



BYRNE JONES & TORNEY

Barristers & Solicitors

A small icon of a gavel, positioned between the words 'Barristers' and 'Solicitors'.

DEED OF VARIATION

IAN & ROBYN ROBERTSON

SUPERANNUATION FUND

WITH EFFECT FROM THE 30TH MARCH, 2000

BYRNE JONES & TORNEY

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THIS DEED is made on the day set out in the Schedule

BY: The Trustee identified in the Schedule ("the Trustee")

RECITALS:

- A. The Trustee is trustee of the Superannuation Fund named in the Schedule ("the Fund") which was founded by deed ("the First Deed") on the founding date set out in the Schedule. The First Deed was varied by Deed/s on the variation date/s set out in the Schedule. (This/ese Deed/s are collectively called "the Present Deed").
- B. The Present Deed permits the Trustee to change, remove from or add to the First Deed.
- C. The Trustee wishes to change the Present Deed to maintain the Fund subject to certain conditions as a Self Managed Superannuation Fund and, to provide superannuation benefits to its Members in the event of their death, to Dependants and for all other purposes allowed by the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Superannuation Industry (Supervision) Regulations* ("the Super Law"). This Deed does not intend to alter any Member's entitlement in the Fund.
- D. The Trustee confirms that the proposed change is authorised by the Present Deed.

VARIATION PART:-

The whole of the Present Deed and all Schedules thereto are Deleted and replaced by Clause 1 to 27 (inclusive) set out in this Deed. This Deed will not change any beneficial entitlement in the Fund or result in a resettlement of the Fund and is void in so far as it does so.

THIS DEED WITNESSES:-

1. **INTERPRETATION**

In this Deed, unless clearly not the case:-

- 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 part of the Deed, or law, regulation, temporary modification order, ruling circular or guideline are references to that part of the Deed, law, regulation, temporary modification order, ruling, circular or guideline as changed, consolidated, added to or replaced;
- 1.3. words referring to one gender include all genders and words meaning the singular include the plural and vice versa;
- 1.4. the index shall not influence the interpretation of this Deed;
- 1.5. where this Deed is referred to, this means this Deed as changed from time to time under Clauses 13 and 27;
- 1.6. where any argument arises regarding the Fund or regarding interpretation of this Deed, the Trustee's decision on the matter shall be final and binding.;
- 1.7. any power to lend, invest or to undertake any other activity in the Present Deed shall, if allowed by the Super Standards, not be limited by the express provisions of this Deed;
- 1.8. if any perpetuity period applied to the Fund under the Present Deed the whole or balance of that perpetuity shall, if allowed by the Super Standards, apply to the Fund under this Deed; and
- 1.9. references to the *Occupational Superannuation Standards Act 1987 (C'th)* shall also referred to the *Superannuation Entities (Taxation) Act 1987 (C'th)*.
- 1.10. in this Deed where anything is permitted to be done ore forbidden whether by the Trustee, a Member, a Dependent or any other Beneficiary that act our prohibition shall only apply in so far as it is

permissible under the Super Law, the Super Standards or by the Super Authority. That is to say where it might otherwise have been necessary to qualify any act, thing or prohibition by stating that that act, thing or prohibition was subject to the Super Law, the Super Standards or the consent of the Super Authority, that will not be done in this Deed

2. **DEFINITIONS**

The following words shall, unless obviously not the case, have the following meanings:-

- 2.1. "Account" means an account maintained in the books of the Fund;
- 2.2. "Actuary" means a practising member of the Institute of Actuaries of Australia or other actuary approved by the Super Standards;
- 2.3. "Allocated Pension" means a Pension or any part of it which:-
 - 2.3.1. prohibits the Pension being transferred to another person other than to a Reversionary Beneficiary on the death of a primary beneficiary or of another Reversionary Beneficiary;
 - 2.3.2. prohibits the capital value or the income from the Pension being used as security for a borrowing;
 - 2.3.3. is paid at least once a year;
 - 2.3.4. allows the Pension not be fixed in amount but requires it (excluding any commutation) to be between the minimum and maximum amounts prescribed in Schedule IA of the SISR; and
 - 2.3.5. otherwise complies with Regulations 1.06(4) and (5) of the SISR and the Super Standards;
- 2.4. "Ancillary Benefits" means Benefits arising in the circumstances described in sub-clause 14.7;

- 2.5. "Approved Fund" means a 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 permitted to transfer a Member's Benefit to the Fund under the Super Standards;
- 2.6. "Approved Trustee" has the same meaning as is defined in the Super Standards;
- 2.7. "APRA" means the Australian Prudential Regulation Authority and prior to July 1, 1998 includes the ISC and any of these bodies' authorised officers;
- 2.8. "ARC" means the amount standing to the credit of a Accumulation Retirement Account of a Member;
- 2.9. "Asset-test Exempt Pension" means a Pension Benefit that is exempt or excluded from the assets test under the *Social Security Act 1991 (Cth)* or the *Veterans Entitlement Act 1986 (Cth)* (and any applicable regulation made under those Acts), as relevant;
- 2.10. "Associate" means a related person or entity as defined in SIS or, any other meaning given to that term in the Super Standards that the Trustee decides;
- 2.11. "Auditor" means an auditor who is:
- 2.11.1. registered under the Corporations Law;
 - 2.11.2. a member, or if the Super Standards require, a fellow of:
 - 2.11.2.1. the Australian Society of Certified Practising Accountants;
 - 2.11.2.2. the Institute of Chartered Accountants of Australia;

- 2.11.2.3. the National Tax and Accountants Association Ltd.;
- 2.11.2.4. the National Institute of Accountants of Australia; or
- 2.11.2.5. the Association of Taxation and Management Accountants;
- 2.11.3. an Auditor-General of the Commonwealth, a State or Territory; or
- 2.11.4. otherwise qualified to act as an auditor under the Super Standards;
- 2.12. "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;
- 2.13. "Benefit" means the amount paid or payable by the Fund to or for 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 this Deed;
- 2.14. "Commissioner" means the Federal Commissioner of Taxation authorised under the *Taxation Administration Act 1953 (Cth)* or any other Commonwealth law;
- 2.15. "Complying Pension" means, unless the Trustee decides otherwise, a Pension:
 - 2.15.1. which:-
 - 2.15.1.1. is paid at least once a year for the life of a Member and, if reversionary, for the time required by Super Standards;

- 2.15.1.2. is for a fixed amount;
- 2.15.1.3. if indexed, is indexed in terms of the Super Standards;
- 2.15.1.4. does not have a residual capital value;
- 2.15.1.5. which cannot be commuted except where it is not restricted under Clause 17.1.3 and then, subject to the Super Standards, only:-
 - 2.15.1.5.1. within 6 months of its commencement day;
 - 2.15.1.5.2. within 10 years of its commencement day on the death of a Member for payment to a Reversionary Beneficiary of an amount equal to or less than the sum of the Pension Benefits the Member would have received if the Member had survived to the end of the 10 year period;
 - 2.15.1.5.3. where the Pension Benefit is used directly to purchase another complying pension or annuity under the Super Standards; or
 - 2.15.1.5.4. to pay a superannuation contributions surcharge;

- 2.15.1.6. on reversion or commutation, does not have a reversionary portion greater than 100% of its capital value before that event;
 - 2.15.1.7. cannot be transferred to anyone who is not a Reversionary Beneficiary on the death of a Member or of another Reversionary Beneficiary;
 - 2.15.1.8. the capital value or the income cannot be used as security for a borrowing; and
 - 2.15.1.9. otherwise complies with Regulation 1.06(2) and (3) of the SISR and the Super Standards; or
- 2.15.2. which:-
- 2.15.2.1. commences after September 20, 1998;
 - 2.15.2.2. entitles a Member to the pension on or after his or her Pension Age;
 - 2.15.2.3. is paid at least once a year to the Member or to a Reversionary Beneficiary:-
 - 2.15.2.3.1. 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 any other period allowed by the Super Standards; or

- 2.15.2.3.2. if the life expectancy of the Member on the commencement day is 15 years or more - throughout a period that is a minimum of 15 years and a maximum of the Member's life expectancy or any other period allowed by the Super Standards;
- 2.15.2.4. allows the total of the payment (ignoring commuted amounts):-
- 2.15.2.4.1. in the first year after the commencement day to be fixed and relates to the period commencing on the day when the Member became entitled to the pension under this Deed; and
- 2.15.2.4.2. in a subsequent year to be not less than the total amount of the payment made in the year before (the 'previous total') and is not more than the previous total which, if indexed, is indexed in accordance with the Super Standards;
- 2.15.2.5. does not have a residual capital value;
- 2.15.2.6. cannot be commuted except:-

- 2.15.2.6.1. within 6 months of the commencement day of the Pension;
- 2.15.2.6.2. where paid on the Member's death, to or for a Reversionary Beneficiary or, to the estate of the Member;
- 2.15.2.6.3. where paid, on the death of a Reversionary Beneficiary, to or for another Reversionary Beneficiary, or, to the estate of the dead Reversionary Beneficiary;
- 2.15.2.6.4. where the Commuted Benefit is used directly to purchase another complying pension or annuity under the Super Standards; or
- 2.15.2.6.5. to pay a superannuation contributions surcharge;
- 2.15.2.7. on reversion or commutation, does not have a reversionary portion greater than 100% its capital value before that event;
- 2.15.2.8. which cannot be transferred to a person except:-
 - 2.15.2.8.1. on the Member's death, to or for a Reversionary Beneficiary

or, to the estate of the Member; or

2.15.2.8.2. on the Reversionary Beneficiary's death, to another Reversionary Beneficiary or, to the estate of the dead Reversionary Beneficiary;

2.15.2.9. where the capital value or the income from the Pension cannot be used as security for a borrowing; and

2.15.2.10. otherwise complies with Regulation 1.06(7) of the SISR and the Super Standards; or

2.15.3. which otherwise complies with the Super Standards,

However, where the Pension is an Asset-test Exempt Pension, the parts *Social Security Act 1991 (Cth)* or the *Veterans Entitlement Act 1986 (Cth)* (and any regulation made under that Act), which are relevant shall apply where they are inconsistent with the Super Standards or the SIS and SISR relating to the provision of that Pension to ensure the Pension qualifies as an Asset-test Exempt Pension;

2.16. "Complying Pension Amount" means the Member's share of the Pension Reserve Account divided by the Factor on the basis that no Reversionary Pension is to be provided and that a fixed rate of indexation of no greater than 5% per annum applies where it relates to a Complying Pension paid under sub-clauses 2.17.1 to 2.17.9 (inclusive), unless the Trustee decides otherwise based on the advice of an Actuary;

2.17. "Conditional Preservation Age" means the age of 55 years (or any other age prescribed by the Super Standards) where all or part of a Member's

Benefit from the Fund on Retirement is first paid if the Trustee is satisfied that the Member has stopped Gainful Employment;

2.18. "Contributor" means:

2.18.1. a Member;

2.18.2. an Employer;

2.18.3. an Associate of a Member;

2.18.4. an Associate of an Employer; or

2.18.5. some other contributor where the Trustee is reasonably satisfied that he is permitted to make contributions to the Fund;

2.19. "Corporate Trustee" is a trading or financial corporation under the control of the Commonwealth under sub-Clause 51(xx) of the *Commonwealth Constitution* entitled to act as a trustee of a regulated superannuation fund under the Super Standards;

2.20. "Dependant" includes any one or more of the following:

2.20.1. the Spouse of the Member;

2.20.2. any child of the Member including any step-child, ex-nuptial child, adopted child and child of the Member born within 10 months after the Member's death; and

2.20.3. any other person who, the Trustee decides 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;

2.21. "Disbursements" means:-

- 2.21.1. the direct costs of establishing, administering, managing, operating and terminating the Fund; and
 - 2.21.2. any administrative, insurance or Taxation costs which are (or are related to) those direct costs;
- 2.22. "Earnings" means the positive or negative amount which the Trustee decides is the income of the Fund less Disbursements (or any part thereof) either:
- 2.22.1. for a Financial Year; or
 - 2.22.2. for any other period for which the Trustee declares Earnings;
- and which may exclude amounts ("excluded amounts") which the Trustee decides are capital and include amounts ("included amounts") which the Trustee decides are income which, if the Trustee has not decided, would not be included in Earnings. These 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;
- 2.23. "Elector" means a Member who is a Qualified Person and includes the legal personal representative of a Member who has died until :-
- 2.23.1. the payment in full of the last Lump-Sum Benefit due to a Beneficiary of the deceased Member in that capacity; or
 - 2.23.2. the commencement of payment of the last Pension Benefit due to a Beneficiary of the deceased Member in that capacity;
- whichever is the later.
- 2.24. "Eligible Spouse" means the spouse of:-

- 2.24.1. a Member; or
- 2.24.2. a person who is Gainfully Employed as an Employee or who is self-employed; or
- 2.24.3. some other person, if permitted by the Super Standards;
- for whom contributions can be made to the Fund under the Super Standards and "Relevant Spouse" means that Member or Gainfully Employed person or other person;
- 2.25. "Employee" means a person who is Gainfully Employed by an Employer;
- 2.26. "Employer" means both a Participating Employer and a Non-Participating Employer;
- 2.27. "Excluded Superannuation Fund" means, unless the Trustee decides otherwise, an excluded superannuation fund as defined in the Super Standards where the trustee of the fund is excused from certain obligations imposed on the trustees of other kinds of superannuation funds under the Super Standards and includes a reference to a Self Managed Superannuation Fund and a Small APRA Superannuation Fund, as the case may be;"
- 2.28. "Factor" means the present value of a notional Complying Pension, calculated by an Actuary where the pension payable in the first year of the Complying Pension is one dollar;
- 2.29. "Financial Year" means a year ended on 30th June unless the Trustee can adopt a different Financial Year by the Super Standards;
- 2.30. "Final Cashing Age" means the age of 70 years or any other stipulated by the Super Standards for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed Full-time;

- 2.31. "First Cashing Age" means the age of 65 years or any other age allowed by the Super Standards for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed either Full-time or Part-time;
- 2.32. "Flexi-Pension" means a Pension or any part of it:-
- 2.32.1. where the Pension is for a fixed amount unless other parts of this Deed say otherwise;
 - 2.32.2. that commences after July 1, 1994;
 - 2.32.3. which, on reversion or commutation, has a reversionary component less than 100% of the capital value of the Pension Benefit before that event;
 - 2.32.4. where the Pension cannot be transferred to another person other than a Reversionary Beneficiary on the death of the Member or of another Reversionary Beneficiary;
 - 2.32.5. where the capital value and/or the income from the Pension cannot be used as security for a borrowing.;
 - 2.32.6. except in relation to payments, on commutation, for superannuation contributions surcharge:-
 - 2.32.6.1. if payment varies from year to year it does not exceed, in any year, indexation under the Super Standards; and
 - 2.32.6.2. where commutation to a lump sum under sub-clause 16.5 is limited by the pension valuation factor prescribed in Schedule 1B of the SISR;
 - 2.32.7. that is paid at least once a year;

- 2.32.8. which may, subject to the Super Standards, have a residual capital value; and
 - 2.32.9. which complies with Regulation 1.06(6) of the SISR and the Super Standards; or
 - 2.32.10. which complies with the Super Standards which govern those pensions;
- 2.33. "Full-time" means, when related to employment, more than 30 hours a week or such other time or conditions required by the Super Standards;
- 2.34. "Fund" means the fund constituted by this Deed;
- 2.35. "Funding Member" means a Member for or by whom the Trustee allows contributions to fund a Complying Pension to be made;
- 2.36. "Gainfully Employed" means employment of a person, either Full-time or Part-time, in any business, trade, profession, occupation or employment as described in the Super Standards, and "Gainful Employment" has a corresponding meaning;
- 2.37. "Insured Benefit" means the Benefit described in Clause 18;
- 2.38. "ISC" means:-
- 2.38.1. before the 1st July 1998, the Insurance and Superannuation Commissioner;
 - 2.38.2. after 1st July 1998, APRA, the Commissioner or, some other official empowered under the law referred to in Clause 26 with the administration of Excluded Superannuation Funds or any of his or her authorised officers;
- 2.39. "Lease" means a "lease" or "lease arrangement" as those terms are defined in the Super Standards;

- 2.40. "Lump-Sum Benefit" means a Benefit or any part of it paid (but not as a Pension) in terms of this Deed;
- 2.41. "Lump-Sum RBL" means a lump sum reasonable benefit limit referred to in Clause 2.57;
- 2.42. "Mandated Employer Contribution" means any contribution made under the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, any shortfall component, any contribution made under an industrial award or prescribed agreement or any other contribution requiring similar treatment under the Super Standards;
- 2.43. "Member" means a person who has been admitted by the Trustee as a member of the Fund in terms of this Deed and includes a former Member and a reference to a Member includes a reference to a Member, or, a Beneficiary and "Membership" has a corresponding meaning, and the Trustee may, if allowed by the Super 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;
- 2.44. "Minimum Benefit" means the Member's minimum Benefit which is must be maintained in the Fund or another Approved Fund terms of the Super Standards;
- 2.45. "Nominated Dependant" means a Dependant nominated in writing to the trustee by a Member to receive his or her Death Benefit;
- 2.46. "Non-Participating Employer" means, unless the Trustee decides against, an employer:
- 2.46.1. who has been notified in writing by the Trustee:
- 2.46.1.1. that:
- 2.46.1.1.1. the Fund is a resident regulated superannuation

fund under the Super Standards;

2.46.1.1.2. the Trustee is not subject to a direction from the Super Authority that stops the Trustee accepting employer or other contributions; and

2.46.1.1.3. the Trustee has not been subject to that direction before or since the date of the application by the employer; or

2.46.1.2. of such matters as are required by the Super Standards from time to time; and

2.46.2. who employs a Member where the Member is an Associate of the Trustee but only while :-

2.46.2.1. the employer can contribute in respect of the Member's employment

2.46.2.2. the Member remains a Member; and

2.46.2.3. the Member remains an Associate of the Trustee;

where the appropriate Fund Form has been executed by the employer and the Trustee to confirm that the employer can contribute to the Fund on behalf of one or more of its Employees as a Non-Participating Employer;

2.47. "Old-Age Pension" means an old-age pension for the purposes of Clause 51(xxiii) of the *Commonwealth Constitution*;

- 2.48. "OSSA" means the *Occupational Superannuation Standards Act 1987 (Cth)* or the *Superannuation Entities (Taxation) Act 1987 (Cth)*, as the case requires;
- 2.49. "OSSR" means the *Occupational Superannuation Standards Regulations* or the *Superannuation Entities Regulations*, as the case requires;
- 2.50. "Participating Employer" means, unless the Trustee determines otherwise:
- 2.50.1. an employer who:
- 2.50.1.1. has agreed with the Trustee to contribute to the Fund on behalf of one or more of its Employees;
- 2.50.1.2. has advised in writing the Trustee that the Fund is a resident regulated superannuation fund under the Super Standards;
- 2.50.1.3. for being allowed to contribute, has agreed:
- 2.50.1.3.1. to comply with this Deed;
- 2.50.1.3.2. to assist Members to comply with this Deed and the Super Standards;
- 2.50.1.3.3. to help the Trustee to comply with this Deed and the Super Standards; and
- 2.50.1.3.4. to give the Trustee all the information that the Trustee reasonably requests; and

2.50.1.4. is allowed, by the Trustee and the Super Standards, to contribute to the Fund until either authority is withdrawn;

where the Funds appropriate application form has been signed by the employer and the Trustee; and

2.50.2. an employer who succeeds an Employer or a former Employer as the employer of certain Members who separately signs the Funds appropriate application confirming all of the matters in Clause 2.46.1;

- 2.51. "Part-time" when related to employment, means more than 10 hours per week or such other time set by the Super Standards which does not amount to Full-time;
- 2.52. "Pension" means an annuity or pension described in the Super Standards and means, unless this Deed states otherwise, 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 "Pensioner" and "Reversionary Pensioner" shall have corresponding meanings;
- 2.53. "Pension Age" has the same meaning as, in the *Social Security Act 1991 (Cth)* and the *Veterans' Entitlement Act 1986 (Cth)*, or any other age acceptable to the Trustee so long as it is permitted by the Super 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 terms of the Super Standards;
- 2.55. "Pension RBL" means a pension reasonable benefit limit referred to in Clause 2.58;

- 2.56. "Pension Reserve" means the Account referred to in Clause 21.5.3;
- 2.57. "Qualified Person" means, subject to the Super Standards:
- 2.57.1. an individual who has not died, lost his or her legal capacity or is not an "insolvent under administration" (as defined in SIS);
 - 2.57.2. an individual who has not been the subject of a civil penalty order made under the Super Standards;
 - 2.57.3. an individual who has not been convicted of an offence involving dishonest conduct anywhere in the world;
 - 2.57.4. 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;
 - 2.57.5. a Company which is permitted by the Super Standards to act as trustee of the Fund provided all of its directors are also Qualified Persons;
 - 2.57.6. an Approved Trustee which the Super Standards permits to act as trustee of the Fund;
- 2.58. "RBL" means a reasonable benefit limit set out in the Super Standards being the maximum amount of concessional taxed superannuation benefits a Member can receive which will be one of:
- 2.58.1. a transitional lump sum or pension RBL fixed the Super Standards; or
 - 2.58.2. the Pension RBL described in the Super Standards where the Member receives at least 50% of his or her pension reasonable benefit limit as a Benefit in the form of a

Complying Pension or a Complying Annuity in terms of the Super Standards;

- 2.58.3. the lump-sum RBL; or
 - 2.58.4. any other reasonable benefit limit allowed by the Super Standards;
- 2.59. "Reserve Account" means the Account described in sub-clauses 21.5 and 21.11;
- 2.60. "Retirement" means :-
- 2.60.1. for an Employee: resignation, dismissal or redundancy; or
 - 2.60.2. for a self-employed person an equivalent stopping of work;
- but not circumstances where the resignation, dismissal, redundancy or cessation, is due to death or to Total and Permanent Disablement, and "Retires" and "Retired" have corresponding meanings;
- 2.61. "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" have a corresponding meanings;
- 2.62. "Securities" means securities as defined in section 92 of the *Corporations Law* and securities approved in any foreign country by the Trustee;
- 2.63. "Self Managed Superannuation Fund", unless the Trustee decides otherwise, means the same as under the Super Standards and, means an Excluded Superannuation Fund;
- 2.64. "SIS" means the *Superannuation Industry (Supervision) Act 1993 (Cth)*;

2.65. "SISR" means the *Superannuation Industry (Superannuation) Regulations*;

2.66. "Small APRA Superannuation Fund" means, unless the Trustee otherwise decides, a fund with fewer than 5 members with an Approved Trustee and includes an Excluded Superannuation Fund with an Approved Trustee;

2.67. "Spouse" of a Member means, subject to the Super Standards, a person married to the Member or a person who, although not legally married to the Member:

2.67.1. lives with the Member, or

2.67.2. had lived with the Member immediately prior to the Member's death;

on a genuine domestic basis as husband, wife or lover and if there is more than one spouse the Trustee shall decide which spouse shall be entitled to be treated as the spouse exclusively or, alternatively, how the spouses shall share the entitlement of a spouse between them;

2.68. "Super 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 26 with the administration of Excluded Superannuation Funds or the provisions of any Benefit by an Excluded Superannuation Fund;

2.69. "Super Standards" means, as the context requires:

2.69.1. the provisions in OSSA, OSSR, the *Income Tax Assessment Act 1936 (Cth)*, the *Income Tax Assessment Act 1997 (Cth)* and the *Fringe Benefits Tax Assessment Act 1986 (Cth)* which must be complied with so that:

- 2.69.1.1. the Fund has concessional tax treatment;
 - 2.69.1.2. an Employer or a Member retains any entitlement to a tax deduction unless the Employer or Member, whichever applies, chooses not to take a tax deduction; and
 - 2.69.1.3. no dealing with or concerning the Fund constitutes a fringe benefit which is taxable to an Employer unless the Employer chooses to incur the fringe benefits tax liability;
- 2.69.2. the provisions in the SIS and the SISR to be complied with by an Excluded Superannuation Fund to ensure that it is an Excluded Superannuation Fund;
- 2.69.3. the provisions in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997 (Cth)*, the *Bankruptcy Act 1966 (Cth)* and the *Corporations Law* with which an Excluded Superannuation Fund must comply;
- 2.69.4. the Law of Trusts which may affect the Fund but not one which requires the Trustee to do or not do to anything aside from the things required in this Deed when:
- 2.69.4.1. making investments under powers granted under this Deed;
 - 2.69.4.2. exercising any other power granted under this Deed; or
 - 2.69.4.3. doing what is required under this Deed;
- unless the Law of Trusts cannot lawfully be excluded; and
- 2.69.5. where the Trustee decides, any other rule governing superannuation funds and any proposed change to the rules

in Clause 2.8.5 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:

- 2.69.5.1. the Fund retains concessional tax treatment;
 - 2.69.5.2. the Fund remains a regulated superannuation fund;
 - 2.69.5.3. the provisions in the *Social Security Act 1991 (Cth)* with which an Excluded Superannuation Fund must comply in order for an income stream to be an Asset-test Exempt Pension; and
 - 2.69.5.4. no penalty is imposed on the Trustee or the directors of the Trustee due to the Super Standards;
- 2.70. "Taxes" includes any tax liability or provision for same, any surcharge, duty, levy (including any additional tax or penalty) or, where the Trustee decides, any like liability or provision. "Taxation" has a corresponding meaning;
- 2.71. "Temporary Disablement" means physical or mental ill-health that has caused the Member temporarily to cease Gainful Employment or which otherwise qualifies as temporary disablement (or its equivalent) under the Super Standards but is not Total and Permanent Disablement;
- 2.72. "Total and Permanent Disablement" in relation to a Member means:
- 2.72.1. the definition of "total and permanent disablement" in the insurance policy taken out by the Trustee (if any); or

2.72.2. where there is no insurance policy, the physical or mental ill-health of the Member as certified by two medical practitioners which, in their opinion, leaves the Member unlikely to be able to be employed again in any position for which he or she is reasonably qualified by education, training, or experience; or

2.72.3. any other status which the Trustee and the Super Standards consider qualify.

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

2.73. “Trustee” can mean the Trustee of the Fund or other natural persons or Corporate Trustee who holds office as the trustee of the Fund;

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 governing Trusts that may apply;

2.75. “Unconditional Preservation Age” means the age of 60 years or any other age prescribed by the Super 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

2.76. “a Variation” means a variation by deed or a variation orally communicated by the Trustee to any of the Members. Any oral variation shall be unenforceable until recorded in a deed.

3. OVERRIDING BY THE SUPER STANDARDS

In this Deed:

- 3.1. The Super Standards override the provisions of this Deed. To the extent the most logical provision conceivable, not expressed in this Deed, is necessary to enable compliance with the Super Standards, that 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 an implied condition, then that condition shall cease..
- 3.3. Despite sub-clause 3.1 the Trustee may, (on the advice of a lawyer experienced in superannuation), declare that such implied conditions shall cease.
- 3.4. The Trustee will not be in breach of this Deed if the Trustee breaches an implied condition where the breach of the Super Standards is waived by the Super Authority or any Court or Tribunal of competent jurisdiction.
- 3.5. Sub-clause 3.1 shall operate retrospectively prior to the date of establishment of the Fund or prior to the date the relevant standard comes into force and , the Trustee can decide that the whole or part of the Super Standards shall apply on a retrospective basis or in an amended way.
- 3.6. This Clause 3 shall override 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 Super Standards.

4. **FUND PROPERTY**

- 4.1. The property of the Fund shall be all the cash, investments, insurances and other property held on trust under this Deed and shall include:
 - 4.1.1. any money or other property transferred into the Fund;
 - 4.1.2. any contribution (in money or kind) made to the Fund; and

4.1.3. all profits, accumulations and earnings of the Fund net of any Disbursements.

4.2. No Member is entitled to any specific property belonging to the Fund. The Trustee shall have an absolute discretion in determining which property shall be used 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 creates a vacancy in the office of Trustee under Clause 6.5.1, shall use its best endeavours to assist an incoming Trustee to own and to gain control of the Fund.

5. **FUND PURPOSE**

5.1. If 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. If the Trustee is a Corporate Trustee, the sole or primary purpose of the Fund is the provision of Benefits to Members.

6. **OFFICE OF TRUSTEE**

6.1. **Trustee to Hold Property**

The Fund is vested in the Trustee who shall hold the Fund property on the terms of this Deed.

6.2. **Decisions - Individual Trustees**

Where the Trustee is:-

6.2.1. two individuals, trustee decisions shall require unanimous approval; or

6.2.2. 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 proportional to their Fund balance (unless the Super Standards prescribe otherwise) and the Trustees may communicate and meet with each other for Trust business and adjourn and operate as they think fit and, unless the Super Standards prescribe otherwise:

- 6.2.3. the Trustees may meet through any means that they decide including any electronic means, and decisions made at such meetings shall, even though the Trustees are not physically present, be deemed to have been made at a Trustees' meeting on the day and the time the conference was held;
- 6.2.4. if any such meeting is interrupted the Trustees can decided that the interruption amounts to an adjournment of the meeting until the time that the communications are reconnected or the Trustees decide to resume;
- 6.2.5. minutes of any meeting can be confirmed by facsimile, Email or by any other means approved by the Trustees; and
- 6.2.6. if all the Trustees have signed a document (or more than one identical documents) setting out a decision and a statement that they are in favour of the decision, a decision on those terms is taken to have been passed at a Trustees' meeting held at the time the document was signed by the last necessary Trustee.

6.3. Decisions - Corporate Trustees

Where the Trustee comprises a Corporate Trustee, Trustee decisions shall be in terms of the Constitution of the Trustee unless the Super Standards require otherwise.

6.4. Appointment

6.4.1. Provided the Super Standards and this clause, are complied with in an absolute majority of 75% of the Electors who are Members or where there are no Electors, by resolution of a majority of the Participating Employers; a Qualified Person may be appointed as Trustee if he or she has consented to that appointment in writing.

6.4.2. Provided the Super Standards or the Trustee's discretion to determine otherwise, during any period which the Fund is a Self Managed Superannuation Fund (including any period that it remains such a fund even after any permissible breach of the rules relating to the definition of such Fund) each individual trustee and/or each director of a Corporate Trustee shall:

6.4.2.1. satisfy the "linked" test prescribed by the Super Standards; or

6.4.2.2. satisfy any other test that is required by the Super Standards covering such situations as:

6.4.2.2.1. single Member Self Managed Superannuation Funds;

6.4.2.2.2. if a Member has died;

6.4.2.2.3. if a Member suffers from a legal disability (including a legal disability due to age);

6.4.2.2.4. if a Member has appointed a legal personal representative under a power of attorney

or other instrument or act recognised by the Super Standards; or

6.4.2.3. comply with the requirements required by the Super Standards or a Super Authority.

6.4.3. Provided the Super Standards or the Trustee's discretion allow otherwise, during any period which the Fund is a Small APRA Superannuation Fund (including any period that it remains such a fund even after any permissible breach of the rules relating to such a Fund) the Trustee shall:

6.4.3.1. be an Approved Trustee authorised to act as trustee of the Fund; or

6.4.3.2. satisfy all other requirements of the Super Standards or a Super Authority.

6.5. Vacancy

If the Super Standards allow, the Trustee shall:

6.5.1. cease to be a Trustee where:

6.5.1.1. the Trustee resigns as trustee by executing a deed or in any other manner allowed by the Super Standards;

6.5.1.2. an individual, or a responsible officer of a Corporate Trustee, is no longer a Qualified Person (unless that person can continue to be a Trustee by complying with guidelines of the Super Authority or under the Super Standards); or

- 6.5.1.3. an absolute majority of 75% of the Electors who are Members or where there are no Electors; a majority of Participating Employers; by written resolution, remove an individual trustee, Corporate Trustee or Approved Trustee from office; and
 - 6.5.1.4. if the Fund is a Self Managed Superannuation Fund and an individual trustee or a Corporate Trustee no longer qualifies with the requirements of being a trustee (unless that person or company can continue to be a Trustee by complying with guidelines of the Super Authority or under the Super Standards for any extended period); or
 - 6.5.1.5. if the Fund is a Small APRA Superannuation Fund if the Approved Trustee does not satisfy the requirements of being a trustee of such a Fund unless the Trustee can be a Trustee by complying with guidelines of the Super Authority or the Super Standards.
- 6.5.2. if necessary to comply with the Super Standards, be appointed as soon as practicable where there is a vacancy.

6.6. Trustee Remuneration

Subject to clause 10 and the Super Standards:

- 6.6.1. the Trustee shall not receive remuneration from the Fund for its services unless permitted under the Super Standards;
- 6.6.2. any trustee engaged in any profession or business may, even though a Trustee, act in a professional capacity, and charge and be paid all professional and other charges for any work

or act done by him or her, his or her firm, or company, in connection with the Fund even for acts which a trustee could have done personally; and

- 6.6.3. a Trustee is not obliged to choose between professional charges and any commission or fees authorised by the Members, Law or Court. An Approved Trustee shall be entitled to its normal fees, charges and commissions including any amount authorised by Law.

7. COVENANTS

The Trustees must:

- 7.1. act honestly regarding all Fund matters;
- 7.2. use 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, in relation to all matters concerning the Fund;
- 7.3. make sure that the Trustee's duties and powers are done and used in the best interests of the Members;
- 7.4. keep the money and other property of the Fund separate from any money and property:
- 7.4.1. that is held by the Trustee personally; or
- 7.4.2. that is money or property of an Employer or an Associate;
or
- 7.4.3. that is 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 acting or using its functions and powers;

7.6. formulate and implement one or more investment strategies that, take into account all the circumstances of the Fund and particular Members including, but not restricted to the following:-

7.6.1. the risk involved in making, holding and disposing of, and the likely return from, the investments of the Fund bearing in mind the purposes of the Fund as set out in Clause 5 and its expected cash flow requirements;

7.6.2. how the investments are split up including their diversity or exposure of the Fund to risks from lack of diversification;

7.6.3. the liquidity of the Fund's investments, bearing in mind the Fund's expected cash flow requirements; and

7.6.4. the ability of the Fund to satisfy its existing and prospective cash flow requirements.

7.7. formulate and implement one or more strategies for the wise management of any Fund reserves in terms of the Fund's investment strategies and its capacity to discharge its liabilities, whether actual or contingent; and

7.8. give Members access to any information and documents to which they are entitled under the Super Standards.

8. **POWERS**

8.1. The Trustee has complete discretion in doing anything it deems necessary for the purposes of the Fund. The Trustee shall have an absolute and uncontrolled discretion to exercise or not to exercise powers, authorities and discretions conferred on it by law and this Deed,.

8.2. The Trustee is not obliged to give reasons for its actions or omissions unless required by this Deed or the Super Standards.

- 8.3. The Trustee shall have power to:
- 8.3.1. settle, compromise, commence, carry on or defend Court or other actions or agree to arbitration of any claims, matters or things relating this Deed or the rights of any Member;
 - 8.3.2. 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 decides, in the name of the Member if allowed by the Super Standards;
 - 8.3.3. pay all Disbursements;
 - 8.3.4. sell, vary, improve, renovate or repair any investment and exchange any investment for another investment;
 - 8.3.5. 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;
 - 8.3.6. to create any sub-fund, segment or partition in the Fund with separate assets, Members and liabilities with those Members only having an interest in that sub-fund which is separately accounted for under this Deed;
 - 8.3.7. get from the Fund money required, in the Trustee's opinion, to pay any debt or obligation due or accruing;
 - 8.3.8. pay calls on shares or stock or units forming part of the Fund and to accept transfers of shares or Securities;
 - 8.3.9. agree to any arrangement, sale, transfer or exchange of any shares, stock, debentures or other Securities modifying, any

rights, privileges or interest of the Fund and to agree to any scheme of arrangement for the increase or reduction of the value or amount in the capital of any company in which any shares, stock or debentures belonging to the Fund is invested or agree to any rearrangement of its capital or its reconstruction or any arrangement made or proposed by it for any purpose;

- 8.3.10. borrow money and secure the repayment in any manner and upon any terms (including with or without security) to pay Benefits or to settle Securities or for any other purposes allowed by the Super Standards;
- 8.3.11. indemnify or undertake to indemnify any person or entity against any claims relating to the Fund or to the rights of Members in respect of the Fund;
- 8.3.12. 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;
- 8.3.13. underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by an Employer where there is a possibility of transfers of Employees to the Fund;
- 8.3.14. have the Trustee or the Fund registered or recognised in any country or place outside the jurisdiction of its place of incorporation;
- 8.3.15. do anything required by the Super Standards including changing the status of the Fund from an Excluded Superannuation Fund to a non-Excluded Superannuation Fund or some other type of fund allowed by the Super Standards; or

- 8.3.16. generally do any other thing which the Trustee considers necessary or expedient regarding the management and administration of the Fund and to further the interests of the Fund.
- 8.4. The Trustee may act as such 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 act so long as the act is done in a genuine prudential manner under the Super Standards.
- 8.5. The Trustee may:
- 8.5.1. take or apply, any part of the Fund's investments as full or part discharge of any entitlement in the Fund or in the Benefits without obtaining any of the consents required by Trustee Law; and
- 8.5.2. the Trustee may decide upon the value of the Fund's property and liabilities subject to the Super Standards, and every decision made under this sub-clause shall bind any person who is or may become interested in the Fund including those who do not have legal capacity and who are not yet ascertained.
- 8.6. The Trustee may:
- 8.6.1. take out and maintain insurance over risks to the Fund including:
- 8.6.1.1. insurance on the lives, disability and working capacity of Members; and
- 8.6.1.2. insurance in respect of trustee liabilities;
- 8.6.2. transfer any insurance policy, annuity contract or other similar entitlement in the Fund to a Member as a Benefit

entitlement under this Deed and may decide on their value;
and

- 8.6.3. pay insurance costs out of the Fund.
- 8.7. The Trustee may withhold Tax from any contributions, earnings, gains, property or other payment received, receivable paid or payable by the Fund and get and give any Tax information and may deal in or pay the Tax.
- 8.8. The Trustee may get and act (or not act) on any professional advice or obtain any professional help required.
- 8.9. 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 and the Super Standards and this Deed permit any such indirect payment or transfer.
- 8.10. 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, if the Super Standard permits it. Any custodian or investment manager must be appointed in writing; and the Trustee may remove, replace or suspend any such person or organisation.

9. **LIMITATIONS**

- 9.1. The Trustee shall not be empowered or authorised to:
- 9.1.1. make loans to a Member or an Associate;
- 9.1.2. borrow money on behalf of the Fund;

9.1.3. acquire property, including any insurance policy, from a Member or an Associate; or

9.1.4. make loans, Leases or investments to or in an Employer, Member or an Associate;

unless and only as authorised by the Super 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 (Cth)* or any other Australian law dealing with discrimination.

10. LOSS AND INDEMNITY

10.1. Subject to the Super Standards, the Trustee and its directors or officers, shall not be liable or responsible for any loss:

10.1.1. due a breach of trust or otherwise, unless the loss was caused by the Trustee's own fraud or dishonesty;

10.1.2. which results from relying on any professional advice or assistance if the Trustee was acting in good faith;

10.1.3. resulting from delegation in good faith of any function, duty or obligation;

10.1.4. resulting from the Trustee complying with the Super Standards even if that the act or omission results in a breach of trust or non-compliance with the express provisions of this Deed; or

10.1.5. to the Fund or any Member due to no, insufficient or inadequate insurance being taken out by the Trustee whether the loss was foreseeable or not;

9.1.3. acquire property, including any insurance policy, from a Member or an Associate; or

9.1.4. make loans, Leases or investments to or in an Employer, Member or an Associate;

unless and only as authorised by the Super 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 (Cth)* or any other Australian law dealing with discrimination.

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10.1. Subject to the Super Standards, the Trustee and its directors or officers, shall not be liable or responsible for any loss:

10.1.1. due a breach of trust or otherwise, unless the loss was caused by the Trustee's own fraud or dishonesty;

10.1.2. which results from relying on any professional advice or assistance if the Trustee was acting in good faith;

10.1.3. resulting from delegation in good faith of any function, duty or obligation;

10.1.4. resulting from the Trustee complying with the Super Standards even if that the act or omission results in a breach of trust or non-compliance with the express provisions of this Deed; or

10.1.5. to the Fund or any Member due to no, insufficient or inadequate insurance being taken out by the Trustee whether the loss was foreseeable or not;

unless the Super Standards state that the Trustee and its directors or officers must remain liable or responsible for the act or omission resulting in the loss, if punishable by a monetary penalty under the civil penalty order provisions of the Super Standards.

10.2. The Trustee shall:

10.2.1. 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 Super Standards; and

10.2.2. have a lien on and may use the property of the Fund to cover this indemnity unless prohibited by Regulation 13.13 or Part 5 of the SISR or by the Super Standards.

10.3. 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 unless the interested parties agree otherwise.

11. INVESTMENT

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 and in terms of the Super Standards including, without limitation:

11.1. any investment which is prudent under Trustee Law;

11.2. any mortgage or other security on freehold or leasehold property even though the amount of the loan exceeds two-thirds of the value of the property and whether or not a report or valuation of the property has been obtained;

11.3. on deposit or on loan, with or without security, at a rate of interest and on terms the Trustee considers reasonable;

- 11.4. the purchase or acquisition of any real or personal property including 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 acquiring in any way of shares or stock (of any class or description) or of any type of bond, mortgage, debenture, note, option or other similar 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 may open and operate such accounts;
- 11.9. in financial instruments and may draw, make, accept, endorse, discount, issue or generally deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument;
- 11.10. in 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 acquiring of any unit or sub-unit in any unit trust, listed or unlisted, individually or jointly and whether fully paid up or their issue involves any contingent or reserve liability;
- 11.12. in any business (which includes primary production) and any direct or indirect interest in any business and where a Trustee has invested in a business, the Trustee may, where allowed by the Super Standards, carry

on the business or employ people to carry on the business on its behalf;
or

11.13. in any other investments which are acceptable under the Super Standards.

12. **MEMBERSHIP**

12.1. **Eligibility**

The Trustee may admit any one or more of the following applicants to Membership:

12.1.1. an Employee;

12.1.2. a self-employed person;

12.1.3. an Eligible Spouse; or

12.1.4. any other person,

if:

12.1.5. subject to sub-clause 12.3, the applicant for membership has provided an appropriate Application Form to the Trustee;
and

12.1.6. if the Fund is a Self Managed Superannuation Fund - the applicant can be appointed as an individual trustee or an officer of a Corporate Trustee under sub-clause 6.4.2; or

12.1.7. where the Super Standards otherwise all the admission.

12.2. **Evidence**

Each applicant for membership and each Member shall give to the Trustee any information and documents and other evidence, including undergoing health and medical checks and tests, that the Trustee

reasonably requires 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 may obtain, due to any misrepresentation or omission, a greater Benefit than he or she would otherwise have been entitled to, the Trustee may, if the Super Standards allow, reduce the Benefit to the amount he or she would have been entitled to if not for the misrepresentation or omission.

12.6. Termination

Unless the Trustee's decides otherwise, a Member's membership shall terminate upon the earliest of the following events:-

- 12.6.1. on his or her death;
- 12.6.2. when the Trustee decides that he or she has been paid all his or her Benefit from the Fund;
- 12.6.3. when the Trustee decides that his or her continued membership may cause the Fund to become a public offer superannuation fund;
- 12.6.4. when the Trustee requires that termination to comply with the Super Standards;

12.6.5. when the Trustee decides that a Member or Beneficiary who is entitled to a Pension Benefit need longer be recognised as a Member ; or

12.6.6. when the Trustee otherwise reasonably decides.

12.7. Age Notification

A Member shall must advise the Trustee when he or she reaches the First Cashing Age, the Final Cashing Age or when he or she ceases to be Gainfully Employed.

12.8. Members Bound

Members are all bound by the provisions of this Deed.

13. CONTRIBUTIONS

13.1. A Contributor may contribute:-

13.1.1. money;

13.1.2. securities listed on a stock exchange in Australia authorised by the Super Standards or other property both subject to Clause 9.1.3;

13.1.3. other property subject to Clause 9.1.1;

to the Fund on behalf of one or more Members if the Trustee agrees and if the contributions are allowed under the Super Standards.

13.2. A Contributor is not obliged to make any contribution to the Fund unless sub-clause 13.10 or under a separate contribution agreement with the Trustee.

13.3. A Contributor shall make or pay contributions to the Fund when requested by the Trustee.

13.4. The Trustee may:-

- 13.4.1. reject the whole or any part of any amount, tendered as a contribution to the Fund and, return to the Contributor, any of the contribution which, the Trustee's consider, could prejudice the Fund's ability to comply with the Super Standards relevant to an Excluded Superannuation Fund including any contribution which exceeds the Member's relevant maximum deductible contribution limit applying to the relevant Financial Year under the Super Standards or for any other reason without having to give any reason; and
 - 13.4.2. request information or documents to make sure the contributor is entitled to contribute to the Fund where the Trustee decided that there is not enough information provided in a Member's membership application.
- 13.5. The Trustee shall reject contributions if:
- 13.5.1. they may cause the Fund to become a public offer superannuation fund;
 - 13.5.2. the Member has reached the First Cashing Age unless the Super Standards allow it; or
 - 13.5.3. the Member is not Gainfully Employed unless the Super Standards allow it.
- 13.6. 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 entitled them.
- 13.7. The Trustee may accept contributions made by or for a Member who has not reached the First Cashing Age if:
- 13.7.1. the contributions are Mandated Employer Contributions:

- 13.7.2. the Member has, in the 2 years before acceptance of the contributions by the Trustee, been Gainfully Employed;
 - 13.7.3. when the contributions are accepted the Member suffers from ill-health which prevents the Member from being Gainfully Employed and where the start of that ill-health stopped the Member from continuing to be Gainfully Employed;
 - 13.7.4. the Member has been on genuine maternity or paternity leave authorised by the Employer for less than 7 years consecutively, if the Member has a legal right to resume that Gainful Employment at the end of the leave and the leave otherwise complies with the Super Standards;
 - 13.7.5. the Member is an Eligible Spouse the Relevant Spouse or any other person entitled make contributions for the Eligible Spouse under the Super Standards; or
 - 13.7.6. in any other case the Super Standards allow it.
- 13.8. The Trustee may accept contributions made for a Member who has not reached the Final Cashing Age if:
- 13.8.1. the contributions are Mandated Employer Contributions;
 - 13.8.2. the Member is at least Part-time Gainfully Employed when the contributions are received by the Trustee; or
 - 13.8.3. in any other case the Super Standards allow it.
- 13.9. The Trustee may accept contributions made for a Member who has reached the Final Cashing Age if:
- 13.9.1. the contributions are Mandated Employer Contributions;
 - 13.9.2. in any other case the Super Standards allow it.

13.10. Despite sub-clauses 13.2, 13.4, 13.5, 13.7, 13.8, and 13.9 the Contributor shall make and the Trustee shall, after making a finding under sub-clause 21.7, accept contributions to the Fund for the benefit of Funding Members in accordance with an Actuary's determination complying with the Pension RBL and other Super Standards relevant to the provision of a Complying Pension under Clause 17.

14. **BENEFITS**

14.1. **Benefit Election**

Where a Member is entitled to a Benefit from the Fund, the Member may decide to receive his or her Benefit:

14.1.1. by way of Lump-Sum or Pension Benefits or a mixture of both;

14.1.2. by way of Pension being Allocated Pensions, Flexi-Pension or a Complying Pension or a mixture of them; or

14.1.3. in any other manner permitted by in sub-clause 14.3;

unless the Benefit must be provided in some other way under the Super 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 and provide it is allowed under the Super Standards

14.2. **Requirements of Election**

An election under sub-clause 14.1 shall be in writing and indicate the required amount or of the Lump-Sum Benefit or Pension Benefit, to be received and must be given to the Trustee before the Benefit commences or within any further period allowed by the Trustee. A Member may specify whether or not to a Pension Benefit is to be a Reversionary Pension and, if so, to whom and under what other terms or conditions the Member wishes the Pension to be subject.

14.3. Benefit Type

The Trustee may, where allowed by the Super Standards, in considering the Member's election, but without being bound by it, provide a Benefit payable to a Member:

- 14.3.1. as an Allocated Pension or Flexi-Pension (where commutation of the pension is subject to the Super Standards where the Trustee is not a Corporate Trustee);
- 14.3.2. as a Complying Pension based on the advice of an Actuary;
- 14.3.3. as a Lump-Sum Benefit (subject to any applicable limitations in the Super Standards where the Trustee is not a Corporate Trustee);
- 14.3.4. by acquiring an annuity from an Approved Fund;
- 14.3.5. as an Ancillary Benefit for that part which is not one of the above; or
- 14.3.6. a mixture of the above which may include more than one of each.

14.4. Retained Benefits

Subject to and sub-clause 14-5, the Trustee may, if the Member's consents:-

- 14.4.1. retain a Member's Lump-Sum Benefit in the Fund for as long as the Trustee decides, even though a Member's right to be paid that Benefit has arisen;
- 14.4.2. retain a Member's Pension Benefit in the Fund for as long as the Trustee shall determine so long as the Pension commences on the last day allowed by the Super Standards.

14.5. **Compulsory Commencement of Benefit**

14.5.1. Where the Super Standards require, the Trustee shall pay, start to pay or transfer to an Approved Fund Benefits as soon as practicable where:

14.5.1.1. the Member reaches the First Cashing Age and the Member is not Gainfully Employed at least Part-time ; or

14.5.1.2. the Member reaches the Final Cashing Age and the Member is not Gainfully Employed Full-time;

and the Benefits are not "post 65 employer-financed benefits" under the Super Standards where the Trustee decides that Mandated Employer Contributions can still be made in respect of the Member.

14.5.2. Where the Super Standards require or allow, the Trustee shall pay, start to pay or transfer to an Approved Fund, 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 stop in respect of the Member.

14.6. **Preservation of Benefits**

The Trustee shall ensure, as required by the Super Standards that a Benefit must be preserved-:

14.6.1. it is preserved in the Fund; or

14.6.2. it is transferred to an Approved Fund;

and the Trustee may make all elections required under the Super Standards.

14.7. Ancillary Benefits

The Trustee may pay a Member as much of a Benefit under the minimum conditions of release and/or cashing restrictions as the Super Standards permit:-

- 14.7.1. on compassionate grounds;
- 14.7.2. 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 Super Standards;
- 14.7.3. where the Benefit is an unrestricted non-preserved benefit under the Super Standards;
- 14.7.4. on the Temporary Disablement of a Member as long as the Benefit only replaces the income of a Member as a non-commutable income stream with no residual capital value over a period not longer than the period of Temporary Disablement. The Benefit may be indexed and paid at least monthly;
- 14.7.5. any other type of Benefit approved under the Super Standards not referred to in clause 17.4 or in clause 14.3; or
- 14.7.6. the Benefit relates to other ancillary purposes approved by the Super Authority in writing or is otherwise approved by the Super Standards.

14.8. Form of Benefits

Benefits may be paid to Members either in money or in any other form of property allowed by the Super Standards.

14.9. Member's Debt

Where a Member owes money to the Trustee or to a Participating

Employer and/or Associate, the Trustee may reduce the Member's Benefit by the outstanding debt, if allowed by the Super Standards.

14.10. Discharge

14.10.1. The payment or transfer of all Benefits to or for a Member or an Approved Fund shall be in full and final settlement of the obligations of the Trustee and the Fund to that Member and all of his or her or their interests in the Fund.

14.10.2. Where any Member is not an Elector, the Trustee can pay a Benefit less any costs to the Member's parent, guardian, legal personal representative, authorised attorney or can establish a trust with a suitable trustee ("the Payee") and on the terms and conditions decided by the Trustee, for the benefit of the Member and:

14.10.2.1. where the Payee is a professional person or carrying on a business, the Payee can, subject to Clause 6.6, act as Payee and charge professional fees;

14.10.2.2. the Payee can use the Benefit or any part of it at any time for the advancement, maintenance, education or general well being, of the Member; and

14.10.2.3. the receipt by the Payee shall fully discharge the Trustee.

14.11. Dependants & Succession

A Member may direct the Trustee in writing regarding the payment of a Benefit upon death to one or more of that Member's Dependants. If the Trustee agrees the direction may relate to the type, amount and proportions of different components of Benefit to be paid on his death

whether a Pension Benefit, reversionary or not, is to be provided on his death. A Member can change the direction at any time by in writing prior to the Member's death.. If there is no direction on the Member's death, the Trustee:

14.11.1. can decide on the type, amount and proportions of different components in any Benefit and whether it is a Pension Benefit and, if so, whether it is reversionary or not and may:

14.11.1.1. consider but not necessarily implement any direction of Preferred Dependant by the Member; and

14.11.1.2. pay:

14.11.1.2.1. a Member's Benefit to the Preferred Dependant;

14.11.1.2.2. a Member's Benefit to any other Dependant;

14.11.1.2.3. a Member's Benefit to a Member's legal personal representative even if there are Dependents; or

14.11.1.2.4. a mixture of the above which may include two or more Dependents or the legal personal representative in proportions that the Trustee alone decides;

14.11.2. may pay a Member's Benefit to his legal personal representative where there are no Dependents;

- 14.11.3. may pay a Member's Benefit to the Member's nearest kin if the Member has no legal personal representative and there are no Dependants; or
- 14.11.4. if clause 14.11.1 to 14.11.3 (inclusive) do not apply, deal with the Benefit either:
 - 14.11.4.1. under sub-clause 20.4 as required by the Super Standards; or
 - 14.11.4.2. by cancelling it and crediting its value to the Accumulation Reserve Account under sub-clause 21.1.1 if allowed by the Super Standards.

15. **LUMP-SUM BENEFIT**

15.1. **Regular Benefits**

Subject to Clause 14.3.3:-

- 15.1.1. If a Member Retires permanently, to the Trustee's satisfaction from Gainful Employment on or after the Conditional Preservation Age, the Member may receive a Lump-Sum Benefit in an amount decided by the Trustee which will be drawn from the Member's ARC.
- 15.1.2. A Member who reaches the Unconditional Preservation Age may receive a Lump-Sum Benefit in an amount decided by the Trustee which will be drawn from the Member's ARC.
- 15.1.3. A Member who is not dealt with under the above sub-clauses may not draw a Lump-Sum Benefit from the Member's ARC unless the Super Standards allow it. The amount and timing of any such Lump Sum Benefit shall be decided by the Trustee.

15.2. **Ancillary Benefits**

A Member who qualifies for an Ancillary Benefit referred to in sub-clause 14.7 may be paid that Benefit drawn from the Member's ARC, subject to sub-clause 14.3.3, as a Lump-Sum Benefit in an amount decide by the Trustee unless it must be paid in some other way under the Super Standards such as on compassionate grounds (to which clause 14.7.1 applies) or Temporary Incapacity Benefits (to which Clause 14.7.3 applies).

15.3. **Death Benefits**

Where a Member dies, the Beneficiary is entitled, subject to the clause 14.3.3, to receive a Lump-Sum Benefit of an amount decided by the Trustee which is to be drawn from the Member's ARC and any Insured Benefit that arises under Clause 18.

15.4. **Total and Permanent Disablement Benefits**

Where a Member becomes Totally and Permanently Disabled, the Member may, subject to Clause 14.3.3, receive a Lump-Sum Benefit in an amount decided by the Trustee which is to be drawn from the Member's ARC and any Insured Benefit under Clause 18.

16. **ALLOCATED PENSION OR FLEXI-PENSION ENTITLEMENTS**

16.1. **Regular Benefits**

16.1.1. Where:

16.1.1.1. a Member Retires; and

16.1.1.2. the Trustee believes that the Member has Retired permanently from Gainful Employment on or after his Conditional Preservation Age; and

16.1.1.3. the Trustee agrees to pay an Allocated Pension or a Flexi-Pension from the Fund;

the Member is entitled to an Allocated Pension or Flexi-Pension in the amount decided by the Trustee which will be drawn from the Member's ARC.

16.1.2. Where:

16.1.2.1. a Member reaches the Unconditional Preservation Age; and

16.1.2.2. the Trustee agrees to pay an Allocated Pension or a Flexi-Pension from the Fund;

the Member is entitled to receive an Allocated Pension or Flexi-Pension in the amount decided by the Trustee which is to be drawn from the Member's ARC.

16.1.3. A Member not covered by Clause 16.1.1 and 16.1.2 may not draw an Allocated Pension or Flexi-Pension from the Member's ARC unless the Super Standards allows. The amount and timing of such pension shall be decided by the Trustee.

16.2. **Ancillary Benefits**

Where:

16.2.1. a Member is entitled to an Ancillary Benefit referred to in sub-clause 14.7; and

16.2.2. the Trustee agrees to pay an Allocated Pension or a Flexi-Pension from the Fund;

the Member may be paid that Benefit as an Allocated Pension or Flexi-Pension in an amount decided by the Trustee drawn from the Member's ARC unless the Benefit must be paid in some other manner under the Super Standards such as:

16.2.2.1. Benefits on compassionate grounds to which Clause 14.7.1 applies; or

16.2.2.2. Temporary Incapacity Benefits to which Clause 14.7.4 applies.

16.3. Death Benefits

Where:

16.3.1. a Member dies; and

16.3.2. the Trustee agrees to pay an Allocated Pension or a Flexi-Pension from the Fund;

the Beneficiary will receive an Allocated Pension or Flexi-Pension in the amount decided by the Trustee which is to be drawn from the Member's ARC and any Insured Benefit under Clause 18.

16.4. Total and Permanent Disablement Benefits

Where:

16.4.1. a Member becomes Totally and Permanently Disabled; and

16.4.2. the Trustee agrees to pay an Allocated Pension or a Flexi-Pension from the Fund;

the Member will receive an Allocated Pension or Flexi-Pension amount decided by the Trustee which will be drawn from the Member's ARC and any Insured Benefit that arises under Clause 18.

16.5. Commutation

Subject to Clause 14.3.3, the Trustee's consent and the Super 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 allowed by this Deed at any time.

17. **COMPLYING PENSION ENTITLEMENTS**

17.1. **Regular Benefits**

17.1.1. Where:

- 17.1.1.1. a Funding Member Retires;
- 17.1.1.2. the Trustee believes that the Member has Retired permanently from Gainful Employment on or after the Conditional Preservation Age; and
- 17.1.1.3. subject to Clause 14.3.2, provision has been made for the payment of a Complying Pension (but not a Complying Pension under to sub-clause 2.15.2) to the Member under the Super Standards;

the Member is entitled to a Complying Pension in the amount decided by the Trustee which will be drawn from the Pension Reserve Account.

17.1.2. Where:

- 17.1.2.1. a Funding Member reaches the Unconditional Preservation Age; and
- 17.1.2.2. subject to Clause 14.3.2, provision has been made for the payment of a Complying Pension (but not a Complying Pension under sub-clause 2.15.2) to the Member under the Super Standards;

the Member is entitled to a Complying Pension in the amount decided by the Trustee which will be drawn from the Pension Reserve Account.

17.1.3. Where:

17.1.3.1. a Funding Member Retires permanently from Gainful Employment before the Conditional Preservation Age; and

17.1.3.2. subject to Clause 14.3.3, provision has been made for the payment of a Complying Pension (but not a Complying Pension under to sub-clause 2.15.2 to the Member under the Super Standards;

the Member is entitled to a restricted Complying Pension in the amount decided by the Trustee which will be drawn from the Pension Reserve Account an which cannot be commuted under Clause 2.15.1.5..

17.1.4. Where:

17.1.4.1. a Funding Member reaches the Pension Age; and

17.1.4.2. subject to Clause 14.3.2, provision has been made for the payment of a Complying Pension (including a Complying Pension under sub-clause 2.15.2) to the Member in under the Super Standards; and

17.1.4.3. the Trustee has agreed to the payment of a Complying Pension;

the Member is entitled to a Complying Pension in the amount decided by the Trustee which will be drawn from the Pension Reserve Account.

17.1.5. A Member who does not qualify under Clauses 17.1.1 to 17.1.4 (inclusive) is not entitled to draw a Complying Pension from the Pension Reserve Account unless the Trustee agrees and the Super Standards allows. The amount and timing of any pension under this sub-clause shall be decided by the Trustee.

17.2. Death Benefits

Where:

17.2.1. a Funding Member dies; and

17.2.2. subject to Clause 14.3.2, provision has been made for the payment of a Complying Pension (but not a Complying Pension under sub-clause 2.15.2 unless the Funding Member has reached Pension Age) to the Member under the Super Standards;

the Beneficiary is entitled to a Complying Pension in the amount decided by the Trustee which will be drawn from the Pension Reserve Account.

17.3. Total and Permanent Disablement

Where:

17.3.1. a Funding Member becomes Totally and Permanently Disabled; and

17.3.2. subject to Clause 14.3.2, provision has been made for the payment of a Complying Pension (but not a Complying Pension under sub-clause 2.15.2 unless the Funding Member has reached Pension Age) to the Member under the Super Standards;

the Member is entitled to a Complying Pension in the amount decided by the Trustee which will be drawn from the Pension Reserve Account.

17.4. **Initial default Pension**

The first annual Complying Pension Benefit (but not a Complying Pension under sub-clause 2.15.2) shall be the Complying Pension Amount unless the Trustee decides otherwise based on the advice of an Actuary.

17.5. **Variation of Pension**

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

18. **INSURED BENEFITS**

18.1. The Insured Benefit in respect of the death, Total and Permanent Disablement of a Member or for any other reasons shall be equal to the amount (if any) paid or obtained by the Trustee under any insurance policy taken out 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 is not liable for any loss of the Fund or any Member because:-

18.2.1. no insurance or the wrong insurance was taken out by the Trustee whether he foresaw the loss or not; or

18.2.2. an insurer not paying out all or part of the claim under an insurance policy;

and the Trustee shall be allowed to reduce or cancel insurance cover for Members because of age, ill-health or other reasons, which must be disclosed under the *Insurance Contracts Act 1984 (Cth)* would lead to premium costs that are out of proportion with costs that are incurred on behalf of other Members.

19. **RESTRICTIONS ON VESTING**

19.1. No Benefit in respect of a Member shall vest in a Member or a Dependant after:-

19.1.1. the Member commits an act of bankruptcy or becomes an insolvent person under administration;

19.1.2. the Member transfers, secure or encumbers his or her Benefit in the Fund (or attempts to do so); or

19.1.3. the Member's Benefit whether by his or her own act, operation of law, an order of any court or other reason becomes payable to or belongs to any other person, company, government or other organisation,

and the Trustee shall be allowed to pay any amount in any manner as the Trustee decides so long as the payment is allowed by the Super Standards.

19.2. This clause does not apply to any Benefit:

19.2.1. that has already vested in a Member, or

19.2.2. that must vest in the Member as a Minimum Benefit or otherwise under the Super Standards.

20. **TRANSFER OF BENEFITS**

20.1. **Transfers to the Fund**

Subject to Clause 9.1.3, the Trustee may, upon the written request of an Employer or a Member, accept the transfer into the Fund of property (including money) from another Approved Fund in respect of that Member if the transfer complies with the Super Standards.

20.2. Benefits Transferred to the Fund

Where the value of property (or money) accepted under sub-clause 20.1:-

20.2.1. represents different components (such as employer and employee contributions and preserved, restricted non-preserved and unrestricted non-preserved amounts) the Trustee shall make sure that the Member's ARC, the Pension Reserve Account and any other account in the Fund, appropriately reflects and records those components; and

20.2.2. is to be credited to the Pension Reserve Account for of any entitlement to a Complying Pension, the Trustee, the Member or his Employer, shall first agree on the effect of the credit and necessary assumptions.

20.3. Transfer to Other Funds

The Trustee may:

20.3.1. after:-

20.3.1.1. receiving, a written request from a Member;
or

20.3.1.2. the Trustee deciding to transfer a Member's Benefit;

transfer the whole or part of the Member's Benefit to another Approved Fund if the Trustee is satisfied that the amount transferred to that Approved Fund is allowed by the Super Standards; and

20.3.2. transfer a Benefit which has become payable to a Member to an Approved Fund chosen by the Trustee where a Member

has failed to properly instruct the Trustee about the payment or transfer within 90 days of the Benefit first becoming payable.

20.4. Unclaimed Money

Where necessary under the Super Standards, the Trustee shall:

- 20.4.1. do what is necessary for unclaimed money which is payable by the Fund to a Member whom the Trustee cannot trace after making reasonable efforts and inquiries;
- 20.4.2. pay any unclaimed money under any applicable Unclaimed Money Law referred to in Clause 26 or, in the event that no such law applies, to the Super Authority; and
- 20.4.3. complete any statements or returns regarding unclaimed money required by any applicable Unclaimed Money Law or the Super 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 required amount of unclaimed money under sub-clause 20.4 shall amount to a complete and final discharge of the Trustee and the Fund for any liability to the Member concerned whatsoever.

21. ACCOUNTS

21.1. Trustee to Keep

The Trustee shall keep the Accounts.

21.2. Financial Statements

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

21.3. Provisions

- 21.3.1. The Trustee may make provision in or adjust 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 decides.
- 21.3.2. For this purpose, 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 them under this Deed.

21.4. Earnings

- 21.4.1. Earnings may be credited or debited to the Members' Accounts, the Pension Reserve Account, the Accumulation Reserve Account or other Accounts as long, as these credits amount to greater than Earnings in a period as set out in the Accounts and as long as these debits do not amount to greater than Earnings in the event there are no Earnings unless the Trustee decides otherwise.
- 21.4.2. The Trustee shall consider, when deciding and allocating earnings to a Member:-
- 21.4.2.1. the ARC of Members;
 - 21.4.2.2. any property held on behalf of a Member and any income earned from that property;
 - 21.4.2.3. Pension Reserve Account balances, if any;
 - 21.4.2.4. other reserve Account balances, if any;

- 21.4.2.5. length of membership;
 - 21.4.2.6. investment strategies;
 - 21.4.2.7. actuarial advice, if any; and
 - 21.4.2.8. 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 related to those assets;
- 21.4.3. Earnings may be debited or credited, as the case may require, annually or whenever the Trustee's decides.
- 21.4.4. The Trustee may estimate credits or debits of any Earnings, before final Accounts or financial statements are available to the Trustee after the end of a Financial Year.

21.5. Reserves

The Trustee must set up and maintain the following accounts in its own name or under its control and subject to any rules and procedures it specifies:-

- 21.5.1. the Accumulation Reserve Account which receive credits under sub-clause 21.11;
- 21.5.2. reserve Accounts or liability Accounts which 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
- 21.5.3. any other Accounts, including a Pension Reserve Account and any other reserves the Trustee decides including, one or

more contributions, miscellaneous and investment reserve accounts.

21.6. Calculations Relating to Current Pension Liabilities

In:

- 21.6.1. fixing income earned from property under Clause 21.4.2.2;
- 21.6.2. 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-Clause 21.4.2.8 or
- 21.6.3. identifying the amount to be credited to reserve Accounts or liability Accounts set up under Clause 21.5.2;

the Trustee may decide that any debit, credit or other adjustment to, or that impacts on, the Accounts, Disbursements or financial position of the Fund is to be included or excluded from any decision, attribution or identification and the Trustee need not either explain or give reasons for its decision, attribution or identification unless the Super Standards require it.

21.7. Pension Reserve Account

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

- 21.7.1. contributions (if any) by or on behalf of a Funding Member to the Fund including any contribution which exceeds that Member's maximum contribution limit prescribed in any Financial Year by the Super Standards;
- 21.7.2. sums received on trust and held in accordance with sub-clauses 20.1 and 20.2.1
- 21.7.3. allocations of Earnings;

- 21.7.4. allocations, which the Trustee decides, from the Accumulation Reserve Account;
- 21.7.5. Insured Benefits received for a Funding Member;
- 21.7.6. any other amounts which the Trustee considers to be properly 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, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts so long as the payment or provision is permitted by the Super Standards and complies with actuarial advice.

21.8. **Members' Accounts**

The Trustee may establish and maintain in each Members' name:-

- 21.8.1. an Accumulation Retirement Account to which, unless the Trustee decides otherwise, shall be credited:
 - 21.8.1.1. contributions (if any) by or on behalf of the Member to the Fund including any contribution which is more than the relevant Member's maximum contribution limit permitted in any Financial Year by the Super Standards;
 - 21.8.1.2. sums received on trust and held in under sub-clauses 20.1 and 20.2;
 - 21.8.1.3. allocations of Earnings;
 - 21.8.1.4. allocations from the Accumulation Reserve Account;

21.8.1.5. such other amounts as can properly be credited to the Member's Account(s) in respect of the Member;

as long as the amounts have not already been credited to the Pension Reserve Account under with sub-clause 21.7; and

21.8.2. such other Accounts, including Allocated Pension Accounts or Flexi-Pension Accounts, as the Trustee decides are required;

and the Trustee may debit these Accounts to pay or provide for any amounts, which, are required to meet Disbursements, Benefits, Benefit adjustments, negative Earnings, deficiencies and any other amounts as long as the payment or provision is permitted by the Super Standards including those that apply to small account balances.

21.9. Treatment of property contributions

Where specific property is contributed by or for a Member, the value of the property shall be credited to the Member's ARC or any other account or reserve which the Trustee decides subject to sub-clause 4.2.

21.10. Members' credit Accounts

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 under sub-clause 14.4. Once a Benefit has accrued to a Member, it can no longer be posted to the Member's ARC or the Accumulation Reserve Account under sub-clause 21.11.

21.11. Credits to Accumulation Reserve Account

The Trustee may reduce any Account of a Member set up and maintained under sub-clause 21.8 or the Insured Benefit of a Member with the amount of the reduction then credited to the Accumulation Reserve Account including where:

21.11.1. the Trustee decides it is in the interests of the Members that the credit should take place;

21.11.2. a Benefit is fully paid to a Member or and any residual balance (which does not form part of the Benefit) remains in the Member's Accumulation Retirement Account;

21.11.3. the amount is subject to sub-clause 14.11; or

21.11.4. the amount is subject to sub-clause 19.1;

as long as the reduction is not a Minimum Benefit or contravenes the Super Standards.

21.12. **Credits to Pension Reserve Account**

Any credit to a Funding Member's ARC or the Accumulation Reserve Account can be transferred to the credit of the Pension Reserve Account under the Super Standards where a Complying Pension is to be paid to the Member and the Trustee decides, based on an Actuary's advice, that a proposed Member's Complying Pension Benefit requires further funding,

21.13. **Debits from Pension Reserve Account**

Any amount in the Pension Reserve Account can be transferred to a Member's ARC or credited to the Accumulation Reserve Account where the Trustee decides, based on an Actuary's advice, that an proposed Member's Complying Pension Benefit is over-funded.

22. **RECORDS AND AUDIT**

22.1. The Trustee shall:

22.1.1. ensure that proper records are maintained and, the relevant notifications and annual or other returns are lodged with the Super Authority, the Members and any other person or body as required by the Super Standards;

22.1.2. keep a record of all Trustee decisions regarding, to the Fund for a period of at least 10 years; and

22.1.3. keep the Fund's Accounts, financial statements and returns for a period of at least 5 years.

22.2. The Trustee must appoint an Auditor as required under the Super Standards to:-

22.2.1. audit the financial statements and the records of the Fund requiring, audit; and

22.2.2. report in writing to the Trustees within the time set out in the Super Standards.

23. **INFORMATION**

The Trustee shall provide the information and notifications for the Fund, required by the Super Standards, including:-

23.1. a notification when a person becomes or ceases to be a Member;

23.2. annual disclosures at the end of each Financial Year (or other period) Members, the Fund or other person;

23.3. changes to of this Deed;

23.4. a copy of this Deed for inspection by Member; and

23.5. at least once a year all information required by the Super Standards and requested by a Member.

24. **WINDING-UP**

24.1. The Trustee shall wind-up and bring the Fund to an end as follows when the first of the following events happen:

24.1.1. all Members agree to wind-up the Fund;

- 24.1.2. the Trustee decides that to continue the Fund is not reasonably justified;
- 24.1.3. the Fund must be wound-up in terms of the Super Standards; or
- 24.1.4. the last remaining Member stops being a Member of the Fund;

and the date when the first of the above events happens, shall be the "Wind-up Date".

- 24.2. The Trustee shall close the membership of the Fund on the Wind-up Date and decide on the amount or value of property available, subject to sub-clause 2 1.8 to pay the amount credited to the Account of each Member after considering making provision for the Disbursements and losses related to winding up and completing the Fund.
- 24.3. The Trustee shall pay, or transfer to an Approved Fund, the Benefit that can be paid in the amount arrived at under sub-clause 24.2 for each Member and make any adjustment to Member's Benefits for any surplus or deficiency apparent during and before completely the winding-up of the Fund provided that:
 - 24.3.1. the Trustee shall not pay or transfer the whole part of Member's Benefit if not allowed by the Super Standards; and
 - 24.3.2. the Trustee may retain any Member Benefit after the Fund is wound-up subject to similar trusts set out 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, the amount shall, be paid to any person who has ever been a Member in the proportions that the Trustee decides is reasonable and fair.

24.5. The Fund shall be run and its property distributed or paid on a winding-up to comply with the Super Standards or any Trustee Law.

24.6. The payment or transfer of a Member's Benefit under this clause shall, completely and finally discharge the Trustee and the Fund in respect of that Member.

25. **SEVERANCE**

The provisions of this Deed are and shall be construed on the basis that if any part of it is found not to be binding able to be cancelled by any party, invalid, not enforceable or illegal then the remainder of this Deed shall remain valid, binding, and enforceable.

26. **APPLICABLE LAW**

This Deed shall be governed by the laws of Victoria and the parties Members and any Beneficiary under the Deed, agree to the exclusive jurisdiction of the Courts and Tribunals of the Commonwealth of Australia and Victoria.

27. **CHANGE TO DEED**

The Trustee can change this Deed prospectively or retrospectively (including any provisions deemed to be included under sub-clause 3.6) so long, as:

27.1. no change shall reduce a Benefit to which Member is entitled before the change, unless the Trustee has the written consent of that Member; or

27.2. Where the Super Standards prohibit it no change shall allow:-

27.2.1. an individual to be appointed as Trustee unless the sole or primary purpose of the Fund is to provide Old-Age Pensions; and

27.2.2. the Fund to have a sole or primary purpose which is not the provision of Old-Age Pensions, unless the Trustee is a constitutional corporation;

a change may reduce a Benefit to which a Member was entitled before the change without obtaining that Member's consent if the change leading to reduction:-

1. is required because of, and is not more than, any Tax payable on the Fund's income; or
2. is needed to comply with the Super Standards or the Super Authority gives its written approval to the reduction; or
3. is otherwise permitted by the Super Standards;

and the Trustee need not comply with Trustee Law which applies to the change or how to make the change.

EXECUTED AS A DEED:

SIGNED SEALED AND DELIVERED by the said **IAN GREGORY ROBERTSON** in the presence of:-

Shirley A. [Signature]
.....
(Power of Attorney)

[Signature]
.....

Witness

SIGNED SEALED AND DELIVERED by the said **ROBYN LEANNE ROBERTSON** in the presence of:-

Shirley A. [Signature]
.....
(Power of Attorney)

[Signature]
.....

Witness

SCHEDULE

1. **DATE OF DEED:** 30TH MARCH, 2000
2. **TRUSTEE:** IAN GREGORY ROBERTSON & ROBYN
LEANNE ROBERTSON
3. **NAME OF FUND:** IAN & ROBYN ROBERTSON
SUPERANNUATION FUND
4. **FOUNDING DATE:** 1ST JULY 1998
5. **VARIATION DATE/S** NIL