amount** means in relation to a Lifetime Pension paid by the Fund, unless the Trustee determines otherwise based on the advice of an Actuary, the Member's share of the Pension Reserve Account divided by the Factor (pro-rated for the number of days the pension is payable in relation to that Financial Year) assuming:

- (a) no Reversionary Pension is to be provided;
- (b) a fixed rate of indexation of no greater than 5% per annum; and
- (c) **Factor** means the present value, as calculated by an Actuary, of a notional Lifetime Pension if the pension payable in the first year of the Pension is one dollar;

28.47. **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 **Legal Personal Representative** has a corresponding meaning;

28.48. **Lump Sum** means a Benefit or any component of it paid otherwise than as a Pension in accordance with this Deed;

28.49. **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;

28.50. **Market Linked Pension** means a Pension:

- (a)
  - (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:

- (1) 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)(A) of the SISR;

- (2) on the death of the Member or Reversionary Beneficiary, by payment of:

- (A) a Lump Sum or a new Pension to one or more dependants of either the Member or Reversionary Beneficiary; or

- (B) a Lump Sum to the LPR of either the Member or Reversionary Beneficiary; or

(C) if, after making reasonable enquiries, the Trustee is unable to find a person mentioned in (A) or (B), a Lump Sum to another individual;

provided that if the Member has opted for a Life Expectancy Term under rule 28.43(a)(iv), the Pension cannot be commuted until the death of both the Member and the Member's Spouse;

(3) 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;

(4) to pay a superannuation contributions surcharge; or

(5) to give effect to an entitlement of a Non-Member Spouse under a Payment Split;

(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:

(1) on the death of the Member, to one of the Dependents of the Member or to the LPR of the Member; or

(2) on the death of the Reversionary Beneficiary, to one of the Dependents 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(8), 1.06(9), 1.06(10) and 1.07C of the SISR and the Standards relating to Market Linked Pensions; or

(b) that otherwise complies with such parts of the Standards as govern Market Linked Pensions;

28.51. **Member** means a person who has been admitted by the Trustee as a member of the Fund in accordance with the provisions of this Deed and, if the Trustee determines, includes a reference to a former Member or a reference to a Beneficiary 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 be entitled to a Benefit or some other interest in the Fund;

28.52. **Minimum Benefit** means the Member's minimum Benefit which is required to be maintained in the Fund or another Approved Fund in accordance with the Standards;

28.53. **Miscellaneous Benefit** means a Benefit arising in the circumstances described in rule 18;

28.54. **Non-Commutatable Allocated Pension** means an Allocated Pension commenced on or after 1 July 2005;

(a)

(i) that, if commuted, the resulting Lump Sum cannot be cashed unless:

(1) the purpose of the commutation is:

- (A) to cash an unrestricted non-preserved benefit; or
- (B) to pay a superannuation contributions surcharge; or
- (C) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
- (2) 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 otherwise complies with such parts of the Standards as govern Non-Commutable Allocated Pensions;

28.55. **Non-Commutable Income Stream** means a Benefit that:

- (a)
  - (i) cannot be commuted;
  - (ii) is paid at least monthly;
  - (iii) does not have a residual capital value; and
  - (iv) is such that the total amount paid each month is fixed or varies only:
    - (1) for the purpose of complying with the SISR and the SISR; and
    - (2) 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

(b) that otherwise complies with such parts of the Standards as govern such income streams;

28.56. **Non-Commutable Pension** means a Pension commenced on or after 1 July 2005:

- (a)
  - (i) that meets the Standards in relation to Lifetime Pensions, Term Pensions or Market Linked Pensions, as the case may be; and
  - (ii) if the Pension is commuted under rules 28.45(a)(v)(1), 28.50(a)(iv)(1) or 28.82(a)(v)(1), the resulting Lump Sum cannot be cashed unless:
    - (1) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or
    - (2) 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 otherwise complies with such parts of the Standards as govern Non-Commutable Pensions;

28.57. **Non-Member Spouse** has the same meaning as that term has under the Family Law Act;

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

28.59. **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;

28.60. **Part-Time Employment** means Gainful Employment for at least ten hours, and less than thirty hours, each week;

28.61. **Part-Time Equivalent Level** means Gainful Employment for at least 240 hours during the Financial Year that ended on the last occurring 30 June;

28.62. **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;

28.63. **Pension** means an annuity or pension or any component of it prescribed or permitted by the Standards and, except if this Deed states otherwise, includes an annuity or pension which is a reversionary annuity or Reversionary Pension and **Pensioner** and **Reversionary Pensioner** have corresponding meanings but excludes a Defined Benefit Pension;

28.64. **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;

28.65. **Pension Reserve Account** means the Account referred to in rules 22.5(c) and 22.7 or such other account as the Trustee determines including any account under rule 22.8(b) in respect of a Member or otherwise;

28.66. **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;

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

Date of Birth	Preservation Age
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 the preservation age by the Standards for the payment of all or part of a Member's Benefit 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;



- 28.68. **RBL** means a reasonable benefit limit prescribed in the Standards to determine the maximum amount of concessionally taxed superannuation benefits a Member can receive which is one of:
- (a) a transitional lump sum or transitional pension reasonable benefit limit determined in accordance with the Standards, if applicable;
  - (b) the pension reasonable benefit limit prescribed by the Standards;
  - (c) the lump sum reasonable benefit limit prescribed by the Standards; or
  - (d) such other reasonable benefit limit permitted by the Standards;
- 28.69. **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;
- 28.70. **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 – an arrangement under which a Member was Gainfully Employed has come to an end on or after the Member attaining that age; or
  - (c) any other requirements under the Standards that govern Members retiring; and **Retirement** has a corresponding meaning;
- 28.71. **Reversionary Pension** means a Pension payable to a Beneficiary who succeeds a Member to the entitlement of the Member to Pensions, and **Reversionary Beneficiary** and **Reversionary Pensioner** have corresponding meanings;
- 28.72. **Securities** means securities as defined in section 92 of the *Corporations Act 2001* (Cth) and securities approved by the Trustee in any foreign country;
- 28.73. **SMSF** has the same meaning as the term 'Self Managed Superannuation Fund' in the Standards;
- 28.74. **SISA** means the *Superannuation Industry (Supervision) Act 1993* (Cth);
- 28.75. **SISR** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth);
- 28.76. **Small APRA Fund** means a fund with fewer than five members with an Approved Trustee and that otherwise complies with the Standards in relation to such funds;
- 28.77. **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;

28.78. **Spouse** in relation to a Member means, subject to the Standards, a person married to the Member or a person who, although not legally married to the Member:

- (a) lives with the Member; or
- (b) had lived with the Member immediately prior to the Member's death; on a bona fide domestic basis as husband or wife 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;

28.79. **Standards** means any relevant requirements in the following provisions as the context requires:

- (a) any applicable provisions in the SISA and the SISR with which the Fund must comply;
- (b) any applicable provisions in the ITAA 1936, the ITAA 1997 and the *Fringe Benefits Tax Assessment Act 1986* (Cth) and any applicable regulations made pursuant thereto which must be complied with so that:
  - (i) the Fund obtains concessional tax treatment;
  - (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; and
  - (iii) no dealing with or concerning the Fund gives rise to a fringe benefit which is taxable to an Employer unless the Employer elects or chooses to incur the fringe benefits tax liability;
- (c) any applicable provisions in the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (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 with which the Fund must comply;
- (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 this Deed in either:
  - (i) exercising powers of investment granted under this Deed;
  - (ii) exercising any other power granted under this Deed; or
  - (iii) complying with an obligation contained in this Deed; unless the Trustee Law cannot lawfully be so excluded;
- (e) if the Trustee considers it appropriate, any other applicable requirement regulating superannuation funds including any proposed change thereto which must be complied with in order to ensure:
  - (i) the Fund remains entitled to concessional tax treatment;
  - (ii) the Fund remains a regulated superannuation fund; or
  - (iii) no penalty is imposed on the Trustee or the directors of the Trustee under or by virtue of the Standards; or
  - (iv) entitlement to a benefit under any legislation of other applicable law; and
- (f) any applicable common law, law of equity, or legal requirement the Trustee considers relevant;

28.80. **Taxes** includes any liability or provision for a liability for a tax, surcharge, duty, excise, levy, goods and services tax including any additional tax or penalty or, if the Trustee determines, any similar liability or provision, and **Taxation** has a corresponding meaning;

28.81. **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;

28.82. **Term Pension** means a Pension Funded by Assurance:

(a)

(i) that is paid at least annually to the Member or to a Reversionary Beneficiary:

(1) if the Pension commenced before 20 September 2004 and a Member became entitled to be paid the Pension on or after their Pension Age or otherwise becomes eligible to be paid this type of Pension under the Standards;

(A) if the life expectancy of the Member on the commencement day is less than 15 years, throughout a period equal to the Member's life expectancy on the commencement day, rounded up to the next whole number, at the Member's option; or

(B) if the life expectancy of the Member on the commencement day is 15 years or more, throughout a period that is not less than 15 years but not more than the Member's life expectancy on the commencement day, rounded up to the next whole number, at the Member's option; or

(2) if the Pension commenced on or after 20 September 2004, throughout the Life Expectancy Term; and

(ii) that in respect of payments made, ignoring any commuted amounts:

(1) the total amount of the payment, or payments, to be made in the first year after the commencement day is fixed and that payment, or the first of those payments, relates to the period commencing on the day the Member became entitled to the pension; and

(2) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year ('Previous Total') and does not exceed the Previous Total by more than any limit imposed by the Standards;

(iii) that the total amount of the payments to be made in a year in accordance with rule 28.82(a)(ii) may be varied only to allow:

(1) commutation to pay a superannuation contributions surcharge; or

(2) an amount to be paid under a Payment Split and reasonable fees in respect of the Payment Split to be charged;

(iv) that does not have a residual capital value;

(v) that, subject to the Standards, cannot be commuted except:

- (1) if the pension is not funded from the commutation of an annuity or another Pension as prescribed by regulation 1.06(7)(g)(i) of the SISR and the commutation is made within six months of the commencement day of the Pension;
  - (2) subject to rule 28.82(a)(v)(4), by payment, on the death of the Member, to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to the estate of the Member;
  - (3) by payment, on the death of a Reversionary Beneficiary, to the benefit of another Reversionary Beneficiary, or, if there is no other Reversionary Beneficiary, to the estate of the Reversionary Beneficiary;
  - (4) if the Member has opted for a Life Expectancy Term under rule 28.43(a)(iv), upon the death of both the Member and the Member's Spouse;
  - (5) if the Lump Sum resulting from the commutation is transferred directly to the purchase of another benefit as prescribed by regulation 1.06(7)(g)(v) of the SISR;
  - (6) to pay a superannuation contributions surcharge; or
  - (7) to give effect to an entitlement of a Non-Member Spouse under a Payment Split;
  - (vi) that if the Pension reverts, it does not have a reversionary component greater than 100% of the Benefit that was payable before the reversion;
  - (vii) that if the Pension is commuted, the commuted amount cannot exceed the Benefit that was payable immediately before the commutation;
  - (viii) that cannot be transferred to a person except:
    - (1) on the death of the Member, to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to the estate of the Member; or
    - (2) on the death of a Reversionary Beneficiary, to another Reversionary Beneficiary or, if there is no other Reversionary Beneficiary, to the estate of the Reversionary Beneficiary;
  - (ix) that the capital value of the Pension, and the income from it, cannot be used as security for a borrowing; and
  - (x) that otherwise complies with regulations 1.06(7) and 1.07B of the SISR and the Standards relating to Term Pensions; or
- (b) that otherwise complies with such parts of the Standards as govern Term Pensions;

28.83. **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, ever again 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;

28.84. **Trustee** means the natural person, company or other entity who holds office as trustee of the Fund including any substitute, successor co-trustee or replacement trustee from time to time; and

28.85. **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 1893* (NT) apply or any other Commonwealth, State or Territory legislation of like effect that may apply.

## **SEVERANCE**

29. The provisions of this Deed are and shall be construed as severable and so if any provision or any part of the provision shall, at any time, be found or declared void or invalid then the remaining part of the provision, if any, and all other provisions of this Deed 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 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 trust deed governing the Fund. I acknowledge that the expressions and meanings in this Application are identical to those used in the trust deed.
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 benefit that I have in the Fund on my death in the designated proportions. I understand that this nomination does not bind the Trustee and is overridden by any Binding Nomination in respect of my death benefit:

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

5. I will notify the Trustee as soon as I cease to be Gainfully Employed or reach age 65.
6. I acknowledge that the Trustee can collect my tax file number ('TFN') under the Standards.
7. I understand that the Trustee will only use the TFN for legal purposes. This includes finding or identifying my superannuation benefits if other information is insufficient, and calculating tax on any eligible termination payment I may be entitled to.
8. 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, I may pay more tax on my benefits than I would otherwise have to pay (but which may be later credited to a later assessment of tax) and I may lose benefits which are more difficult to find or to amalgamate with other benefits I am entitled to.
9. I acknowledge that the Trustee may provide any TFN disclosed to the Trustee to the trustee of any other superannuation fund to which my benefits are 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).
10. I authorise the Trustee to retain and store information on my behalf despite any contrary provision in any privacy legislation.
11. 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, to an Employer:

EMPLOYER'S NAME	
EMPLOYER'S ADDRESS	

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.

DATE	
SIGNED BY THE TRUSTEE	

