

# 'Diamond D'

SMSF Trust Deed

Prepared for

Peacocke Accountants Pty Ltd



# 'Diamond D'

SMSF Trust Deed

Prepared by:

**hunt&hunt**

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1 Macquarie Place  
Sydney NSW 2000

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# Trust Deed

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**THIS DEED** is made on the date specified in the Schedule by the person or persons named in the Schedule to this Deed.

## **RECITALS**

The Trustees wish to establish a self-managed superannuation fund for the benefit of those people who become Members of the Fund on the terms and conditions set out in this Deed.

### **A. Establishment**

The Trustee by this Deed establishes the Fund as a Self Managed Superannuation Fund. The Fund will be vested in the Trustees and will at all times be held, controlled and managed by the Trustees subject to the trusts, powers and provisions of this Deed and the Rules.

The Fund was established on the date specified in the Schedule.

### **B. Trustee**

The Trustee consent to act as trustees of the Fund with effect from the date specified in the Schedule and acknowledge by execution of this Deed that they have read and agree to be bound by this Deed and the Rules.

### **C. Fund Details**

The Fund will be in existence from the date specified in the Schedule and will be known by the name in the Schedule or such other name as the Trustees might in writing determine.

### **D. Fund Deed and Rules**

This Deed includes the Rules. The Rules are those attached to this Deed as amended from time to time.

### **E. Purpose of the Fund**

The Fund is to be maintained for the sole purpose of providing superannuation benefits for its Members and their Dependants.

### **F. Compliance**

The Trustee must ensure that the Fund, from the date of creation, continues its status as a Complying Self Managed Superannuation Fund as defined by and for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

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# Schedule

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**Creation Date:** ..... 29 / 03 / 2012 .....

**Fund Name:** 'Diamond D'

**Meeting Address:** 7599 Kamilaroi Hwy CURLEWIS NSW 2381

**Trustee:**  
'Diamond D' Pty Ltd ACN 156 416 456

**Members:**  
Diana Maree Hubbard  
Peter Yule Hubbard

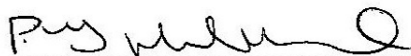
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**EXECUTED AS A DEED** by 'Diamond D'  
Pty Ltd ACN 156 416 456 as Trustee in  
accordance with *section 127* of the  
*Corporations Act 2001*, by its Directors or  
Director and/or Secretary:

PETER YULE HUBBARD

Please Print Name of Director



Signature

DIANA MAREE HUBBARD

Please Print Name of Director/Secretary\*



Signature

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# Rules of the Fund

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## 1. DEFINITIONS

In this Deed the following words or expressions have the meaning thereafter ascribed to them:

<b>Act</b>	The <i>SIS Act 1993</i> , the <i>Tax Act</i> , the <i>Corporations Act 2001 (Cth)</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
<b>Ancillary Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.
<b>Application Form</b>	An application form provided by the Trustees for prospective members to complete and submit to the Trustees.
<b>Associate</b>	Has the meaning given by the <i>Act</i> .
<b>Auditor</b>	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor <i>Act</i> or otherwise determined by the Regulator.
<b>Asset</b>	Means any asset that the Trustees hold for the purposes of the Fund.
<b>Benefit</b>	An entitlement payable or distributable by the Fund which may include a Pension or lump sum payment.
<b>Benefit Arrangement</b>	Means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Special Account established under the <i>Small Superannuation Accounts Act 1995 (Cth)</i> .
<b>Beneficiary</b>	Includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the <i>Act</i> .
<b>Binding Death Benefit Nomination</b>	A direction given to the Trustees by a Member in accordance with and subject to Rule 19 in such form and manner as the Trustees may from time to time specify which is a binding direction for the purposes of the <i>Act</i> as to payment of the Member's Death Benefit in the event of the Member's death.
<b>Child</b>	Includes an adopted child, a step child, an ex-nuptial child, a child of the Spouse of the Member and a child of the Member within the meaning of the <i>Family Law Act 1975 (Cth)</i> .
<b>Complying Superannuation Fund</b>	A Self Managed Superannuation Fund which is compliant with Section 42A of the <i>SIS Act</i> .
<b>Constitutional Corporation</b>	A body corporate which is a trading or non-trading entity or financial corporation which is formed within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i> and to include a company incorporated under the provisions of the <i>Corporations Act 2001</i> .

<b>Contributions</b>	Amounts paid or property transferred to the Trustees for the benefit of a Member or Members.
<b>Core Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> .
<b>Death Benefit</b>	Means a benefit payable on a Member's death.
<b>Deed</b>	The deed establishing the Fund as amended from time to time.
<b>Dependant</b>	Includes a person who is the Spouse or Child of the Member or any other person with whom the Member has an Interdependency Relationship.
<b>Earnings</b>	Includes any income received and accrued, realised and unrealised gains and any other amount the Trustees believe should form part of the earnings.
<b>Eligible Rollover Fund</b>	A fund defined by regulation 10.01 of the SIS Regulations as an eligible rollover fund.
<b>Employer</b>	A person who engages an "employee" or "employees" for the purposes of section 17A of the <i>SIS Act</i> .
<b>Excess Contributions Tax</b>	Any tax imposed by reason of the Superannuation ( <i>Excess Concessional Contributions Tax</i> ) Act 2007 or the Superannuation ( <i>Excess Non- Concessional Contributions Tax</i> ) Act 2006 or successor legislation.
<b>Financial Year</b>	A year ended 30 June or that period of twelve months adopted by the Trustees as the Fund's financial year.
<b>Fund</b>	Means the fund referred to in the Schedule and established by this Deed.
<b>Gainful Employment</b>	That activity in which a person is engaged for gain or reward in any business, trade, profession, vocation, calling or occupation or if the Act prescribes a different meaning.
<b>Interdependency Relationship</b>	Has the meaning given in the Act.
<b>Legal Personal Representative (LPR)</b>	The executor of the will or administrator of the estate of a deceased Member, the Trustee of the estate of a Member under a legal disability or a person who holds an enduring power of attorney granted by a Member.
<b>Manager</b>	The person or entity appointed by the Trustees to manage the Fund.
<b>Market Value</b>	The amount a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made: <ul style="list-style-type: none"> <li>(a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;</li> <li>(b) the sale occurred after proper marketing of the asset; and</li> </ul> the buyer and seller acted knowledgeably and prudently in relation to the sale.

<b>Member</b>	Any person accepted by the Trustees as a member of the Fund and who has not ceased to be a Member and includes a person in receipt of a pension from the Fund.
<b>Member's Account</b>	An account established and maintained by the Trustees on behalf of a Member in accordance with Rule 17.
<b>Member's Accumulation Account</b>	A Member's Account established by the Trustees, to accumulate the investments and earnings of the Member.
<b>Member's Pension Account</b>	A Member's Account established by the Trustees from which the payment of a Pension will be debited.
<b>Non-Binding Death Benefit Nomination</b>	A nomination given to the Trustees by a Member in such form and manner as the Trustees may from time to time specify the direction of which the Trustees can but are not bound to follow in the event of the Member's death.
<b>Old age pensions</b>	Has the meaning given by the Act.
<b>Payment Split</b>	Has the meaning given to that term in Part VIII B of the <i>Family Law Act 1975</i> (Cth).
<b>Pension</b>	Means a benefit taken to be a pension payable by the Fund in accordance with the <i>SIS Act</i> .
<b>Pension Dependants</b>	Those entitled recipients specified in reg 6.21 (2A) and (2B) of the SIS Regulations.
<b>Permanent Incapacity</b>	In relation to a Member means ill health (whether physical or mental) where the Trustees are reasonably satisfied that the Member is unlikely, because of the ill health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience.
<b>Policy</b>	Means an insurance policy arranged by the Trustees in accordance with Rule 24.
<b>Product Disclosure Statement (PDS)</b>	A statement which provides a description of the features and benefits of the Fund.
<b>Preserved Benefits</b>	Means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits.
<b>Regulated Superannuation Fund</b>	A superannuation fund that is regulated as defined within section 19 of the <i>SIS Act</i> .
<b>Regulator</b>	The Commissioner of Taxation or any person or entity appointed to regulate the Fund as defined in section 10(1) of the <i>SIS Act</i> .
<b>Relative</b>	Has the meaning given by s17A(9) of the SIS Act.
<b>Reserve Account</b>	Means the Account referred to in Rule 23.

<b>Rules</b>	Means such one or more rules of the Fund.
<b>Self Managed Superannuation Fund</b>	A fund as defined in section 17A of the <i>SIS Act</i> .
<b>SIS Act</b>	The <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
<b>SIS Regulations</b>	The <i>Superannuation Industry (Supervision) Regulations 1994</i>
<b>Splittable Contributions</b>	An amount that has the meaning for the purposes of Part 6 of the SIS Regulations.
<b>Spouse</b>	In relation to a person includes: <ul style="list-style-type: none"> <li>(a) a person, who whether or not legally married to the Member or who lives with the Member on a genuine domestic basis as the husband or wife of the Member;.</li> <li>(b) any other person who is accepted by the Trustees as being the Member's Spouse for the purposes of the Act; and</li> <li>(c) another person (whether of the same sex or a different sex) with whom the person is or was in a relationship that was registered under a law of a State or a Territory prescribed for the purposes of Section 22B of the <i>Acts Interpretation Act 1901</i> (Cth) as a kind of relationship prescribed for the purposes of that section.</li> </ul>
<b>Superannuation Entity</b>	<ul style="list-style-type: none"> <li>(a) a Regulated Superannuation Fund, or</li> <li>(b) an approved deposit fund, or</li> <li>(c) retirement savings account; or</li> <li>(d) eligible rollover fund</li> </ul> <p>or any other arrangement which the Trustees determined should be treated for the purposes of the Fund as a Superannuation Entity.</p>
<b>Superannuation Interest</b>	In relation to a Member means an interest in the Fund or such other interest as defined in section 995-1(1) of the Tax Act as determined by the Trustees with reference to section 307-200 of the Tax Act and relevant Regulations.
<b>Superannuation Law</b>	<ul style="list-style-type: none"> <li>(a) the SIS Act</li> <li>(b) the Tax Act;</li> <li>(c) the Family Law Legislation;</li> <li>(d) the <i>Corporations Act 2001</i> (Cth);</li> <li>(e) the <i>Bankruptcy Act 1966</i> (Cth);</li> <li>(f) the <i>Anti-Money Laundering and Counter-Terrorist Financing Act 2006</i> (Cth);</li> <li>(g) any replacement or additional Commonwealth or State law; and</li> </ul>



- (h) any other present, future or proposed legal requirements with which the Trustees:
  - (1) are legally obliged to comply; or
  - (2) must comply to obtain the maximum Tax concessions available to the Fund.

**Tax** Includes all actual or anticipated tax, Surcharge, levy or impost on income, capital gains and superannuation contributions, stamp, financial institutions, registration and other duties, bank accounts debits tax, goods and services tax and other taxes, levies, imposts, deductions and charges together with interest, fines and penalties (if any) and charges, fees or other amounts made or payable in respect of them

**Tax Act** Either or both of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (as the case may be including any replacement, modification of supplement to those Acts).

**Taxable Component** Has the meaning given by section 995-1(1) of the *Tax Act*.

**Temporary Incapacity** In relation to a Member, who has ceased to be gainfully employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be gainfully employed) means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity)

**Termination Date** The date on which the Fund terminates.

**Trustee** A person or company that has been appointed a trustee of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund. The expression also includes replacement or additional trustees.

## **2. PURPOSE OF THE FUND**

- 2.1. The Trustees must ensure that the Fund is maintained for one or more of the Core Purposes or for one or more of the Core Purposes and for one or more of the Ancillary Purposes permitted under the *S/S Act* and for no other purpose.
- 2.2. If the Trustee is not a company the sole or primary purpose of the Fund is the provision of old age pensions.
- 2.3. The Trustees must cause the Fund at all times to be a Regulated Superannuation Fund.

## **3. TRUSTEES**

### **Who may be a Trustee**

- 3.1. A Trustee may be a natural person or a company.
- 3.2. An individual may only be a Trustee if the individual is a Member or a LPR of a Member or a parent or guardian of a Member who is under a legal disability because of age and does not have a LPR.

- 3.3. A company may only be a Trustee if all the directors of the company are Members.
- 3.4. Notwithstanding the above rules the LPR of a Member may be:
- (a) a director of the Trustee in place of the Member during any period when:
    - (1) the Member is under a legal disability; or
    - (2) the LPR has an enduring power of attorney in respect of that Member;  
or
  - (b) an alternate director of the Trustee where that Member is also a director of the Trustee but the alternate director may only act as director when the Member is not performing his/her duties and powers as a director.
- 3.5. Notwithstanding the above rules if there is only one person who is a Member then:
- (a) that Member or a LPR of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a LPR and one other natural person who is a Relative of the Member or is a person who is not an Employer of the Member may be the Trustee; and
  - (b) a company may be the Trustee the sole director of which is the Member or a LPR of the Member or the company may have two directors one of which is the Member or the LPR of the Member and another person who is a Relative of the Member or is a person who is not an Employer of the Member.
- 3.6. A member cannot be appointed as Trustee:
- (a) if they have a legal disability but a LPR of that Member can be appointed as a Trustee on their behalf;
  - (b) if they are under a legal disability because of age but a parent or guardian of that Member can be appointed as a Trustee on their behalf provided the Member does not have a LPR.
- 3.7. A Regulator may appoint a person or company as Trustee.
- 3.8. A Trustee will comply with all requirements under the *Act* in relation to their appointment.

**Who may not be a Trustee**

- 3.9. A person cannot be a Trustee if that person is a disqualified person under the *S/S Act*.
- 3.10. A body corporate cannot be a Trustee if that body corporate is a disqualified person under the *S/S Act*:
- (a) the company knows, or has reasonable grounds to suspect, that a director is a disqualified person under the *S/S Act* and the disqualification has not been waived or revoked;
  - (b) an administrator or provisional liquidator has been appointed;
  - (c) a receiver, or a receiver and manager has been appointed over the property beneficially owned by the company; and
  - (d) the company has begun to be wound up.

- 3.11. If a Member of the Fund is a person who is under a legal disability because of age and does not have a LPR and a parent or guardian of that Member is a Trustee in place of the Member, then the Trustee of the Fund cannot be a body corporate.

#### **4. COMPLIANCE WITH SUPERANNUATION LAW**

##### **4.1. The provisions of this clause 4 override any other provisions of this Deed**

The Trustees must comply with the requirements of the Superannuation Law and are fully empowered (without being obliged) to comply with any provision or standard of the Superannuation Law which is not a requirement.

##### **4.2. Power to comply with the Superannuation Law**

- (a) The Trustees may:
- (1) do anything that the Trustees are required to do or that the Trustees consider necessary, expedient or desirable to comply with any requirement of the Superannuation Law (including expending monies of the Fund); and
  - (2) refrain from doing anything (including, without limitation, delaying or refusing any request or transaction in connection with a Beneficiary's interest in the Fund) that would result in a breach of, or the Trustees breaching, a requirement of the Superannuation Law.
- (b) The Trustees may rely on anything (including any statutory presumptions available to it) in the Superannuation Law, to the extent that the Trustees are entitled to do so in their capacity as trustee of the Fund.
- (c) The Trustees are entitled to be indemnified out of the assets of the Fund for any Liabilities that the Trustees properly incur pursuant to this clause.

##### **4.3. Deemed compliance**

The Trustees are deemed to comply with the Superannuation Law and this Deed if the Regulator:

- (a) is satisfied that the Trustees have complied with the Superannuation Law;
- (b) determines that the Fund will be treated as if it had complied with the Superannuation Law; or
- (c) has advised the Trustees that it will not take action against the Trustees or the Fund in respect of a failure to comply with the Superannuation Law.

##### **4.4. Conflict with the Superannuation Law**

- (a) To the extent that any provision, or part of a provision, of this Deed conflicts with the Superannuation Law or is invalid for any other reason whatsoever:
- (1) that provision, or part, must be read down, changed, construed or severed to avoid such conflict or invalidity; and
  - (2) to the extent that such conflict or invalidity cannot be avoided, the provision or part of the Superannuation Law shall prevail to the extent of the conflict or invalidity only and the provision, or part, will be of no effect and will not affect the remainder of this Deed.

(b) If a provision of this Deed would otherwise be void under the Superannuation Law because it:

- (1) subjects the Trustees to direction by another person; or
- (2) permits a person to exercise a discretion without the consent of the Trustees;

other than in the circumstances permitted by the Superannuation Law, the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

## **5. TRUSTEE APPOINTMENT**

**5.1.** Upon establishment of the Fund a person is appointed as Trustee provided that the person:

- (a) has agreed to their appointment as Trustee by execution of the Deed;
  - (1) has consented in writing to become a Member or is a LPR on behalf of a person and has consented in writing to that person becoming a Member or is a parent or guardian of a Member who is under a legal disability because of age and does not have a LPR and has consented in writing to that person becoming a Member; and
  - (2) if the Fund has only one Member, is a Relative of the Member or is a person who is not an Employer of the Member;
- (b) has read and understood the PDS and agrees to be bound by the Deed and the Rules of the Fund; and
- (c) is not a disqualified person under the *SIS Act*.

**5.2.** Upon establishment of the Fund a company is appointed as Trustee provided that the:

- (a) the company and its directors have agreed to its appointment as Trustee by execution of the Deed;
- (b) all directors have consented to become Members or they are the LPR of a person and have agreed in writing to that person becoming a Member;
- (c) if the Fund has only one Member and two directors, the director that is not a Member is a Relative of the Member or is a person who is not an Employer of the Member;
- (d) the company and its directors have read and understood the PDS and agree to be bound by the Rules of the Fund; and
- (e) the company or its directors are not a disqualified company or person under the *SIS Act*.

**5.3.** Subject to the provisions of these Rules and in particular Rule 3.11, where the Trustees accept a person as a Member that person or a parent or guardian of that person who is under a legal disability because of age and does not have a LPR or a LPR of that person is appointed as a Trustee unless that person or a LPR of that person becomes a director of a company which is the Trustee.

- 5.4.** On retirement of a Trustee one of the following is appointed Trustee in place of the Trustee who has retired (provided the person or company is not already a Trustee):
- (a) if the retiring Trustee is a person, another person who is a Member or a LPR of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a LPR or a company of which that Member or LPR of that member is a director; and
  - (b) if the retiring Trustee is a company, a company all the directors of which are Members or are the LPR's of Members.

## **6. TRUSTEE REMOVAL**

**6.1.** A Trustee will hold office until:

- (a) the Trustee retires in accordance with this Rule
- (b) being a Constitutional Corporation, it goes into liquidation or has a receiver appointed or enters into administration;
- (c) the Trustee is removed, or ceases to be eligible to act as Trustee under the *Act*; or
- (d) being a natural person, the Trustee dies

**6.2.** A Trustee may retire at any time.

**6.3.** If the Fund has only one Member, a person who is not a Member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an employer of the Member is appointed as a Trustee.

**6.4.** A company may retire as a Trustee provided:

- (a) all the directors of that company are appointed as Trustees; or
- (b) another company is appointed as a Trustee where all directors of the resigning company are also directors of the company being appointed as Trustee.

**6.5.** A Trustee may retire as Trustee of the Fund so long as a new Trustee has first been appointed as a Trustee of the Fund.

**6.6.** A person or company is removed as Trustee:

- (a) if a Member is the Trustee, when that person ceases to be a Member;
- (b) if a Member is the Trustee, when that person is incapable of acting as Trustee unless a LPR of the Member is appointed as Trustee in place of the Member;
- (c) if the Trustee is a company, on the date four months from the time one or all directors of the company cease to be Members or the LPRs of the Members;
- (d) on the date the Trustee is prohibited from being a Trustee under the Rules or the *Act*;
- (e) if the continued appointment of the Trustee will result in the Fund losing its status as a Complying Superannuation Fund; and
- (f) when the Member is no longer under a legal disability because of age where the person is Trustee as parent or guardian of and in place of that Member.

## **7. TRUSTEE REMUNERATION AND INDEMNIFICATION**

- 7.1.** No Trustee of the Fund will receive any salary or remuneration from the Fund for acting as Trustee.
- 7.2.** The Trustees and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the *Act*, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under this Deed.
- 7.3.** Subject to the *Act*, the Trustee and its directors and officers may recover from the Fund amounts necessary:
- (a) to meet the indemnities referred to in Rule 7.2; and
  - (b) to meet all liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

To this end, to the maximum extent permitted by the *Act*, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

- 7.4.** If liabilities are incurred by a Trustee or former Trustee in the management, administration, maintenance, or operation of the Fund, then the Trustee may apply the assets of the Fund in indemnification of itself or a former Trustee provided all actions performed by the Trustee or the former Trustee in respect of which indemnification is sought were honest or the required degree of care and diligence was exercised.

## **8. TRUSTEE MEETINGS**

- 8.1.**
- (a) The Trustees may meet as and when required to make decisions in performance of their obligations as Trustees of the Fund under the provisions of this Deed, the Rules or the *Act*. Reasonable notice of such meetings is required in the manner set out in clause 8.2.
  - (b) The Trustees may adjourn and regulate their meetings as they see fit.
  - (c) If there is more than one Trustee, the Trustee must meet if Members, whose account balances combined equal or exceed fifty percent of the Fund's cumulative account balance, serve notice of meeting on the Trustee requiring the Trustee to make a decision regarding an issue relating to the Fund, its administration or management. 14 days notice of such meetings is required in the manner set out in clause 8.2.
- 8.2.** Written notice of meetings must be given to each Trustee at their last nominated mail, facsimile or email address stating the:
- (a) place, date and time for the meeting; and
  - (b) the general reason for the meeting.
- 8.3.** If a Trustee is able to attend the meeting through a communication link established by telephone, audio or audio-visual communication or other approved device, all proceedings will be valid and effective as if that person were physically present.

8.4. At any meeting of Trustees a quorum will be formed with the presence of those Trustees who represent Members, the balance of whose Member's Accounts in aggregation exceeds one half of the aggregated amount of all Member's Account balances.

8.5.

- (a) The Trustees will determine by majority approval at the first meeting of Trustees one of the following as the method by which Trustees will be entitled to cast votes at all meetings of Trustees:
  - (1) each Trustee being entitled to cast the number of votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each; or
  - (2) each Trustee being entitled to cast one vote each.
- (b) If the Trustees fail to make a determination in accordance with clause 8.5(a), clause 8.5(a)(2) will apply.
- (c) If clause 8.5(a)(2) applies and there is a deadlock in making any Trustee decision, the deadlock shall be resolved by weighting each Trustee's votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each

8.6. A resolution will be passed by a majority of votes of those who are present at the meeting and who are entitled to vote.

8.7. A person may appoint, in writing, another person to act as that person's proxy at any Trustee meeting.

8.8. If a written resolution has been signed by all persons entitled to attend a Trustee meeting, the resolution in the terms stated will be deemed as passed at the time and date which the document was last signed by any such person. More than one identical written resolution, each of which has been signed by one or more persons, will constitute one document.

## 9. TRUSTEE RECORDS AND REGISTERS

The Trustee must create and keep such records and registers of the Fund and decisions made as are required by this Deed and the *Act*.

## 10. TRUSTEE POWERS

10.1. In addition to those powers, authorities and discretions conferred on the Trustees by this Deed, the Rules, the Superannuation Law or the *Act*, the Trustee will have the following additional powers:

**Act notwithstanding personal interest:** generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee or any person being a relative of a Trustee or any person being a relative of a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any

other settlement or in his/her personal capacity or a shareholder or director or as a relative of the Trustee or relative of a director or shareholder of a Trustee or member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee, but provided that this power may only be exercised in the circumstances permitted by the *SIS Act* and the *SIS Regulations*.

**Assets:** to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;

**Assurance Policies:** to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability or accident to any Member, to pay premiums, transfer, surrender, change the place of and deal with the policies in any way whatsoever, to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;

**Bank accounts:** to establish and close a bank account with any bank or financial institution in the name of the Trustees as Trustee for the Fund;

**Borrow:** to borrow as permitted by the *Act* to any percentage of the valuation of the security provided, as approved by the Trustee so long as it is in accordance with the investment strategy;

**Choses in action:** to acquire choses in action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary relinquish or otherwise deal with the choses in action in any way on terms and conditions as the Trustees see fit;

**Corporate Securities:** in reference to any entity in which the Trustees hold shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities"), may exercise the following powers in addition to those conferred by law:

- (a) pay calls on securities or to permit securities to be forfeited and sold;
- (b) purchase securities and to take up securities of a new issue;
- (c) attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustees;
- (d) sell securities at such price and upon such terms with or without security as the Trustee decides;
- (e) agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and



- (f) agree in respect of a winding up with the liquidator of a company or any member of such company or any other person, in all things as the Trustee will decide, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;

**Custodian:** the appointment of a custodian to hold the legal title of any asset which has been acquired or is to be acquired by the Trustees on such terms as the Trustees think fit;

**Debt:** if the Trustees believe that funds are required to be set aside to cover any liability or debt, to meet that liability or debt from the assets of the Fund, provided the Trustees are permitted by Superannuation Law;

**Delegation:** the Trustees may delegate to any one or more persons, firms or companies on such terms as the Trustees may think fit any of the authorities, powers and discretions conferred upon the Trustees. Without limiting this general power the Trustees may:

- (a) appoint from time to time any one or more persons, firms or companies as the Trustees may think fit to act as Manager, custodian or investment manager subject to such conditions as the Trustees may from time to time determine;
- (b) delegate to and confer upon the Manager, custodian or investment manager such authorities, power or discretions, including the Trustees' power of delegation, as the Trustees may think fit;
- (c) pay out of the Fund to any Manager, custodian, investment manager or other delegate such remuneration for its services as the Trustees consider proper; and
- (d) remove from time to time any Manager, custodian or investment manager.

**Expenses:** to pay expenses from the assets, Reserves or income of the Fund, including:

- (a) Management expenses: including all costs, charges and expenses relating to management of the Fund, which may include acquiring the services of specialists or administrators;
- (b) General expenses: including all costs, charges and expenses in connection with any real or personal property, which may include insurance premiums, rates, taxes, rent, repairs and any other expense the Trustees may consider necessary;

**Franchises:** to acquire, sell or otherwise deal with franchises, franchise agreements, licences and related dealings;

**Futures contracts and options:** provided the Trustees maintains a risk management strategy, to engage brokers or commission agents, vary and determine terms of any such engagement directly or through a broker or agent in any market in any part of the world to:

- (a) buy, sell, open, close-out or otherwise deal in futures contracts of all kinds;
- (b) enter into, vary, exercise, abandon or sell any put or call option or rights;

- (c) place bids, make offers, hedge and effect orders including buy, sell, straddle, switch and stop-loss order;
- (d) tender and take delivery of commodities and currencies which are the subject of any futures contract or option; and
- (e) otherwise do and perform all things to operate on, utilise or deal with facilities of any stock or futures exchange.

**Gifts:** to receive property by gift or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the Fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;

**Incidental Powers:** to do all such other things as may be incidental to the exercise of the powers, rights, discretions otherwise provided by the Deed, the Rules or by law;

**Indemnities:** to give indemnities to or on behalf of any person that the Trustees think fit.

**Intellectual property:** to apply for, purchase or otherwise acquire and to sell intellectual property (including patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like), conferring any exclusive or non-exclusive or limited right to use intellectual property rights as well as develop or grant licenses in respect of intellectual property rights or information so acquired;

**To Let:** to lease, rent and let property owned by the Fund or held by the Trustees pursuant to the provisions of these Rules upon terms and conditions as the Trustees may decide, to accept surrenders from and to make arrangements with a lessee or tenant as the Trustees may consider appropriate;

**Lease:** to rent premises, to acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;

**Legal proceedings:** to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustees may decide;

**Lend:** may lend and advance moneys as permitted by the *Act*;

**Licences:** may acquire, sell or transfer any licence or permit which the Trustees sees fit to engage or facilitate any business which the Trustees are permitted to under these Rules or the *Act*;

**Power of attorney:** in the exercise of all or any of the powers herein confirmed upon the Trustees to appoint an attorney and to execute any power of attorney or such other instrument that the Trustees consider necessary for the exercise of those powers;

**Property:** to maintain and preserve in good condition any:

- (a) real property: and to acquire, dispose of, exchange, strata title, subdivide, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;

- (b) personal property: and to acquire, dispose of, exchange, hire, lease, mortgage or otherwise deal with any interest in personal property;

**Release of powers:** by irrevocable deed to renounce and release any power conferred on the Trustees under the Rules in respect of the whole or any part of the Fund or the income or any part thereof;

**Specialists:** to employ or engage and pay from the Fund, agents or professionals including such managers, agents, self managed superannuation fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons to transact any business or to do any act required to be done in connection with the administration and management of the Fund, to act upon the opinion or advice of these agents or professionals without being responsible for any loss or damage occasioned by so acting;

**Subdivision of Property:** to partition or to subdivide any property or interest in property which may be subject to these trusts and to pay moneys by way of equality or partition;

**Trustee's power to deal with itself:** notwithstanding any rule or law or equity to the contrary, and provided the in-house assets rules are complied with:

- (a) to acquire, as property of the Fund, the legal and beneficial interest in real or personal property which is, at the date of acquisition, the absolute property of the Trustee provided that any property so acquired is acquired for a consideration not greater than the current Market Value of the property and upon such acquisition the beneficial interest in the property will be held by the Trustee according to the Rules;
- (b) to dispose of any beneficial interest in property of the Fund to itself;
- (c) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee; and
- (d) to lease any property of the Fund to itself;

**Unit trust interests:** to acquire units or sub-units of any fixed or flexible unit trust whether by way of application or purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights and perform all obligations and receive all distributions as a holder of any units in such a trust.

- 10.2.** These powers will be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules, or by Superannuation Law.
- 10.3.** These powers will not be limited by, or be construed so as to be limited by any other powers, authorities and discretions otherwise provided by the Deed, the Rules, or by Superannuation Law.
- 10.4.** In exercising these powers the Trustees must ensure at all times that the Fund remains a Complying Superannuation Fund.
- 10.5.** A Trustee who is a natural person may be a director of any company in which any moneys forming part of the Fund are from time to time invested and may receive remuneration attached to such office without being liable to account for it unless that appointment would compromise or affect the Fund's status as a Complying Superannuation Fund.

- 10.6.** Subject to the terms of these Rules the Trustees may exercise or concur in exercising all powers and discretions given under this Deed or by law, notwithstanding that it or any person who is a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee at the time is the sole Trustee.

## **11. THE TRUSTEE MAY BORROW AS PERMITTED BY THE ACT**

- 11.1.** In general circumstances and unless permitted by the *Act* and the Rules, the Trustees must not:

- (a) borrow money;
- (b) maintain an existing borrowing of money;
- (c) recognise, or in anyway encourage or sanction, a charge over, or in relation to a Member's Benefits; and
- (d) give a charge over, or in relation to, an asset of the Fund.

- 11.2.** The Trustees may borrow funds if permitted by the *Act* provided:

- (a) the asset is held in trust and the Fund will hold a beneficial interest in the asset;
- (b) the Fund may acquire legal and beneficial ownership of the asset; and
- (c) the rights of the lender against the Fund for default on the borrowing are limited to the rights relating only to the asset acquired with the borrowed funds.

## **12. ASSETS**

- 12.1.** The Trustees must not acquire an asset from a Member or an Associate of a Member unless that asset is an allowable acquisition under the *Act* and acquired at Market Value.

- 12.2.** Except if required for the purposes of limited recourse borrowing arrangements permitted under these Rules and the *SIS Act*, the assets of the Fund must be held in the Trustees' names and must be held separately from any assets held by the Trustees personally, a Member, by an employer of a Member or any other person unless otherwise allowed by the *SIS Act*.

## **13. TRUSTEE MAY RECEIVE GIFTS OR DISTRIBUTIONS**

A gift or distribution made to the Fund may be accepted and allocated to Earnings, a Reserve or a Member's Account or applied for any purpose as the Trustees determine including the payment of a Pension to a Member or Pension Dependant in the event of the Member's death, provided the status of the Fund as a Complying Superannuation Fund is not affected or compromised.

## **14. MEMBERS**

- 14.1.** The Trustees have absolute discretion as to who is admitted as a Member provided:

- (a) that person or that person's LPR or that person's parent or guardian (where that person is under a legal disability because of age and does not have a LPR) has provided the Trustees with an Application Form and has read and agreed to be bound by the Deed and Rules of the Fund;

- (b) the admittance of that person as a Member would not affect or compromise the Fund's status as a Complying Superannuation Fund; and
  - (c) the person or LPR of the person applying will accept the appointment as Trustee or director of a company that is the Trustee and is not a disqualified person; or
  - (d) a parent or guardian of that person, where that person is under a legal disability because of age and does not have a LPR, will accept the appointment as Trustee and is not a disqualified person.
- 14.2.** The Trustees must admit any person as a Member where that person will be paid a Pension from the Fund.
- 14.3.** If the Fund is a sole member Fund, the Member may give written notice to the Trustees stating that no other Member will be admitted to the Fund.
- 14.4.** If a Member transfers a property to the Fund, the Member may give written notice to the Trustees stating that the property is to be held specifically for that Member with no other Member to obtain an interest in that property. The Trustees may decline to accept that transfer or may accept that transfer on terms and conditions at the discretion of the Trustees and any expenses of the Fund attributable to that property will be payable from the Member's Account.
- 14.5.** A parent or guardian of a Member who is a Trustee of the Fund in place of that Member (because that Member is under a legal disability because of age and does not have a LPR), may exercise on behalf of that Member any rights or functions which that Member could exercise under the Rules (except those referred to in Rule 19.2) provided such exercise is permitted by the *Act* and will not affect or compromise the Fund's status as a Complying Superannuation Fund.

## **15. MEMBERS APPLICATION**

- 15.1.** The Trustees will not admit any person as a Member of the Fund unless that person has submitted an Application Form. The Trustees are not required to admit a person who the Trustees do not believe has read or understood the Rules or the Deed or who has not agreed to be bound by the Deed and Rules of the Fund.
- 15.2.** Upon death of a Member, any person who may be entitled to receive a Pension Benefit and does not wish to become a Member, or if the Trustees decides not to admit that person as a Member, then the Trustees must transfer the amount that would have funded the Pension to another Benefit Arrangement. The transfer of any amount must be in accordance with Rule 29. Once the Trustees have received all relevant documentation, including the Application Form and any other documentation the Trustees may require, the Trustees may in its absolute discretion admit or refuse to admit that person as a Member of the Fund.
- 15.3.** The terms and conditions applicable to a Member's membership of the Fund, including the contributions and benefits payable to or in respect of the Member, may be varied by written agreement between the Trustees and the Member.
- 15.4.** As soon as practicable after the admission of a person as a Member of the Fund the Trustees will give to that Member any information required by the *Act*.

## **16. TERMINATION OF MEMBERSHIP**

- 16.1.** The Trustees have absolute discretion to expel any Member of the Fund. That if a Member ceases to be a Member of the Fund, he or she must retire as a Trustee of the Fund or a director of a corporate trustee of the Fund.
- 16.2.** The Trustees must give notice to the Member of the member's expulsion from the Fund. Where a Member is expelled from or ceases to be a Member of the Fund the balance of the Member's account must be transferred to a Benefit Arrangement in accordance with Rule 29 or as nominated by the Member within 60 days of the date of the Trustee's Member expulsion notice and if a nomination is not made within that period, to an Eligible Rollover Fund at the discretion of the Trustee.
- 16.3.** Unless prohibited by the *Act*, a Member will be deemed to have ceased to be a Member on the first to occur of the following:
- (a) when the Member is no longer entitled to receive Benefits from the Fund;
  - (b) when the Trustees determine that the Member should no longer be a Member;
  - (c) on the death of the Member, or if the Trustees decide otherwise, no later than the time any LPR of the Member ceases to act as Trustee or director the Trustee company;
  - (d) no later than the earliest of either:
    - (1) four months from the date a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee unless a LPR of that Member is appointed a Trustee; or
    - (2) the date just before a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee unless a LPR of that Member is appointed as a Trustee.

## **17. MEMBER'S ACCOUNT**

- 17.1.** A record of all Contributions, Earnings, amounts allocated to or from any Fund reserves, Benefits paid and all other amounts credited or debited to a Member's Account must be kept by the Trustees on behalf of the Members.
- 17.2.** The Trustees may keep more than one account for a Member, which may include more than one Member's Accumulation Account and more than one Pension account.
- 17.3.** A record of the tax free and Taxable Components of a Member's Account must be kept by the Trustees.
- 17.4.** The Trustees will, subject to any restrictions imposed by the *Act*, add to a Member's Account the following received on behalf of the Member or attributable to the Member's Account:
- (a) Contributions received; and
  - (b) Earnings; and
  - (c) Splittable Contributions; and
  - (d) Payment Split; and
  - (e) Reserves; and

- (f) the proceeds of any Policy; and
- (g) any other amount which the Trustees with the consent of the Member determine will be credited to the Member's Account.

**17.5.** The Trustees will subject to any restrictions imposed by the *Act* deduct from a Member's Account the following:

- (a) any costs or fees and any other liabilities attributed to it;
- (b) Losses of the Fund;
- (c) Benefit payments paid to that Member or persons entitled to receive them or transferred to another Benefit Arrangement;
- (d) Tax payable;
- (e) Excess Contributions Tax liability;
- (f) Splittable Contributions;
- (g) Payment Split; and
- (h) Any other amount including an amount to be transferred to a Reserve Account which the Trustees with the consent of the Member, determine will be debited to the Member's Account.

## **18. CONTRIBUTIONS**

**18.1.** The Trustees may accept any Contributions made on behalf of a Member or a Spouse of a Member by any person, entity or government body so long as the acceptance by the Fund of that contribution:

- (a) will not compromise or affect the Fund's status as a Complying Superannuation Fund; or
- (b) is permitted by the *Act*.

**18.2.** The Trustees are required to comply with the provisions of the *Act* concerning any Excess Contributions Tax imposed on a Member.

**18.3.** The Trustees, at the request of a Member, will allot, transfer or rollover, within the period required by the *Act*, of all or part of a Member's Account to another Superannuation Entity or another Member's Account, if

- (a) the Trustees are satisfied that any such action will not compromise or affect the Fund's status as a Complying Superannuation Fund, or
- (b) the Trustees are required by order or agreement under the provisions of the *Family Law Act 1975* to perform such an action.

**18.4.** The Trustees will not transfer or rollover a Member's Account to a Superannuation Entity or another Member's Account if prohibited by the *Act*, if it will cause a breach of the minimum benefit provisions of Division 5.3 of the SIS Regulations or if it will compromise or affect the Fund's status as a Complying Superannuation Fund.

**18.5.** The Trustees have absolute discretion as to whether the transfer will be in the form of cash or assets, with or without conditions.

- 18.6.** The Trustees have absolute discretion and may accept transfers or rollovers from another Superannuation Entity, whether conditionally or not, provided it does not breach the *Act* or compromise or affect the Fund's status as a Complying Superannuation Fund.

## **19. ESTATE PLANNING**

### **19.1. Non-binding Death Benefit Nominations**

- (a) A Member may provide a written Non-Binding Death Benefit Nomination to the Trustees, by which the Trustees may, in their discretion, provide benefits to the beneficiaries listed in that nomination. Subject to the *Act*, the Trustees must accept a Non-Binding Death Benefit Nomination, but it is not binding on the Trustees.
- (b) A Member or the LPR of the Member may confirm, amend or revoke the nomination previously given to the Trustees.
- (c) A Member or the LPR of the Member may give direction to the Trustees to act in a particular way upon the Member's death or incapacity, but the Trustees are not obligated to follow such instructions.
- (d) The Trustees must not comply with any nomination or direction that would compromise or affect the Fund's status as a Complying Superannuation Fund.

### **19.2. Binding Death Benefit Nominations**

- (a) Trustees should provide a Member with information that it believes the Member needs for the purposes of submitting a Binding Death Benefit Nomination.
- (b) A Member may provide a written Binding Death Benefit Nomination, by which the Trustees are bound to provide Benefits to the beneficiaries listed in and in accordance with that nomination, provided the nomination is valid and binding at the date of death of the Member.
- (c) Subject to the *Act*, the Trustees must accept a Binding Death Benefit Nomination and will be bound by it, subject to Pension terms and conditions incorporated as a Rule under Rule 20.7.
- (d) A Member may confirm, amend or revoke the nomination by written notice given to the Trustees.
- (e) The Trustees must not comply with any nomination or direction that would compromise or affect the Fund's status as a Complying Superannuation Fund.
- (f) A Binding Death Benefit Nomination and any revocation or amendment to it must:
  - (1) be in writing;
  - (2) require that all Benefits would be payable to one or more of a LPR or a Dependant of the Member; and
  - (3) be signed by the Member in the presence of more than one person:
    - (A) each of whom has turned 18 years of age; and



- (B) neither of whom is a person mentioned in the Binding Death Benefit Nomination.
- (g) If proceedings, for dissolution of a Member's marriage to a spouse, under the *Family Law Act 1975* or some similar foreign legislation have commenced, then any nomination which states that the Benefit is to be paid to that spouse of the Member will be deemed to be revoked.
- (h) A Binding Death Benefit Nomination will have an indefinite term unless the Member has stipulated otherwise or the nomination is revoked by written notice to the Trustees.

### **19.3. Death Benefit Request**

- (a) A Member or the Legal Personal Representative of the Member may provide the Trustee with a notice in writing requesting the Trustee to establish a Death Benefit Rule that requires the Trustee to pay Benefits in the event of the death of the Member in a manner and form that the Member or the Legal Personal Representative of the Member so chooses; including whether the Benefit is to be a Lump Sum Benefit, a Pension Benefit or combination of both.
- (b) The Trustee may accept or reject any notice referred to at Rule 19.3 (a) and must reject if the Trustee holds a Binding Death Benefit Nomination from that Member. If the Trustee accepts the notice, the Trustee shall be bound to act in accordance with that Death Benefit Rule that would be established as a consequence of accepting the notice.
- (c) A Member, or the Legal Personal Representative of the Member, may provide the Trustee with a notice in writing requesting the Trustee to delete or amend a Death Benefit Rule that was previously established at the request of the Member and, if amended, the Trustee shall act in accordance with that amended Death Benefit Rule.
- (d) The Trustee shall not accept any notice referred to at Rule 19.3 (a) or (c) if that would cause the Fund to become a Non-Complying Self Managed Superannuation Fund.

## **20. BENEFITS**

**20.1.** A Member or any other person permitted to receive a Member's Benefit by the *Act*, may be entitled to receive one or more of:

- (a) a lump sum Benefit;
- (b) a Pension Benefit;
- (c) a Temporary Incapacity Benefit;
- (d) a Permanent Incapacity Benefit; and
- (e) such other Benefit including the proceeds of any Policy that may be permitted to be paid to a Member under the *Act*, including in situations of Severe Financial Hardship or on Compassionate Grounds, as the Trustees might determine;

provided that the payment of any such Benefit would not breach the minimum Benefit provisions of Division 5.3 of the SIS Regulations or compromise or affect the Fund's status as a Complying Superannuation Fund or be in breach of the *Act*.

- 20.2.** A Benefit will be payable to a Member, Dependant of a Member, LPR of a Member or to some other person provided it is required to be paid by the Rules or the *Act*.
- 20.3.** A Member or the LPR of a Member may request that a lump sum Benefit be paid, and the Trustees at their discretion may pay the Benefit provided it is permitted by the *Act* and will not compromise or affect the Fund's status as a Complying Superannuation Fund.
- 20.4.** A Trustee may pay a lump sum Benefit to a Member that will not exceed the balance of that Member's Accumulation Account although, in addition, the Trustee at its discretion may pay the whole or part of any Reserves to the Member.

#### **Pension Benefit**

- 20.5.** Where a Member or a Member's LPR requests that the Trustees pay a Pension to a Member or after the Member's death, to their Pension Dependant, the Trustees may do so provided it is permitted by the *Act*, and provided the payment will not compromise or affect the Fund's status as a Complying Superannuation Fund.
- 20.6.** Any Pension must be paid in accordance with these Rules and comply with the standards for the provision of Pensions of the SIS Regulations (which are deemed incorporated in these Rules).
- 20.7.** A Trustee must notify a Member in writing of any Pension it will pay to the Member and the notification will outline the terms or conditions of the Pension which will be deemed to be a Rule unless payment of the Pension would affect or compromise the Fund's status as a Complying Superannuation Fund.
- 20.8.** Subject to the Rules and the *Act*, the Trustees in their sole discretion may utilise any amount standing in the Member's Account, a Member's Pension Account or a reserve to provide a Pension to a Member, or if permitted by the *Act*, their Dependants, a LPR of a Member, or any other person.

#### **Incapacity**

- 20.9.** The Member is to advise the Trustees of incapacity:
- (a) if a Member becomes incapacitated that Member or their LPR will advise the Trustees as soon as practicable. The Trustees may request the Member submit to any reasonable medical examinations, as it sees fit;
  - (b) upon receipt of any documentation required by the Trustees regarding a Member's incapacity, the Trustees at their sole discretion will determine whether or not the Member suffers Temporarily Incapacity or Permanent Incapacity.

#### **Temporary Incapacity**

- 20.10.** If the Trustees are reasonably satisfied that a Member suffers Temporary Incapacity, it may choose to pay a Benefit in the manner and for no more than the amount permitted by the *Act* to the Member from the time of that Temporary Incapacity to the earlier of:
- (a) the date the Member is re-instated in similar employment the Member was previously engaged in prior to suffering the Temporary Incapacity;
  - (b) the date on which the Trustees believe the Member commenced to suffer Permanent Incapacity;
  - (c) the date of death of the Member; or

(d) such other time permitted under the *Act*.

**20.11.** The Trustees, in their sole discretion, may deduct an amount from a Reserve Account or any of the Member's accounts to pay the Temporary Incapacity Benefit.

#### **Permanent Incapacity**

**20.12.** If the Trustees are reasonably satisfied that a Member suffers Permanent Incapacity the Trustee may pay all or part of any of a Member's Accounts to the Member, or if permitted by the *Act*, to a Dependant or Pension Dependant or LPR of the Member whether as a lump sum or a Pension or a combination of both, in its absolute discretion.

**20.13.** The Trustees in their sole discretion may allocate any amount from any Reserve Account held in the Fund to pay the Benefit on the Member's Permanent Incapacity.

#### **Death of a Member**

**20.14.** On the death of a Member:

(a) if the member was a Trustee or a director of the corporate Trustee, the Member's LPR will be appointed as a replacement Trustee or a director of the corporate Trustee until the date Benefits payable on the death of the Member commence to be payable provided that the LPR is eligible to act as Trustee and has consented to act as Trustee; and

(b) the Trustees may transfer or continue to pay any Pension previously payable to a Member to such Pension Dependents of the Member as are permitted by the *Act* to receive the Pension.

#### **Payment of a Death Benefit**

**20.15.** In the event of a Member's death, the Trustees at their sole discretion, but subject to Rule 20.17, will pay a Death Benefit to any one or more of the Member's Dependents or the Member's LPR or another person as permitted by the *Act*.

**20.16.** If the Trustees hold a Non-Binding Death Benefit Nomination by the deceased Member, the Trustees in their sole discretion may choose but is not obliged to pay such Benefits to persons nominated in that Non-Binding Death Benefit Nomination, provided the payment is permitted by the *Act*.

**20.17.** If the Trustees hold a Binding Death Benefit Nomination by the deceased Member the Trustees must pay such Benefits in the manner and form as requested in that Binding Death Benefit Nomination provided the payment is permitted by the *Act*.

**20.18.** Provided it is permitted by the *Act*, the Trustees may pay additional amounts to the deceased Member's Dependents or LPR including from a Reserve Account but these amounts would not form part of the deceased Member's Benefit.

#### **Conversion of a Lump Sum Benefit into a Pension**

**20.19.** Should a Member, or a deceased Member's LPR or a deceased Member's Dependents so request, the Trustees in their sole discretion may convert any lump sum Benefit payable to or in respect of a Member either in whole or in part to a Pension payable to the Member, or the deceased Member's Pension Dependents as permitted by the *Act*.

- 20.20.** A Member or a deceased Member's LPR or a deceased Member's Dependants must notify the Trustees of the Pension required and the Trustees are to use the Member's lump sum Benefit to fund any Pension.

#### **Commutation of a Pension**

- 20.21.** By written request of a Member or in the event of a Member's death, the Member's Pension Dependants and provided it is permitted by the *Act*, the Trustees, in their absolute discretion, may commute the whole or any part of any Pension payable to the Member in accordance with the Rules below.
- 20.22.** Any amount resulting from the commutation may be applied by the Trustees:
- (a) to pay a lump sum Benefit to a Member, or in the event of the death of the Member, to any one or more of the Member's Pension Dependants; or
  - (b) to be allocated into the Member's Accumulation Account.
- 20.23.** The Trustees will determine any possible Tax consequences or commutation limits prior to commuting a Pension. The Trustees must also notify the Member, Dependants or LPR of the Member of this information.

## **21. INVESTMENTS**

### **Investment strategy**

- 21.1.** The Trustees must formulate and implement an investment strategy that reflects the purpose and circumstances of the Fund and considers:
- (a) the risk and liquidity involved in making, holding and realising and likely return from investments having regard to the Funds objectives and expected cash flow requirements;
  - (b) the composition of the Fund's investments as a whole and the Benefits and risks associated with diversification;
  - (c) the liquidity of the Fund's investments in view of its expected cash flow;
  - (d) the ability of the Fund to discharge its existing and prospective liabilities; and
  - (e) the needs of Members considering their age, income level and retirement needs.
- 21.2.** The investment strategy could consist of one or more strategy for the whole of the Fund or separate strategies for various parts of the Fund.
- 21.3.** The investment strategy should identify the investment objectives and provide detail of the investment methods the Fund may adopt to implement the strategy.
- 21.4.** The Trustee will review this strategy annually and can amend the strategy at any time deemed appropriate. The Trustee must advise all Members affected by written notice of all details outlined in any amendment.
- 21.5.** Should a Member request to view the Fund's investment strategy the Trustee will comply with this request by the Member.
- 21.6.** The Trustees must also set an investment strategy for one or more reserves of the Fund. Any such investment strategy must be based upon the prudential management of assets of the reserve or such other requirements as laid down in the *Act*.

- 21.7. The Trustees in their sole discretion may act on the advice of an adviser or a specialist in documenting the Fund's investment strategy so long as the Trustee believes the adviser has adequate credentials to provide such advice.

**The Trustee must invest the assets of the Fund**

- 21.8. The Trustees must invest the assets of the Fund in accordance with the Fund's investment strategy.

**A Member can request the Trustee to invest their account separately or jointly**

- 21.9. A Member or the LPR of the Member may request the Trustees to invest all or part of the amount standing to the credit in the Member's Account separately from other investments held in the Fund however it is in the Trustees sole discretion to accept, subject to conditions, or reject the request from the Member.

**Authorised investments**

- 21.10. The Trustee may invest the assets of the Fund as if it were the absolute and beneficial owner of those assets and will exercise such diligence and prudence that an ordinary person would exercise in conducting their own affairs.

- 21.11. The Trustees may invest in investments both within and outside Australia. The Trustees have the power to apply or invest any moneys required to be invested either alone or in partnership or co-ownership with any other person or persons.

- 21.12. The Trustees may invest in:

- (a) **Authorised investments:** in any one or more investments as sanctioned by law in any State or Territory of Australia relating to the investment of trust moneys;
- (b) **Real and Personal property:** in the acquisition of real or personal property or any interest in it including intellectual property rights or privileges in Australia or any other country;
- (c) **Shares:** in the acquisition of fully or partly paid shares including redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
- (d) **Option and rights:** in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (c) of this sub-clause;
- (e) **Deposit:** on fixed deposit or at-call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
- (f) **Insurance:** in the acquisition of any policy of assurance or insurance of any kind whatsoever and wherever made;

- (g) **Loans:** in making loans to any person or company, except to Members or a relative of a Member;
- (h) **Precious objects:** in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques, or any other similar objects;
- (i) **Commodity contracts:** in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or futures contracts of any other kind quoted on a recognised stock exchange;
- (j) **Permanent building society:** in the lodgement of moneys with a permanent building society wherever situated, by taking up shares in or depositing funds with;
- (k) **Deferred property:** in the acquisition of any reversionary or deferred property or rights of any description;

#### **Investment manager**

**21.13.** The Trustees may in writing appoint a person (not disqualified from acting as such) as investment manager of the Fund assets for such periods and subject to such conditions as the Trustees may from time to time determine, except the investment manager may not be exempted from or have limited liability for negligence.

**21.14.** The Trustees:

- (a) may delegate to and confer upon that investment manager such powers, discretions and authorities relating to the investments, sale, getting in and disposal of the Fund assets as the Trustee may think fit;
- (b) will have power, as an expense of the Fund, to pay out of the Fund assets to that investment manager such remuneration for its services as the Trustees considers proper; and
- (c) will have power to remove that investment manager.

**21.15.** No investment manager appointed by the Trustees will be entitled to take any part in the proceedings or deliberations of the Trustees.

**21.16.** No delegation of powers and discretions and authorities under this clause, however, will be made in the breach of any of the provisions of the *Act* and in particular must be in accordance with s102 of the *SIS Act*.

#### **Trustee not bound to act personally**

**21.17.** The Trustees are not bound in any case to act personally but is at liberty to employ any person to act as manager, lawyer, accountant, clerk, contractor, workman, or employee or any agent to transact any business. The Trustees may determine the remuneration to be paid and allowed for those services.

#### **Trustee to appoint Auditor**

**21.18.** On establishment of the Fund and in every year of income of the Fund, the Trustees must appoint an Auditor to audit the Fund who must give the Trustees a report in the form required by the *Act*.

## **22. OPERATION AND ADMINISTRATION**

### **Fund Compliance**

- 22.1.** If a Trustees are aware or notified by the Auditor, an adviser to the Fund or the Regulator of the Fund that it may lose its status as a Complying Superannuation Fund the Trustees must:
- (a) liaise with the Auditor, adviser or Regulator to implement a compliance plan to ensure the Fund's status as a Complying Superannuation Fund will be maintained;
  - (b) notify all Members of any action required under the compliance plan; and
  - (c) take any such action as required under the compliance plan within a reasonable time frame and before the lodgement of the Fund's next regulatory return.

### **Fund Insolvency**

- 22.2.** If the Trustees are notified by the Auditor or the Fund's actuary or becomes aware the Fund is or may become insolvent, the Trustees must:
- (a) liaise with the actuary or Auditor to determine a solvency plan to ensure the Fund's solvency, including but not limited to reducing any Members' Accounts or Members' Benefits;
  - (b) notify Members of any action required under the solvency plan; and
  - (c) take such action as is required under the solvency plan prior to the lodgement of the Fund's next regulatory return.

### **Earnings**

- 22.3.** The Trustees will determine the amount of the Fund's Earnings for all or part of a Financial Year.
- 22.4.** The Trustees have sole discretion as to where to allocate Earnings including allocating Earnings to a Member's Accumulation Account, a Member's Pension Account, or a reserve and using Earnings to pay a Benefit or expense of the Fund or any tax imposed upon the Fund.

### **Taxation**

- 22.5.** The Trustees must pay all Tax properly assessed to the Trustees.
- 22.6.** The Trustees may in their sole discretion deduct from a Member's Account Tax paid or payable by the Trustees:
- (a) as a consequence of the receipt by the Trustee of a Contribution for the Benefit of a Member,
  - (b) payable on any income which may be added to a Member's Account, and
  - (c) any Tax which the Trustee believes may be payable as a consequence of a payment given to a Member.
- 22.7.** The Trustee may in their discretion deduct from any account, including a Reserve Account, Tax paid or payable by the Trustee provided that any such deduction will not affect or compromise the Fund's status as a Complying Superannuation Fund.

- 22.8.** If the Trustees receive a refund of Tax the Trustee may allocate the refund to any Member's Account or a Reserve Account as it sees fit provided that this would not affect or compromise the Fund's status as a Complying Superannuation Fund.

### **Annual Accounts**

- 22.9.** The Trustees must keep annual accounting records as required by the *Act*.
- 22.10.** Accounting records are to be kept in such form and supported by any documentation as to enable them to be properly audited.
- 22.11.** The Trustees must in a reasonable time frame after the end of each Financial Year:
- (a) organize a statement of the Fund's financial position recording all assets and liabilities at the end of that preceding Financial Year;
  - (b) organize an operating statement recording any profit derived or loss incurred by the Fund for that preceding Financial Year (or part year if the Fund was not in existence for a full year); coordinate for these statements and all accounting records of the Fund to be audited by an approved Auditor;
  - (c) arrange for all tax returns and other statements required to be lodged pursuant to the *Act* by the Fund to be lodged as required; and
  - (d) prepare any Member and other statements and reports as required by the *Act*.
- 22.12.** The Trustees must keep accounts and statements for a minimum period of 5 years after the end of the Financial Year to which they relate.

## **23. RESERVES**

- 23.1.** The Trustees may maintain reserves for specific purposes and applications and may add, deduct and allocate amounts to those Reserve Accounts as it considers appropriate.
- 23.2.** The Trustees must formulate and implement a separate investment strategy for any reserve that is consistent with the Fund's investment strategy. Investments must be in accordance with the Fund's investment strategy and with the Trustee's ability to discharge liabilities, either actual or contingent, as and when they fall due.
- 23.3.** No Member or any other person will have any entitlement to any amount in a Reserve Accounts.

## **24. INSURANCE**

### **The Trustee may establish an insurance plan**

- 24.1.** The Trustees may establish and implement an insurance plan for the Benefit of the Fund to enable the Fund to make payments (including the payment of Benefits on a Member's death or disability) to a Member, a Member's Dependant or the LPR of a Member in the event of a Member's death, disablement, illness or otherwise as permitted by the *Act*.

### **Self Insurance**

- 24.2.** The Trustees can elect to self insure and may establish a Reserve:
- (a) to which such amounts as the Trustees might require will be added for the purpose of self insurance;



- (b) from which the Trustees may pay amounts required to be paid as a consequence of the Trustees self insuring against an event; and
- (c) from which amounts no longer required for the purpose of self insurance may be transferred to such other Reserve or to such Member's Account as the Trustees may determine.

**The Trustee has discretion as to the application of any insurance proceeds**

- 24.3.** The Trustees have absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the insurance proceeds to any Member's Account or to Reserves held in the Fund.
- 24.4.** No Member nor their LPR nor any other person has any interest in any insurance proceeds that might be received by the Fund.
- 24.5.** If a Benefit would ordinarily include an insured component under a Policy (for example a benefit payable on the Member's death or disablement) but:
- (a) no amount is paid under that Policy; or
  - (b) the amount paid under the Policy is less than the amount that would ordinarily be payable;

the amount payable to the Member may be adjusted accordingly.

- 24.6.** This clause is:
- (a) for the protection of the Trustees and the Fund; and
  - (b) not to be taken as conferring any rights on Beneficiaries in respect of benefits additional to those conferred under other provisions of this Deed.

## **25. CHANGES**

**Amendment of the Deed or the Rules**

- 25.1.** The Trustees may in their absolute discretion amend vary or alter any provision of this Deed or the Rules (in whole or in part) by way of written resolution provided:
- (a) any change to the Deed will not affect or compromise the Fund's status as a Complying Superannuation Fund and is not in breach of the *Act*;
  - (b) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment unless the Member or the LPR of the Member has in writing consented to any such amendment;
  - (c) the amendment does not amend the term of a Pension unless the Member or the LPR of the Member who accepted the term of the Pension has in writing consented to any such amendment;
  - (d) the amendment does not allow a person other than a Constitutional Corporation to be eligible for appointment as a Trustee unless the Rules provide and will continue to provide after the amendment is made that the Fund has as its sole or primary purpose the provision of old age pensions, and
  - (e) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide after the amendment is made that the Trustee must be a Constitutional Corporation.

## **26. GOVERNING LAW**

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia where the Trustee resides.

## **27. STATUS OF THE ACT**

In every respect, these Rules are subject to the provisions of the *Act*. Any Rule, to the extent that it affects or compromises the Fund's status as a Complying Superannuation Fund, will not apply and will have no force or effect. If there is any inconsistency between the provisions of the *Act* and these Rules, the provisions of the *Act* will prevail. Provided there is no inconsistency between the provisions of these Rules and the *Act*, any authority or discretion given to the Trustee by the *Act* will be incorporated into these Rules as if it were a Rule.

## **28. TERMINATION OF THE FUND**

**28.1.** The Fund will be terminated on the first to occur of the following:

- (a) the Trustees resolve that the Fund should be wound up and terminated;
- (b) the Fund must be wound up for any purposes under the *Act*;
- (c) the Fund ceases to have Members;
- (d) the Regulator requires that the Fund be wound up; or
- (e) the Trustee's office becomes vacant and no new Trustee is appointed within ninety (90) days.

**28.2.** The Trustees will on the Termination Date deal with the Fund in the following order:

- (a) dispose of any assets in the Fund in order to have sufficient cash with which to meet any debts and liabilities the Fund may have incurred. The Trustees have discretion to determine which of the Fund's assets are to be disposed;
- (b) pay out any outstanding debts and liabilities of the Fund;
- (c) pay out any Benefits due by the Fund to the Members. The Trustees retain sole discretion as to how these amounts will be paid;
- (d) transfer or rollover amounts standing to the credit of remaining Member's Accounts as if the Members had been expelled under rule 16.2; and
- (e) determine to whom any Benefits are to be paid including former Members, trusts that former Members were beneficiaries of, the LPR of former Members or any other person. The Trustees will retain sole discretion as to where and how those Benefits are to be paid and must ensure that the payment complies with the *Act*.

## **29. TRANSFERS TO AND FROM OTHER FUNDS**

**29.1. Transfers from other Funds**

Subject to the *Act*, the Trustees may accept into the Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Benefit Arrangement.

## **29.2. Transfers to Other Funds**

- (a) The Trustees may transfer the whole or part of any amount held in the Fund in respect of a Member to another Benefit Arrangement.
- (b) The Trustees may make such a transfer without the Member's consent where the *Act* permits (including to a Successor Fund or an Eligible Rollover Fund).
- (c) The Trustees may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the *Act* (or in the case of a retirement savings account, the *Retirement Savings Account Act 1997* (Cth)) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the *Act*.

A transfer of an amount under this clause 29 is a complete discharge to the Trustees in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred

## **30. INTERPRETATION**

**30.1.** In the Deed and the Rules unless the contrary intention appears or can be reasonably implied from the context:

- (a) The singular includes the plural and vice versa.
- (b) A reference to one gender includes a reference to all other genders.
- (c) Headings of clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate.
- (d) References to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute.
- (e) The words "including", "includes", "such as" and "for example" should be read as if followed by the words "without limitation".
- (f) The word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not.
- (g) A reference to 'interest', 'earnings' or 'investment returns' or such other similar term can refer to either positive or negative 'interest', 'earnings' or 'investment returns'.
- (h) If an expression is defined in the *Act*, but is not defined in this Deed, then that expression will have the meaning given to it in the *Act*.
- (i) The Deed will bind each party's legal personal representatives, successors and assigns.
- (j) When a party comprises two or more person the rights and obligations of such persons pursuant to this Deed will enure for the benefit of and bind all of them jointly and each of them severally.