

Jenways Super Fund

**Prepared for NTAA Corporate by
Australian Business Structures
Order: 105133**

Deed of Establishment

Jenways Super Fund

Date Date of Establishment

Parties The corporation named and described in Schedule 1 and appointed under clause 9 as Trustee (**Trustee**)

Recitals

- A The Trustee wishes to establish and maintain the Fund solely for the purpose of providing superannuation benefits for its Members and for their Dependants in the event of the death of a Member and for any other purposes permitted by the Superannuation Law.
- B The Trustee will act as trustee of the Fund and has consented to act as the Fund's trustee in accordance with the provisions of this deed, including the powers granted by this deed.
- C The Trustee has agreed to conduct the Fund so as to ensure that the Fund at all times attracts any income tax concessions that may apply to superannuation funds.

It is Declared:

1 Establishment

By this deed, the Trustee establishes the Fund that commences on the date of Establishment.

2 Terms of this Deed

The terms of this deed include those set out in Annexure A and Schedule 1 to this deed.

Annexure A

Contents

Contents	i
Part 1 - How to read this deed	6
1 Overview of deed	6
2 Definitions	6
3 Interpretation	13
3.2 Severability	13
3.3 Fund subject to Superannuation Law at all times	14
4 Other provisions to note	14
4.1 Exercise of powers and rights	14
4.2 Benefits secured	14
5 Governing law and jurisdiction	14
5.1 Governing law	14
5.2 Jurisdiction	14
6 Dispute resolution	15
6.1 Enquiries and complaints mechanism	15
6.2 Trustee to implement decision	15
Part 2 - The Fund	16
7 Structure of the Fund	16
7.1 Fund vested in Trustee	16
7.2 Class of Members	16
7.3 Composition of the Fund	16
Part 3 - Trustees	17
8 Covenants	17
9 Appointment and change of Trustee	17
9.1 Purpose of Fund	17
9.2 Self Managed Superannuation Funds and Approved Trustee Funds	17
9.3 Appointment of Trustee	18
9.4 Ceasing to act as Trustee	18
9.5 Continuity of office	19
9.6 Quorum of Individual Trustees	19
9.7 Remuneration of Trustee	19
9.8 Confidentiality of information	19
9.9 Member may be Trustee	19
Part 4 - Other persons in Fund	20
10 Appointment and removal of other persons	20

20.1	Recording of specific investments	29
20.2	Allocation of Earnings and costs for specific investments	29
21	Valuation of Fund	29
	Part 7 - Record Keeping	30
22	Records, Reports and Audit	30
22.1	Trustee obligations	30
22.2	Provision of information	30
22.3	Information and documents for Tribunal	31
22.4	Directions of Statutory Authority	31
	Part 8 - General matters	32
23	Policies of insurance	32
23.1	Member Policies	32
23.2	Member may request a specific Policy	32
23.3	Trustee to effect Policy if required	32
23.4	Premiums	32
23.5	Limitation on liability of Trustee	32
24	Payment of Tax and Levies	32
24.1	Deduction of Tax on Benefit	32
24.2	Tax on Contributions and Shortfall Components	32
	Part 9 - Membership of the Fund	33
25	Membership	33
25.1	Eligibility for Membership	33
25.2	Application for Membership	33
25.3	Admission to Membership without application	33
25.4	Members and Beneficiaries to provide information	33
25.5	Trustee may amend or alter Benefits	33
25.6	Member bound by deed	33
25.7	Member to be medically examined	33
25.8	Refusal to be medically examined	34
26	Membership notification requirements	34
26.1	Product Disclosure Statements	34
26.2	Disclosure and reporting requirements	34
26.3	Former Member notices	34
26.4	Inspection of deed and other Documents	34
26.5	Meetings and Members	34
27	Ceasing to be a Member	35
	Part 10 - Contributions to the Fund	36
28	Contributions to the Fund	36
28.1	Eligibility to make Contributions	36
28.2	Amount of Contributions	36
28.3	Superannuation Guarantee legislation	36
29	General provisions concerning Contributions	36
29.1	Form of Contribution	36
29.2	Obligations to contribute	36

44.4	Payment if Binding Death Benefit Nomination is invalid or ineffective	47
44.5	Payment if no Binding Death Benefit Nomination or Reversionary Beneficiary nomination	47
44.6	Forms of payment	47
45	Commutation of Income Stream	47
46	Anti detriment payment	48
	Part 12 - Family Law	49
47	Information to Members and Non Member Spouses	49
48	Trustee may create new interest for Non Member Spouse	49
49	Non Member Spouse may request transfer of interest	49
50	Family Law fees	49
51	Satisfaction of entitlement	50
	Part 13 - Termination of Trust	51
52	Termination	51
52.1	Events of termination	51
52.2	Notice to Members	51
52.3	No further Contributions	51
52.4	Order of payment of Benefits	51
52.5	Payment if Member Dies	52
52.6	Surplus	52
52.7	Form of Payment	52
52.8	Payment to other Persons	52
	Part 14 - Amendment	53
53	Amendment of this deed	53
53.1	Method of amendment	53
53.2	Notification of Members of Amendment	53

- (f) any other accounts required to be opened or maintained by the Trustee in accordance with the Superannuation Law or any other accounts the Trustee decides to establish and maintain.

Accumulation Account means the Account established on behalf of each Member or Beneficiary as described in clause 15.

Actuary means a person for the time being appointed as actuary of the Fund under clause 10.1(b).

Administrator means a person appointed as administrator of the Fund under clause 10.1(c).

Allot has the same meaning given to that term in the SIS Regulations.

Annuity means a Benefit payable by instalments that satisfies the meaning of Annuity in regulation 1.05 of the SIS Regulations or any other provision of the Superannuation Law.

Applicant means a Member who makes a Splittable Contributions application under clause 29.6.

Approved Benefit Arrangement means a fund or benefit arrangement other than the Fund, including:

- (a) another Complying Superannuation Fund;
- (b) an Approved Deposit Fund;
- (c) an Annuity arrangement; or
- (d) an Eligible Roll Over Fund,

into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or to fail to comply with the Superannuation Law.

Approved Deposit Fund in relation to a year of income means a fund which is a complying approved deposit fund in accordance with the Taxation Act.

Approved Trustee means a trustee approved by the Australian Prudential Regulation Authority or any other body or person that has responsibility for the administration of superannuation funds other than Self Managed Superannuation Funds.

Auditor means a person for the time being appointed as auditor of the Fund under clause 10.1(d).

Authorised Deposit Taking Institution has the same meaning given to that term in the *Banking Act 1959* (Cth).

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Beneficiary means a person who is presently and absolutely entitled or has a contingent right to receive a Benefit under the provisions of this deed at any given time and includes a Member, a Dependant or a Pensioner.

Benefit means any amount which is payable by the Trustee out of the Fund in accordance with this deed to or in respect of a Member.

Benefit Entitlement means any amount held in the Fund which may become payable to a Beneficiary but to which the person has not become absolutely and indefeasibly entitled and includes a contingent right to payment of an amount.

Family Law means the Payment Splitting arrangements under the Superannuation Law.

Financial Assistance means any financial assistance granted to the Fund in accordance with Part 23 of the SIS Act.

Financial Year means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee determines.

Fluctuation Account means the account established in accordance with clause 18.

Forfeiture Account means the account established in accordance with clause 42.3.

Full Time Gainful Employment in relation to a Member means Gainful Employment on a full time basis within the meaning of the Superannuation Law.

Fund means the superannuation fund under the name set out in schedule 1.

Fund Earning Rate means the earning rate for the Fund (which may for the purposes of this deed be negative) determined under clause 17.4 after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable.

Fund Year means a period of twelve months ending on 30 June, or such other period ending on such other date as the Trustee determines from time to time.

Gainful Employment means, in relation to a Member, engagement in any business, trade, profession, vocation, calling, occupation or employment for personal gain to the extent required by the Superannuation Law.

Guarantee Act means the *Superannuation Guarantee Charge Act 1992* (Cth) which incorporates the *Superannuation Guarantee (Administration) Act 1992* (Cth) and any regulations made to that Act.

Income Stream means:

- (a) a Pension;
- (b) an Annuity; or
- (c) a Benefit payable in a form other than as a Superannuation Lump Sum as permitted by the Superannuation Law.

Individual Trustee means a natural person who is appointed to be a Trustee of the Fund.

Insured Member means any Member who has a Policy effected in his or her name by the Trustee.

Insurer means any insurer with whom the Trustee effects a Policy or Policies.

Interdependency Relationship has the same meaning given to that term in Superannuation Law.

Investment Manager means a person appointed as an Investment Manager of the Fund in accordance with clause 10.1(a).

Legal Personal Representative has the same meaning given to that term in the SIS Act.

Levy includes a levy payable by the Fund in accordance with the *Superannuation Supervisory Levy Act 1991* (Cth), the *Superannuation (Fund Assistance Levy) Act 1993* (Cth) and any other legislation or regulations which impose a levy or levies on the Fund.

- (c) any policy which provides that Benefits are payable to the Trustee on the death or disablement of a Member,

provided that the acquisition of any given policy is not prohibited by Superannuation Law.

Preservation Age means:

for a person born before 1 July 1960	55 years of age
for a person born during the year 1 July 1960 to 30 June 1961	56 years of age
for a person born during the year 1 July 1961 to 30 June 1962	57 years of age
for a person born during the year 1 July 1962 to 30 June 1963	58 years of age
for a person born during the year 1 July 1963 to 30 June 1964	59 years of age
for a person born after 30 June 1964	60 years of age

Preserved means the prohibition against paying any amount held in the Fund before a Member reaches Preservation Age or is otherwise entitled to be paid that amount in accordance with the Superannuation Law and **Preserve** has a corresponding meaning.

Preserved Payment means a payment made to the Fund which is required to be Preserved in order for the Fund to be a Complying Superannuation Fund.

Relative has the same meaning given to that term in the SIS Act.

Reserve Account means an account established in accordance with clause 19.

Retires from Employment means retirement as defined by the Superannuation Law.

Retires from Gainful Employment means actual retirement by a Member from Gainful Employment or retirement as defined for the purposes of the Superannuation Law for the payment of Benefits.

Reversionary Beneficiary means a Dependant nominated by a Pensioner (and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee) who is eligible to receive a Benefit on the death of a Pensioner.

RSE Licensee has the same meaning given to that term in the SIS Act.

Self Managed Superannuation Fund means a superannuation fund which satisfies the requirements of a self managed superannuation fund set out in the Superannuation Law.

Severe Financial Hardship has the same meaning given to that term in the Superannuation Law.

Shortfall Component has the same meaning given to that term in the Guarantee Act.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

SIS Regulations means the Superannuation Industry (Supervision) Regulations 1994 (Cth).

Splittable Contribution has the same meaning given to that term in the SIS Regulations.

Spouse has the same meaning given to that term in the SIS Act.

Unrestricted Non Preserved Amount means an amount including a roll-over payment payable to or in respect of a Member which is not required to be Preserved or at the time of payment is no longer required to be Preserved under the Superannuation Law and is an Unrestricted Non Preserved Benefit as that term is defined in the SIS Regulations.

Untaxed Splittable Contribution has the same meaning given to that term in the SIS Regulations.

3 Interpretation

In this deed, headings are inserted for convenience only and do not affect the interpretation of this deed unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (e) a reference to a document or instrument, including this deed, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (f) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a party includes the party's successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives;
- (h) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a firm and a trust;
- (i) if any dispute arises as to the interpretation of any of the provisions of this deed or as to the rights or obligations of a Member or any other person, then (except to the extent otherwise expressly provided in the deed) the decision of the Trustee is final and binding;
- (j) all monetary amounts are in Australian dollars, unless otherwise stated, and a reference to payment means payment in Australian dollars; and
- (k) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day.

3.2 Severability

If any provision of this deed is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this deed without affecting the validity or enforceability of the remaining provisions of this deed.

6 Dispute resolution

6.1 Enquiries and complaints mechanism

The Trustee must ensure that there are arrangements in place to deal with enquiries and complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Superannuation Law.

6.2 Trustee to implement decision

Subject to the Trustee's rights to determine in its discretion to appeal against any decision of a court or tribunal, the Trustee must ensure that it implements any decision of a court or tribunal as required by that court or tribunal.

Part 3 - Trustees

8 Covenants

The Trustee must perform and observe the covenants, trusts, conditions and obligations of this deed as and to the extent they are included in the deed or deemed to be included in the deed by the Superannuation Law.

9 Appointment and change of Trustee

9.1 Purpose of Fund

Subject to the Superannuation Law:

- (a) the Trustee must at all times be a Constitutional Corporation; or
- (b) as otherwise permitted under the Superannuation Law and where the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund must be the provision of old age pensions as that term is defined in section 51(xxiii) of the *Commonwealth of Australia Constitution Act*.

9.2 Self Managed Superannuation Funds and Approved Trustee Funds

- (a) Despite any provision in this clause 9, at any time while the Fund is a Self Managed Superannuation Fund, a person is not eligible to be:
 - (i) the Trustee; or
 - (ii) where the Trustee is a Constitutional Corporation, a Director of the Trustee, of the Fund unless all of the provisions in this clause 9.2 are satisfied.
- (b) Subject to clause 9.2(d), where the Fund is a Self Managed Superannuation Fund with one Member, the Trustee must either be:
 - (i) a Constitutional Corporation where:
 - (A) the Member is the sole director of the Constitutional Corporation; or
 - (B) the Member is one of only two Directors of the Constitutional Corporation and the other Director is a Relative; or
 - (C) the Member is one of only two Directors of the Constitutional Corporation and the Member is not employed by the other Director; or
 - (ii) two Individual Trustees comprising the Member and another person who is either:
 - (A) a Relative of the Member; or
 - (B) not an Employer of the Member.
- (c) Subject to clause 9.2(d), where the Fund is a Self Managed Superannuation Fund with more than one Member, the Trustee must be:

- (e) subject to the Superannuation Law, if the person is removed from office by notice in writing given by no less than two thirds of the Members to the Trustee.

9.5 Continuity of office

Any person who acts as Trustee must, on ceasing to be Trustee under this clause 9, do everything necessary to vest the Fund in the remaining or new Trustee or Trustees and must promptly deliver all records and other books to the remaining or new Trustee or Trustees.

9.6 Quorum of Individual Trustees

A quorum of Trustees is the number of Trustees for the time being or as required by the Superannuation Law.

9.7 Remuneration of Trustee

Unless permitted by the Superannuation Law, during any time that the Fund is a Self Managed Superannuation Fund, no Trustee of the Fund may receive remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund in its capacity as Trustee of the Fund.

9.8 Confidentiality of information

The Trustee and every Employer must, as far as possible, treat as confidential all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this deed.

9.9 Member may be Trustee

No Individual Trustee, Director or officer of a Constitutional Corporation or Employee of an Employer is, by virtue of their office or the powers delegated to them by the Trustee, disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

Part 5 - Powers of Trustees

11 Investment powers of Trustees

11.1 Investment strategy

The Trustee must from time to time formulate and give effect to one or more investment strategies having regard to the Fund's circumstances provided that such investment strategies are formulated and effected in accordance with the Superannuation Law.

11.2 Power of investment

Subject to the Superannuation Law, the Fund's investment strategy and to clause 11.3, the Trustee has power, at the Trustee's absolute discretion, to invest the whole or any part of the Fund's assets, as if the Trustee was the absolute owner and beneficially entitled to those assets, in investments with full power to vary, replace or otherwise deal with any investments as fully and effectively as a person absolutely and beneficially entitled to dealing with their own property, including:

- (a) in the acquisition by original subscription, purchase or otherwise of debentures, debenture stock (whether secured or unsecured), secured or unsecured notes or other loan instruments of any corporation wherever situated or incorporated and payable or repayable in any currency and whether bearing interest or not;
- (b) in the acquisition by original subscription, purchase or otherwise of shares or stocks, whether ordinary, preferred, deferred, redeemable or otherwise and whether involving liabilities or not, of any corporation wherever situated or incorporated and expressed in any currency;
- (c) in the purchase of, or at interest on the security of, shares, stocks, funds, securities, land or other investment or property of any nature and wherever situated (other than an investment of a wasting or speculative nature) and whether income producing or not, whether fully or partly paid up and whether involving liabilities or not, or in loans on personal credit, with or without security, as the Trustee, in the Trustee's absolute discretion, thinks fit and to the intent that the Trustee has the same power in all respects;
- (d) in the acquisition by original subscription, purchase or otherwise of interests or rights, whether partly paid or not and whether involving liabilities or not, in corporations not having a share capital wherever situated or incorporated;
- (e) in the acquisition by original subscription, purchase or otherwise of securities of any country, state or territory for any period;
- (f) in the acquisition by original subscription, purchase or otherwise of securities of any statutory or municipal body, wherever situated and for any period;
- (g) in the acquisition by original agreement, purchase or otherwise of options and rights to take up shares or stock, whether ordinary, preferred, deferred, redeemable or otherwise, whether partly or fully paid and whether involving liabilities or not, of any corporation wherever situated or incorporated or to take up interests or rights, whether involving liabilities or not, in corporations not having a share capital wherever situated or incorporated;
- (h) in the acquisition by original subscription, purchase or otherwise of units or sub-units of any unit trust;

- (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (f) to open bank accounts (or accounts with non-bank financial institutions (NBFIs)) and to retain on current or deposit account at any bank (or NBFIs) any money that it considers proper and to make procedures for the operation of such bank accounts including the signing and endorsing of cheques;
- (g) to enter into a leasing arrangement with any person, including:
 - (i) a finance lease;
 - (ii) an operating lease; or
 - (iii) a hire purchase agreement;
- (h) to determine who is entitled to sign receipts, acceptances, endorsements, release, contracts and documents on the Fund's behalf;
- (i) to pay Benefits out of the Fund to a Member or a Dependant;
- (j) to decide who are Dependents for the purposes of this deed;
- (k) in case of the mental or physical ill health or incapacity of any person entitled to Benefits, to pay or apply all Benefits or any part of those Benefits to, or for the benefit of, that person and the Dependents of that person without being responsible for seeing to the application of payments under this clause 12.1(k) or payments made in the exercise of any other power vested in the Trustee by this deed;
- (l) to indemnify, give any guarantee or to undertake to indemnify or give any guarantee to any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund provided that an indemnity or guarantee may only be provided to the extent that it is not limited by or contrary to the Superannuation Law;
- (m) to pay and advance out of the Fund all costs, expenses and outgoings (including Tax) of, and incidental to, the management and administration of the Fund;
- (n) to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (o) to take and act on the opinion of any legal practitioner, whether in relation to the interpretation of this deed or any other document or statute or as to the administration of the trusts declared under this deed, without being liable to any Member or his or her Dependents in respect of any act done by in accordance with that opinion;
- (p) to insure and keep insured as it thinks fit any liability of the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers) or the liability of the Fund to indemnify and reimburse the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers);
- (q) to insure or re-insure any risk, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company or re-insurance company;
- (r) to provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;

13 Liability and indemnification of Trustee

13.1 Liability

The Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) is not liable for:

- (a) any act, omission or mistake in connection with the exercise of its powers, duties or discretions vested by this deed or with the proper performance of its duties under this deed;
- (b) any losses or expenses incurred by the Fund due to the insufficiency or deficiency of any security in or upon which any of the money of the Fund is invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities are deposited;
- (d) any loss suffered as a result of relying on any professional advice or assistance; or
- (e) any other loss, damage or misfortune whatever,

except where the Trustee or other relevant person fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or other relevant person is required to exercise, or incurs a monetary penalty in respect of an administrative penalty or a civil penalty order under the Superannuation Law.

13.2 Indemnity

- (a) Subject to clause 13.2(b), the Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) is indemnified and has, subject to the Superannuation Law, a lien on the Fund for its indemnity against all liabilities incurred by the Trustee or other relevant person through any act, omission or mistake in connection with the exercise of the powers, duties and discretions vested in them under this deed or in the proper performance of their duties under this Deed.
- (b) Where the Trustee or other relevant person fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or other relevant person is required to exercise, or incurs a monetary penalty in respect of an administrative penalty or a civil order under the Superannuation Law, the indemnity in clause 13.2(a) does not apply.

13.3 Limitation of liability clause

This clause 13 only operates to exempt a person from liability and provide an indemnity to the extent that the exemption from liability or provision of indemnity would not be limited by or inoperative under the Superannuation Law.

- (g) any other amounts as the Trustee determines and are permitted by the Superannuation Law.

16 Pension Account

16.1 Establishment

Where the Trustee determines to pay all or any of the Benefits to the Member as a Pension, the Trustee must establish a Pension Account in respect of the Member.

16.2 Amounts to be transferred

The Trustee must transfer to the Pension Account assets of the Fund or amounts as are determined in accordance with this deed which the Trustee believes are necessary in order to provide the Member's Benefit as a Pension.

16.3 Amounts to be credited

The Trustee may credit to the Pension Account the portion of the Earnings (if positive) as the Trustee determines in accordance with clause 17.4, and any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

16.4 Amounts to be debited

The Trustee may debit all amounts that are required or permitted by this deed and the Superannuation Law to be debited to the Pension Account, including:

- (a) Benefits to be debited to the Pension Account paid to Members or Beneficiaries;
- (b) the portion of the Earnings (if negative) that the Trustee determines in accordance with clause 17.4; and
- (c) any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

17 Income Account

17.1 Establishment

The Trustee must establish an Income Account for the Fund.

17.2 Amounts to be credited

The Trustee must credit the Income Account with amounts that are required by this deed and the Superannuation Law, including the Earnings (if positive) determined in accordance with clause 17.4 and any proceeds from Policies or Financial Assistance not credited to any other Account.

17.3 Amounts to be debited

The Trustee must debit the Income Account with all amounts that are required by this Deed and the Superannuation Law including:

- (a) any amounts required under clause 21(b);
- (b) any losses on sale of investments;

18.5 Adjustment of Member Account

The Trustee may make, in its discretion and in accordance with the Superannuation Law, adjustments to the credit of a Member Account to reflect the Fund Earning Rate applying at the date of payment.

19 Reserve Accounts

Subject to the Superannuation Law, the Trustee may establish and maintain one or more Reserve Accounts and operate Reserve Accounts for any purpose that it may specify from time to time, including for the purpose of separating:

- (a) assets funding a Pension from assets that are needed for solvency reasons as instructed by an Actuary or as otherwise determined by the Trustee;
- (b) assets funding a Pension into various classes to comply with the rules of the relevant Pension or to obtain favourable taxation treatment; or
- (c) some assets of the Fund from other assets to establish any other type of reserve account permitted by the Superannuation Law.

20 Specific investments

20.1 Recording of specific investments

Where the Trustee invests separately in respect of certain Members or Beneficiaries in accordance with clause 11.5, the Trustee must record on whose behalf the specific investments are made for the purposes of determining allocations to the Member Account.

20.2 Allocation of Earnings and costs for specific investments

The Member Account of the relevant Member or Beneficiary must be:

- (a) credited with any income and profit; and
- (b) debited with any costs, charges or Tax

in proportions applicable to any specific investment made under clause 20.1, in accordance with the Superannuation Law.

21 Valuation of Fund

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Superannuation Law requires, the Trustee must:

- (a) make a valuation of all of the assets of the Fund (including the value of any Policy held by the Fund);
- (b) transfer any surplus or deficiency in the valuation of assets, other than specific investments in accordance with clause 20.1, to the Income Account; and
- (c) ensure that the records and Accounts of the Fund reflect the valuation of each asset.

22.3 Information and documents for Tribunal

The Trustee must do all things necessary to comply with its obligations to the Tribunal under the *Superannuation (Resolution of Complaints) Act 1993* (Cth).

22.4 Directions of Statutory Authority

The Trustee must comply with any direction or requirement of the Statutory Authority or Tribunal in relation to the Fund including:

- (a) the acceptance of Contributions into the Fund;
- (b) the disposal of assets of the Fund;
- (c) the appointment of an investigator to the Fund; and
- (d) the conduct of an investigation into the Fund.

Part 9 - Membership of the Fund

25 Membership

25.1 Eligibility for Membership

- (a) The Trustee may admit any person who applies for membership in the Fund provided that his or her admission would not cause the Fund to breach the Superannuation Law.
- (b) If the Trustee accepts a person's application for Membership, the person will become a Member from the date and on the terms and conditions as the Trustee may, in its absolute discretion, determine.

25.2 Application for Membership

Each application for Membership is to be made by the relevant applicant in any form as the Trustee may from time to time approve.

25.3 Admission to Membership without application

The Trustee may, subject to Superannuation Law, admit a person as a Member even though he or she has not applied for membership in accordance with clauses 25.1 and 25.2.

25.4 Members and Beneficiaries to provide information

Each applicant for Membership and any Beneficiary must whenever requested by the Trustee supply all information that the Trustee deems necessary for the purposes of any investigations in connection with the Fund.

25.5 Trustee may amend or alter Benefits

Where the Trustee is or becomes aware that the information provided under clause 25.4 is incorrect or misleading or that any relevant information has been deliberately withheld, the Trustee may, in its absolute discretion, alter or amend the Benefits to amounts which would have been determined had full and accurate information been supplied.

25.6 Member bound by deed

Each Member is deemed to have consented to be bound by the provisions of this deed by virtue of his or her application for Membership.

25.7 Member to be medically examined

For the purposes of effecting, increasing or otherwise varying any Policy or Annuity, the Trustee may require a Member, or any person who has applied to become a Member, to take any steps that are required for those purposes to the satisfaction of the Insurer, including:

- (a) being medically examined;
- (b) submitting other evidence of health; or
- (c) providing proof of age.

27 Ceasing to be a Member

A Member ceases to be a Member of the Fund on the first of the following to occur:

- (a) the Trustee determines that the Member has been paid all of his or her Benefit from the Fund;
- (b) where the Member dies, the Trustee determines that the deceased Member's Benefit has been paid to the deceased Member's dependants or Legal Personal Representative;
- (c) the Trustee determines that the Member's continued membership would cause the Fund to cease complying with the Superannuation Law; or
- (d) the Trustee determines, on reasonable grounds, that the Member should cease to be a Member.

- (b) acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- (c) the Statutory Authority directs the Trustee not to accept any Contributions or any Shortfall Component in accordance with the Superannuation Law.

29.5 Ineligible Contributions

If any Contribution or Shortfall Component is accepted by the Fund in breach of the provisions of this Part 10, the Trustee must refund such Contribution or Shortfall Component as required by the Superannuation Law, less any:

- (a) Tax payable, or amounts which the Member has validly authorised the Trustee to pay, to the Statutory Authority;
- (b) charges which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contribution or Shortfall Components; and
- (c) reasonable administration charges,

and the Trustee must debit the Member's Account accordingly.

29.6 Contributions Splitting

- (a) This clause 29.6 does not apply to a Benefit:
 - (i) that is subject to a Payment Split; or
 - (ii) on which a Payment Flag is operating.
- (b) Subject to the Superannuation Law, an Applicant may, in a Financial Year, apply to the Trustee in writing in such form (if any) as the Trustee may require to roll over, transfer out of the Fund or Allot an amount of the Applicant's Benefits, for the benefit of the Spouse of the Applicant, that is equal to an amount of the Splittable Contributions made by, for, or on behalf of the Applicant in:
 - (i) the previous Financial Year; or
 - (ii) the Financial Year in which the application is made provided that the entire Benefit of the Applicant is to be rolled over or transferred in that Financial Year.
- (c) Subject to the SIS Regulations, an application under clause 29.6(b) is invalid:
 - (i) if in the Financial Year in which it is made:
 - (A) the Applicant has already made an application in respect of the relevant Financial Year; and
 - (B) the Trustee is:
 - (1) considering the application; or
 - (2) has given effect to the application; or
 - (ii) if the amount of any Benefits that the application relates to exceeds the Maximum Splittable Amount; or
 - (iii) subject to clause 29.6(d), if the Spouse of the Applicant is aged:

that would be payable if the Applicant withdrew his or her entire Benefits at the time the Trustee gave effect to the application.

29.7 Fund capped Contributions

- (a) Despite any other provision of this deed, the Trustee, having made all reasonable inquiries, must not accept any Contributions in a financial year in respect of a Member (excluding Employer Contributions required under Superannuation Law) that would cause the Member to exceed his or her Contributions Caps.
- (b) If a Trustee receives an amount to which clause 29.7(a) applies, the Trustee must return the amount to the person that paid the amount within 30 days of becoming aware that the amount is an amount to which clause 29.7(a) applies, unless a valid notice under section 290-170 of the Taxation Act is received by the Trustee within 30 days of that amount being received by the Trustee.
- (c) Any increase or decrease in the value of the amount to be returned by the Trustee under clause 29.7(b) as determined in the Trustee's sole discretion may be taken into account by the Trustee in determining the amount that must be returned.

30 Transfers from and to Approved Benefit Arrangements

30.1 Transfers from Approved Benefit Arrangements

Subject to clause 30.2, the Trustee may make any arrangements as it thinks fit with any Member or the trustee of any Approved Benefit Arrangement to transfer any assets to the Fund and may also make arrangements about any other matter which is incidental to, or consequent on, the admission of that Member to the Membership of the Fund.

30.2 Payment of Benefits deferred

If the Approved Benefit Arrangement from which assets are to be transferred is one in which the payment of Benefits is required by Superannuation Law to be deferred until the attainment of a particular age or until the occurrence of a specified event, then the Member is not entitled to receive from the Fund any part of the Benefits that is attributable to those assets at a date earlier than the date on which that Member would have been entitled to receive those Benefits from the transferring Approved Benefit Arrangement.

30.3 Transfers to Approved Benefit Arrangements

The Trustee may:

- (a) if requested by the Member, in lieu of part or all of any other Benefit that the Member may be entitled to under this deed, transfer to the trustee of another Approved Benefit Arrangement a portion of the assets of the Fund that the Trustee, in its discretion, determines does not exceed the amount that the Trustee considers equivalent in value to the Benefit being provided to the Member to the extent that it has accrued;
- (b) transfer a Benefit which has become payable to a Member to an Approved Benefit Arrangement selected by the Trustee where a Member has not provided instructions to the Trustee on the payment or transfer of the Benefit within a reasonable period of the Benefit first becoming payable;
- (c) transfer some or all of any amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; and

Part 11 - Benefits

31 Types of Benefits

31.1 Benefit Entitlement

Where a Member becomes entitled to a Benefit in accordance with this deed and the Superannuation Law and there are no cashing restrictions that apply to that Benefit under Superannuation Law, the Member may elect in writing to the Trustee to be paid the Benefit in one or more of the forms permitted under the Superannuation Law including:

- (a) one or more lump sums;
- (b) one or more Income Streams; or
- (c) any other form of Benefit permissible under the Superannuation Law,

but an election is not binding on the Trustee.

31.2 Election

Unless the Trustee otherwise agrees, the election provided by the Member for the purposes of clause 31.1 must:

- (a) be in writing;
- (b) state the amount to be paid;
- (c) state the extent to which the amount is to be paid as any one or more types of Benefit permitted to be paid by this deed and the Superannuation Law; and
- (d) be provided to the Trustee before the Benefit commences to be paid to the Member.

31.3 Benefit Entitlement - with cashing restrictions

Subject to the Superannuation Law, where a Member becomes entitled to a Benefit in accordance with clauses 36 or 37, and there are cashing restrictions that apply to that Benefit under the Superannuation Law, the Trustee must pay that Benefit in accordance with the applicable cashing restrictions.

31.4 Transfer of Policy as Benefit

Where a Member or a Beneficiary is entitled to be paid a Benefit and that Benefit includes any interest in a Policy of any kind on the life of the Member or Beneficiary, the Trustee may transfer the relevant Policy to the Member or Beneficiary or to the Dependants.

31.5 Transfer of assets as Benefit

The Trustee may, with the consent of a Member or Beneficiary to whom a Benefit is payable, transfer assets of the Fund of an equivalent value to that Member or Beneficiary in lieu of paying the whole or any part of the amount otherwise payable under the provisions of this deed.

- (e) if the Member's Gainful Employment with an employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member is terminated;
- (f) if the Member suffers Severe Financial Hardship;
- (g) if the Member attains age 65;
- (h) the Trustee determines that some or all of the Member's Benefit may be released on Compassionate Grounds;
- (i) if the Member attains Preservation Age;
- (j) if the Member has a Terminal Medical Condition; or
- (k) any other condition of release permitted by the Superannuation Law.

38 Pension Benefit

The following provisions apply to the payment of a Pension:

- (a) where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee may, subject to the Superannuation Law, provide a Benefit to the Member as any one or more types of Pension permitted by the Superannuation Law;
- (b) subject to the Superannuation Law, where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee must provide that Pension in accordance with the governing rules of the Fund (including this deed), trustee resolutions or any pension agreement;
- (c) all relevant provisions prescribed by the Superannuation Law with which the Fund or the Trustee must comply in respect of a Pension shall apply to the Pension including any condition, standard or requirement of the Superannuation Law which is required to be satisfied in order for the Pension to qualify as a pension (or as a particular type of pension) under the Superannuation Law;
- (d) where an instalment of Pension is payable in respect of a Member and the amount standing to the credit of the Member's relevant Pension Account is less than the instalment payable, the lesser amount must be paid and the Trustee's liability in respect of the payment of the Pension is discharged; and
- (e) despite any other provisions of this clause 38, where a Benefit is payable as a Pension, the Trustee may at its discretion apply an amount representing the capital value of that Benefit in the purchase of an Annuity in its name and may arrange for payments to be made directly to the Member but may assign the Annuity to the Member if requested to do so and if permitted to do so under the Superannuation Law.
- (f) A Pensioner may, at any time whether before or after the commencement of a Pension, nominate a Reversionary Beneficiary to continue receiving the Pension following the death of the Pensioner.
- (g) Despite any other clause of this deed but subject to clause 45(d) and the Superannuation Law, where a Member requests that the Trustee continues to pay a Pension to a Reversionary Beneficiary following the Member's death, the Trustee must act in accordance with the request and the Pension will automatically continue to be paid to the nominated Reversionary Beneficiary following the death of the Member provided the payment is permitted by the Superannuation Law.

42 Forfeited Benefits

42.1 Forfeiture

Benefits payable out of the Fund must, subject to the Superannuation Law, be forfeited if:

- (a) without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge all or any part of those Benefits; or
- (b) required under the Bankruptcy Act.

42.2 Application of forfeited money

The whole of the Benefits forfeited by a person under clause 42.1 must be applied by the Trustee for the benefit of a Member and his or her Dependants or for any one or more of them as the Trustee, in its absolute discretion, determines.

42.3 Forfeiture Account

The Trustee has power at any time to establish a Forfeiture Account of the Fund and must transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the reasons above or otherwise forfeited in accordance with this deed or the Bankruptcy Act.

42.4 Treatment of money in Forfeiture Account

While any money is held in the Forfeiture Account, that money does not form part of any other Account and any income derived by the Fund in respect of money held in the Forfeiture Account must be credited to the Forfeiture Account.

42.5 Unclaimed Benefits Account

The Trustee is, subject to the Superannuation Law, entitled to treat as unclaimed and to forfeit and transfer to the Unclaimed Benefits Account, any money in the Fund standing to the credit of any Member whose whereabouts are unknown to the Trustee and if, after making such enquiries as the Trustee deems appropriate, the Trustee is unable to positively trace any person entitled to the benefit of that money.

43 Death Benefit Nominations

43.1 Non Binding Death Benefit Nomination

A Member may at any time make a Non Binding Death Benefit Nomination designating one or more Dependants or Legal Personal Representatives as a Nominated Beneficiary of any Benefit payable by the Trustee on or following the death of the Member, provided that:

- (a) a Member wishing to designate a Nominated Beneficiary may do so by providing a written notice to the Trustee in any form as approved by the Trustee from time to time; and
- (b) subject to the Superannuation Law, a Non Binding Death Benefit Nomination is not binding on the Trustee.

43.2 Binding Death Benefit Nomination

- (a) A Member wishing to make a Binding Death Benefit Nomination must make that Binding Death Benefit Nomination in a form that:

44.3 Payment if Binding Death Benefit Nomination

Subject to clauses 45 and 38(g), if a Member made a valid Binding Death Benefit Nomination, any Benefit payable on or following the death of the Member must be paid by the Trustee in accordance with that Binding Death Benefit Nomination.

44.4 Payment if Binding Death Benefit Nomination is invalid or ineffective

If a Member had made a Binding Death Benefit Nomination that is invalid or ineffective at the date of death, the Binding Death Benefit Nomination will be treated as a Non Binding Death Benefit Nomination.

44.5 Payment if no Binding Death Benefit Nomination or Reversionary Beneficiary nomination

Subject to clauses 44.3 and 38(g) and the Superannuation Law, on or following the death of a Member, if that Member has not made a Binding Death Benefit Nomination or a Reversionary Beneficiary nomination pursuant to clause 38(f), or they have made such a Binding Death Benefit Nomination or a Reversionary Beneficiary nomination but such nomination does not deal with all of the deceased Member's benefits, any Benefit (or remaining Benefit) payable in respect of that Member may be paid or applied in accordance with clause 44.6 to:

- (a) one or more of the Nominated Beneficiaries (if any) designated in the most recent Non Binding Death Benefit Nomination made by that Member (if any) in accordance with clause 44.2;
- (b) other Dependants of that Member and in such proportions as the Trustee, in its absolute discretion, determines; or
- (c) one or more of the Legal Personal Representatives of that Member.

44.6 Forms of payment

Subject to clauses 44.3 and 38(g) and the Superannuation Law, payment of a Member's Benefit under clauses 44.2 or 44.5 may be paid or applied, in the manner and on the terms that the Trustee, in its absolute discretion, determines, including by way of:

- (a) one or more Annuities;
- (b) one or more Income Streams;
- (c) one or more Superannuation Lump Sums; or
- (d) any combination of such methods of payment.

45 Commutation of Income Stream

- (a) Despite any other clause of this deed but subject to paragraph (d) and the Superannuation Law, the Trustee may, and must where required by Superannuation Law, discharge its liability to a Member, Dependant or Beneficiary in respect of a Pension by commuting the whole or any part of the Pension payable from the Fund to the Member, Dependant or Beneficiary as the case may be, and applying the amount in accordance with paragraph (b), provided that the commutation would not cause the Trustee or the Fund to breach the Superannuation Law.
- (b) Subject to the Superannuation Law, the Trustee may apply the amount of the commuted Pension by either:

Part 12 - Family Law

47 Information to Members and Non Member Spouses

If a Member's Benefit or Benefit Entitlement becomes subject to a Payment Split, the Trustee must provide the Member and the Non Member Spouse with all notices and information, and in such form as required under the Superannuation Law.

48 Trustee may create new interest for Non Member Spouse

- (a) The Trustee may admit a Non Member Spouse in respect of a Payment Split as a Member:
 - (i) if the Non Member Spouse provides a written request as required by the Superannuation Law to the Trustee in a form approved by the Trustee; or
 - (ii) on its own initiative in the circumstances permitted by the Superannuation Law.
- (b) If the Trustee admits a Non Member Spouse as a Member under this clause 48, or the Non Member Spouse is already a Member of the Fund, the Trustee must reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.

49 Non Member Spouse may request transfer of interest

If the Non Member Spouse in respect of a Payment Split is not admitted as a Member under clause 48, the Trustee must:

- (a) either:
 - (i) transfer or roll over the entitlement of the Non Member Spouse to an Approved Benefit Arrangement; or
 - (ii) pay the entitlement of the Non Member Spouse to the Non Member Spouse if permitted or required to do so by the Superannuation Law; and
- (b) reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.

50 Family Law fees

- (a) In addition to its other powers under this deed, the Trustee may charge reasonable fees in respect of any action taken by the Trustee which is permitted or required by Family Law and for which the Trustee is entitled to charge fees.
- (b) The Trustee is entitled to recoup those fees in accordance with the Superannuation Law from:
 - (i) a Member's Benefit Entitlement; or
 - (ii) the entitlements of the Non Member Spouse.

Part 13 - Termination of Trust

52 Termination

52.1 Events of termination

The trusts declared under this deed will cease and terminate and the Fund must be wound up in accordance with this Part 13 on the occurrence of any of the following events:

- (a) if there are no Members in the Fund and the Trustee resolves to terminate the Fund;
- (b) all Members agree to terminate the Fund;
- (c) the Trustee decides that it is not reasonable to continue to operate the Fund; or
- (d) the Fund is required to be terminated to comply with the Superannuation Law.

52.2 Notice to Members

On the trusts ceasing and terminating due to an event set out in clause 52.1, the Trustee must give written notice to each Employer and to each Member, if any, that the Fund will be wound up on the Closing Date, which will be a date no later than any date on which the Fund is required to be wound up under clause 52.1(d).

52.3 No further Contributions

As from the Closing Date:

- (a) no Employer or Member may make any further Contributions, other than arrears of Contributions due to the Closing Date; and
- (b) arrears of Contributions, if any, must be called in immediately.

52.4 Order of payment of Benefits

On the trusts ceasing and terminating due to an event set out in clause 52.1, subject to clause 52.8, the Trustee must make provision out of the Fund, after meeting expenses and liabilities, as is necessary to provide for the payment of the following Benefits in the following order of priority:

- (a) payments which on or before the Closing Date had become payable to retired Members or Dependants;
- (b) payments to each Member who is still in employment and has attained his or her Normal Retirement Age equal to the Member's Accumulation Account;
- (c) payment to each Member who is still in the employment of the Employer and has not attained his or her Normal Retirement Age equal to his or her Benefit had he or she resigned immediately prior to the Closing Date; and
- (d) payment to each Member who is still in the employment of the Employer of such amount of the assets of the Fund then remaining as the Trustee considers equitable after taking into account payments determined under clauses 52.4(b) and 52.4(c) as can be paid without being regarded as excessive amounts under the Superannuation Law.

Part 14 - Amendment

53 Amendment of this deed

53.1 Method of amendment

- (a) Subject to clauses 53.1(b) and 53.1(c) and the Superannuation Law, the Trustee may at any time by resolution or by instrument in writing amend, alter, vary, modify or delete with immediate, prospective or, to the extent that the law allows, retrospective effect from time to time, any or all of the provisions of this deed.
- (b) No reduction of the accrued Benefit of a Member can be made without the written consent of the particular Member.
- (c) No amendment may be made under clause 53.1(a) which would cause the trusts contained in this deed to fail by reason of the application of the rule against perpetuities.
- (d) No amendment may be made under clause 53.1(a) that would allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the governing rules provide and will continue to provide after the amendment that the Fund has as its sole or primary purpose, the provision of old age pensions.

53.2 Notification of Members of Amendment

As soon as practicable after this deed has been amended under clause 53.1, the Trustee must give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlements of the Member.