

**DEED OF AMENDMENT OF
A & L MESSINA
SUPERANNUATION FUND**

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THIS DEED is made on the Deed Date.

BETWEEN: The parties named in Item 2 in the Schedule.

RECITALS

- A. The Fund was established by the execution of the Trust Deed on the Establishment Date.
- B. The Trustee is the current trustee of the Fund.
- C. Each Member is a member of the Fund.
- D. The parties wish to amend the Governing Rules in accordance with the Amendment Clause and to record the amendment in accordance with the terms of the Trust Deed and have entered into this Deed accordingly.

OPERATIVE PART:

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this Deed, unless the context or subject matter require otherwise:

Act means the Superannuation Industry (Supervision) Act 1993;

Amendment Clause means the clause or provision of the Trust Deed which authorises the amendment of the Trust Deed and which is listed in Item 5 in the Schedule;

Deed Date means the date of this Deed specified in Item 1 in the Schedule;

Establishment Date means the date on which the Fund commenced or was established which is listed in Item 4 in the Schedule;

Fund means the superannuation fund described in Item 3 in the Schedule;

Governing Rules means the governing rules for the Fund as they are amended or varied from time to time;

Trust Deed means the deed establishing the Fund, as amended, varied, novated or supplemented from time to time and includes all documents or instruments made prior to the Deed Date and effecting such amendments.

1.2 Interpretation

- (a) Each party to this Deed will be referred to in this Deed by the description against their name in Item 2 in the Schedule.
- (b) In the interpretation of this Deed, unless the context or subject matter require otherwise, references to:
 - (i) **singular** words include the **plural** and vice versa;
 - (ii) any **gender** include every gender;

- (iii) a **person** include natural persons, firms, companies, corporations, bodies corporate, trustee, trusts, associations, partnerships, government authorities, and other legal entities and includes successors and assigns;
 - (iv) **writing** include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
 - (v) **signature** and **signing** mean due execution of a document by a person, corporation or other relevant entity and include signing by an agent or attorney or representative (if a body corporate);
 - (vi) **months** mean calendar months;
 - (vii) **statutes** include statutes amending, modifying, rewriting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, orders in council and ordinances made under those statutes;
 - (viii) **sections** of statutes or terms defined in statutes are to corresponding sections or defined terms in amended, consolidated or replacement statutes;
 - (ix) an **agreement** or **document** (including the Trust Deed and this Deed) mean that agreement or document as amended, novated or supplemented and includes all recitals, schedules, appendices and exhibits to it;
 - (x) a **party** include that party's executors, administrators, substitutes, successors and assigns;
 - (xi) **clauses** or **schedules** are references to the clauses or schedules of this Deed.
- (c) The following rules apply unless the context or subject matter require otherwise:
- (i) **headings** are used for convenience only and will be disregarded in the interpretation of this Deed;
 - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning;
 - (iii) if a word or phrase is given a **defined meaning in the Trust Deed**, that word or phrase will have the same meaning in this Deed unless another meaning is given in this Deed.

2. AMENDMENT OF TRUST DEED

In accordance with the Amendment Clause, the terms of the Trust Deed are amended by deleting all of the operative Governing Rules and inserting the new Governing Rules contained in Rule 1 to Schedule 3 inclusive which are annexed to this Deed.

3. MISCELLANEOUS

The parties confirm that the Trust Deed, other than to the extent that it has been amended or varied in accordance with this Deed remains in full force and effect.

4. POWER OF ATTORNEY

- (a) Where the Fund is currently subscribed to a system for the administration of superannuation fund governing rules conducted by or on behalf of Superdepot Pty Ltd ACN 122 036 248, the Trustee appoints its professional advisor for the time being and each principal, director and authorised employee of that professional advisor as its duly constituted attorney for the following purposes only:
 - (i) To accept on behalf of the Trustee any amendments to the Governing Rules of the Fund prepared or published by or on behalf of Superdepot Pty Ltd ACN 122 036 248 for

the purposes of that system;

- (ii) To execute on behalf of the Trustee a resolution accepting and adopting any amended Governing Rules for the Fund prepared or published by or on behalf of Superdepot Pty Ltd ACN 122 036 248 for the purposes of that system;
 - (iii) To confirm by electronic medium or otherwise the acceptance and/or adoption of such Governing Rules.
- (b) The Trustee will upon request execute an authority required in order to complete this appointment and put it into effect.
 - (c) The Trustee may at any time revoke the power of attorney in this clause 4 by giving written notice to the Trustees attorney.

5. SECRETARIAL

The parties will promptly do all acts, matters and things necessary to give effect to the provisions of this Deed.

6. LIMIT ON AMENDMENTS

Regardless of anything contained in this Deed to the contrary, this Deed does not and will not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members;
- (c) alter the rights and benefits of existing Members in a manner such that, on the whole, equity between Members is not maintained; or
- (d) offend the provisions of any relevant Act or Regulation as they exist, from time to time, or any amendment or variation of any relevant Act or Regulation made after the Deed Date.

7. SEVERANCE

This Deed will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable or not permitted or required by the Act or results in a re-settlement of the Fund:

- (a) that provision will, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation;
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability; or
- (c) that provision will, be read down or severed to the extent that it may be necessary to ensure that it does not result in a re-settlement of the Fund.

SCHEDULE

Item 1 Deed Date:

22 / 03 / 2011



DATE HERE

Item 2 Trustee:

ANTONIO MESSINA
303 ALBANY CREEK ROAD
BRIDGEMAN DOWNS QLD 4035

LYNETTE MARY MESSINA
303 ALBANY CREEK ROAD
BRIDGEMAN DOWNS QLD 4035

Member:

ANTONIO MESSINA
LYNETTE MARY MESSINA

Item 3 Fund:

A & L MESSINA SUPERANNUATION FUND established
by the Trust Deed on the Establishment Date.

Item 4 Establishment Date:

20/10/2006

Item 5 Amendment Clause:

RULE 12.8

Executed as a Deed.

SIGNED, SEALED AND DELIVERED by)
ANTONIO MESSINA as a party to this Deed)
and in each capacity listed for him/her in)
Item 2 in the Schedule in the presence of:)



ANTONIO MESSINA

Mary Ireland
Signature of Witness

Mary Ireland
Full Name of Witness

SIGNED, SEALED AND DELIVERED by)
LYNETTE MARY MESSINA as a party to)
this Deed and in each capacity listed for)
him/her in Item 2 in the Schedule in the)
presence of:)



LYNETTE MARY MESSINA

Mary Ireland
Signature of Witness

Mary Ireland
Full Name of Witness

Client REF: 4079

TABLE OF CONTENTS

1. INTERPRETATION PROVISIONS	1
1.1 TERMS DEFINED IN THE ACT.....	1
1.2 DICTIONARY (ALSO SEE SCHEDULE 3)	1
1.3 ADDITIONAL DEFINITIONS.....	1
1.4 INTERPRETATION.....	1
1.5 RULES FOR SELF MANAGED SUPERANNUATION FUNDS	2
1.6 SOLE PURPOSE.....	4
2. MEMBERSHIP	5
2.1 WHO MAY APPLY	5
2.2 BECOMING A MEMBER.....	5
2.3 SOME EX-SPOUSES TREATED AS MEMBERS	5
2.4 CATEGORIES AND SUB-PLANS.....	5
2.5 RESTRICTIONS IF THE FUND HAS MEMBER-CONTRIBUTED WA PROPERTY	6
3. INFORMATION WHICH TRUSTEE MUST GIVE	7
3.1 PRODUCT DISCLOSURE STATEMENTS	7
3.2 CIRCUMSTANCES REQUIRING INFORMATION.....	7
3.3 HOW TO PROVIDE INFORMATION.....	8
3.4 INFORMATION ON DEATH OF MEMBER	8
3.5 INFORMATION PURSUANT TO FAMILY LAW ACT ORDERS.....	8
4. CONTRIBUTIONS	9
4.1 WHO MAY MAKE CONTRIBUTIONS.....	9
4.2 SUBJECT TO RELEVANT LAW	9
4.3 GOVERNMENT CO-CONTRIBUTION	9
4.4 SPLITTABLE CONTRIBUTIONS	9
5. BENEFITS AND ENTITLEMENTS	10
5.1 BENEFITS A MEMBER MAY RECEIVE	10
5.2 HOW TO CALCULATE BENEFITS	11
5.3 BINDING DEATH NOMINATIONS.....	12
5.4 NON-LAPSING BINDING NOMINATION.....	13
5.5 ORDER OF PRIORITY	14
5.6 DEALING WITH INSURANCE	14
5.7 HOW TO PAY A PENSION AND HOW TO PAY A LUMP SUM BENEFIT	15
5.8 TYPES OF PENSIONS WHICH MAY BE PAID	16
5.9 ONLY SOME FUNDS MAY PAY DEFINED BENEFIT PENSIONS.....	16
5.10 RESTRICTIONS ON WHEN AND HOW BENEFITS MAY BE PAID.....	17
5.11 RESTRICTIONS WHEN THE FUND HAS MEMBER-CONTRIBUTED WA PROPERTY	19
6. ROLLOVERS AND TRANSFERS OF BENEFITS	20
6.1 INTO THE FUND	20
6.2 OUT OF THE FUND	20
6.3 TRUSTEE'S DUTIES.....	22
6.4 SPLITTING CONTRIBUTIONS	22
7. EMPLOYERS WHO MAY CONTRIBUTE TO THE FUND	24
8. THE TRUSTEE	25
8.1 APPOINTMENT, RESIGNATION AND REMOVAL	25
8.2 GENERAL TRUSTEE MATTERS.....	26
8.3 COVENANTS, POWERS, AUTHORITIES AND RESTRICTIONS	26

RULES

PLEASE NOTE that the material referred to in these Rules is constantly changing and you must keep up to date with those changes. If you are unsure about the currency of any information in the Rules, please contact us immediately or your accountant, financial planner or other advisor.

YOU SHOULD NOT ATTEMPT TO MANAGE YOUR OWN SUPERANNUATION FUND WITHOUT CONSULTING YOUR ACCOUNTANT, FINANCIAL PLANNER, LAWYER OR OTHER ADVISER.

- (ix) **regulations** or terms defined in regulations refer to corresponding regulations or defined terms in amended, consolidated or replacement regulations;
 - (x) an **agreement** or **document** (including this Deed) means that agreement or document as amended, novated or supplemented and includes all parts of it including clauses, recitals, schedules, appendices and exhibits to it;
 - (xi) a **party** includes that party's executors, administrators, substitutes, successors and assigns;
 - (xii) **Rules, clauses** or **schedules** are references to the Rules, clauses or schedules contained in this Deed;
 - (xiii) Where a person is entitled to **vote** or holds the **right to vote** on any matter by virtue of this Deed, the person may vote by proxy or attorney or representative (if a body corporate). A reference to a person being present means present in person or by proxy.
- (b) In this Deed, the following rules apply unless the context or subject matter requires otherwise:
- (i) **headings** and the **table of contents** are used for convenience only and must be disregarded in the interpretation of this Deed;
 - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning;
 - (iii) a requirement to give a person **notice** in writing must be satisfied by posting the notice to that person's last known address;
 - (iv) no **rule of construction** of documents will apply to the disadvantage of a party, on the basis that the party put forward the document or any relevant part of it;
 - (v) **notes and references** to statutes (or sections of statutes) or other documents contained in bold text after any term defined in this Deed are used to assist in the reading of this Deed and must be disregarded in the legal interpretation of this Deed.

1.5 RULES FOR SELF MANAGED SUPERANNUATION FUNDS

Subject to the Act and Regulations, the Fund is a **Self Managed Superannuation Fund** or **SMSF** only if it satisfies all of the conditions in either Rule 1.5(a) or 1.5(b). **section 17A**

- (a) **Funds other than single member funds.** Where the Fund has more than one Member, the Fund is an SMSF if:
- (i) it has less than 5 Members;
 - (ii) where the Trustees are individuals - each Trustee is a Member;
 - (iii) where the Fund has a Corporate Trustee - each Director of the Corporate Trustee is a Member;
 - (iv) each Member is a Trustee or if the Fund has a Corporate Trustee, is a director of the Corporate Trustee;
 - (v) no Member is an Employee of another Member, unless they are a Relative of that Member; and
 - (vi) no Trustee receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.
- (b) **Single member funds.** Where the Fund has only one Member, the Fund is an SMSF if:

- (ii) a Spouse or former Spouse of the individual, or of an individual referred to in paragraph (i),

and for the purposes of paragraph (i), if one individual is the child of another individual because of the definition of Child in this Deed, relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual.

1.6 SOLE PURPOSE

Subject to Section 60 of the Superannuation Industry (Supervision) Act 1993, this Deed is subject to the requirement that:

- (a) where the Trustee is a natural person or persons, the sole or primary purpose of the Fund must always be the provision of Old-age Pensions; or
- (b) where the Trustee is a constitutional corporation, this Fund is subject to the requirement that the Trustee must always be a constitutional corporation.

2.5 RESTRICTIONS IF THE FUND HAS MEMBER-CONTRIBUTED WA PROPERTY

(a) Regardless of any other provision in this Deed but subject to Rule 5.11, where the Fund acquires Member-contributed WA Property:

- (i) jointly from all of the Members where the Fund has more than one Member; or
- (ii) from a sole Member,

the Fund must not admit any further Members, so long as the Fund still owns the Member-contributed WA Property unless Rule 2.5(b) applies.

(b) Regardless of any other provision in this Deed, where there is more than one Member and the Fund acquires or proposes to acquire Member-contributed WA Property:

- (i) from only some of the Members; or
- (ii) from all of the Members and further Members are admitted to the Fund after the date of that acquisition,

the Trustee must, prior to the acquisition, create a sub-plan under Rule 2.4 for the Member or Members contributing the Member-contributed WA Property and the Member-contributed WA Property must be placed to the credit of that sub-plan which must be maintained separately from the rest of the Fund. The Member-contributed WA Property recorded in the sub-plan created under this Rule must not be transferred or removed from that sub-plan. No Members other than the Member or Members contributing the Member-contributed WA Property may be admitted as Members of the sub-plan.

(c) The property held under Rule 2.5(b) must be held by the Fund specifically for the transferor of the Member-contributed WA Property and must not be combined or pooled with the contributions of assets of another Member or Members other than the Members transferring the Member-contributed WA Property to the Fund. No other Member or other person is entitled to obtain or make any claim any interest in the Member-contributed WA Property.

(d) Any Member-contributed WA Property held under the preceding Rules can only be held in the Fund to be provided to the transferor as a retirement benefit.

- (iii) any combination of the preceding paragraphs; or
- (l) at any other time or in any circumstances required by the Relevant Law.

3.3 HOW TO PROVIDE INFORMATION

Where the Trustee considers that there is an obligation to provide information in accordance with this Rule, the Trustee must provide the appropriate information to Members, Beneficiaries, Employers or other appropriate persons in the manner prescribed in the Relevant Law.

3.4 INFORMATION ON DEATH OF MEMBER

Upon the death of a Member, the Trustee must:

- (a) provide all appropriate information in accordance with this Rule to the Member's personal legal representative; and
- (b) notify each person to whom any benefits or entitlements are payable of the reasons why benefits and entitlements are payable to them, the amounts payable and the terms upon which they are to be paid.

3.5 INFORMATION PURSUANT TO FAMILY LAW ACT ORDERS

- (a) **Information to be given.** If a Member's Superannuation Interest becomes subject to a Payment Split, or other action or restriction pursuant to an order under the Family Law Act, the Trustee will be required to give the information prescribed by the Relevant Law to the Non-member Spouse and to the Member.
- (b) **Cost of information.** Where the Trustee is obliged to give information under Rule 3.5(a) to the Non-member Spouse, the Trustee may levy reasonable charges against the Non-member Spouse's Superannuation Interest in respect of the provision of that information, including the cost of obtaining professional advice in relation to any requirement under this Rule.

5. BENEFITS AND ENTITLEMENTS

5.1 BENEFITS A MEMBER MAY RECEIVE

- (a) **Retirement at the normal time.** A Member who Retires or attains the age of 65 years is entitled to receive a Normal Retirement Benefit, calculated in accordance with Rule 5.2.
- (b) **Benefits before the normal time.** A Member who has attained the age of 55 years but has not yet Retired is entitled to receive a Normal Retirement Benefit, calculated in accordance with Rule 5.2, but subject to the benefit being paid as a pension which cannot be commuted to a lump sum before the Member Retires or attains the age of 65 years, or in any other form allowable under the Relevant Law, from time to time.
- (c) **Total and Permanent Disablement.** A Member who ceases Gainful Employment because of Total and Permanent Disablement is entitled to receive a Total and Permanent Disablement Benefit, calculated in accordance with Rule 5.2.
- (d) **Total and Temporary Disablement.** Upon the Total and Temporary Disablement of a Member, the Member is entitled to receive a Total and Temporary Disablement Benefit, calculated in accordance with Rule 5.2.
- (e) **Terminal Illness Benefit.** Upon a Member being diagnosed as Terminally Ill, the Member is entitled to receive a Terminal Illness Benefit.
- (f) **Death Benefits.** A Death Benefit becomes payable upon the death of:
 - (i) a Member; or
 - (ii) a reversionary beneficiary in receipt of a Pension,
 to the extent that the type of Pension or other benefit being received allows for the calculation and payment of a Death Benefit from the Fund.
- (g) **Pension to Spouse if Member dies.** If a Member dies while receiving a Pension from the Fund, the Member's Spouse may apply to the Trustee to have that Pension continued. The Trustee may, in its absolute discretion, decide to continue that Pension. The amount of that Pension will not exceed the amount calculated in accordance with the Act and Regulations. A person will, unless the Trustee otherwise determines, be entitled to a continuation of the deceased Member's Pension only if the person was the Member's Spouse before the Member retired.
- (h) **No right to elect to receive Death Benefit as Pension.** Unless Rule 5.3 or 5.4 requires a payment in accordance with a Binding Death Nomination or a Non-lapsing Binding Nomination to be made by way of a Pension, a person entitled to receive a Death Benefit does not have a right to elect to receive that benefit by way of a Pension. However, the person entitled to receive a Death Benefit may apply to the Trustee for part or all of their Death Benefit entitlement be paid as one or more Pensions and the Trustee, in its absolute discretion, may decide to grant the request.
- (i) **Other cases.** A person who ceases to be a Member, otherwise than by death, and who is not entitled to a:
 - (i) Normal Retirement Benefit; or
 - (ii) Total and Permanent Disablement Benefit,
 will be entitled to:

- (d) **Total and Temporary Disablement.** A Member's Total and Temporary Disablement Benefit will, subject to any requirements imposed by the Regulator on the payment of similar benefits, be a Non-commutable Income Stream cashed from the Fund for:
- (i) the purpose of continuing (in whole or in part) the gain or reward which the Member was receiving before the Temporary Incapacity; and
 - (ii) a period not exceeding the period during which the Member is prevented from undertaking Employment of the kind engaged in immediately before the Temporary Incapacity,
- but in any event must not exceed an amount equal to the balance of the Member's Accumulation Account, less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (e) **Terminal Illness Benefit.** A Member's Terminal Illness Benefit will be an amount up to the balance of the Member's Accumulation Account less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (f) **Death Benefit.** A Member's Death Benefit will be an amount equal to the balance of the Member's Accumulation Account less:
- (i) any taxes or reasonable charges determined by the Trustee to be applicable to the payment of that benefit; and
 - (ii) the amount necessary to meet any obligations with respect to a Pension or other payments required to be met from the Member's benefits and entitlements,
- and will be payable in any amounts and to any of the following persons as the Trustee reasonably considers to be appropriate in the circumstances:
- (iii) one or more of the Member's Designated Beneficiaries;
 - (iv) one or more of the Member's Dependants;
 - (v) the Member's legal personal representative,
- unless Rule 5.3 or 5.4 requires a payment in accordance with a Binding Death Nomination or a Non-lapsing Binding Nomination.

5.3 BINDING DEATH NOMINATIONS

- (a) **Requirements.** A Binding Death Nomination:
- (i) must be in writing;
 - (ii) must be signed and dated by the Member in the presence of 2 witnesses, each of whom has turned 18 and neither of whom is a person mentioned in the notice;
 - (iii) must contain a declaration, signed and dated, by the witnesses stating that the notice was signed by the Member in their presence;
 - (iv) must be accepted by the Trustee;
 - (v) will lapse and be of no further effect on the day which is 3 years after the day on which it was first signed or last confirmed or amended by the Member whichever is the later; and
 - (vi) may be revoked by the Member by written notice to the Trustee at any time.
- (b) **Member may give.** A Member may, at any time, give the Trustee a Binding Death Nomination directing the payment of any part of the Member's Death Benefit to a person or persons named in the notice. If the Trustee receives a Binding Death Nomination, the

- (d) **Information to Member.** Before the Trustee accepts a Non-lapsing Binding Nomination, the Trustee must give to the Member a statement:
- (i) that the Trustee cannot alter the Member's properly made request, regardless of the consequences or circumstances which might arise subsequent to the Member making the request and so long as that request remains current;
 - (ii) that careful consideration should be given to the wording of the Member's request to ensure that the Member's intentions are clearly and legally binding and executable;
 - (iii) that the Member is advised to seek further information and professional advice as to the manner and consequences of the request prior to its being made;
 - (iv) containing all other information required by the Act and Regulations; and
 - (v) containing any other information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the Member's rights under this Rule.

5.5 ORDER OF PRIORITY

- (a) **Invalid Nomination.** Where a Binding Death Nomination or a Non-lapsing Binding Nomination is invalid in whole or in part, to the extent that it is invalid, the Trustee must pay the Member's Death Benefit in accordance with Rule 5.2(f).
- (b) **Automatic revocation.** If the Trustee accepts a Binding Death Benefit Nomination or a Non-lapsing Binding Nomination, it will automatically revoke any earlier Binding Death Nomination or Non-lapsing Binding Nomination accepted by the Trustee.

5.6 DEALING WITH INSURANCE

- (a) **Insurance relating to benefits.** The Trustee may effect one or more policies of insurance or assurance in relation to a Member as Benefit Payment Insurance or Additional Insurance.
- (b) **Insurance applied to liability.** Whenever a payment is to be made under any insurance, the payment will be applied:
- (i) in the case of Benefit Payment Insurance, towards satisfaction of the Fund's liability to pay any one or more of a Member's benefits; or
 - (ii) in the case of Additional Insurance, in addition to the Fund's liability to pay any one or more of a Member's benefits,
- as agreed by the Member and the Trustee.
- (c) **Insurance not designated.** If a policy has been effected under Rule 5.6(a) and the policy is not designated as Benefit Payment Insurance or Additional Insurance, the policy will be deemed to be Benefit Payment Insurance.
- (d) **Treatment of Additional Insurance.** Where the Trustee has effected Additional Insurance and an amount becomes payable to the Trustee under it, the Trustee must add the amount payable, net of any reasonable fees, charges and taxes, to the Member's Accumulation Account prior to calculating the amount of the Member's benefits or entitlements payable in accordance with this Deed.
- (e) **Treatment of Benefit Payment Insurance.** Where the Trustee has effected Benefit Payment Insurance and an amount becomes payable to the Trustee under it, the Trustee must first apply that amount towards satisfaction of the Fund's liability to pay the Member's

That payment or application will constitute an effective discharge to the Fund and the Trustee. The Trustee need not be concerned and is not liable to see to the application of those benefits or entitlements after the time of their payment or application.

- (f) **Effect of Family Law Act.** A reference to a Member in this Rule 5.7 includes a Non-member Spouse. If a Superannuation Interest is created in favour of a Non-member Spouse and the order creating that interest does not require the Non-member Spouse's benefits or entitlements to be paid as a Pension, the Trustee is not required to pay those benefits or entitlements as a Pension.

5.8 TYPES OF PENSIONS WHICH MAY BE PAID

The Trustee may pay any Pension allowable under the Act and Regulations. A Pension must be subject to the terms and conditions contained in the Act and Regulations in relation to that type of Pension. The following Pensions, and the descriptions of them in Schedule 1, are specific examples of the Pensions which may be paid:

- (a) Pensions commencing after 30 June 2007:
- (i) **Minimum Only Pensions** described in Part 1 of Schedule 1.
 - (ii) **Transition to Retirement Pensions** described in Part 2 of Schedule 1.
- (b) Pensions commencing before 20 September 2007:
- (i) **Allocated Pensions** described in Part 3 of Schedule 1.
 - (ii) **Pre-20 September 2007 Market Linked Pensions** described in Part 4 of Schedule 1.
 - (iii) **Lifetime Pensions** (included in the definition of Defined Benefit Pension) described in Part 5 of Schedule 1.
 - (iv) **Life Expectancy Pensions** (included in the definition of Defined Benefit Pension) described in Part 6 of Schedule 1.
 - (v) **Lifetime Commutable Pensions** (included in the definition of Defined Benefit Pension) described in Part 7 of Schedule 1.
 - (vi) **Non-Commutable Allocated Pensions** described in Part 8 of Schedule 1.
- (c) Pensions commencing after 19 September 2007, where the amount was purchased with a rollover superannuation benefit that resulted from the commutation of a pension or annuity of the type referred to in Regulation 1.06(1B):
- (i) **Post-19 September 2007 Market Linked Pensions** described in Part 9 of Schedule 1.

5.9 ONLY SOME FUNDS MAY PAY DEFINED BENEFIT PENSIONS

Subject to the Act and Regulations, if the Fund is a Self Managed Superannuation Fund, the following provisions apply in relation to the Fund paying Defined Benefit Pensions to Members:

- (a) Where a Member was already receiving a Defined Benefit Pension on or before 11 May 2004, that Member may continue to receive that Pension, but any further Defined Benefit Pensions in respect of that or other Members are only payable in the circumstances set out in this Rule 5.9.

- (iii) the form, if any, specified in the Cashing Restriction for Restricted Non-preserved Benefits in relation to the relevant Condition of Release; or
 - (iv) if the Cashing Restriction is "Nil" then, subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, in any one or any combination of the following forms:
 - A. one or more lump sums;
 - B. one or more Pensions; and/or
 - C. the purchase of one or more Annuities.
- (d) **Payment of Preserved Benefits.** Subject to this Deed, the whole or any part of a Member's Preserved Benefits may only be cashed on or after the satisfaction of a Condition of Release and must not exceed the sum of:
- (i) the Member's Preserved Benefits that had accrued at the time when the Condition of Release was satisfied; and
 - (ii) any investment earnings accruing on those benefits from that time,
- less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the amounts in (i) and (ii) above at the relevant time. The form in which Preserved Benefits may be cashed is:
- (iii) the form, if any, specified in the Cashing Restriction for Preserved Benefits in relation to the relevant Condition of Release; or
 - (iv) if the Cashing Restriction is "Nil" then, subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, in any one or any combination of the following forms:
 - A. one or more lump sums;
 - B. one or more Pensions; and/or
 - C. the purchase of one or more Annuities.
- (e) **When it is compulsory to pay benefits.** A Member's benefits and entitlements in a Regulated Superannuation Fund must be cashed as soon as practicable after a Member dies.
- (f) **Payment of compulsory benefits.** Subject to this Deed and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, the form in which benefits and entitlements may be cashed under Rule 5.10(e) is any one or any combination of the following forms:
- (i) a single lump sum;
 - (ii) an interim lump sum plus a final lump sum;
 - (iii) one or more Pensions; and/or
 - (iv) the purchase of one or more Annuities,
- except where that benefit is to be paid to a Child of the deceased Member, in which case it is subject to the restrictions contained in Rule 5.10(g).
- (g) **Restriction on Death Benefit Pensions to Children.** Subject to the Act and Regulations, from time to time, if a Member dies after 30 June 2007 and part or all of that Member's Death Benefit is to be paid to a Dependant who is a Child of the Member, the Death Benefit may only be paid as a Pension if the Child:
- (i) is less than 18 years of age; or

6. ROLLOVERS AND TRANSFERS OF BENEFITS

6.1 INTO THE FUND

- (a) **Members may.** A Member may request that the Trustee accept a rollover or transfer into the Fund of any existing superannuation benefits or entitlements which are able to be rolled over or transferred into the Fund under the Relevant Law. Those benefits or entitlements may include:
- (i) any Superannuation Lump Sums being held with another superannuation fund, Approved Deposit Fund, EPSSS, RSA or pooled superannuation trust; and/or
 - (ii) any Superannuation Lump Sums from other sources which are able to be rolled over or transferred into the Fund under the Relevant Law.
- (b) **Trustee to decide.** The Trustee must consider a request made in accordance with Rule 6.1(a) and may:
- (i) accept a rollover or transfer of the entire amount of the benefits or entitlements;
 - (ii) accept a rollover or transfer of part of the benefits or entitlements; or
 - (iii) reject a rollover or transfer of the whole or any part of the benefits or entitlements,
- and in reaching that decision, the Trustee may consider the limits on benefits payable to the Member, the balance of the Member's Accumulation Account before and after the proposed rollover or transfer, the terms under which the benefits or entitlements are currently being held and any other matters which the Trustee considers relevant.
- (c) **Some rollovers and transfers cannot be accepted.** The Trustee must not accept a rollover or transfer of any benefits or entitlements which would or would be likely to cause a breach of a Civil Penalty Provision or constitute an offence under the Act.
- (d) **Condition of rollover or transfer in.** Where the Trustee accepts a rollover or transfer of benefits or entitlements under this Rule 6.1, those benefits or entitlements must be maintained and will only be payable:
- (i) in accordance with the terms of the trust deed or governing rules, if any, of the transferring entity at the date of rollover or transfer, as advised to the Trustee; or
 - (ii) on other terms approved by the Regulator.
- (e) **Most benefits rolled over or transferred into the Fund retain the same status.** Except as otherwise provided by the Act and Regulations, for the purpose of determining the status of benefits or entitlements under this Deed, any benefits or entitlements rolled over or transferred into the Fund will retain the same character in the Fund as they had in the superannuation fund, Approved Deposit Fund, EPSSS, RSA or pooled superannuation trust from which they were transferred.

6.2 OUT OF THE FUND

- (a) **Who may request.** A request to roll over or transfer any benefits or entitlements out of the Fund may only be made by:
- (i) a Member;
 - (ii) in the case of a Member's death or Total and Permanent Disablement, the person or persons otherwise entitled to receive a benefit or entitlement; or
 - (iii) a Member's legal personal representative.

6.3 TRUSTEE'S DUTIES

- (a) **Duty to ensure transferee is regulated.** When the Trustee receives a request under Rule 6.2(a), the Trustee must, before allowing any rollover or transfer, ensure that the entity accepting the benefits or entitlements is:
- (i) a Regulated Superannuation Fund;
 - (ii) an Approved Deposit Fund;
 - (iii) a RSA; or
 - (iv) an EPSSS,
- and it is sufficient for the Trustee to receive from the entity accepting the benefits or entitlements, confirmation in writing of its status.
- (b) **Duty to ensure proper deductions made.** Where a rollover, transfer or payment of benefits or entitlements out of the Fund is to be made, the Trustee must ensure that:
- (i) all taxes, expenses, accrued and actual liabilities required to be deducted from the Member's Accumulation Account have been deducted; and
 - (ii) all income, gains and accretions required to be credited to the Member's Accumulation Account have been credited,
- prior to determining the amount of benefits or entitlements available for rollover, transfer or payment to the Member.
- (c) **People to be notified if Member has died.** If a Member dies and benefits or entitlements become payable to any person other than the Member's legal personal representative, the Trustee must notify each person to whom benefits or entitlements are payable of the reasons why benefits or entitlements are payable to them, the amounts payable and the terms upon which they are to be paid.
- (d) **Dealing with Death Benefits if Beneficiaries cannot be located.** If the Trustee cannot, after making all reasonable attempts, locate a person to whom any benefits or entitlements are payable in accordance with Rule 6.3(c), the Trustee may pay those benefits or entitlements, to the Member's legal personal representative, or to any one or more of the remaining Designated Beneficiaries, if any, in any proportions as the Trustee decides. No person will have any claim or cause of action against the Trustee or the Fund as a result of the Trustee exercising its discretion in accordance with this Rule.
- (e) **Information to the Taxation Commissioner.** When the Trustee pays benefits or entitlements out of the Fund and the entire amount of those benefits or entitlements are not rolled over or transferred into a Regulated Superannuation Fund, Approved Deposit Fund, EPSSS or RSA, the Trustee must, within the prescribed time, provide to the Taxation Commissioner, in the form prescribed by the Relevant Law, information required by the Taxation Commissioner in relation to those benefits or entitlements and in relation to the recipients.

6.4 SPLITTING CONTRIBUTIONS

- (a) **Contributions that may be split.** Where contributions are made in respect of a Member after 1 January 2006, the following contributions (called "**Splittable Contributions**") may be split:
- (i) if the contributions will be included in the Fund's taxable income for a Year of Income – up to 85% of the contributions; and

7. EMPLOYERS WHO MAY CONTRIBUTE TO THE FUND

Subject to Rule 4.1, the Trustee may accept contributions from an Employer or past Employer whether or not the Employer has agreed in writing to the terms and conditions of this Deed.

- A. has an application made, resolution passed or an order made for its liquidation or winding up (except for the purposes of amalgamation or reconstruction);
 - B. is deemed to be insolvent, or any act or event constituting grounds for winding up by a court occurs;
 - C. is struck off, de-registered or otherwise ceases to exist or to have full capacity;
 - D. has a receiver or official manager appointed to the whole or any part of its undertaking;
 - E. becomes disqualified from office by operation of law; or
 - F. becomes a Disqualified Person.
- (i) **Trustee/Member dies or becomes Legally Disabled.** Where the Fund is an SMSF and a person who is a Trustee and a Member dies or becomes Legally Disabled, the Member's legal personal representative will become a Trustee during the period:
- (i) where the Member dies, beginning at the date of the Member's death and ending when death benefits first commence to be paid in respect of the Member; or
 - (ii) where the Member becomes Legally Disabled, beginning at the date when the Member's legal personal representative assumes control of the Member's affairs and ending either when that person ceases to act in the capacity of legal personal representative for the Member, or in other circumstances allowed or required by this Deed or the Relevant Law.

8.2 GENERAL TRUSTEE MATTERS

The Trustee may be a Member. Where a proposed Trustee is a natural person, that person is not, by their status as a Member, excluded or otherwise restricted from being appointed as a Trustee and may vote as a Member in all circumstances in which Members are entitled to vote, including resolutions for the appointment or dismissal of that person as Trustee.

8.3 COVENANTS, POWERS, AUTHORITIES AND RESTRICTIONS

- (a) **Trustee's covenants.** By accepting the appointment to the office of Trustee, the Trustee covenants:
- (i) to act honestly in all matters concerning the Fund;
 - (ii) to exercise, in relation to all matters affecting the Fund, the same degree of diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
 - (iii) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Beneficiaries;
 - (iv) to keep the money and other assets of the Fund separate from any money and assets respectively that are held by the Trustee personally or in any other capacity;
 - (v) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
 - (vi) to formulate and give effect to an investment strategy for the Fund;
 - (vii) if the Fund has any reserves, to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its

matters applicable to the choice offered in accordance with the above paragraphs; and

F. it conforms with any other matters prescribed by the Regulations for the purposes of section 52(4) of the Act.

(e) **General powers of Trustee.** Subject to the Relevant Law, the Trustee has all the rights of a natural person to do any thing, or to engage in any transaction or dealing, on behalf of the Fund as it could do if it were the beneficial owner of the Fund and absolutely entitled to it.

(f) **Specific powers of Trustee.** The following powers are specific examples of the Trustee's powers in Rule 8.3(e) and should not be interpreted as limiting those powers:

- (i) Subject to the other provisions of this Deed and the Act and Regulations to invest in such corporeal or incorporeal property, rights, currency, or other things of value as the Trustee decides.
- (ii) To purchase, acquire, create, hold, rent, lease, license, sell or otherwise dispose of assets and investments in any property, rights or privileges, including derivatives assets and contracts, which the Trustee is authorised by law to acquire or dispose of, on terms and conditions as the Trustee decides.
- (iii) To carry on a business, to the extent that it is allowable under the Relevant Law, from time to time;
- (iv) To appoint and/or remove or suspend, the Fund's Auditor, or any accountants, Custodians, managers, secretaries, clerks, agents and other servants or consultants, and may appoint any of them permanently, temporarily or for special services and may determine the scope and extent of their powers and duties, on terms as to remuneration or salaries as the Trustee decides.
- (v) To appoint any person (other than a Trustee) to be a Custodian for the purpose of holding or retaining the legal title of or to any asset, property, investment or other thing acquired or to be acquired by or for the benefit of the Fund.
- (vi) To institute, conduct, defend, compound, compromise or abandon any legal or other proceedings by or against the Fund or its officers or otherwise, concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands made by or against the Fund.
- (vii) To make and give receipts, releases and other discharges for money payable to the Fund and for any claims and demands against the Fund and to pay expenses as it considers properly relate to the Fund, including any income tax liability which may attach to income of the Fund or contributions made to it.
- (viii) To open accounts and to retain on current or deposit account at any bank or financial institution, any moneys as it considers proper and to make regulations for the operation of those accounts, including the signing and endorsement of cheques in connection with them.
- (ix) To borrow moneys, incur liabilities or pledge the assets of the Fund as security, but only to the extent allowed or allowable in accordance with the Act and Regulations. Any borrowing or raising may include (without limitation):
 - A. the drawing, endorsing, accepting, negotiation or other dealing in bills of exchange, promissory notes, cheques or other negotiable instruments;
 - B. any other form of borrowing or raising of money which is authorised by the Act.

- (iv) neglect, default, intent to defraud, wilful misconduct, defalcation, or act or omission of any manager, agent, professional adviser, banker, stockbroker, or other person not bound or deemed to be a bound by this Deed; or
 - (v) breach of duty or of trust, or any neglect or otherwise.
- (i) **Persons entitled to indemnity.** The following persons are entitled to claim the indemnity in Rule 8.3(h):
- (i) the Trustee;
 - (ii) the Directors and other officers of the Trustee, in the case of a Corporate Trustee;
 - (iii) any Custodian; and
 - (iv) any Investment Manager.
- (j) **Exception to indemnity.** The indemnity contained in Rule 8.3(h) does not apply to any expense, damage or liability which arises from or as a result of:
- (i) a breach of trust if the Trustee:
 - A. fails to act honestly in a matter concerning the Fund; or
 - B. intentionally or recklessly fails to exercise in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
 - (ii) a liability for a monetary penalty under a Civil Penalty Provision.
- (k) **Instalment Warrants.** The Trustee has the power to borrow money under arrangements of the kind contemplated by Section 67A of the Act and to enter into any and all such arrangements for that purpose, including:
- (i) the granting of indemnities to lenders for the purpose of furthering these arrangements;
 - (ii) the granting of any security for the performance of any obligation or other dealing or engagement incurred or to be entered into by the Trustee or by any other person. The Trustee's power includes the power to grant any mortgage, charge or encumbrance over all or any part of any asset or property to be acquired in accordance with the Trustee's powers under Section 67A of the Act;
 - (iii) despite the covenants in Rule 8.3(a), to give proxies and powers of attorney (with or without power of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any part of the Fund. Without limitation, the Trustee may empower its attorney to take any action and/or perform any act on behalf of the Trustee and to sign and execute any deed, agreement or document that the Trustee may lawfully do, including the exercise of any of the Trustee's rights or obligations and the execution of mortgage and security documents. The Trustee may in its discretion, grant powers of attorney or proxies to any third party including any mortgagee, lender or financier of the Fund.

8.4 IN-HOUSE ASSETS AND OTHER RESTRICTED INVESTMENTS

- (a) **Restricted and prohibited investments.** The Trustee must not make any investments and, to the extent necessary, must divest the Fund of investments, to ensure that:
- (i) the acquisition of an asset would not cause the Market Value of In-house Assets of the Fund to exceed 5% of the Market Value of the total assets of the Fund;

- IV. the sum of the investments in the company or unit trust, acquired by the Fund after 23 December 1999, does not exceed the limits specified in section 71E of the Act.

8.5 RULES APPLY TO OTHERS

All of the rules and restrictions contained in this Deed which affect or apply to any act or thing done or not to be done by the Trustee, will apply to any act or thing done or not done on behalf of the Trustee by any person including, without limitation, any Director of a Corporate Trustee, Custodian or Investment Manager appointed by the Trustee.

- (h) all direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund allocated to the Member's Accumulation Account; and
- (i) any overpayments of Government Co-contribution which the Fund is required to repay;
- (j) any amounts required to be paid to the Commissioner of Taxation as a result of the Member's failure to quote his or her tax file number to the Fund within the prescribed time;
- (k) any other taxes or surcharges applicable to contributions made by or on behalf of a Member which are required to be withheld or deducted directly from such contributions,

and the Trustee must allocate all amounts in a fair, reasonable and consistent manner, having regard to any special circumstances relating to one or more Members which might otherwise affect the allocation of amounts to a Member's Accumulation Account. Where the Trustee has made the allocations in accordance with these principles, its decision will be final.

9.3 ACCOUNTS FOR NON-MEMBER SPOUSES

- (a) **Compliance with Family Court Orders.** When any order is made under the Family Law Act in respect of a Member's Superannuation Interest, the Trustee may be required to:
 - (i) create and maintain a new Accumulation Account for a Non-member Spouse;
 - (ii) split the amount standing to the credit of a Member's Accumulation Account with the Non-member Spouse;
 - (iii) identify a component or percentage of a Member's Superannuation Interest which is to be paid to the Non-member Spouse;
 - (iv) transfer or roll over a Non-member Spouse's Superannuation Interest to another regulated superannuation fund, approved deposit fund, EPSSS or RSA; and/or
 - (v) notify the Non-member Spouse and the Member of orders requiring a Payment Split and other matters.
- (b) **Cost of complying.** If Rule 9.3(a) applies, the reasonable costs incurred in complying with any Family Court order, including the costs of the Trustee seeking professional advice, may be deducted from the Non-member Spouse's interest.
- (c) **Splitting Pensions.** Where, pursuant to the Family Law Act, an order is made which affects the Superannuation Interest of a Member in receipt of a Pension, the Trustee may deduct any reasonable costs incurred in complying with those orders from the capital sum supporting the Pension to be paid to the Non-member Spouse, or from the periodical payments of the Pension to be paid to the Non-member Spouse.

9.4 INVESTMENT RESERVE

Subject to the Act and Regulations the Trustee may, in its discretion, credit any investment earnings of the Fund to an investment reserve, to be used for such purposes as the Trustee may decide, including in the satisfaction of any expenses of the Fund and for the purpose of smoothing investment earnings allocated to members' accounts. Part or all of the balance of the investment reserve may be allocated to one or more Member's Accumulation Accounts or, where the reserve relates to a sub-plan, to the Accumulation Accounts of Members of that sub-plan. The Trustee must make any allocation in a fair, reasonable and consistent manner having regard to any special circumstances relating to one or more Members which might otherwise affect the allocation.

- (c) keep its accounting records to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Act; and
- (d) keep the accounting records of the Fund, or cause them to be kept, in Australia for at least 5 years after the end of the Year of Income to which they relate.

9.10 PREPARATION OF ACCOUNTS

Except where Rule 9.11 applies, the Trustee must, in respect of each Year of Income, prepare accounts and statements in respect of the Fund which consist of at least:

- (a) a statement of financial position of the Fund;
- (b) an operating statement of the Fund; and
- (c) other accounts and statements as the Act and Regulations specify,
- (d) and, where practicable, the Trustee will prepare those accounts and statements to ensure that the Auditor does not qualify the accounts of the Fund for lack of detail or non-compliance with relevant Australian Accounting Standards.

9.11 ACCOUNTS REQUIRED WHERE BENEFITS SOLELY LIFE ASSURANCE

Where the Fund is, at the end of any Year of Income, a Fund from which the benefits and entitlements paid to each Member are wholly determined by reference to policies of life assurance, the Trustee must prepare:

- (a) a statement that policies of life assurance are in place at the end of the Year of Income;
- (b) a statement as to whether those policies have been fully maintained as required by the relevant insurers;
- (c) a statement of the identities of those insurers;
- (d) a statement of the amounts contributed by Employers and Members in the Year of Income;
- (e) a statement of the amount of premiums paid on those policies; and
- (f) a statement of the expenses incurred by the Fund in respect of the Year of Income, other than amounts covered by premiums.

9.12 AUDIT OF THE ACCOUNTS

The Trustee must appoint, and has the power to dismiss, an Approved Auditor. The Trustee must ensure that each set of accounts and statements prepared in respect of a Year of Income is audited by the Auditor.

9.13 PREPARATION AND LODGEMENT OF RETURNS

The Trustee must, in respect of each Year of Income, prepare and lodge:

- (a) with the Regulator:
 - (i) an annual return, in the approved form, containing information which is required in relation to the Fund;
 - (ii) a certificate, in the approved form, in respect of that Year of Income; and

10. MEETINGS OF TRUSTEES AND MEMBERS

10.1 TRUSTEES OR DIRECTORS MEETINGS

- (a) **How to call a meeting.** The Trustees, or the Directors of a Corporate Trustee, may convene a meeting of the Trustees, or of the Directors, as the case may be, by 1 of their number giving 1 month's notice in writing to each of the others, of the time, place and business to be conducted at the meeting. The notice period in this Rule may be waived by unanimous agreement of all Trustees and/or all Directors.
- (b) **Appointing a chair.** Before any business is discussed at a meeting of Trustees or Directors, they must appoint one of their number to chair the meeting, and the meeting must be conducted by that person in a fair and reasonable manner, but otherwise as that person determines.
- (c) **Meetings at least annually.** Meetings of Trustees or Directors may be convened at any time, but must be convened at least once in every calendar year, to consider:
- (i) the accounts of the Fund and the Approved Auditor's report relating to those accounts;
 - (ii) the returns and other documents specified in Rule 9.13;
 - (iii) any matters raised by the accounts and statements which require action or attention; and
 - (iv) any other matters which the Trustees or the Directors, consider appropriate.
- (d) **Quorum.** The quorum for meetings of Trustees or Directors is:
- (i) one, in the case of a single individual trustee or sole Director of a Corporate Trustee; or
 - (ii) two or half of the total number of Trustees or Directors, whichever is greater, in all other cases.
- (e) **Voting by proxy.** A Trustee and/or a Director who is unable to be present at a meeting of the Trustees or the Directors, as the case may be, may nominate another person to attend the meeting as their proxy, subject to the following requirements:
- (i) The person nominated as proxy must carry into and put before the meeting an authority, signed by the person in whose place the proxy is attending, in the following form:

"I,, being a Trustee / Director of the Trustee, of.....Superannuation Fund, authorise, who presents this document to the meeting, to act as my proxy for the purposes of the Trustees' / Directors' meeting to be held on / / .

Signed, dated / / "
 - (ii) A person may be nominated as a proxy for one meeting only. The same person may be nominated for any subsequent meeting.
 - (iii) A person nominated as proxy, who is not otherwise a Trustee or a Director of the Trustee, must be asked to leave the meeting if the chairperson considers that a subject to be discussed is of a sensitive or confidential nature.
 - (iv) A person nominated as proxy must be given an opportunity to read and to table any written statement from their appointor, and must vote strictly in accordance with the directions of that person, but a proxy, who is not otherwise a Trustee or a Director of

11. INQUIRIES AND COMPLAINTS

- (a) **Dealing with complaints.** The Trustee must, within 90 days, consider any inquiry or complaint by one or more Members which has been raised either in a Members' meeting or in writing. Where an inquiry or complaint is not dealt with to the satisfaction of the Member or Members within that time, the parties must arrange for a convenient time and place to meet with each other, for the purpose of resolving the matter. Each party, or the representatives of each party, will be allowed approximately equal time to present the reasons for and to propose resolutions to their grievances.
- (b) **Conduct of meetings.** The parties present at a meeting under Rule 11(a):
- (i) may, by agreement, appoint a person to chair the meeting, but it is not necessary to do so;
 - (ii) must appoint a person to take and distribute, to all parties in attendance, written minutes of the proceedings; and
 - (iii) may agree to convene one or more further meetings to address the issues in dispute.

12.6 RECEIPTS AND PAYMENTS WITH ASSETS

Subject to Rule 5.8 and to the Act and Regulations, where:

- (a) any benefits or entitlements of Members are payable, transferable or receivable by or to the Fund; or
- (b) any liabilities incurred by or on behalf of the Fund are required to be satisfied; or
- (c) any assets are owing to or are to be acquired by the Fund,
the Trustee may, with the agreement of the other party, in lieu of money, and at its discretion, make or receive settlement of the amounts concerned by:
 - (d) transferring assets of the Fund to; or
 - (e) receiving a transfer of assets from,
another person, at the assets' Market Value.

12.7 MEMBERS TO PROVIDE INFORMATION

Every Member and every person claiming a benefit or entitlement, or in receipt of a Pension, or other benefit or entitlement, must give the Trustee any information or authorisation and produce any documents which the Trustee considers necessary for the purposes of giving effect to this Deed.

12.8 VARIATION OF TRUSTS OR DEED

The Trustee may at any time amend, revoke, replace or modify all or any of the provisions of this Deed by deed or other written instrument or by resolution in writing. Any amendment, revocation, replacement or modification must not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members without the prior written approval of the Members or the amendments are required to comply with the Relevant Law;
- (c) alter the rights and benefits of existing Members in any manner so that, on the whole, equity between Members is not maintained;
- (d) be contrary to or inconsistent with the Act and Regulations; or
- (e) invalidate or alter the terms of any Non-lapsing Binding Nomination given by one or more Members, unless the Relevant Law has changed in a manner which would invalidate or alter the terms of any Non-lapsing Binding Nominations and, in that case, the amendment, revocation or modification to the Deed is no greater than the change necessitated by the Relevant Law.

12.9 EFFECT OF CHANGES IN RELEVANT LAW

The Trustee is authorised and empowered to act in accordance with the Relevant Law (including the requirements for the Fund to be a complying superannuation fund and a Regulated Superannuation Fund) and, to the extent that there is any inconsistency between this Deed and the Relevant Law, the Relevant Law will prevail.

SCHEDULE 1

Description of Pensions

Rule 5.8

PART 1

MINIMUM ONLY PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(9A)(a), which included the following requirements at the date of this Deed:

- (a) payments are made at least annually;
- (b) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not smaller in total than the following amounts:

$$\text{Account Balance} \times \text{Percentage Factor}$$

Where:

Account Balance means:

- (i) the value of the annuity or pension:
 - A. on 1 July in the financial year in which the payment is made; or
 - B. if that year is the year in which the annuity or pension payments commence - on the commencement day,

being the total amount paid as consideration to purchase the annuity or pension, as increased by returns on investments and as decreased by fees, charges, applicable taxes, payments to the annuitant or pensioner and payments made under a Splitting Order; or
- (ii) if the value of the annuity or pension under paragraph (a) is less than the withdrawal benefit to which the beneficiary would be entitled if the annuity were to be fully commuted — the value of the withdrawal benefit.

Percentage Factor means the percentage factor specified in Table 1, below, that applies to the beneficiary because of the beneficiary's age on:

- (i) 1 July in the financial year in which the payment is made; or
- (ii) if that is the year in which the annuity or pension payments commence - the commencement day.

- (h) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (i) if the Pension is commuted, at least the minimum amount, calculated in accordance with Regulation 1.07D, has been paid in the year of commutation.

PART 2

TRANSITION TO RETIREMENT PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(9A)(a), which included the following requirements at the date of this Deed:

- (a) payments are made at least annually;
- (b) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not smaller in total than the following amount:

Account Balance x Percentage Factor

Where:

Account Balance means:

- (i) the value of the annuity or pension:
 - A. on 1 July in the financial year in which the payment is made; or
 - B. if that year is the year in which the annuity or pension payments commence - on the commencement day,

being the total amount paid as consideration to purchase the annuity or pension, as increased by returns on investments and as decreased by fees, charges, applicable taxes, payments to the annuitant or pensioner and payments made under a Splitting Order; or
- (ii) if the value of the annuity or pension under paragraph (a) is less than the withdrawal benefit to which the beneficiary would be entitled if the annuity were to be fully commuted — the value of the withdrawal benefit.

Percentage Factor means the percentage factor specified in Table 1, below, that applies to the beneficiary because of the beneficiary's age on:

- (i) 1 July in the financial year in which the payment is made; or
- (ii) if that is the year in which the annuity or pension payments commence - the commencement day.

(iii) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*,

and, except in the case of a Child described in (iii) above, such a Pension must cease no later than the Child attaining 25 years of age;

- (i) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (j) if the pension is commuted, any resulting Superannuation Lump Sum cannot be cashed unless:
 - (i) the purpose of the commutation is:
 - A. to cash an unrestricted non-preserved benefit;
 - B. to pay a superannuation contributions surcharge; or
 - C. to give effect to an entitlement of a non-member spouse under a Splitting Order; or
 - (ii) 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 is 'Nil';
- (k) if the Pension is commuted, at least the minimum amount, calculated in accordance with Regulation 1.07D, has been paid in the year of commutation.

PART 3

ALLOCATED PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(4), which included the following requirements at the date of this Deed:

- (a) payments are made at least annually;
- (b) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) 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 payments made under a Splitting Order) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the Regulations; and
- (e) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than the following:
 - (i) 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 one of the following Schedules to the Regulations:
 - A. Schedule 1A;
 - B. Schedule 1AAB;

- (iii) if the person referred to in paragraph (ii) is a full-time student at age 16, at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs first);
- (b) the size of payments of benefit in a year is fixed, allowing for variation only:
 - (i) as specified in the Governing Rules;
 - (ii) to allow commutation to pay a superannuation contributions surcharge; or
 - (iii) to allow an amount to be paid under a Payment Split and reasonable fees in respect of a Splitting Order;
- (c) unless the Regulator otherwise approves, the sum payable as a benefit in each year to the primary beneficiary or to the reversionary beneficiary, is determined in accordance with the formula contained in Regulation 1.06(2)(c);
- (d) the Pension does not have a residual capital value;
- (e) the Pension cannot be commuted except as authorised by Regulation 1.06(2);
- (f) if the Pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation;
- (g) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (h) the capital value of the Pension and the income from it, cannot be used as security for any borrowing; and
- (i) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii), a surviving reversionary beneficiary may obtain a payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period; and
- (j) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii) and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been payable in the period, is payable to the primary beneficiary's estate; and
- (k) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii) and there is a surviving reversionary beneficiary who also dies within that period, an amount is payable to the reversionary beneficiary's estate determined as described in Rule 5.6(b) as if that Rule applied to the reversionary beneficiary.

PART 6

LIFE EXPECTANCY PENSIONS (INCLUDED IN THE DEFINITION OF "DEFINED BENEFIT PENSION")

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(7), which included the following requirements at the date of this Deed:

- (a) if a Pension has a Pension Date before 20 September 2004 and:
 - (i) if the life expectancy of the primary beneficiary on the Pension Date day is less than 15 years, the Pension is paid at least annually to the primary beneficiary or to a

- (b) the Pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) the size of the payments of benefit in a year is fixed, allowing for variation only as specified in this Deed or as advised by or to allow payments to be made under a Splitting Order;
- (e) except in relation to payments, by way of commutation for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the consumer price index published by the Australian Bureau of Statistics in the preceding 3 years;
- (f) payments in accordance with the contracted size are made at least annually; and
- (g) where the Pension is commuted, except if conversion is in relation to a commutation to pay a superannuation contributions surcharge, 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 Regulations to the Pension as if the Pension Date was the day on which the commutation occurs.

PART 8

NON-COMMUTABLE ALLOCATED PENSIONS

A Pension which meets the minimum terms and conditions contained in Regulations 1.06(4) and 6.01(2), which included the following requirements at the date of this Deed:

- (a) payments are made at least annually;
- (b) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) 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 payments made under a Splitting Order) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the Regulations;
- (e) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than the following:
 - (i) 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 one of the following Schedules to the Regulations:
 - A. Schedule 1A;
 - B. Schedule 1AAB;
 - (ii) for payments made on or after 1 July 2006 – the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB;

SCHEDULE 2

Table for Non-lapsing Binding Nomination

Rule 5.4(a)

TO MY	AS A (Options include: Pension, Lump Sum, or Beneficiary Choice, except for Non-Dependant Children and Estate, where option is Lump Sum only)	ORDER OF PRIORITY OR PERCENTAGE*
Spouse		
Dependant Children		
Non-Dependant Children		
Estate		

* Where indicating an Order of Priority, place a number in this column. For example, placing a number "1" beside an option means that the Trustee will try to distribute in accordance with this option first. If it is not possible to meet the criteria of option "1" (eg. Because a beneficiary in that category has predeceased the Member), the Trustee will attempt to distribute in accordance with option "2", and so on. It is not necessary to complete more than one option.

Where indicating a percentage, ensure that the sum of all percentages add to 100% and that the "%" symbol is used. In the event that the sums add to less than 100%, the nomination is still valid in respect of the percentages and beneficiaries indicated.

This non-lapsing, binding death benefit nomination is made by me,
[Insert name of Member] on the day of,

.....
[Signature of Member]

We, the undersigned, certify that we witnessed the above-named person sign this document:

.....
[Signature of Witness 1]

.....
[Signature of Witness 2]

.....
[Full Name of Witness 1]

.....
[Full Name of Witness 2]

NOTE: This table is only part of the nomination process. Simply completing this table will not result in a legally binding nomination – see Rule 5.4(a) for details.

Allocated Pension means a Pension which meets the standards of Regulation 1.06(4); **Reg 1.03 and 1.06**

Annuity means a benefit which meets the standards of Regulation 1.05; **Reg 1.05**

Approved Auditor means a person included in a class of persons specified in the Regulations, but excludes a person disqualified under the Act; **section 10**

Approved Deposit Fund means an indefinitely continuing fund that is maintained by an Approved Trustee solely for Approved Purposes and has approved rules; **section 10**

Approved Purposes means the purposes of:

- (a) receiving on deposit:
 - (i) Eligible Termination Payments under section 27D of the Tax Act as in force before 1 July 2007; and
 - (ii) amounts paid under Part 24 of the Act; and
 - (iii) amounts paid under section 65 of the Superannuation Guarantee (Administration) Act 1992; and
- (b) dealing with those amounts, in accordance with the Rules and in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the Fund; and
- (c) paying to Beneficiaries (subject to any standards under section 32 of the Act) in accordance with the covenant referred to in section 53 of the Act, or to the legal personal representatives of Beneficiaries, amounts deposited with the Fund together with accumulated earnings on those amounts;
- (d) any other purposes approved by APRA; **section 10**

Approved Trustee means a Constitutional Corporation in relation to which an approval under section 26 of the Act is in force; **section 10 section 26**

APRA means the Australian Prudential Regulation Authority;

ASIC means the Australian Securities and Investments Commission;

Associate has the meaning given by section 12 of the Act; **section 10**

Beneficiary means a person who has a beneficial interest in the Fund; **section 10**

Benefit Payment Insurance means insurance effected by the Trustee to discharge the Trustee's liability to pay Total and Temporary Disablement Benefits, Total and Permanent Disablement Benefits or Death Benefits in accordance with Rule 5.6(b)(i);

Binding Death Nomination means a nomination which complies with Rule 5.3(a);

Business Real Property, in relation to an Entity, means:

- (a) any freehold or leasehold interest of the Entity in real property;
- (b) any interest of the Entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or

Designated Beneficiary means any Dependant of a Member who is named as a Designated Beneficiary in a Membership Application;

Director has the same meaning as in the Corporations Act;

Disqualified Person means:

- (a) an individual who:
 - (i) has been convicted of an offence in respect of dishonest conduct against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, or has had a civil penalty order made in relation to them and that individual has not been granted a waiver by the Regulator of their disqualified status;
 - (ii) is an Insolvent Under Administration; or
 - (iii) has been disqualified by the Regulator.
- (b) a corporation which:
 - (i) knows or has reasonable grounds to suspect that a responsible officer is a disqualified person under (i) above;
 - (ii) has a receiver, or a receiver and manager appointed in respect of property beneficially owned by the corporation;
 - (iii) has an official manager, deputy official manager or administrator appointed in respect of the corporation;
 - (iv) has a provisional liquidator appointed in respect of the corporation; or
 - (v) has begun to be wound up.

Eligible Employment means:

- (a) the holding of any office or appointment;
- (b) the performance of any functions or duties;
- (c) the engaging in of any work; or
- (d) the doing of any act or things,

that results in a person being treated as an employee for the purposes of section 12 of the Superannuation Guarantee (Administration) Act 1992 (but excluding section 12(11) of that Act);

Eligible Person means any person, except someone who is engaged in Eligible Employment during part or all of a Year of Income, unless the following formula applies to that year:

[Assessable income + reportable fringe benefits] from Eligible Employment

is less than 10% of

[Assessable income + exempt income + reportable fringe benefits] from all sources.

Eligible Termination Payment has the meaning in Subdivision AA of Division 2 of Part III of the Tax Act; **Reg 1.03**

- (a) the purpose of which is to maintain over time the purchasing power of the pension relative to the CPI; and
- (b) that:
 - (i) ensures that an adjustment will be made at least annually to the amount of the pension payments; or
 - (ii) has been approved by APRA. **Reg 1.06**

Insolvent Under Administration means a person who:

- (a) is an undischarged bankrupt under the Bankruptcy Act 1966 or the law of an external Territory or a foreign country; or
- (b) has the status of an undischarged bankrupt under the law of any country other than Australia or of an external Territory;
and includes:
- (c) a person, any of whose property is subject to control under section 150 or 188 of the Bankruptcy Act 1966, or a corresponding provision of the law of an external Territory or of a foreign country; or
- (d) a person who has, at any time, executed a personal insolvency agreement under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or of a foreign country and the person has not been released from obligations under that Act or law; **section 10**

Interdependency Relationship means circumstances in which 2 persons (whether or not related by family):

- (a) have a close personal relationship, live together, one or each of them provides the other with financial support and one or each of them provides the other with domestic support and personal care; or
- (b) have a close personal relationship but do not satisfy paragraph (a) because either or both of them suffer from a physical, intellectual or psychiatric disability,

but excludes relationships which are excluded by the Regulations; **section 10 section 10A**

Invest or Investment means:

- (a) apply assets in any way; or
- (b) make a contract,

for the purpose of gaining interest, income, profit or gain; **section 10**

Investment Manager means a person appointed by a Trustee to Invest on behalf of the Trustee; **section 10**

In-house Asset has the meaning given in Part 8 of the Act and, unless otherwise stated in Part 8, includes a Loan to, or an investment in a Related Party of the Fund, an investment in a Related Trust of the Fund, or an asset of the Fund subject to a lease or Lease Arrangement between the Trustee of the Fund and a Related Party of the Fund;

includes a person who receives a Pension, or who has deferred his or her entitlement to receive a benefit from the Fund; **section 10**

Membership Application means an application to be admitted as a Member in a form which the Trustee approves;

Member-contributed WA Property means property to which the Stamp Act 1921 (Western Australia) or the Duties Act 2008 (Western Australia) applies, which is transferred (for consideration or otherwise) into the Fund by a Member or Members as a contribution by that Member or Members on their own behalf, which property was owned by the Member or Members prior to its contribution so that following the transfer no person other than the Member or Members contributing the Member-contributed WA Property will hold a beneficial interest in that property as contemplated by the Stamp Act 1921 (Western Australia) or the Duties Act 2008 (Western Australia), but does not include publicly-listed securities;

Minimum Benefit means all of a Member's benefits in the Fund;

Non-lapsing Binding Nomination means a nomination, the form of which is approved by the Trustee and which complies with Rule 5.4(a);

Non-commutable Income Stream means a benefit that:

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

Non-member Spouse means a person who is the non-member spouse in relation to a Payment Split; **Reg 1.03**

Normal Retirement Benefit is the benefit to which a Member who meets the criteria set out in Rules 5.1(a) or 5.1(b) is entitled and which is calculated in accordance with Rules 5.2(a) and 5.2(b);

Normal Retirement Date, subject to the Act or Regulations, means the earlier of:

- (a) the date on which the relevant Member ceases to be Gainfully Employed; or
- (b) the date on which the relevant Member attains the age of 65 years;

Old-age Pension has the meaning in paragraph 51(xxiii) of the Constitution; **section 10**

Part 8 Associate, in relation to an Entity has the meanings given in Subdivision B of Part 8 of the Act;

- (b) the trust deed or governing rules provide that the sole or primary purpose of the fund is the provision of Old-age Pensions,
- (c) and in relation to which the trustee has elected in writing in a form approved by the Regulator that the Act will apply to the fund; **section 10 section 19**

Regulations means the Superannuation Industry (Supervision) Regulations 1994;

Regulator means the body having the responsibility for administering the Act and the activities of the Fund and includes APRA, ASIC or the Taxation Commissioner; **section 10**

Related Party means any of the following:

- (a) a Member;
- (b) a Standard Employer Sponsor;
- (c) a Part 8 Associate of a person or entity referred to in paragraph (a) or (b); or
- (d) a Non-member Spouse with a Superannuation Interest;

Related Trust means a trust over which a Member or a Standard Employer Sponsor has Control, other than an Excluded Instalment Trust;

Relative of an individual (except in Rule 1.5) means the following:

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or Adopted Child of the individual or of his or her Spouse;
- (b) the Spouse of the individual or of any other individual referred to in paragraph (a),

and for the purposes of paragraph (a), if one individual is the child of another individual because of the definition of Child in this Deed, relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual;

Relevant Law means the Act and Regulations, the Tax Act, the Corporations Act and any other laws governing the provision of superannuation and retirement benefits in Australia, from time to time and any regulations made under them;

Restricted Non-preserved Benefits means the total of the amount of any restricted non-preserved benefits that are received from another Regulated Superannuation Fund, a Retirement Savings Account established under the Retirement Savings Account Act 1997, or an EPSSS;

Retire means:

- (a) where a person is at least aged 55 years and less than 60 years, an arrangement under which the Member was Gainfully Employed has come to an end and the Trustee is reasonably satisfied that the Member intends never again to become Gainfully Employed on at least a Part time Basis;
- (b) where a person is at least aged 60 years and less than 65 years, an arrangement under which the Member was Gainfully Employed ceased on or after the Member's 60th birthday;

Trustee is reasonably satisfied that the Member is unlikely, ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;

✓ **Total and Permanent Disablement Benefit** means a benefit payable under Rule 5.2(c);

Total and Temporary Disablement Benefit means a benefit payable under Rule 5.2(d);

Trustee means the first Trustee of the Fund and / or any other person appointed as an addition to or replacement or substitute for that person. The Trustee may be one or more persons at any time;

Unrestricted Non-preserved Benefits means the sum of:

- (a) the total of the Member's Unrestricted Non-preserved Contributions;
- (b) the amount of the Member's Preserved Benefits and Restricted Non-preserved Benefits which have met a Condition of Release and have a nil Cashing Restriction;
- (c) the amount of unrestricted non-preserved benefits received by the Fund in respect of the Member on or after the day on which the Fund becomes a Regulated Superannuation Fund; and
- (d) the investment earnings on the amounts specified in paragraphs (a) and (c) for the period before 1 July 1999,

less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the amounts in (a) to (d) above at the relevant time;

✓ **Unrestricted Non-preserved Contributions** means the amounts (other than an amount that is a CGT Exempt Component as defined in the Tax Act):

- (a) that will be taken by section 27D of the Tax Act as in force before 1 July 2007 to have been expended out of Eligible Termination Payments within the meaning of that section; and
- (b) that have been received from sources other than:
 - (i) superannuation funds;
 - (ii) Approved Deposit Funds within the meaning of the Act or the Occupational Superannuation Standards Act 1987 as in force immediately before the commencement of section 5 of the Occupational Superannuation Standards Amendment Act 1993; or
 - (iii) deferred annuities within the meaning of Rule 5 or the Occupational Superannuation Standards Regulations; or
 - (iv) Retirement Savings Accounts established in accordance with the Retirement Savings Accounts Act 1997;

Year of Income means the period from 1 July of a calendar year to 30 June of the following calendar year, unless any other period applicable to the Fund is, for the purposes of the Tax Act, a year of income of the Fund. **section 10**

✓ **For further information please contact your accountant, financial planner, lawyer or other advisor or go to**

<http://www.ato.gov.au/>