

**THIS TRUST DEED** is made on 1 December 1999.

**BY:** RUNA NOMINEES PTY. LTD. A.C.N. 005 081 541 care of Davies Knox Chartered Accountants, 10 Moonee Street, Coffs Harbour, New South Wales ('the Trustee\*')

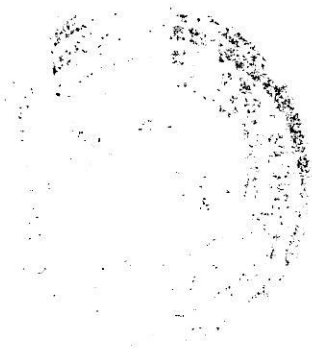
**RECITALS:**

- NEW SOUTH WALES DUTY  
30-12-1999 0000198056-001  
SECTION 60-DUPLICATE  
DUTY \$ \*\*\*\*\*2.00
- A. The Trustee\* established the Murphy Superannuation Fund ("the Fund") on the date shown above, in accordance with this trust deed as a Self Managed Superannuation Fund as defined under the *Superannuation Industry (Supervision) Act 1993 (C'th)* with the flexibility of becoming another type of superannuation fund under that legislation.
- B. The Trustee\* has agreed to act as trustee of the Fund in accordance with the Trust Deed incorporating the attached detailed provisions in clauses 1 to 27 of Part A and Forms 1 to 3 in Part B (the "Trust Deed").
- C. The Trustee desires to maintain the Fund as a complying superannuation fund under the *Income Tax Assessment Act*.
- D. The purpose of the Fund is:
- (1) to provide superannuation benefits to Members, and in the event of their death, for their dependants; and
  - (2) while the trustees of the Fund are natural persons, to provide these superannuation benefits by way of old-age pensions;

and to act for any other purposes as permitted from time to time by the *Superannuation Industry (Supervision) Act 1993 (C'th)* and the *Superannuation Industry (Supervision) Regulations*.

**PROVISIONS:-**

1. The Fund shall be administered in accordance with the Trust Deed.
2. The Trustee\* confirms that it will act as the initial Trustee of the Fund in accordance with the Trust Deed.
3. The Trust Deed shall be varied in accordance with clause 25 of Part A of the Trust Deed including variations due to the deemed inclusion of the Applicable Standards in accordance with clause 3 of Part A of the Trust Deed.
4. The Trust Deed shall be subject to the definitions set out in clause 2 of Part A of the Trust Deed.
5. The Trust Deed shall be construed in accordance with the laws of the State or Territory of New South Wales and the Commonwealth of Australia and the courts and tribunals of that jurisdiction and the Commonwealth and, to the extent courts and tribunals of that jurisdiction and the Commonwealth have application to the Trust Deed, their jurisdictions shall be exclusive except to the extent that all of the parties to a proceeding unanimously agree that the courts and tribunals of another state or territory shall have jurisdiction.



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**IN WITNESS** the parties have executed the Trust Deed on the date first referred to.

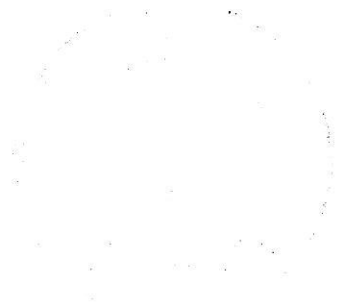
**EXECUTED** by RUNA NOMINEES PTY. LTD. )  
A.C.N. 005 081 541 by being signed by those persons )  
authorised to sign for the Company: )  
)  
)

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*J. Murphy* X Director

*B. Murphy* X Director or Secretary



# PART A

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(This table does not form part of the Deed)

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This documentation has been prepared by DBA Butler Pty Ltd, Lawyers (DBA) on its instructions 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. All advice, if any, regarding the Fund are matters for the parties to the documentation and the person ordering the Fund. Taxation and superannuation laws are subject to continual change and substantial penalties can be imposed for any breach of these laws. Accordingly, expert advice should be obtained wherever in doubt. Except to the extent required by law, DBA disclaims all and any liability arising in any manner that does not relate to the documentation prepared on its specific instructions.

## DETAILED PROVISIONS TO THE FUND'S TRUST DEED

### Aids to Interpretation

- 1 In this Deed, unless the context otherwise requires:
- 1-1 a reference to any person or body shall include references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators;
  - 1-2 references to any provision of the Deed, law, regulation, temporary modification order, ruling, circular or guideline are references to that provision of the Deed, law, regulation, temporary modification order, ruling, circular or guideline as amended, consolidated, supplemented or replaced from time to time;
  - 1-3 words importing any one gender include all genders and words importing the singular number include the plural and vice versa;
  - 1-4 a reference to a clause can be a reference to a distinct clause, sub-clause, paragraph, sub-paragraph or the like to simplify references throughout this Deed;
  - 1-5 the table of contents shall not be taken into account in the interpretation of this Deed;
  - 1-6 a reference to this Deed means this Deed as modified from time to time under clauses 3 and 25;
  - 1-7 where any question or dispute arises in respect to the Fund or in respect of the interpretation of the Deed, the Trustee's decision on the matter shall be final and binding; and
  - 1-8 references to the *Occupational Superannuation Standards Act 1987 (C'th)* shall, in addition, be taken to be references to the *Superannuation Entities (Taxation) Act 1987 (C'th)* as the case requires.

### Definitions

- 2 The following words shall, unless the Trustee determines otherwise or the context requires otherwise, have the meanings shown below:
- 2-1 "Acceptable Contributor" means:
    - (a) a Member or an Associate of a Member;
    - (b) an Employer or an Associate of a Member; or
    - (c) some other contributor where the Trustee is reasonably satisfied that the contributor is a person who is permitted, under the Applicable Standards, to make contributions to the Fund;
  - 2-2 "Account" means an account in the books of account of the Fund;
  - 2-3 "Accumulation Reserve Account" means the Account described in sub-clauses 21-5 and 21-11;
  - 2-4 "Actuary" means a practising member of the Institute of Actuaries of Australia or any other actuary approved by the Applicable Standards;
  - 2-5 "Allocated Pension" means a Pension or any component of it:
    - (a)
      - (i) where the Pension cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a primary beneficiary or of another Reversionary Beneficiary;
      - (ii) where neither the capital value nor the income from the Pension can be used as security for a borrowing;

- (iii) that is paid at least annually;
  - (iv) where the Pension need not be fixed in amount but where the Pension (excluding any commutation) is between the minimum and maximum amounts prescribed in Schedule 1A of the SISR; and
  - (v) which otherwise complies with Regulations 1.06(4) and (5) of the SISR and the Applicable Standards; or
- (b) which otherwise complies with such other Applicable Standards as govern allocated pensions;
- 2-6 “Ancillary Benefits” means Benefits arising in the circumstances described in sub-clause 14-7;
- 2-7 “Applicable Authority” means the ISC, APRA, the Australian Taxation Office, the Commissioner, the Australian Securities and Investment Commission, the Department of Family and Community Services (formerly the Department of Social Security) or, alternatively, some other body or official empowered under the law referred to in clause 27 with the administration of Self Managed Superannuation Funds or, if the Trustee determines, some other type of superannuation fund;
- 2-8 “Approved Fund” means a superannuation fund (including a Self Managed Fund, a Small APRA Fund and a non-excluded superannuation fund), approved deposit fund, eligible roll-over fund, retirement savings account, small accounts holding reserve or other approved fund including a pension fund or annuity arrangement which, amongst other things, can accept a transfer from the Fund of a Member's\* Benefit or is authorised to transfer a Member's\* Benefit to the Fund in accordance with the Applicable Standards;
- 2-9 “Approved Trustee” has the same meaning as that term is defined in the Applicable Standards;
- 2-10 “Applicable Standards” means, in relation to the status of the Fund at the time (whether a Self Managed Fund, a Small APRA Fund or a non-excluded superannuation fund) any relevant requirements in the following provisions as the context requires:
- (a) any applicable provisions in OSSA, OSSR, the *Income Tax Assessment Act 1936 (C'th)*, the *Income Tax Assessment Act 1997 (C'th)* and the *Fringe Benefits Tax Assessment Act 1986 (C'th)* 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;
  - (b) any applicable provisions in the SIS and the SISR with which the Fund must comply;
  - (c) any applicable provisions in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997(C'th)*, the *Bankruptcy Act 1966 (C'th)* and the *Corporations Law* 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; and

- (e) where the Trustee considers it appropriate, any other applicable requirement regulating superannuation funds and any proposed change to the provisions referred to in the previous paragraphs of this definition where a temporary modification order, press release, ruling, circular or guideline relating to the proposed change has been published which must be complied with to ensure:
- (i) the Fund remains entitled to concessional tax treatment;
  - (ii) the Fund remains a regulated superannuation fund;
  - (iii) any applicable provisions in the *Social Security Act 1991 (C'th)* with which the Fund must comply in order for an income stream to be an Asset-test Exempt Pension, and
  - (iv) no penalty is imposed on the Trustee or the directors of the Trustee under or by virtue of the Applicable Standards;
- 2-11 "APRA" means the Australian Prudential Regulation Authority and prior to July 1, 1998 includes a reference to the ISC and any of these bodies authorised officers;
- 2-12 "ARC" means the amount standing to the credit of an Accumulation Retirement Account of a Member\*;
- 2-13 "Asset-test Exempt Pension" means a Pension Benefit that is exempt or excluded from the assets test under the *Social Security Act 1991 (C'th)* or the *Veterans Entitlement Act 1986 (C'th)* (and any applicable regulation made pursuant thereto), as relevant;
- 2-14 "Associate" means a related person or entity as defined in SIS or, if the Trustee so determines, such other meaning given to that term in the Applicable Standards;
- 2-15 "Auditor" means an auditor who is:
- (a) registered under the Corporations Law;
  - (b) a member, or if the Applicable Standards require, a fellow of:
    - (i) the Australian Society of Certified Practising Accountants;
    - (ii) the Institute of Chartered Accountants of Australia;
    - (iii) the National Tax and Accountants Association Ltd.;
    - (iv) the National Institute of Accountants of Australia; or
    - (v) the Association of Taxation and Management Accountants;
  - (c) an Auditor-General of the Commonwealth, a State or Territory; or
  - (d) otherwise qualified to act as an auditor under the Applicable Standards;
- 2-16 "Beneficiary" means a Dependant, a trustee for a Dependant, a Members\* legal personal representative, a Reversionary Beneficiary or other beneficiary who is entitled to Benefits accruing due to a Member's participation in the Fund under sub-clause 14-11 or otherwise;
- 2-17 "Benefit" means any amount paid or payable by the Fund to or in respect of a Member as a Pension Benefit, a Lump-Sum Benefit or an Ancillary Benefit (if not paid as a Pension Benefit or a Lump-Sum Benefit) under the provisions of this Deed;
- 2-18 "Commissioner" means the Federal Commissioner of Taxation authorised under the *Taxation Administration Act 1953 (C'th)* or any other Commonwealth law;

2-19 "Complying Pension" means a Pension:

- (a)
  - (i) that is paid at least annually for the life of a Member\* and, if reversionary, for such time as the pension must be paid to comply with the Applicable Standards or for such period as the Trustee determines;
  - (ii) where the Pension is fixed in amount unless otherwise provided in this Deed;
  - (iii) which, if indexed, is indexed in accordance with the Applicable Standards;
  - (iv) which does not have a residual capital value;
  - (v) which cannot be commuted except where the Pension is not restricted by virtue of paragraph 17-1(c) and then, subject to the Applicable Standards, only:
    - (1) within 6 months of the commencement day of the Pension;
    - (2) within 10 years of the commencement day of the Pension on the death of a Member\* for payment to a Reversionary Beneficiary of an amount no greater than the sum of the Pension Benefits the Member\* would have received had the Member\* survived for the balance of the 10 year period;
    - (3) where the Pension Benefit on commutation is transferred directly to the purchase of another complying pension or annuity under the Applicable Standards; or
    - (4) to pay a superannuation contributions surcharge;
  - (vi) which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;
  - (vii) where the Pension cannot be transferred to another person other than to a Reversionary Beneficiary on the death of a Member\* or of another Reversionary Beneficiary;
  - (viii) where neither the capital value nor the income from the Pension can be used as security for a borrowing; and
  - (ix) otherwise complies with Regulation 1.06(2) and (3) of the SISR and the Applicable Standards; or
- (b)
  - (i) that commences after September 20, 1998;
  - (ii) the Member became entitled to be paid the pension on or after his or her Pension Age or otherwise becomes eligible to be paid this type of Complying Pension under the Applicable Standards;
  - (iii) that is paid at least annually to the Member or to a Reversionary Beneficiary:
    - (1) 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 or such other period permitted by the Applicable Standards; or
    - (2) 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 or such other period permitted by the Applicable Standards;
  - (iv) the total amount of the payment made ignoring any commuted amounts:

- (1) in the first year after the commencement day is fixed and that payment relates to the period commencing on the day when the Member\* became entitled to the pension under this Deed; and
  - (2) in a subsequent year does not fall below the total amount of the payment made in the immediately preceding year (the 'previous total') and does not exceed the previous total which, if indexed, is indexed in accordance with the Applicable Standards;
- (v) which does not have a residual capital value;
- (vi) which cannot be commuted except:
- (1) within 6 months of the commencement day of the Pension;
  - (2) 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) where the Pension Benefit on commutation is transferred directly to the purchase of another complying pension or annuity under the Applicable Standards; or
  - (5) to pay a superannuation contributions surcharge;
- (vii) which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;
- (viii) which 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) where neither the capital value nor the income from the Pension can be used as security for a borrowing; and
- (x) otherwise complies with Regulation 1.06(7) of the SISR and the Applicable Standards; or
- (c) which otherwise complies with such other Applicable Standards as govern complying pensions and the Pension RBL,

provided that where the relevant Pension is an Asset-test Exempt Pension, the applicable provisions of the *Social Security Act 1991 (C'ith)* or the *Veterans Entitlement Act 1986 (C'ith)* (and any applicable regulation made pursuant thereto), as relevant, apply to the extent of any inconsistency in preference to any applicable provision of SIS and SISR relating to the provision of that Pension to ensure the Pension qualifies as an Asset-test Exempt Pension;

- 2-20 "Complying Pension Amount" means in relation to a complying pension paid pursuant to sub-clause 2-19(a), 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 fiscal year) assuming that no Reversionary Pension is to be provided and that a fixed rate of indexation of no greater than 5% per annum is applicable;

- 2-21 “Conditional Preservation Age” means the age of 55 years or some other age prescribed as the preservation age by the Applicable 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 with any Employer or otherwise;
- 2-22 “Contributing Employer” means, unless the Trustee determines otherwise, an employer:
- (a) who has been notified in writing by the Trustee:
    - (i) that:
      - (1) the Fund is a resident regulated superannuation fund under the Applicable Standards;
      - (2) the Trustee is not subject to a direction from the Applicable Authority that would prevent the Trustee accepting employer or other contributions; and
      - (3) the Trustee has not been subject to such a direction before or since the date of the application by the employer; or
    - (ii) of such matters as the Trustee determines or as is required by the Applicable Standards from time to time; and
  - (b) who or who’s Associate employs a Member but only for so long as the employer can contribute in respect of that employment or for so long as the Member remains a Member;
- where the “Notification to Contributing Employers” Form can be used by the Trustee to notify the employer of any of these items;
- 2-23 “Corporate Trustee” is a trading or financial corporation formed within the limits of the Commonwealth under the jurisdiction of the Commonwealth under sub-paragraph 51(xx) of the *Commonwealth Constitution* eligible to act as a trustee of a regulated superannuation fund in accordance with the Applicable Standards;
- 2-24 “Deed” means this deed which forms part of the Trust Deed establishing the Fund as amended from time to time;
- 2-25 “Dependant” includes 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, any adopted child and any child of the Member born within 10 months after the death of the Member; and
  - (c) any other person who, in the opinion of the Trustee, is at the relevant date (or in the case of a deceased Member was at the time of his or her death) wholly or partially financially dependent upon the Member;
- 2-26 “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;
- 2-27 “Earnings” means the positive or negative amount which the Trustee determines to be the income of the Fund less Disbursements (or any part thereof) either:
- (a) for a Financial Year; or

(b) for any other period 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 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 and Earnings may also reflect unrealised gains or losses;

2-28 "Electors" means a Member who is a Qualified Person and includes the legal personal representative of a Member who has died until the later in time of:

- (a) the payment in full of the last Lump-Sum Benefit due to a Beneficiary of the deceased Member in that capacity; or
- (b) the commencement of payment of the last Pension Benefit due to a Beneficiary of the deceased Member in that capacity;

2-29 "Eligible Spouse" means the spouse of whichever of:

- (a) a Member;
- (b) a person who is Gainfully Employed as an Employee or who is self-employed; or
- (c) some other person, if permitted by the Applicable Standards;

on whose behalf contributions can be made to the Fund in accordance with the Applicable Standards and "Relevant Spouse" means that Member, Gainfully Employed person or other person as the case may be;

2-30 "Employee" means a person who is Gainfully Employed by an Employer;

2-31 "Employer" means a Contributing Employer or such other employer authorised by the Trustee;

2-32 "Excluded Superannuation Fund" means a Self Managed Fund and prior to October 8, 1999 referred to an excluded superannuation fund as defined in the Applicable Standards where the trustee of such a fund was excluded from certain obligations imposed on the trustees of other kinds of superannuation funds under the Applicable Standards;

2-33 "Factor" means the present value as calculated by an Actuary of a notional Complying Pension where the pension payable in the first year of the Complying Pension is one dollar;

2-34 "Financial Year" means a year ended on 30th June unless the Trustee is permitted to adopt a different Financial Year end by the Applicable Standards;

2-35 "Flexi-Pension" means a Pension or any component of it:

- (a)
  - (i) where the Pension is fixed in amount unless otherwise provided in this Deed;
  - (ii) that commences after July 1, 1994;
  - (iii) which, on reversion or commutation, does not have a reversionary component greater than 100% of the capital value of the Pension Benefit before that event;
  - (iv) where 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;
  - (v) where neither the capital value nor the income from the Pension can be used as security for a borrowing;
  - (vi) 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, indexation in accordance with the Applicable Standards; and
  - (2) where any commutation to a lump sum in accordance with sub-clause 16-5 is limited by the pension valuation factor prescribed in Schedule 1B of the SISR;
  - (vii) that is paid at least annually;
  - (viii) which may, subject to the Applicable Standards, have a residual capital value; and
  - (ix) otherwise complies with Regulation 1.06(6) of the SISR and the Applicable Standards; or
  - (b) which otherwise complies with such other Applicable Standards as govern such pensions;
- 2-36 “Form” means the appropriate form in Part B of this Deed. However, the Trustee may accept any document providing similar information or waive the requirement of requiring a form to be completed;
- 2-37 “Full-time” means more than 30 hours per week or such time or conditions as are set by the Applicable Standards;
- 2-38 “Fund” means the fund constituted in this Deed;
- 2-39 “Funding Member” means a Member in respect of whom the Trustee permits contributions to fund or allows a Member to obtain a Complying Pension;
- 2-40 “Gainfully Employed” means a person engaged either on a Full-time or Part-time basis (as the case may be) in any business, trade, profession, occupation or employment within the meaning of the term gainfully employed in the Applicable Standards, and the expression “Gainful Employment” has a corresponding meaning;
- 2-41 “Insured Benefit” means the Benefit described in clause 18;
- 2-42 “ISC” means the Insurance and Superannuation Commissioner prior to July 1, 1998, APRA after July 1, 1998, the Commissioner or, alternatively, some other official empowered under the law referred to in clause 27 with the administration of Excluded Superannuation Funds or any of his or her authorised officers;
- 2-43 “Lease” means a “lease” or “lease arrangement” as those terms are defined in the Applicable Standards;
- 2-44 “Lump-Sum Benefit” means a Benefit or any component of it paid otherwise than as a Pension in accordance with this Deed;
- 2-45 “Mandated Employer Contribution” means any contribution made pursuant to the *Superannuation Guarantee (Administration) Act 1992 (C’th)*, any shortfall component, any contribution made under an industrial award or prescribed agreement or any other contribution requiring similar treatment under the Applicable Standards;
- 2-46 “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, where the context requires, includes a former Member and a reference to a Member\* includes a reference to a Member, or, alternatively, a Beneficiary and “Membership” shall have a corresponding meaning and the Trustee may, subject to the Applicable Standards, determine that a person is not a Member even though he or she may be entitled to a Pension Benefit or some other interest in the Fund;
- 2-47 “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 Applicable Standards;

- 2-48 “Old-Age Pension” means an old-age pension for the purposes of paragraph 51(xxiii) of the *Commonwealth Constitution*;
- 2-49 “OSSA” means the *Occupational Superannuation Standards Act 1987 (C’th)* or the *Superannuation Entities (Taxation) Act 1987 (C’th)*, as the case requires;
- 2-50 “OSSR” means the *Occupational Superannuation Standards Regulations* or the *Superannuation Entities Regulations*, as the case requires;
- 2-51 “Part-time” means more than 10 hours per week or such time or conditions as are set by the Applicable Standards which does not amount to Full-time;
- 2-52 “Pension” means an annuity or pension contemplated by the Applicable Standards and shall, except where this Deed states otherwise, mean an annuity or pension which is not a Reversionary Pension unless the Trustee has agreed in writing with the Member\* that the Pension is a Reversionary Pension and where “Pensioner” and “Reversionary Pensioner” shall have corresponding meanings;
- 2-53 “Pension Age” has the same meaning given to that term in the *Social Security Act 1991 (C’th)* and the *Veterans’ Entitlement Act 1986 (C’th)*, as relevant, or such other age acceptable to the Trustee so long as it is permitted under the Applicable Standards;
- 2-54 “Pension Benefit” means a Pension or any component of it which can be paid or provided from the Fund to a Member\* in compliance with the Applicable Standards;
- 2-55 “Pension RBL” means a pension reasonable benefit limit referred to in sub-clause 2-60;
- 2-56 “Pension Reserve” means the Account referred to in paragraph 21-5(c);
- 2-57 “Penultimate Cashing Age” means the age of 65 years or any other age prescribed by the Applicable Standards for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed either on a Full-time or a Part-time basis;
- 2-58 “Preferred Dependant” means a Dependant nominated by a Member to receive his or her Death Benefit in the Member’s “Application for Membership” Form or in a subsequent clear written notification to the Trustee;
- 2-59 “Qualified Person” means, subject to the Applicable Standards:
- (a) an individual who has not died, has not lost their legal capacity and is not an ‘insolvent under administration’ (as that term is defined in SIS);
  - (b) an individual who has not been the subject of a civil penalty order made under the Applicable Standards;
  - (c) an individual who has not been convicted of an offence involving dishonest conduct anywhere in the world;
  - (d) a company which has not lost legal capacity, gone into liquidation, receivership or been placed under official management or has not otherwise become insolvent under administration;
  - (e) a Corporate Trustee which is permitted by the Applicable Standards to act as trustee of the Fund; or
  - (f) an Approved Trustee which is permitted by the Applicable Standards to act as trustee of the Fund;
- and a Corporate Trustee is a Qualified Person only if all of its directors are also Qualified Persons;
- 2-60 “RBL” means a reasonable benefit limit prescribed in the Applicable Standards to determine the maximum amount of concessional taxed superannuation benefits a Member\* can receive which will be one of:

- (a) a transitional lump sum or pension reasonable benefit limit determined in accordance with the Applicable Standards, where applicable;
- (b) the pension reasonable benefit limit prescribed by the Applicable Standards where the Member\* receives at least 50% of the Member's pension reasonable benefit limit as a Benefit in the form of a Complying Pension or a complying annuity in accordance with the Applicable Standards;
- (c) the lump-sum reasonable benefit limit; or
- (d) such other reasonable benefit limit permitted by the Applicable Standards;

2-61 "Retirement" means in the case:

- (a) of an Employee: resignation, dismissal or redundancy; or
- (b) in the case of a self-employed person: an equivalent cessation of work;

excluding circumstances where the resignation, dismissal, redundancy or cessation, as the case may be, is due to death or to Total and Permanent Disablement and "Retires" and "Retired" have corresponding meanings;

2-62 "Reversionary Pension" means a Pension payable to a Beneficiary who succeeds a Member\* to the entitlement of the Member\* to Pension Benefits and "Reversionary Beneficiary" and "Reversionary Pensioner" has a corresponding meaning;

2-63 "Securities" means securities as defined in section 92 of the Corporations Law and securities approved by the Trustee in any foreign country;

2-64 "Self Managed Fund" has the same meaning as the term 'Self Managed Superannuation Fund' in the Applicable Standards and, where applicable, prior to 8 October 1999 included a reference to an Excluded Superannuation Fund;

2-65 "SIS" means the *Superannuation Industry (Supervision) Act 1993 (C'th)*;

2-66 "SISR" means the *Superannuation Industry (Supervision) Regulations*;

2-67 "Small APRA Fund" means a fund with fewer than 5 members with an Approved Trustee and, where applicable, prior to 8 October 1999 included a reference to an Excluded Superannuation Fund with an Approved Trustee;

2-68 "Spouse" in relation to a Member means, subject to the Applicable 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, wife or lover and if there is more than one spouse the Trustee shall determine which spouse shall be entitled to be treated as the spouse exclusively or, alternatively, how they are to share the entitlement of a spouse between them;

2-69 "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, where the Trustee determines, any similar liability or provision and "Taxation" has a corresponding meaning;

2-70 "Temporary Disablement" means physical or mental ill-health that has caused the Member to cease Gainful Employment or which otherwise qualifies as temporary disablement (or its equivalent) under the Applicable Standards which does not qualify as Total and Permanent Disablement;

2-71 "Total and Permanent Disablement" in relation to a Member means:



- (a) the definition of “total and permanent disablement” in the insurance policy effected by the Trustee (if any); or
- (b) where there is no insurance policy, the physical or mental ill-health of the Member as certified by two medical practitioners who certify that, in their opinion, the Member is unlikely to be capable of being employed again in any position for which he or she is reasonably qualified by education, training or experience; or
- (c) any other circumstances which are acceptable to the Trustee and which are acceptable under Applicable Standards;

and “Totally and Permanently Disabled” shall have a corresponding meaning;

- 2-72 “Trustee” can mean the Trustee\* or other natural person or Corporate Trustee who holds office as the trustee of the Fund;
- 2-73 “Trust Deed” means the trust deed establishing the Fund including this deed as amended from time to time;
- 2-74 “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)*, or the *Trustee Act 1898 (Tas)* and the *Trustee Amendment (Investment Powers) Act 1997 (Tas)* apply or any other Commonwealth, State or Territory legislation of like effect that may apply;
- 2-75 “Ultimate Cashing Age” means the age of 70 years or any other age prescribed by the Applicable Standards for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed on a Full-time basis;
- 2-76 “Unconditional Preservation Age” means the age of 60 years or any other age prescribed as the preservation age by the Applicable Standards at the time of a Member’s Retirement for the payment of all or part of a Member’s Benefit from the Fund on Retirement; and
- 2-77 “a Variation” means a variation by deed or a variation orally communicated by the Trustee to any of the Members so long as any variation shall be unenforceable until recorded in a deed.

### **Supremacy of the Applicable Standards**

#### 3 In this Deed:

- 3-1 The Applicable Standards override the provisions of this Deed and, to the extent the most logical provision conceivable not expressed in this Deed is necessary to enable compliance with the Applicable Standards, the most logical provision shall be implied as a provision of this Deed and shall prevail over provisions expressed in this Deed.
- 3-2 Where sub-clause 3-1 no longer requires a provision referred to in sub-clause 3-1 to override the provisions of this Deed, then that provision shall cease to have effect.
- 3-3 Despite sub-clause 3-1 the Trustee may, after taking the advice of a lawyer experienced in superannuation, by resolution declare that any provision which would be implied by sub-clause 3-1 shall not be so implied.
- 3-4 The Trustee is not to be taken to be in breach of this Deed where the Trustee is in breach of a provision implied by sub-clause 3-1 where the contravention of the Applicable Standards is waived by the Applicable Authority or any competent jurisdiction referred to in clause 27.
- 3-5 Sub-clause 3-1 shall apply on a prospective basis from the date of establishment of the Fund or the date the relevant standard commences to operate, as the case may be. However, the Trustee may decide that the Applicable Standards shall apply on a retrospective basis or in an amended way, either in whole or in part.
- 3-6 This clause 3 shall have a paramount effect and shall be taken to prevail and have priority over the provisions of this Deed to the extent of any inconsistency. The express provisions contained in this Deed shall be read down to the extent of any inconsistency to ensure this Deed and the Fund complies with the Applicable Standards.

## Fund Property

4

- 4-1 The property of the Fund shall consist of all the cash, investments, insurances and other property held on trust under the provisions of this Deed and shall include:
- (a) any money or other property 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.
- 4-2 Nothing in this Deed shall entitle any Member\* to any specific property belonging to the Fund and the Trustee shall have an absolute discretion in determining which property shall be applied to provide funds for any amount which becomes payable in respect of a particular Member\*.
- 4-3 Every outgoing Trustee, including a Trustee whose departure gives rise to a vacancy in the office of Trustee as contemplated in paragraph 6-5(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.

## Fund Purpose

5

- 5-1 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\*.
- 5-2 While the Trustee is a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Benefits to Members\*.

## Office of Trustee

6

### 6-1 **Trustee to hold property**

The Fund shall be vested in the Trustee and the Trustee shall hold the Fund property subject to the provisions of this Deed.

### 6-2 **Decisions - Individual Trustees**

Where the Trustee comprises:

- (a) two individuals, trustee decisions shall require unanimous approval; or
- (b) more than two individuals, trustee decisions shall require majority approval;

and where there is any deadlock on making any decision, each trustee's vote shall be weighted in relation to their Fund balance unless the Applicable Standards prescribe otherwise and the 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 Applicable Standards prescribe otherwise:

- (c) the Trustees may confer via any means as the Trustees by resolution approve including any electronic means, and a resolution passed by such a conference 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 was held;
- (d) if there is any interruption to a conference of Trustees using any of the means set out in paragraph 6-2(c), 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;

- (e) 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
- (f) 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.

### 6-3 **Decisions - Corporate Trustees**

Where the Trustee comprises a Corporate Trustee, Trustee decisions shall be in accordance with the Articles of Association, constitution or governing rules of the Corporate Trustee unless the Applicable Standards prescribe otherwise.

### 6-4 **Appointment**

- (a) Subject to the Applicable Standards and this clause, an absolute majority of 75% of the Electors who are Members\* or where there are no such Electors, a majority of the Contributing Employers; may, by written resolution, appoint a Qualified Person as Trustee so long as the Qualified Person has consented to that appointment in writing.
- (b) Subject to the Applicable Standards and the Trustee's discretion to determine otherwise, during any period which the Fund is a Self Managed Fund (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 a Self Managed Fund) each individual trustee and/or each director of a Corporate Trustee shall:
  - (i) satisfy any eligibility criteria prescribed by the Applicable Standards; or
  - (ii) satisfy such alternative test that is permitted by the Applicable Standards covering such situations as:
    - (1) single Member\* Self Managed Funds;
    - (2) if a Member\* has died;
    - (3) if a Member\* suffers from a legal disability (including a person under a legal disability due to age);
    - (4) if a Member\* has appointed a legal personal representative under a power of attorney or other instrument or act recognised by the Applicable Standards; or
  - (iii) satisfy such other requirements permitted by the Applicable Standards or an Applicable Authority.
- (c) Subject to the Applicable Standards and the Trustee's discretion to determine otherwise, during any period which the Fund is a Small APRA Fund (including any period that 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 Applicable Standards or an Applicable Authority.

### 6-5 **Vacancy**

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

- (a) become vacant where:

- (i) the Trustee resigns as trustee by executing a deed or in some other manner authorised by the Applicable Standards;
  - (ii) an individual, or a responsible officer of a Corporate Trustee, is no longer a Qualified Person unless that person can continue in office by compliance with guidelines of an Applicable Authority or otherwise in accordance with the Applicable Standards; or
  - (iii) an absolute majority of 75% of the Electors who are Members\* or where there are no such Electors, a majority of Contributing Employers; by written resolution, remove an individual trustee, Corporate Trustee or Approved Trustee from office; and
  - (iv) if the Fund is a Self Managed Fund and an individual trustee or a Corporate Trustee can no longer qualify 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 an Applicable Authority or otherwise in accordance with the Applicable Standards for any extended period); or
  - (v) if the Fund is a Small APRA Fund if 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 an Applicable Authority or otherwise in accordance with the Applicable Standards.
- (b) if necessary to comply with the Applicable Standards, be filled as soon as practicable on any vacancy.

#### 6-6 **Trustee Remuneration**

Subject to clause 10 and the Applicable Standards:

- (a) the Trustee shall not be entitled to receive remuneration from the Fund for its services unless remuneration is permitted under the Applicable Standards;
- (b) any trustee engaged in any profession or business may, notwithstanding his or her office of Trustee, act in a professional capacity, and shall be entitled to charge and be paid all professional and other charges for any business or work or act done by him or her, his or her firm, or his or her company, in connection with the Fund including acts which a trustee could have done personally; and
- (c) a Trustee shall not be required to elect between professional charges and any commission or fees otherwise authorised by the Members\*, statute or Court of Law and an Approved Trustee shall be entitled to its normal fees, charges and commissions including any amounts authorised by legislation.

### **Covenants**

7 The Trustee must:

- 7-1 act honestly in relation to all matters concerning the Fund;
- 7-2 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 property of another for whom that person felt morally bound to provide;
- 7-3 ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- 7-4 keep the money and other property of the Fund separate from any money and property, respectively:
  - (a) that is held by the Trustee personally;

- (b) that is money or property of an Employer or an Associate; or
  - (c) that is otherwise not part of the Fund;
- 7-5 not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising its functions and powers;
- 7-6 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:
- (a) the risk involved in making, holding and realising, and the likely return from, the investments of the Fund having regard to the purposes of the Fund as set out in clause 5 and expected cash flow requirements;
  - (b) the composition of the investments of the Fund as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (c) the liquidity of the Fund's investments having regard to the Fund's expected cash flow requirements; and
  - (d) the ability of the Fund to discharge its existing and prospective cash flow requirements.
- 7-7 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; and
- 7-8 provide Members with access to any prescribed information and prescribed documents in accordance with the Applicable 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 its 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 Applicable Standards, the Trustee is not obliged to give reasons for its actions or omissions.
- 8-3 The Trustee shall have 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 Applicable 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 investments or money for the purposes of paying Lump-Sum Benefits, Pension Benefits, Ancillary Benefits or acquiring annuities for any Members\*;

- (f) to establish any sub-fund, segment or partition within the Fund with separately identifiable assets, Members\* and liabilities with such Members\* only having an interest in that sub-fund which is separately accounted for in accordance with this Deed;
- (g) set aside out of the Fund from time to time 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 in which any shares, stock or debentures 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) borrow money and to secure the repayment of it in any manner and upon any terms (including with or without security) to pay Benefits or to settle Securities or for any other purposes permitted under the Applicable Standards;
- (k) 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;
- (l) insure or re-insure any risks contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, re-insurance company or superannuation fund;
- (m) to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by an Employer where there exists the possibility of transfers of Employees to the Fund;
- (n) to procure the Trustee or the Fund to be registered or recognised in any country or place outside the jurisdiction of its place of incorporation;
- (o) to complete any election or perform any act as required by the Applicable Standards including changing the status of the Fund from a Self Managed Fund to a Small APRA Fund, a non-excluded superannuation fund or some other type of fund approved by the Applicable Standards; or
- (p) 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 where the Trustee is an Employer or a Member\*, an Associate of an Employer or a Member\* or has a direct or personal interest in or benefit in the exercise of the power or right so long as the power or right is exercised in a bona fide prudential manner in accordance with the Applicable 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) the Trustee may ascertain and fix the value of the property of the Fund and the liabilities to which the Fund is committed in accordance with the Applicable Standards, and every taking or application made under this sub-clause 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 to the Fund including:

- (i) insurance on the lives, disability and working capacity of Members; and
  - (ii) insurance in respect of trustee liabilities;
- (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; and
- (c) meet the cost of insurance out of the Fund unless otherwise agreed between interested parties.
- 8-7 The Trustee may withhold Tax from any contributions, earnings, gains, property or other payment received, receivable or paid or payable by the Fund and obtain and furnish any information and deal in or pay the Tax.
- 8-8 The Trustee may obtain and act (or refrain from acting) on any professional advice or obtain any professional assistance as it considers appropriate.
- 8-9 Subject to the Applicable Standards and this Deed, the Trustee may pay an amount or transfer property to or for the benefit of a Member\* and the Trustee may accept an amount or property directly from a Member\* or any other party or indirectly (where an amount or property is paid to another party) provided its consent is obtained in respect of any such indirect payment or transfer,
- 8-10 Subject to the Applicable 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, so long as any custodian or investment manager must be appointed in writing; and the Trustee may similarly remove, replace or suspend any person or organisation as it considers appropriate.

### **Limitations**

9

- 9-1 The Trustee shall not be empowered or authorised to:
- (a) make loans to a Member or an Associate;
  - (b) borrow money on behalf of the Fund;
  - (c) acquire property, including any insurance policy, from a Member or an Associate; or
  - (d) make loans, Leases or investments to or in an Employer, Member or an Associate;
- unless and only to the extent authorised by the Applicable Standards.
- 9-2 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 (C'th)* or any other Australian law concerned with discrimination.

### **Loss and Indemnity**

10

- 10-1 Subject to the Applicable 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 from 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 Applicable 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 no, insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not;

unless the Applicable 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 Applicable Standards or otherwise.

10-2 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 Applicable Standards; and
- (b) have a lien on and may use the property of the Fund to satisfy this indemnity unless prohibited by Regulation 13.13 or Part 5 of the SISR or otherwise by the Applicable Standards.

10-3 Unless otherwise agreed between interested parties, the Trustee's costs of obtaining advice, including legal, accounting or actuarial advice and all related assistance and information shall be met by the Fund.

### **Investment**

11 Subject to the Applicable Standards, the Trustee shall ensure that all of the property of the Fund is invested in appropriate investments, in Australia or elsewhere, as the Trustee thinks fit including, without limitation:

- 11-1 any investment taken to be prudent under Trustee Law;
- 11-2 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;
- 11-3 on deposit or on loan, with or without security, at a rate of interest and upon terms as the Trustee may consider reasonable;
- 11-4 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;
- 11-5 the giving or taking of leases, licences or options over real or personal property or any interest in respect of them;
- 11-6 the discounting of loans, mortgages, contracts, hire purchase agreements or leases;
- 11-7 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 or other like security in a company or other entity, whether listed or unlisted and whether the shares or Securities are fully or partly paid up and whether secured or unsecured, registered or unregistered;
- 11-8 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;
- 11-9 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;



- 11-10 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;
- 11-11 the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust, whether listed or unlisted, whether individually or jointly and whether the units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- 11-12 any business (including a business of primary production) including any direct or indirect interest in any business and where a Trustee has invested in a business the Trustee may, to the extent permitted by the Applicable Standards, carry on the business or employ persons to carry on the business on behalf of the Trustee; or
- 11-13 any other investments which are acceptable under the Applicable Standards.

## **Membership**

12

### 12-1 **Eligibility**

Subject to the Applicable Standards, the Trustee may admit any one or more of the following applicants to Membership:

- (a) an Employee;
- (b) a self-employed person;
- (c) an Eligible Spouse; or
- (d) any other person,

so long as:

- (e) subject to sub-clause 12-3, the applicant for membership has provided an "Application for Membership" Form to the Trustee; and
- (f) if the Fund is a Self Managed Fund - the applicant is eligible to be appointed as an individual trustee or an officer of a Corporate Trustee under sub-clause 6-4(b); or
- (g) the applicant satisfies such other requirements permitted by the Applicable Standards or an Applicable Authority.

### 12-2 **Evidence**

Each applicant for membership and each Member shall give to the Trustee the 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 his or her membership of the Fund.

### 12-3 **Discretion without formal application**

The Trustee may admit a person as a Member even though he or she has not completed a formal application or complied with sub-clauses 12-1 and 12-2.

### 12-4 **Conditional admission**

The Trustee may admit an applicant as a Member of the Fund and attach special conditions attaching to his or her membership or Benefit in the Fund.

### 12-5 **Misrepresentation or omission**

Where a Member\* has or is likely to obtain, by reason of any misrepresentation or omission, a greater Benefit than he or she would otherwise have been entitled to, the Trustee may, subject to

the Applicable Standards, reduce the Member's\* Benefit to the amount he or she would have been entitled to had it not been for the misrepresentation or omission.

**12-6 Cessation**

Subject to the Applicable 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) his or her death;
- (b) when the Trustee determines that he or she has been paid all his or her Benefit from the Fund;
- (c) when the Trustee determines that his or her 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 his or her membership of the Fund to comply with the Applicable Standards;
- (e) when the Trustee determines that a Member or Beneficiary who is entitled to a Pension Benefit is no longer required to be recognised as a Member of the Fund; or
- (f) when the Trustee shall otherwise reasonably determine.

**12-7 Age notification**

A Member shall notify the Trustee when he or she reaches the Penultimate Cashing Age, the Ultimate Cashing Age or when he or she ceases to be Gainfully Employed.

**12-8 Members bound**

Members\* shall be bound by the provisions of this Deed.

## Contributions

13

13-1 An Acceptable Contributor may make contributions of:

- (a) money;
- (b) securities listed on a stock exchange in Australia authorised by the Applicable Standards subject to paragraph 9-1(c); or
- (c) other property subject to paragraph 9-1(c);

to the Fund on behalf of one or more Members with the consent of the Trustee so long as the contributions are permitted under the Applicable Standards.

13-2 An Acceptable Contributor is not bound to make any contribution to the Fund unless the Acceptable Contributor is bound to make the contribution in accordance with sub-clause 13-10 or in accordance with a separate contribution agreement between the Trustee and the Acceptable Contributor.

13-3 Contributions by an Acceptable Contributor shall be paid or made to the Fund in the amount and times convenient to the Trustee.

13-4 The Trustee is authorised:

- (a) to reject any amount, in full or at all, tendered as a contribution to the Fund and, to return to the contributor, any of the contribution which, in the Trustee's opinion, could prejudice the Fund's ability to comply with the Applicable Standards relevant to the type of fund in question (e.g., a Self Managed Fund) 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 Applicable 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 where the information provided in the application for membership of a Member is, in the Trustee's opinion, insufficient for these purposes.

13-5 Contributions shall be rejected by the Trustee if:

- (a) they may cause the Fund to become another type of fund with more onerous requirements including a public offer superannuation fund;
- (b) the Member has reached the Penultimate Cashing Age unless permitted by the Applicable Standards; or
- (c) the Member is no longer Gainfully Employed unless permitted by the Applicable Standards.

13-6 Subject to the Applicable 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.

13-7 The Trustee may accept contributions made by or on behalf of a Member who has not reached the Penultimate Cashing Age if:

- (a) the contributions are Mandated Employer Contributions;
- (b) the Member has, in the 2 years prior to the time of acceptance of the contributions by the Trustee, been Gainfully Employed;
- (c) the Member suffers from ill-health at the time of acceptance of the contributions which prevents the Member from being Gainfully Employed and where the onset of that ill-health prevented the Member from continuing in that kind of Gainful Employment;
- (d) the Member has been on genuine maternity or paternity leave from Gainful Employment authorised by the Employer for less than 7 years consecutively where the Member has a statutory or contractual right to resume that Gainful Employment at the conclusion of the leave and such leave otherwise complies with the Applicable Standards;
- (e) the Member is an Eligible Spouse and the contributions are made by the Relevant Spouse or any other person who may make contributions on behalf of an Eligible Spouse under the Applicable Standards; or
- (f) it is otherwise permitted by the Applicable Standards.

13-8 The Trustee may accept contributions made on behalf of a Member who has not reached the Ultimate Cashing Age if:

- (a) the contributions are Mandated Employer Contributions;
- (b) the Member is Gainfully Employed on at least a Part-time basis at the time of acceptance of the contributions by the Trustee; or
- (c) it is otherwise permitted by Applicable Standards.

13-9 The Trustee may accept contributions made on behalf of a Member who has reached the Ultimate Cashing Age if:

- (a) the contributions are Mandated Employer Contributions; or
- (b) the contributions are otherwise permissible under the Applicable Standards.

- 13-10 Despite sub-clauses 13-1, 13-2, 13-4, 13-5, 13-7, 13-8, and 13-9 the Acceptable Contributor shall make and the Trustee shall, after making the determination referred to in sub-clause 21-7, accept contributions to the Fund for the benefit of Funding Members in accordance with the determination of an Actuary in accordance with the Pension RBL and other Applicable Standards relevant to the provision of a Complying Pension under clause 17.

## Benefits

14

### 14-1 **Benefit election**

Where a Member\* becomes entitled to a Benefit from the Fund, the Member\* may, subject to the Applicable Standards, elect to receive his or her Benefit:

- (a) by way of Lump-Sum or Pension Benefits or a mixture of both;
- (b) by way of Pension Benefits being either Allocated Pensions, Flexi-Pension or a Complying Pension or a mixture of them; or
- (c) in any other manner contemplated in sub-clause 14-3;

unless the Benefit must be provided in some other manner under the Applicable Standards so long as the sum of all Benefits does not exceed the sum of balances of the Member's\* ARC, the Member's\* entitlement to be paid out of Pension Reserves and any Insured Benefit to which the Member is entitled as the case may require.

### 14-2 **Requirements of election**

Unless the Trustee determines otherwise, an election under sub-clause 14-1 shall be in writing and indicate the desired amount or extent that a Lump-Sum Benefit and Pension Benefit, 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 a further period as the Trustee permits. A Member\* may specify in any election relating to a Pension Benefit 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.

### 14-3 **Benefit type**

The Trustee may, where permitted by the Applicable Standards, and having regard to the Member's\* election but without being bound by it, provide a Benefit payable to a Member\*:

- (a) as an Allocated Pension or Flexi-Pension (where commutation of the pension is subject to any applicable limitations in the Applicable Standards where the Trustee is not a Corporate Trustee);
- (b) as a Complying Pension based on the advice of an Actuary;
- (c) as a Lump-Sum Benefit (subject to any applicable limitations in the Applicable Standards where the Trustee is not a Corporate Trustee);
- (d) by acquiring an annuity from an Approved Fund;
- (e) as an Ancillary Benefit to the extent the Benefit is not one of the above; or

a mixture of the above which may include more than one of each.

### 14-4 **Retention of Benefits**

Subject to the Applicable Standards and sub-clause 14-5, the Trustee may, with the Member's\* consent:

- (a) retain a Member's\* Lump-Sum Benefit in the Fund for a period as the Trustee shall determine, even though a Member's\* entitlement to be paid that Benefit has arisen;

- (b) retain a Member's\* Pension Benefit in the Fund for a period as the Trustee shall determine so long as the Pension commences prior to or on the last day permitted by the Applicable Standards.

#### 14-5 **Mandatory commencement of Benefit**

- (a) Where required by the Applicable Standards, the Trustee shall pay, commence to pay or transfer to an Approved Fund for the purposes of payment, Benefits as soon as is practicable where:
  - (i) the Member reaches the Penultimate Cashing Age and the Member is not Gainfully Employed on at least a Part-time basis; or
  - (ii) the Member reaches the Ultimate Cashing Age and the Member is not Gainfully Employed on a Full-time basis;

and the Benefits are not "post 65 employer-financed benefits" under the Applicable Standards where Mandated Employer Contributions may, in the Trustee's opinion, still be made in respect of the Member.

- (b) Where required by the Applicable Standards, the Trustee shall pay, commence to pay or transfer to an Approved Fund for the purposes of payment, Benefits as soon as is practicable where the amount is a post 65 employer-financed benefit when Mandated Employer Contributions to the Fund or any other Approved Fund cease to be made in respect of the Member or as otherwise required by the Applicable Standards.

#### 14-6 **Preservation of Benefits**

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

- (a) the Benefit is preserved in the Fund; or
- (b) the Benefit is transferred to an Approved Fund;

in accordance with the Applicable Standards and the Trustee may make all elections required under them.

#### 14-7 **Ancillary Benefits**

The Trustee may provide a Member with a Benefit in accordance with minimum conditions of release and/or cashing restrictions to the fullest extent permitted by the Applicable Standards including:

- (a) on compassionate grounds to the extent approved by the Trustee or the Applicable Standards;
- (b) on termination by the Member of Gainful Employment with an Employer before the Unconditional Preservation Age where the Member's Benefit is a restricted non-preserved Benefit under the Applicable Standards;
- (c) where the Benefit is an unrestricted non-preserved benefit under the Applicable Standards;
- (d) on the Temporary Disablement of a Member so long as the Benefit is provided only to replace the income of a Member as a non-commutable income stream with no residual capital value over a period not to exceed the period of Temporary Disablement which may be indexed and paid at least monthly in accordance with the Applicable Standards;
- (e) any other type of Benefit approved under the Applicable Standards which is not referred to in this sub-clause or in sub-clause 14-3; or

- (f) the Benefit is provided for other ancillary purposes approved by the Applicable Authority in writing or is otherwise approved by the Applicable Standards.

**14-8 Form of benefits**

Benefits may be paid to Members\* either in money or in any other form of property so long as Benefits are paid in accordance with the Applicable Standards.

**14-9 Member's debt**

Where a Member owes money to the Trustee or to a Contributing Employer and/or Associate, the Trustee may, subject to the Applicable Standards, reduce the Member's Benefit by the Member's outstanding debit loan.

**14-10 Discharge**

- (a) 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 his or her (or their) rights, entitlements and interests in the Fund.
- (b) Where any Member\* is not an Elector, the Trustee may, subject to the Applicable Standards, pay a Benefit to the Member's\* parent, guardian, legal personal representative, authorised attorney or establish a trust with a suitable trustee ("the Payee") and subject to such terms and provisions as the Trustee determines, for the benefit of the Member\*, the costs of same being payable out of any Benefit, and:
- (i) where the Payee is a professional person or carrying on a business, the Payee shall be entitled, subject to clause 6-6, 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 advancement, maintenance, education or general well-being of the Member\*; and
- (iii) the receipt by the Payee shall be a complete and final discharge to the Trustee for the application or payment.

**14-11 Dependants & Succession**

Subject to the Applicable Standards, a Member may provide the Trustee with a binding written direction as to the payment of a Benefit upon death to one or more of that Member's Dependants. If the Trustee consents, such a direction may relate to the type, amount and proportions of different components or Benefit to be paid upon the Member's death and also specify whether a Pension Benefit, reversionary or not, is to be provided on the death of the Member. A Member may vary any such direction at any time by written direction provided to the Trustee prior to the Member's death but not otherwise. In the absence of such written direction, upon the death of a Member, the Trustee:

- (a) may make any determination relating to the type, amount and proportions of different components in any Benefit and whether a Pension Benefit is provided and, if so, whether it is reversionary or not and may:
- (i) have regard to but shall not be bound by any nomination of Preferred Dependant by the Member; and
- (ii) pay:
- (1) a Member's Benefit to the Preferred Dependant;
- (2) a Member's Benefit to any other Dependant;
- (3) a Member's Benefit to a Member's legal personal representative even though there are Dependants; or

- (4) a mixture of the above which may include two or more Dependents or the legal personal representative in the proportions that the Trustee may, in its absolute discretion, determine;
- (b) may pay a Member's Benefit to the Member's legal personal representative where there are no Dependents;
- (c) may pay a Member's Benefit to the nearest of kin of the Member where the Member has no legal personal representative and there are no Dependents; or
- (d) deal with the Benefit either:
  - (i) in accordance with sub-clause 20-4 to the extent required by the Applicable Standards; or
  - (ii) by cancelling the Benefit and crediting the value of it to the Accumulation Reserve Account in accordance with sub-clause 21-11 to the extent permitted by the Applicable Standards;

if paragraphs 14-11(a), 14-11(b) or 14-11(c) do not apply.

### **Lump-Sum Entitlements**

15

#### **15-1 Regular Benefits**

Subject to the limitation in paragraph 14-3(c):

- (a) Where a Member Retires and the Trustee is satisfied that the Member has Retired permanently from Gainful Employment with any Employer or otherwise on or after the Conditional Preservation Age, the Member\* is entitled to receive a Lump-Sum Benefit of an amount determined by the Trustee which is to be drawn from the Member's\* ARC.
- (b) A Member\* who attains the Unconditional Preservation Age is entitled to receive a Lump-Sum Benefit of an amount determined by the Trustee which is to be drawn from the Member's\* ARC.
- (c) A Member\* to whom paragraphs 15-1(a) and 15-1(b) do not apply is not entitled to draw a Lump-Sum Benefit from the Member's\* ARC unless it is permitted by the Applicable Standards. The amount and timing of any Lump Sum Benefit shall be determined by the Trustee.

#### **15-2 Ancillary Benefits**

A Member\* who is eligible for an Ancillary Benefit referred to in sub-clause 14-7 may be paid that Benefit drawn from the Member's\* ARC, subject to the limitation in paragraph 14-3(c), as a Lump-Sum Benefit of an amount determined by the Trustee unless the Benefit is of a type that must be paid in some other manner under the Applicable Standards such as on compassionate grounds to which paragraph 14-7(a) applies and Temporary Incapacity Benefits to which paragraph 14-7(d) applies.

#### **15-3 Death Benefits**

Where a Member dies, the Beneficiary is entitled, subject to the limitation in paragraph 14-3(c), to receive a Lump-Sum Benefit of an amount determined by the Trustee which is to be drawn from the Member's\* ARC and Insured Benefit that arises under clause 18.

#### **15-4 Total and Permanent Disablement Benefits**

Where a Member becomes Totally and Permanently Disabled, the Member\* shall be entitled, subject to the limitation in paragraph 14-3(c), to receive a Lump-Sum Benefit of an amount

determined by the Trustee which is to be drawn from the Member's\* ARC and any Insured Benefit that arises under clause 18.

### **Allocated Pension or Flexi-Pension Entitlements**

16

#### **16-1 Regular Benefits**

- (a) Where:
- (i) a Member Retires; and
  - (ii) the Trustee is satisfied that the Member has Retired permanently from Gainful Employment with any Employer or otherwise on or after the Conditional Preservation Age; and
  - (iii) the Trustee is prepared to pay an Allocated Pension or a Flexi-Pension from the Fund;

the Member\* is entitled to an Allocated Pension or Flexi-Pension of an amount determined by the Trustee which is to be drawn from the Member's\* ARC.

- (b) Where:
- (i) a Member attains the Unconditional Preservation Age; and
  - (ii) the Trustee is prepared to pay an Allocated Pension or a Flexi-Pension from the Fund;

the Member\* is entitled to receive an Allocated Pension or Flexi-Pension of an amount determined by the Trustee which is to be drawn from the Member's\* ARC.

- (c) A Member to whom paragraphs 16-1(a) and 16-1(b) do not apply is not entitled to draw an Allocated Pension or Flexi-Pension from the Member's\* ARC unless it is permitted by the Applicable Standards. The amount and timing of such pension shall be determined by the Trustee.

#### **16-2 Ancillary Benefits**

Where:

- (a) a Member is eligible for an Ancillary Benefit referred to in sub-clause 14-7; and
- (b) the Trustee is prepared to pay an Allocated Pension or a Flexi-Pension from the Fund;

a Member\* may be paid that Benefit as an Allocated Pension or Flexi-Pension of an amount determined by the Trustee drawn from the Member's\* ARC unless the Benefit is of a type that must be paid in some other manner under the Applicable Standards such as:

- (c) Benefits on compassionate grounds to which paragraph 14-7(a) applies; or
- (d) Temporary Incapacity Benefits to which paragraph 14-7(d) applies.

#### **16-3 Death Benefits**

Where:

- (a) a Member dies; and
- (b) the Trustee is prepared to pay an Allocated Pension or a Flexi-Pension from the Fund;



the Beneficiary is entitled to receive an Allocated Pension or Flexi-Pension of an amount determined by the Trustee which is to be drawn from the Member's\* ARC and any Insured Benefit that arises under clause 18.

#### 16-4 **Total and Permanent Disablement Benefits**

Where:

- (a) a Member becomes Totally and Permanently Disabled; and
- (b) the Trustee is prepared to pay an Allocated Pension or a Flexi-Pension from the Fund;

the Member\* is entitled to receive an Allocated Pension or Flexi-Pension of an amount determined by the Trustee which is to be drawn from the Member's\* ARC and any Insured Benefit that arises under clause 18.

#### 16-5 **Commutation**

Subject to the limitation in paragraph 14-3(c), the Trustee's consent and the Applicable Standards, a Member\* may commute the whole or any part of a remaining Allocated Pension Benefit or Flexi-Pension Benefit to a Lump-Sum Benefit or any other Benefit permitted by this Deed at any time.

### **Complying Pension Entitlements**

17

#### 17-1 **Regular Benefits**

- (a) Where:
  - (i) a Funding Member Retires;
  - (ii) the Trustee is satisfied that the Member has Retired permanently from Gainful Employment with any Employer or otherwise on or after the Conditional Preservation Age; and
  - (iii) subject to paragraph 14-3(b), provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to sub-clause 2-19(b)) to the Member in accordance with the Applicable Standards;

the Member\* is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account.

- (b) Where:
  - (i) a Funding Member attains the Unconditional Preservation Age; and
  - (ii) subject to paragraph 14-3(b), provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to sub-clause 2-19(b)) to the Member in accordance with the Applicable Standards;

the Member\* is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account.

- (c) Where:
  - (i) a Funding Member Retires permanently from Gainful Employment with an Employer or otherwise before the Conditional Preservation Age; and
  - (ii) subject to paragraph 14-3(b), provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to sub-clause 2-19(b)) to the Member in accordance with the Applicable Standards;

the Member\* is entitled to a restricted Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account which shall be restricted in that it cannot be commuted as contemplated in paragraph 2-19(a)(v).

- (d) Where:
- (i) a Funding Member attains the Pension Age or otherwise becomes eligible to be paid a Complying Pension under the Applicable Standards; and
  - (ii) subject to paragraph 14-3(b), provision has been made for the payment of a Complying Pension (including a Complying Pension pursuant to sub-clause 2-19(b)) to the Member in accordance with the Applicable Standards; and
  - (iii) the Trustee has consented to the payment of a Complying Pension;

the Member\* is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account.

- (e) A Member to whom paragraphs 17-1(a), 17-1(b), 17-1(c) and 17-1(d) do not apply is not entitled to draw a Complying Pension from the Pension Reserve Account unless it is permitted by the Trustee and the Applicable Standards. The amount and timing of any pension pursuant to this paragraph shall be determined by the Trustee.

#### 17-2 **Death Benefits**

Where:

- (a) a Funding Member\* dies; and
- (b) subject to paragraph 14-3(b), provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to sub-clause 2-19(b) unless the Funding Member has attained Pension Age or otherwise becomes eligible to be paid a Complying Pension under the Applicable Standards) to the Member in accordance with the Applicable Standards;

the Beneficiary is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account.

#### 17-3 **Total and Permanent Disablement Benefits**

Where:

- (a) a Funding Member becomes Totally and Permanently Disabled; and
- (b) subject to paragraph 14-3(b), provision has been made for the payment of a Complying Pension (other than a Complying Pension pursuant to sub-clause 2-19(b) unless the Funding Member has attained Pension Age or otherwise becomes eligible to be paid a Complying Pension under the Applicable Standards) to the Member in accordance with the Applicable Standards;

the Member\* is entitled to a Complying Pension of an amount determined by the Trustee which is to be drawn from the Pension Reserve Account.

#### 17-4 **Initial default Pension**

The first annual Complying Pension Benefit (other than a Complying Pension pursuant to sub-clause 2-19(b)) shall be the Complying Pension Amount unless the Trustee determines otherwise based on the advice of an Actuary.

#### 17-5 **Variation of Pension**

Subject to the Applicable Standards, a Complying Pension may be varied or commuted on the advice of an Actuary.

## Insured Benefits

18

- 18-1 The Insured Benefit in respect of the death, Total and Permanent Disablement of a Member or for any other purposes in relation to a member shall, subject to the Applicable Standards, be equal to the amount (if any) paid or obtained by the Trustee in respect of any insurance policy effected to provide the Insured Benefit less any amount credited from that amount to the Accumulation Reserve Account, the Pension Reserve Account or to any other Account that the Trustee may decide.
- 18-2 The Trustee or the Fund shall not be liable for any loss suffered by the Fund or any Member\* as a result of:
- (a) no or insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not; or
  - (b) an insurer failing to pay out on an insurance policy, in whole or in part, for whatever reason;

and the Trustee shall be at liberty to reduce or abandon insurance cover in relation to Members whose age, ill-health or other circumstances, which must be disclosed under the *Insurance Contracts Act 1984 (C'th)* would lead to premium costs that are out of proportion with costs that are incurred on behalf of other Members.

## Restrictions on Vesting

19

- 19-1 Subject to the Applicable 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 his or her Benefit in the Fund (or attempting to do so); or
  - (c) the Member's\* Benefit whether by his or her 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 in any manner as the Trustee determines in its absolute discretion from time to time so long as the payment or application is in accordance with the Applicable Standards.

- 19-2 This clause shall not apply to any Benefit:
- (a) that has already vested in a Member\*, or
  - (b) that must vest in the Member as a Minimum Benefit or otherwise under the Applicable Standards.

## Transfer of Benefits

20

### 20-1 **Transfers to the Fund**

Subject to paragraph 9-1(c), the Trustee may, upon the written request of an Acceptable Contributor, accept the transfer into the Fund of property (including money) from another Approved Fund in respect of a Member\* or such other property (or amount) that the Trustee agrees to accept into the Fund's reserves provided the transfer complies with the Applicable Standards.

**20-2 Benefits transferred to the Fund**

Where the value of property (or money) accepted under sub-clause 20-1:

- (a) represents different components (such as employer and employee contributions and preserved, restricted non-preserved and unrestricted non-preserved amounts) the Trustee shall ensure the Member's\* ARC, the Pension Reserve Account in the Fund and any other account in the Fund, as the case may require, appropriately reflect and record those different components; and
- (b) is to be credited to the Pension Reserve Account in anticipation of any entitlement to a Complying Pension, the Trustee, the Member\*, the Contributing Employer, as applicable, and such other person acceptable to the Trustee as the case may be, shall first agree on the effect of the credit and necessary assumptions.

**20-3 Transfer to other funds**

The Trustee may:

- (a) upon:
  - (i) receiving a written request from a Member\*;  
or
  - (ii) a resolution of the Trustee to transfer a Member's\* Benefit;

transfer the whole or part of the Member's\* Benefit to another Approved Fund so long as the Trustee is satisfied that the amount transferred to that Approved Fund complies with the Applicable Standards;

- (b) transfer a Benefit which has become payable to a Member of the Fund to an Approved Fund selected by the Trustee where a Member\* has failed to provide instructions in relation to the payment or transfer within a reasonable time period of the Benefit first becoming payable; and
- (c) the Trustee may also transfer any other property or amount in the Fund that it approves including any reserves, surplus or unallocated amounts in the Fund.

**20-4 Unclaimed money**

Where required by the Applicable Standards, the Trustee shall:

- (a) comply with the requirements relating to unclaimed money which becomes payable by the Fund to a Member\* who the Trustee is unable to trace after making reasonable efforts and inquiries;
- (b) pay any unclaimed money in accordance with any applicable unclaimed money law referred to in clause 27 or, in the event that no such law is applicable, to the Applicable Authority; and
- (c) complete any statements or returns in respect of unclaimed money required by any applicable unclaimed money law or the Applicable Standards.

**20-5 Discharge on transfer**

The receipt from an Approved Fund of the amount or property transferred or the lodgement of a statement with the requisite amount of unclaimed money under sub-clause 20-4 shall be a complete and final discharge to the Trustee and the Fund in respect of any liability to that Member\* in relation to his or her Benefit or the amount or value of the property transferred.

## Accounts

21

### 21-1 **Trustee to keep**

The Trustee shall keep the Accounts.

### 21-2 **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 where necessary.

### 21-3 **Provisions**

- (a) The Trustee may make provision or adjustment in the Accounts, including the Members'\* Accounts, for all Disbursements (including Taxes on unrealised gains, advance tax instalments and notional surcharge amounts), liabilities, tax credits, depreciation, amortisation or revaluations as the Trustee considers appropriate.
- (b) In pursuance of this sub-clause, 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.

### 21-4 **Earnings**

- (a) Earnings may be credited or debited to the Members'\* Accounts, the Pension Reserve Account, the Accumulation Reserve Account or other Accounts under this clause so long as these credits shall not sum to an amount greater than Earnings in a period as ascertained in the Accounts and so long as these debits shall not sum to an amount greater than Earnings in the event Earnings are negative unless the Trustee determines otherwise.
- (b) The Trustee shall have regard to:
  - (i) the ARC of Members\*;
  - (ii) any property held on behalf of a Member\* and any income earned from that property;
  - (iii) Pension Reserve Account balances, if any;
  - (iv) other reserve Account balances, if any;
  - (v) length of membership;
  - (vi) investment strategies;
  - (vii) actuarial advice, if any; and
  - (viii) the exchange and segregation of the assets of the Fund, if any, as assets set aside to meet current 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 Member\* under this clause.
- (c) Earnings may be debited or credited, as the case may require, annually or at other times in the Trustee's absolute discretion.
- (d) 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.

**21-5 Reserves**

The Trustee shall establish and maintain in its own name or otherwise under its control and subject to such rules and procedures it specifies from time to time the following Accounts:

- (a) the Accumulation Reserve Account which may receive credits in the circumstances outlined in sub-clause 21-11;
- (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 contributions, miscellaneous and investment reserve accounts.

**21-6 Calculations relating to current pension liabilities**

In:

- (a) determining income earned from property under paragraph 21-4(b)(ii);
- (b) attributing Earnings to assets set aside to meet current pension liabilities of the Fund or for other purposes of the Fund for the purposes of sub-paragraph 21-4(b)(viii) or
- (c) identifying value to be credited to reserve Accounts or liability Accounts set up in accordance with paragraph 21-5(b);

the Trustee may determine that any debit to an Account, 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 Applicable Standards.

**21-7 Pension Reserve Account**

Based on the advice of an Actuary, the Trustee may credit the Pension Reserve Account with:

- (a) contributions (if any) by or on behalf of a Funding Member to the Fund including any contribution which exceeds the relevant Funding Member's maximum contribution limit as prescribed in any Financial Year by the Applicable Standards;
- (b) sums received on trust and held in accordance with sub-clauses 20-1 and 20-2;
- (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 the Trustee determines;
- (e) Insured Benefits received in respect of a Funding Member;
- (f) such other amounts as may in the opinion of the Trustee properly be credited to the Pension Reserve Account in respect of a Funding Member;

and the Trustee may debit this Account to pay or provide for any amounts, which, in the opinion of the Trustee, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts so long as the payment or provision is in accordance with Applicable Standards and is in accordance with actuarial advice.

## 21-8 **Members' Accounts**

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

- (a) an Accumulation Retirement 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 Applicable Standards;
  - (ii) sums received on trust and held in accordance with sub-clauses 20-1 and 20-2;
  - (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 the Trustee determines;
  - (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;

so long as the amounts have not already been credited to the Pension Reserve Account in accordance with sub-clause 21-7; and

- (b) such other Accounts, including Allocated Pension Accounts or Flexi-Pension Accounts, as the Trustee considers appropriate from time to time;

and the Trustee may debit these Accounts to pay or provide for any amounts, which, in the opinion of the Trustee, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts so long as the payment or provision is in accordance with Applicable Standards including the Applicable Standards that apply to small account balances.

## 21-9 **Treatment of property contributions**

Where specific property is contributed by or in respect of a Member, the value of the property shall be credited to the Member's\* ARC or such other account or reserve as the Trustee determines subject to sub-clause 4-2.

## 21-10 **Members'\* credit Accounts**

Subject to the Applicable Standards, the Trustee may open a Member's\* credit Account on a temporary basis where a Benefit has accrued to a Member\* but has not been paid or applied to the Member\* such as in circumstances contemplated under sub-clause 14-4 or otherwise. Unless the Trustee otherwise determines, once a Benefit has accrued to a Member then it can no longer be posted to the Member's\* ARC or the Accumulation Reserve Account.

## 21-11 **Credits to Accumulation Reserve Account**

Any Account of a Member\* established and maintained in accordance with sub-clause 21-8 or the Insured Benefit 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 where:

- (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 Retirement Account;
- (c) the amount is subject to sub-clause 14-11; or

- (d) the amount is subject to sub-clause 19-1;

so long as the reduction concerned does not form a Minimum Benefit or contravenes the Applicable Standards.

**21-12 Credits to Pension Reserve Account**

Subject to the Applicable Standards, any credit to a Funding Member's\* ARC or any credit to the Accumulation Reserve Account or any other account or reserve can be transferred to the credit of the Pension Reserve Account in accordance with the Applicable Standards where a Complying Pension is to be paid to the Member\* and the Trustee determines, based on the advice of an Actuary, that an anticipated Member's\* Complying Pension Benefit requires further funding.

**21-13 Debits from Pension Reserve Account**

Subject to the Applicable Standards, any amount in the Pension Reserve Account can be transferred to a Member's\* ARC or to the credit of the Accumulation Reserve Account where the Trustee determines, based on the advice of an Actuary, that an anticipated Member's\* Complying Pension Benefit is over-funded.

### **Records and Audit**

22

**22-1 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 Applicable Authority, the Members\* and any other relevant authority in accordance with the Applicable 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 5 years.

**22-2 The Trustee must appoint an Auditor for each Financial Year or as required under the Applicable 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 Applicable Standards.

### **Provision of Information**

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

- 23-1 an appropriate notification upon a person becoming or ceasing to be a Member\*;
- 23-2 annual disclosures at the end of each Financial Year (or relevant period) in respect of a Member, the Fund or other person;
- 23-3 changes to the provisions of this Deed;
- 23-4 a copy of this Deed shall be available for inspection by each Member; and
- 23-5 the information specified by the Applicable Standards which may be requested by a Member at least once a year.



## Winding-Up

24

24-1 The Trustee shall wind-up and terminate the Fund in the manner provided by this clause when the first of the following events occurs:

- (a) all Members agree to wind-up the Fund;
- (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 Applicable Standards; or
- (d) the last remaining Member\* ceases to be a Member\* of the Fund;

and the date when the first of the above events occurs, shall be referred to as the "Wind-up Date".

24-2 The Trustee shall close the membership of the Fund on the Wind-up Date and determine the amount or value of property available, subject to sub-clause 21-8 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.

24-3 The Trustee shall pay (or transfer to an Approved Fund, as the case requires) the Benefit that can be satisfied by the amount determined under sub-clause 24-2 in respect of each Member and any applicable reserve or surplus in relation thereto and make any adjustment to each Member's Benefit on account of any surplus or deficiency arising during the course of and before finalising the winding-up of the Fund provided that:

- (a) the Trustee shall not pay or transfer a Member's Benefit (or a part of it) where payment or transfer would be inconsistent with the Applicable Standards; and
- (b) 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 transfer the Member's Benefit to an Approved Fund until the Member is entitled to be paid his or her Benefit.

24-4 Where any amount remains after the winding-up and payment or transfer of Benefits (as contemplated in sub-clause 24-3), the amount so remaining shall, subject to the Applicable 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.

24-5 The Fund shall be administered and its property distributed or paid upon a winding-up so that the Fund does not infringe the Applicable Standards.

24-6 The payment or transfer of a Member's\* Benefit or other amount in accordance with this clause shall, subject to the Applicable Standards, be a complete and final discharge of the Trustee and the Fund in respect of that Member\*.

## Variation

25 The Trustee may at any time by a Variation vary this Deed on a prospective or retrospective basis (including any provisions deemed to be included under sub-clause 3-6) so long as:

25-1 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; or

25-2 no amendment shall permit:

- (a) an individual to be appointed as Trustee unless the Fund has and continues to have the sole or primary purpose of providing Old-Age Pensions; and
- (b) the Fund to have a sole or primary purpose other than the provision of Old-Age Pensions unless the Trustee is a constitutional corporation;

where the Applicable Standards prohibit such amendments;

25-3 an amendment may reduce a Member's Benefit accrued before the date of the amendment without obtaining the Member's consent where the amendment is required to ensure:

- (a) the reduction in Benefits is required because of, and does not exceed the value of, any Tax payable on the Fund's income; or
- (b) the reduction is required to enable the Fund to comply with the Applicable Standards or the Applicable Authority provides its written approval to the reduction; or
- (c) the amendment is otherwise authorised by the Applicable 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.

### **Severance**

26 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, voidable by any party, invalid, unenforceable or illegal then the remaining part of the provision, if any, and all other provisions of this Deed shall remain valid, binding and enforceable.

### **Applicable Law**

27 This Deed shall be construed in accordance with the laws of the State or Territory specified in the Trust Deed and the Commonwealth of Australia.

# PART B (Schedule)

## FORM 1

### Application for Membership

To the Trustee of the Fund.

I,

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

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

- I consent to being a trustee or director of a corporate trustee unless I am specifically excepted from this requirement under the Applicable Standards (e.g., 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.
- I agree to abide by and 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.
- 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.
- I acknowledge receipt of written notice of the existence of the nature of the rights that I will have in the Fund, if I am admitted as a Member. Should I or my dependants become entitled to receive benefits from the Fund then I elect that my preference is for payment of a Lump-Sum Benefit unless I complete the table immediately below signifying a different preference:

<b>Lump-Sum Benefit</b>	<b>Allocated Pension</b>	<b>Flexi-Pension</b>	<b>Complying Pension</b>
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- I consent to the Trustee acting as Trustee of the Fund.
- I nominate the following Dependants (eg, spouse or children) to be entitled to any benefit that I may have in the Fund upon my death:

Name	Relationship	% of benefit

- I will notify the Trustee as soon as I cease to be Gainfully Employed or reach the age of 65 years.
- I acknowledge that the Trustee can collect my tax file number ("TFN") under the Applicable Standards.
- I understand that the Trustee will only use the TFN for legal purposes. This includes finding or identifying my superannuation benefits where other information is insufficient, and calculating tax on any eligible termination payment I may be entitled to.
- 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.
- 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*.
- 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 changes regarding these matters.

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

**FORM 2****Notice to New Members**

Members can become entitled to benefits in certain circumstances and have certain obligations to the Fund in the trust deed (the "Deed").

The Fund is established as a Self Managed Fund under the *Superannuation Industry (Supervision) Act (C'th) 1993* and the *Superannuation Industry (Supervision) Regulations* ("SIS"). Broadly, this means that each member must be a trustee and is not an employee of another member or any related entity unless they are covered by a prescribed family relationship. However, the fund can appoint an independent Approved Trustee or convert to another type of SIS fund (however expert advice should first be obtained).

The fund has dynamic provisions which, broadly, imply these measures (as "the Applicable Standards" including SIS) as they change from time to time. So long as the Fund continues to comply with the Applicable Standards, the Fund should continue to be entitled to concessional taxation treatment.

A member has a primary obligation to comply with the Deed and the Applicable Standards. In particular, a member must provide information or evidence as is required by the Trustee from time to time.

The Deed specifies when entitlements to benefits arise. Entitlements generally arise on retirement, death or total and permanent disability. The main benefits arise in the following circumstances:

1. a retirement benefit is payable to a member when a member reaches the age 55 (or the relevant preservation age for persons born after July 1, 1960) and retires from work;
2. a death benefit is payable upon the death of a member to dependants (eg, a spouse and/or children). The Trustee will be guided by but not bound by the election of dependants notified by the member in Form 1 - Application for Membership; and
3. a total and permanent disablement benefit ("TPD benefit") is payable if a member becomes totally and permanently disabled.

The Fund is conducted as an **accumulation fund** (where benefits accumulate in distinct accounts for members out of which entitlements arise on a lump-sum, allocated pension, flexi-pension or annuity basis). Alternatively, the Trustee may conduct all or some part of the Fund as a **defined benefits fund** (where the fund which is assisted by an actuary to pay pension benefits for life of a certain level out of a pension reserve [a complying pension]). Ordinarily, benefits are calculated on the basis set out in the following table (but only to the extent a part of a member's account balance is to be met by that type of benefit or funding is committed to the pension reserve as the case may be):

Type of benefit	Retirement benefit	Death benefit	TPD benefit
Lump-Sum benefit	an amount equal to the member's account balance is immediately payable	an amount equal to the late member's account balance augmented by any insurance proceeds is immediately payable	an amount equal to the member's account balance augmented by any insurance proceeds is immediately payable
Allocated pension or Flexi-pension	an amount equal to the member's account balance is set aside to meet the pension obligation	an amount equal to the late member's account balance augmented by any insurance proceeds is set aside to meet the pension obligation	an amount equal to the member's account balance augmented by any insurance proceeds is set aside to meet the pension obligation
Annuity	an amount equal to the member's account balance is used to purchase an eligible annuity	an amount equal to the late member's account balance augmented by any insurance proceeds is used to purchase an eligible annuity	an amount equal to the member's account balance augmented by any insurance proceeds is used to purchase an eligible annuity
Complying pension	an amount is set aside out of the pension reserve of the fund to meet a pension obligation based on actuarial advice	an amount is set aside out of the pension reserve of the fund to meet a pension obligation based on actuarial advice	an amount is set aside out of the pension reserve of the fund to meet a pension obligation based on actuarial advice

The balance of member's accounts will depend on a range of factors including the amount contributed to the Fund on behalf of the member and the net earnings (after expenses and taxes) on those contributions. Usually, expenses will be allocated at least annually on a proportionate basis among members' accounts however the Trustee does have power to charge a particular member disproportionately if there is justification for so doing.

Members can lose entitlement to non-vested portions of benefits if they assign, secure or charge their interest in the Fund or if they become bankrupt. However a member cannot lose entitlement to a vested benefit in either case and, it is also noted, a vested benefit within "RBLs" under the *Income Tax Assessment Act* is protected from sequestration under current bankruptcy law.

The value of the Fund's investments may go up or down depending on the prevailing economic conditions and a range of other factors. Accordingly, there is no guarantee that contributions will ultimately be returned as benefits.

The Trustee is primarily responsible for managing and administering the Fund for the benefit of members. In particular, the Trustee will, amongst other things, be responsible for:

1. investing the Fund's assets – there are significant limits on investments (including loans and leases) involving members or related parties;
2. taking out insurance;
3. determining and paying benefits; and
4. ensuring appropriate records, accounts and reports are completed for the Fund.

The Trustee is entitled to delegate or appoint another person or organisation to handle these functions and obtain professional assistance or advice.

The Trustee is also entitled to be indemnified by the Fund for any loss; unless the loss was caused by the Trustee's own fraud, wilful neglect or culpable negligence.

Members will be notified of their financial position in the Fund after the end of each financial year on request. In addition, members will be provided with information relating to any changes to the Deed and of such other matters required by the Applicable Standards.

You should discuss any query you may have in relation to the Fund with the Trustee. While the Trustee will generally attempt to accommodate your wishes, the Trustee is bound to act in accordance with the Deed, and the Trustee's decision will be final and binding.

Please contact the trustee at the address shown below if you require any further information:

<b>NAME</b>	
<b>ADDRESS</b>	
<b>DATE</b>	
<b>SIGNED ON BEHALF OF THE TRUSTEE</b>	

**FORM 3****Notification to Contributing Employer**

From the Trustee, to an Employer:

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

The Trustee wishes to notify the Employer that:

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

and the Employer will be registered as a **Contributing Employer** under the Fund.

<b>DATE</b>	
<b>SIGNED BY OR ON BEHALF OF THE TRUSTEE</b>	