

# Deed of Replacement of Governing Rules (Trust Deed)

## BROWN INVESTMENT SUPERANNUATION FUND

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**Brown SMSF Holdings Pty Ltd (ACN 161 671 647)**  
(Trustee)

**Loredana Maria Brown**  
(Members)

**Peter Thomas Brown**

**Pro Forma Precedent  
Prepared by**

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**Date:** This Deed is made on the Date of this Deed specified in **Item 1** of the Schedule (**Date of this Deed**) between

**Parties:**

The person/s named and identified as the Trustee/s in **Item 2** of the Schedule (**Trustee**); and

The person/s named and identified as the Member/s in **Item 3** of the Schedule (**Members**); and

If applicable, the person/s (if any) named and identified as the Principal in **Item 4** of the Schedule (**Principal**)

**Introduction:**

- A. The indefinitely continuing superannuation fund known by the name specified in **Item 5** of the Schedule (**Fund**) is a self managed superannuation fund that is regulated under the *Superannuation Industry (Supervision) Act 1993 (Cth)* (**SIS Act**).
- B. The Fund was established on the date specified in **Item 6** of the Schedule (**Commencement Date of the Fund**).
- C. On the Date of this Deed, the Fund is governed by a trust deed or governing rules specified in **Item 7** of the Schedule (**Existing Trust Deed**).
- D. On the Date of this Deed:
  - (i) the Trustee is the trustee of the Fund;
  - (ii) the Members are the members of the Fund; and
  - (iii) the Principal (if any) is named in the Existing Trust Deed as a employer-sponsor, founder and/or other sponsor of the Fund.
- E. The Trustee wishes to update the governing rules of the Fund to ensure that they are consistent with the current relevant provisions of the SIS Act and developments in superannuation law relating to self managed superannuation funds since the date of the Existing Trust Deed.
- F. The Existing Trust Deed contains a clause specified in **Item 8** of the Schedule (**Amendment Clause**) that allows the Existing Trust Deed to be amended and/or replaced.
- G. In accordance with the Amendment Clause, the Trustee is executing this Deed so as to repeal and replace the Existing Trust Deed and adopt a new trust deed in the form of the Annexure to this Deed (**New Trust Deed**) to operate as the new governing rules of the Fund effective from the date specified in **Item 9** of the Schedule (**Effective Date**).
- H. The Trustee considers that the replacement of the Existing Trust Deed by adoption of the New Trust Deed effected by this Deed will not adversely alter any Member's right or claim to accrued benefits in the Fund or the amount of those accrued benefits, and therefore the adoption of the New Trust Deed does not require the consent of any Member of the Fund. However, the Members wish to record their consent to the adoption of the New Trust Deed by their execution of this Deed.
- I. The Principal (if any) also executes this Deed to record the Principal's consent to the adoption of the New Trust Deed.

## **This Deed witnesses:**

### **1. Replacement of Existing Trust Deed**

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#### **1.1 Amendment**

In accordance with the Amendment Clause, the governing rules of the Fund are amended by repealing and replacing all of the provisions of the Existing Trust Deed inclusive and adopting the new provisions of the New Trust Deed with effect from the Effective Date. On and from the Effective Date, the New Trust Deed will operate as the governing rules of the Fund.

#### **1.2 Members Consent**

The Members consent to the adoption of the New Trust Deed.

#### **1.3 Principal Consent**

The Principal consents to the adoption of the New Trust Deed including, if applicable, the removal of the role of any Founder that may have existed under the Existing Trust Deed.

#### **1.4 No Resettlement**

For the avoidance of doubt, the Trustee, the Principal and the Members intend and agree that nothing in the New Trust Deed, or in the Trustee's act of replacing the Existing Trust Deed with the New Trust Deed by this Deed, shall operate as or establish, or be deemed to operate as or establish, a new superannuation fund or trust or a resettlement of the Fund.

### **2. Governing Law and Jurisdiction**

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This Deed is governed by the laws of the State or Territory identified in **Item 10** of the Schedule (**Governing State**) and the parties submit to the jurisdiction of the Courts of that Governing State and the Courts of the Commonwealth of Australia.

### **3. Definitions and Interpretation**

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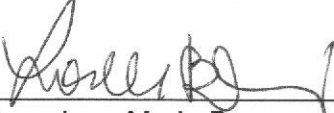
- (a) In this Deed, an expression that appears in its context to define a fact, person or thing immediately preceding that expression, will mean that fact, person or thing.
- (b) In this Deed, the singular includes the plural and vice versa.
- (c) Notwithstanding anything to the contrary in the Existing Trust Deed, to the extent that there is any inconsistency between this Deed and any part of the Existing Trust Deed, this Deed shall take priority and shall prevail over that inconsistent part of the Existing Trust Deed, and this Deed shall be interpreted accordingly.
- (d) A reference to a Schedule or Annexure means the Schedule or Annexure to this Deed.


Executed by the parties as a Trust Deed on the execution date: 28/10/2015

**Trustee**

Brown SMSF Holdings Pty Ltd **ACN 161 671 647**

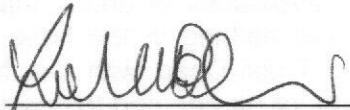
in accordance with Section 127(1) of the Corporations Act 2001:


  
\_\_\_\_\_  
Loredana Maria Brown  
Director

  
\_\_\_\_\_  
Peter Thomas Brown  
Director


**Members**


Signed sealed and delivered by  
**Loredana Maria Brown**  
in the presence of:

  
\_\_\_\_\_  
28/10/2015

  
\_\_\_\_\_  
Witness  
**MIGUEL CARLOS RODRIGUES**  
Full Name of Witness

Signed sealed and delivered by  
**Peter Thomas Brown**  
in the presence of:

  
\_\_\_\_\_  
28/10/2015

  
\_\_\_\_\_  
Witness  
**MIGUEL CARLOS RODRIGUES**  
Full Name of Witness



## Schedule 1

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- Item 1 Date of this Deed:** 28<sup>th</sup> October 2015,
- Item 2 Trustee:** Brown SMSF Holdings Pty Ltd ACN 161 671 647  
11 Station Street, CONCORD NSW 2137
- Item 3 Members:** Loredana Maria Brown  
11 Station Street, CONCORD NSW 2137  
Peter Thomas Brown  
11 Station Street, CONCORD NSW 2137
- Item 4 Principal (if applicable):  
(Principal Employer, Founder  
etc)**
- Item 5 Name of the Fund:** BROWN INVESTMENT SUPERANNUATION FUND
- Item 6 Commencement Date of the  
Fund:** 22 June 2012
- Item 7 Existing Trust Deed:** 22 June 2010
- Item 8 Amendment Clause:** 8
- Item 9 Effective Date:**
- Item 10 Governing State:** New South Wales

## Annexure - New Trust Deed

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As annexed

## Trust Deed

# BROWN INVESTMENT SUPERANNUATION FUND

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**THIS TRUST DEED** is made on the Date of this Deed specified in the Schedule.

**TRUSTEE:**

The person named as the Trustee in the Schedule  
("the Trustee")

**RECITALS:**

- A. This Deed contains the governing rules of an indefinitely continuing superannuation fund ("the Fund") known by the name specified in the Schedule.
- B. This Deed requires that:
  - (i) the Fund have the sole or primary purpose of providing Old-Age Pensions and may also have the ancillary purpose of providing other Benefits described in this Deed; or
  - (ii) the Fund have a Corporate Trustee as the Trustee of the Fund.
- C. The Trustee has consented to act as the Trustee of the Fund.
- D. This Deed reflects the intention of the Trustee that the Fund operate as an Australian complying regulated self managed superannuation fund and comply with the Act in order that the Fund is eligible for Concessional Taxation Treatment.

**THIS DEED WITNESSES:**

**1. DEFINITIONS**

**1.1 Defined Terms in this Deed**

In this Deed, unless the context otherwise requires:

**"Account"** means any account established and maintained by the Trustee under this Deed for administering the Fund on behalf of the Members, and includes any Accumulation Account, Reserve Account, Income Account, or Pension Account, as described in this Deed.

**"Account-Based Pension"** means a pension that meets the definition and standards of an account-based pension prescribed by the SIS Regulations, and specifically Regulations 1.03(1) and 1.06(9A).

**"Act"** means:

- (a) Co-contribution Act;
- (b) Corporations Act;
- (c) Family Law Act;
- (d) Income Tax Act;
- (e) Privacy Act;
- (f) RSA Act;

**"Beneficiary Nomination"** means a Three Year Binding Nomination; a Non-lapsing Binding Nomination; a Beneficiary Statement of Wishes; or any other form of written nomination given by a Member to the Trustee stating how the Member directs or wishes the Trustee to pay all or part of the Member's Benefit on the Member's death to one or more nominated recipients and, subject to the requirements of this Deed, may include a direction by the Member to the Trustee to pay or apply all or part of the Death Benefit:

- (a) as to any specific amounts or proportions of the Death Benefit; or
- (b) as to the order of priority between or to nominated recipients; or
- (c) as to any requirement for the recipients to have survived the Member by a specified number of days; or
- (d) as to any specific Fund assets by transfer in-specie subject to clause 58; or
- (e) as to any type of Pension or Superannuation Lump Sum; or
- (f) as to any combination of (a) to (e) inclusive.

**"Beneficiary Statement of Wishes"** means any written nomination howsoever called given by a Member to the Trustee stating how the Member wishes the Trustee to pay all or part of the Member's Benefit on the Member's death.

**"Benefit"** means any amount which is, or may become payable, by the Trustee to a Beneficiary as a benefit from the Fund under this Deed, subject to the Trustee being satisfied of the Beneficiary's entitlement to receive the benefit under the Act.

**"Child Contribution"** means a payment to the Fund made as a contribution on behalf of a Member by a parent, grandparent or other relative of that Member, and permitted by the Act.

**"Co-contribution Act"** means the Superannuation (Government Co-contribution for Low Income Earners) Act 2003.

**"Commencement Date"** means the date of commencement of the Fund specified in the Schedule.

**"Concessional Contributions Cap"** has the meaning given by section 292-20 of the Income Tax Act.

**"Concessional Taxation Treatment"** means any and all of the concessions that are available under the Income Tax Act relating to superannuation and in respect of:

- (a) Contributions accepted by the Fund;
- (b) income and earnings derived from the investments of the Fund;
- (c) Benefits paid out of the Fund; and
- (d) any other matter concerning the Fund, Trustee or Beneficiaries as governed under this Deed.

**"Contribution"** means a gross payment to the Fund (prior to deduction of any Taxation payable in respect of the payment) made as a contribution by or on behalf of a Member in accordance with this Deed or payment that is otherwise permitted as, or deemed to

**"Fixed Term Pension"** means a pension payable for a fixed term based on the life expectancy of the primary Pensioner or his or her Spouse that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(7) and 1.07B.

**"Flexi Pension"** means a pension (also known as a "commutable lifetime pension") that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(6) and 1.07B.

**"Gainfully Employed"** means in respect of a person, employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment, and includes:

- (a) a person who is an Employee;
- (b) if the person has reached age 65, the person has been so employed or self-employed on at least a part time basis during the Financial Year, by having worked at least 40 hours in a period of not more than 30 consecutive days in that Financial Year; or
- (c) any other meaning of "Gainfully Employed" under the Act.

**"Government Contribution"** means a co-contribution under the Co-contribution Act or any other superannuation contribution made by the Commonwealth of Australia on behalf of a Member.

**"Income Tax Act"** means the Income Tax Assessment Act 1936 (Cth) and Income Tax Assessment Act 1997 (Cth).

**"Individual Trustee"** means a Trustee who is an individual, and if more than one, each of them.

**"Insurer"** means any insurer or assurer selected by the Trustee to obtain a Policy of Insurance under this Deed.

**"Investment Strategy"** means an investment strategy as required by the Act.

**"Legal Personal Representative"** means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

**"Lifetime Pension"** means a pension payable for the lifetime of the primary Pensioner that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(2) and 1.07B.

**"Market-Linked Pension"** means a market-linked pension (also known as a "Term Allocated Pension" or "Growth Pension") that meets the definition and standards prescribed by the SIS Regulations, and specifically Regulations 1.06(8) and 1.07C.

**"Member"** means a person admitted to membership of the Fund under this Deed and **"Membership"** means membership of the Fund.

**"Member Contribution"** means a gross payment to the Fund made by a Member as a contribution.

**"Nominated Beneficiary"** means a person nominated in writing by a Member as the desired recipient of a Benefit that is or becomes payable following the death of that

**"Policy of Insurance"** means any policy of insurance or assurance obtained by the Trustee on behalf of a Member for the life, endowment, term, disablement, trauma, accident or sickness of that Member or any other Member, including an individual policy, a group policy, and a policy under which the proceeds will be payable to the Trustee.

**"Prescribed Event"** means a condition of release or other event being satisfied in relation to a Member that entitles the Trustee to pay all or part of a Benefit to or in respect of the Member without contravening the Act.

**"Privacy Act"** means the Privacy Act 1988 (Cth).

**"Qualified Adviser"** means an accountant, auditor, barrister, solicitor, actuary, medical practitioner or other professional person who the Trustee considers is capable of giving advice in relation to any matter that concerns the Fund or this Deed.

**"Responsible Authority"** means the Australian Prudential Regulation Authority ("APRA"), Australian Securities and Investment Commission ("ASIC"), the Australian Taxation Office ("ATO"), the Commissioner of Taxation and any other government or statutory authority or office which is responsible for administering or regulating all or any part of the Act.

**"Responsible Officer"** means a director, secretary or executive officer of a Corporate Trustee.

**"Rollover Payment"** means any payment of a Member's Benefit rolled over by the Trustee within the Fund or to any other Approved Superannuation Entity or payment rolled over to the Trustee on behalf of a Member from any Approved Superannuation Entity.

**"RSA Act"** means the Retirement Savings Accounts Act 1997 (Cth).

**"SGA Act"** means the Superannuation Guarantee (Administration) Act 1992 (Cth).

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

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

**Social Security Act** means the *Social Security Act 1991* (Cth).

**"Spouse"** of a person means:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the Acts Interpretation Act 1901 (Cth) as a kind of relationship prescribed for the purposes of that section; or
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple; or
- (c) any other person who is recognised by the Act as a spouse of the first-mentioned person.

**"Spouse Contribution"** means a gross payment made to the Fund as an eligible spouse contribution on behalf of a Member by a Spouse of that Member as permitted by the Act.



## **2. INTERPRETATION**

In this Deed, unless the context otherwise requires:

- (a) Headings and underlinings are for convenience only and do not affect the interpretation of this Deed;
- (b) A reference to the singular includes the plural and vice versa;
- (c) A reference to a gender includes any gender;
- (d) A reference to a natural person includes any company, partnership, joint venture, association, trust or other body corporate;
- (e) A reference to any thing includes a part of that thing;
- (f) A reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed;
- (g) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) A reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (i) A reference to a party to any document includes that party's successors and permitted assigns;
- (j) A covenant or agreement on the part of two or more persons binds them jointly and individually;
- (k) A reference to "\$" or "Dollars" means the lawful currency of the Commonwealth of Australia.

## **3. FUND IS SUBJECT TO REQUIREMENTS OF THE ACT**

### **3.1 Deemed Inclusion of Relevant Act Provisions**

This Deed must be read and construed as if all relevant requirements of the Act (including any relevant standards prescribed in the Act) with which the Fund or the Trustee must comply and all relevant discretions, powers, and authority conferred by the Act on the Trustee under which the Trustee may act, in order for the Fund:

- (a) to obtain and maintain the status of an Australian complying regulated self managed superannuation fund; and
- (b) to qualify for Concessional Taxation Treatment or any other relevant benefit or concession; and
- (c) to ensure that neither the Fund nor the Trustee becomes liable for any penalty or obligation for which they would not otherwise be liable;

are deemed to be included in this Deed.



- (g) any other monies, property or investments which are or become held by or on account of the Trustee on the trusts of this Deed.

## **7. ELECTION TO BE AUSTRALIAN COMPLYING REGULATED SELF MANAGED SUPERANNUATION FUND**

### **7.1 Trustee must give Notice of Election**

The Trustee must, as soon as practicable after the Commencement Date (and within the prescribed period required by the Act), give to the relevant Responsible Authority a written notice signed by the Trustee, and in the form prescribed by the Act, irrevocably electing that the Act is to apply to the Fund.

### **7.2 Pension Fund and/or Corporate Trustee**

At all times the Fund must have:

- (a) the sole or primary purpose of providing Old-Age Pensions (notwithstanding that the Fund may also provide other ancillary Benefits as specified in this Deed); or
- (b) a Corporate Trustee as the Trustee of the Fund.

### **7.3 No Amendment to Change Purpose**

Notwithstanding any other provision in this Deed to the contrary, the Trustee must not make or allow to be made any amendment to this Deed which would have the effect, whether expressly or by implication, that the Fund no longer has or will not continue to have:

- (a) the sole or primary purpose of providing Old-Age Pensions; or
- (b) a Corporate Trustee.

### **7.4 Fund to be "Australian Complying Regulated Self Managed Superannuation Fund"**

- (a) The Trustee intends that the Fund will maintain, and operate in a manner that satisfies, each of the elements of an Australian complying regulated self managed superannuation fund as defined in this Deed.
- (b) The Trustee must procure and ensure that any relevant requirements of the Act for an Australian complying regulated self managed superannuation fund are satisfied and complied with, including any requirement as to:
  - (i) the composition or structure of the Trustee, the Members or the relationship between them;
  - (ii) the acceptance of Contributions by or on behalf of Members; and
  - (iii) the ordinary location of the management and control of the Fund.

An Individual Trustee or Corporate Trustee or any Director of any Corporate Trustee must do all things necessary to implement and act in accordance with a notice of removal that it or he receives under this clause.

#### 8.4 **Cessation from Office of Individual Trustee or Responsible Officer of Corporate Trustee**

A person ceases to hold the office of an Individual Trustee or to hold the office of Responsible Officer of a Corporate Trustee:

- (a) upon the resignation of that person by notice in writing given to all other Individual Trustees or Directors of a Corporate Trustee, as the case may be;
- (b) upon the removal of that person under clause 8.3 by notice in writing given to that person;
- (c) upon that person becoming disqualified within the meaning of the Act;
- (d) upon that person being replaced by his attorney holding an enduring power of attorney granted by that person, subject to clause 8.10
- (e) upon the person suffering a legal disability, subject to clause 8.11;
- (f) upon the death of that person, subject to clause 8.12;
- (g) upon that person committing an act of bankruptcy or being declared a bankrupt or entering into any arrangement or composition with that person's creditors or becoming an insolvent under administration under or pursuant to the Bankruptcy Act 1966 (Cth) or any other law of the Commonwealth of Australia relating to insolvency;
- (h) upon that person being convicted of a criminal offence in respect of dishonest conduct; or
- (i) where a civil penalty order as defined by the Act is made in relation to the person.

#### 8.5 **Cessation from Office of Corporate Trustee**

A company ceases to hold the office of a Corporate Trustee:

- (a) upon the resignation of the company as Corporate Trustee by notice in writing given to the Members;
- (b) upon the removal of that company as Corporate Trustee under clause 8.3 by notice in writing given to the company;
- (c) upon the company being disqualified from holding office as Corporate Trustee within the meaning of the Act;
- (d) upon the appointment of a receiver, receiver and manager, official manager, administrator, agent for a mortgagee, provisional liquidator or liquidator in respect of its property or the approval by a court of a scheme of arrangement providing for its dissolution, or it entering into any other form of insolvency administration; or

#### **8.11 Legal Personal Representative of Member with a Legal Disability**

- (a) If a Member is under a legal disability, the Legal Personal Representative of that Member may be appointed, and on written request by that Legal Personal Representative to the Trustee, must be appointed, to hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be, in place of that Member during the period of the Member's legal disability. At the end of that period, a Legal Personal Representative so appointed will cease to hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be.
- (b) If a Member is under a legal disability because of age, and does not have a Legal Personal Representative, a parent or guardian of that Member may be appointed and hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be, in place of that Member during the period of the Member's legal disability because of age. At the end of that period, the parent or guardian so appointed will cease to hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be.
- (c) If the Member is the sole Director and sole shareholder of a Corporate Trustee, and the Member cannot manage the Corporate Trustee because of the Member's mental incapacity, the Legal Personal Representative of the Member may self-appoint the Legal Personal Representative to be a Director of the Corporate Trustee in accordance with this clause 8.11 and section 201F(2) of the Corporations Act.

#### **8.12 Legal Personal Representative of Deceased Member**

- (a) If a Member who is an Individual Trustee or Director of a Corporate Trustee dies, the Trustee:
  - (i) may appoint the Legal Personal Representative of the deceased Member; and
  - (ii) must on written request by that Legal Personal Representative to the Trustee,

appoint that Legal Personal Representative to hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be, in place of that deceased Member during the period commencing on or after the date of death and ending on the date on which a Death Benefit commences to be payable from the Fund in respect of that Member.
- (b) At the end of that period, the Legal Personal Representative will cease to hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be.
- (c) The appointment is subject to the Legal Personal Representative consenting to act under clause 8.7 and not being disqualified within the meaning of the Act.
- (d) If the deceased Member was the sole Director and sole shareholder of a Corporate Trustee, the Legal Personal Representative of the deceased Member may self-appoint the Legal Personal Representative to be a Director of the Corporate Trustee in accordance with this clause 8.12 and section 201F(2) of the Corporations Act.

#### 9.4 **Attendances at Meeting when not present in Person**

An Individual Trustee or a Director of a Corporate Trustee may participate in a meeting of the Trustee without attending the meeting in person by means of any suitable and appropriate communications equipment provided that all persons participating in the meeting can hear each other. Participation in this way will be deemed to constitute presence in person at the meeting.

#### 9.5 **Circular Resolutions**

A written resolution signed by all Individual Trustees or by all Directors of a Corporate Trustee will be deemed to be a resolution duly made by the Trustee on the date that the resolution is signed by the last of the Individual Trustees or the last of the Directors of the Corporate Trustee, as the case may be.

#### 9.6 **Appointment of Chairperson**

- (a) The Trustee may, by resolution, appoint an Individual Trustee or a Director of a Corporate Trustee, as the case may be, to be the Chairperson of the Trustee.
- (b) The Chairperson will hold office until:
  - (i) he retires as Chairperson by written notice given to the Trustee;
  - (ii) he ceases to be an Individual Trustee or a Director of a Corporate Trustee; or
  - (iii) he is removed as Chairperson by a written notice given to him pursuant to a resolution passed by the Trustee.

#### 9.7 **Chairperson's Duty**

The Chairperson may act as Chairperson of each meeting of the Trustee at which he is present. If the Chairperson is not present in person at a meeting, or if at the time of a meeting there is no Chairperson, a person shall be appointed by a resolution of the Trustee to act as Chairperson of that meeting.

#### 9.8 **Voting Entitlement**

- (a) Each person holding office as an Individual Trustee or as a Director of a Corporate Trustee has one vote on any question.
- (b) The Chairperson does not have a casting vote on any question.
- (c) Any Individual Trustee or Director of a Corporate Trustee may direct, either prior to or immediately following the vote on any question, that the vote be cast or recast, as the case may be, with each person having a number of votes corresponding to the withdrawal benefit amount of that person's Benefit in the Fund.
- (d) Subject to clause 53, if a resolution concerns the exercise of discretion by the Trustee concerning the payment of a Death Benefit following the death of a Member, either:

(g) that the Trustee and the Fund are complying with the Act.

#### **9.11 Constitution of Corporate Trustee**

If the Trustee is a Corporate Trustee and any part of this Deed is inconsistent with the Constitution of the Corporate Trustee, the Directors of the Corporate Trustee agree, and will use reasonable endeavours to procure the agreement of the shareholders of the Corporate Trustee, that the inconsistent part of this Deed prevails over the Constitution, unless giving effect to the inconsistent part of this Deed would be contrary to the Corporations Act.

### **10. TRUSTEE'S DISCRETION**

#### **10.1 No Requirement to Give Reasons**

The Trustee is not bound to give to any person any reason for or explanation of the Trustee's exercise, non-exercise or partial exercise of any power or discretion.

#### **10.2 Unfettered Discretion**

The Trustee has an absolute and unfettered discretion and is not bound to act subject to the direction of any other person (unless otherwise expressly required by the Act) in the exercise or non-exercise or partial exercise of any power or discretion.

#### **10.3 Trustee's Decision Final**

The decision of the Trustee in relation to any dispute on the interpretation of this Deed or the rights or obligations of a Member or the Trustee or any other person under this Deed will be final and binding on all interested persons.

#### **10.4 Exercise of Discretion by Person Other than Trustee**

Unless permitted by the Act, a discretion given to the Trustee must not be exercised by any other person without the consent of the Trustee.

### **11. PROTECTION AND INDEMNITY OF THE TRUSTEE**

#### **11.1 Limitation of Liability - General**

Subject to clause 11.2, the Trustee will not personally be liable for any claim, liability, cost, loss, damage or expense incurred by or arising out of any act or omission in connection with this Deed or the Fund or the exercise or performance of the Trustee's powers, discretions and duties.

#### **11.2 Liability for Certain Conduct**

Clause 11.1 does not exempt the Trustee from, and the Trustee will be liable for, any claim, liability, cost, loss, damage or expense which is a direct result of an act or omission by the Trustee involving:



- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) to formulate, review regularly and give effect to an Investment Strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - (i) the risk involved in making, holding, and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities; and
  - (v) the insurance requirements of the Members;
- (g) if there are any monies in the Reserve Account of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's Investment Strategy and the Fund's capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Beneficiary access to any information or any documents which are prescribed by the Act; and
- (i) to comply with any other covenant that is prescribed by the Act.

### **13. COVENANTS BY DIRECTORS OF A CORPORATE TRUSTEE**

- (a) If the Fund has a Corporate Trustee, each of its Directors covenant to exercise a reasonable degree of care and diligence for the purpose of ensuring that the Trustee carries out the covenants described in clause 12.
- (b) On the basis that the Directors have participated in the passing of a resolution authorising the Trustee to execute this Deed, this clause shall be deemed to operate as if the Directors were parties to this Deed.
- (c) The reference in this clause to a reasonable degree of care and diligence refers to the degree of care and diligence that a reasonable person in the position of a Director of the Trustee would exercise in the Trustee's circumstances.

### **14. RECORDS OF CHANGES OF TRUSTEE / REPORTS TO MEMBERS**

#### **14.1 Changes of Trustee and Consents and Declarations**

The Trustee must keep and retain, for at least the minimum period required by the Act, up to date records of all changes of the Trustee and changes in Directors of any Corporate Trustee, all consents given by the Individual Trustees or Directors of any Corporate Trustee, as the case may be, and all declarations made by Individual Trustees or the Directors of any Corporate Trustee under the SIS Act.



### **15.5 Members Bound by Deed**

Every Member is deemed to have consented to be bound by this Deed as it relates to the rights and obligations of the Member.

### **15.6 Trustee to Notify Members of their Rights**

The Trustee must notify each Member in writing of that Member's rights to receive Benefits from the Fund and of any other information in the form and at the times required by the Act.

### **15.7 Trustee May Impose Conditions on Members**

The Trustee may impose, remove or vary any conditions on the rights and obligations of a Member.

### **15.8 Classification of Different Classes of Members**

- (a) The Trustee may classify Members into different classes of membership with rights and entitlements pertaining to each class as the Trustee may determine from time to time.
- (b) The Trustee must advise a Member of any class of membership to which that Member belongs and of the rights and entitlements pertaining to that class and of any subsequent change to that class or rights.
- (c) If the Trustee does not create different classes of membership, then all Members will be classified as ordinary Members in one class of membership.

## **16. MEETINGS OF MEMBERS**

### **16.1 Members may Convene Meeting**

The Members may convene, meet, adjourn and regulate a meeting of Members as the Members see fit.

### **16.2 Trustee Convening Meeting**

The Trustee may convene a meeting of Members and must convene a meeting of Members upon receiving a written notice of request for a meeting from a Member.

### **16.3 Notice of Meeting**

The Trustee convenes a meeting of Members by sending a notice of meeting to each Member specifying:

- (a) the date, place and time of the meeting;
- (b) the details of all agenda items, including the proposed resolutions to be considered at the meeting; and

- (a) any rights or obligations of that Member which accrued prior to the date of cessation or death; and
- (b) any rights or obligations of that Member as a former or deceased Member on and from the date of cessation or death, as the case may be.

## **18. MEMBERS PROVIDING INFORMATION TO TRUSTEE**

### **18.1 Upon Request by Trustee**

If requested by the Trustee, a Member must provide to the Trustee any information that the Trustee considers necessary or desirable for the purposes of any investigation or otherwise in connection with the Fund, including undergoing medical examination by a medical practitioner acceptable to the Trustee.

### **18.2 Member's Failure to Comply**

If a Member fails to comply with the request by the Trustee, the Trustee may suspend the acceptance of any Contributions in respect of that Member or withhold any Benefits payable in respect of that Member or impose any other conditions on the membership of that Member as the Trustee considers necessary or appropriate, but subject to the requirements of the Act.

### **18.3 Information Incorrect or Misleading**

If a Member provides information to the Trustee which affects or is likely to affect the Benefit payable to or in respect of the Member and the information supplied is incorrect or misleading or any relevant information is in the opinion of the Trustee deliberately withheld by the Member, the Trustee may alter or amend the Benefit of that Member in a manner that the Trustee considers necessary or appropriate, but subject to the requirements of the Act.

### **18.4 Tax File Numbers of Members**

The Trustee may request a Member's Tax File Number in a manner and form permitted by the Act or the Responsible Authority. The Member is not obliged to comply with the request. If a Member quotes his or her Tax File Number to the Trustee, the Trustee must record, retain, use and later destroy the record of the Tax File Number only in accordance with the requirements of the Act and the Responsible Authority.

### **18.5 Members Updated Information to Trustee**

Members may at any time give the Trustee updated information about their details such as address, marital status, status of Gainful Employment, Dependants and/or Nominated Beneficiaries.

a statement in relation to any rollover superannuation benefit paid by the Fund to an Approved Superannuation Entity on behalf of the Member as required under the Income Tax Act; and

(g) **Superannuation Splitting under Family Law Act**

information in respect of any splitting of a Member's Benefit under the Family Law Act.

**19.3 Limitation on Disclosure**

Unless required by the Act, the Trustee is not required to disclose:

- (a) internal working documents of the Fund; or
- (b) information or documents that would disclose personal information of another person if, in the circumstances, the disclosure would be inappropriate or unreasonable; or
- (c) trade secrets or confidential information having commercial value that would be reduced by the disclosure; or
- (d) information or documents for which the Fund owes another person a duty of non-disclosure.

**19.4 What, When and How Information is Provided**

The Trustee must comply with the Act in relation to any information that is required to be disclosed as to:

- (a) what information is provided;
- (b) when the information is provided; and
- (c) how the information is provided.

**19.5 Product Disclosure Statements – Information Knowledge of Members**

The Trustee may assume that a Member has received, or has, and knows that they have, access to, all of the information that a product disclosure statement would be required to contain, unless the Member is able to satisfy the Trustee on reasonable grounds to the contrary.

**20. GENERAL POWERS OF THE TRUSTEE**

**20.1 Trustee has Complete Management and Control**

The Trustee has complete management and control of all matters concerning the Fund, subject to this Deed and the requirements of the Act.

**21.5 Receipts and Discharges**

To make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;

**21.6 Bank Accounts**

To open and maintain bank accounts for the Fund and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques;

**21.7 Seek Advice**

To act on the advice of any Qualified Adviser (whether or not that advice was obtained by the Trustee) in relation to any matter concerning the Fund without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on that advice;

**21.8 Borrow Money, Give Indemnity and Security**

To give undertakings and indemnities, enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit including, but without limitation, borrowing or raising money in any lawful manner, including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument and to secure the repayment of any moneys so borrowed or raised or any other obligation in connection with that borrowing or raising by interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit, including by providing a charge or mortgage or any other form of encumbrance over all or part of the Fund and by giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee in connection with the Fund. Any money so raised by the Trustee will form part of the Fund;

**21.9 Receive Distributions, Dividends and Gifts**

To receive any distribution (from a family trust or otherwise), dividend or gift which is tendered to the Fund.

**21.10 Maintain Property**

To repair, paint, alter, rebuild, improve and generally maintain any property, real or personal and whether freehold or leasehold, for the time being comprising part of the Fund;

**21.11 To Pay Rates and Taxes**

To pay all rates taxes costs, charges, insurance premiums, expenses and outgoings of whatever nature payable in connection with the maintenance upkeep and management of the property comprising the Fund;

**21.12 Lease Property**

To lease or sub-lease any property (whether real or personal) forming part of the Fund for such period and at such rent and subject to such terms and conditions as the Trustee

## 22. INVESTMENT OF THE FUND

### 22.1 General Investment Powers of the Trustee

Subject to clause 23, the Trustee may in the name of the Trustee or in the name of any nominee selected by the Trustee invest the whole or any part of the Fund in any investment or manner of investment (whether in Australia or elsewhere or whether involving liability or not) which the Trustee considers to be a suitable investment or manner of investment for the Fund and which complies with the Investment Strategy and the Act.

### 22.2 Specific Investment Powers of the Trustee

The Trustee may invest the Fund in any one or more of the following:

- (a) **authorised Trustee investments:** any investment from time to time authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust monies;
- (b) **on deposit:** on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution or with any other person approved by the Responsible Authority in any type of account either with or without security at such rate of interest and on such terms as the Trustee may determine;
- (c) **acquisition of securities:** in the acquisition by subscription or by purchase or otherwise of fully or partly paid shares, stock, options, debentures, bonds, notes or other securities or obligations howsoever called in any company;
- (d) **acquisition of units:** in the acquisition of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible) or other scheme in the nature of a unit trust;
- (e) **acquisition of property:** in the acquisition of any property (whether real or personal) or any interest in property whether or not such property or interest in property is subject to any mortgage, charge or other encumbrance or is acquired or purchased for profit or is producing income at the date it is acquired or purchased;
- (f) **acquisition of mortgages:** in the acquisition of mortgages over freehold or leasehold property either by direct loan or by purchase at a discount or otherwise; or
- (g) **derivative transactions:** in derivative transactions and master agreements, subject to clause 23.8.

**“Derivative transaction”** means any:

- (i) interest rate swap, currency swap, currency option, interest rate option, swap option, smart forward, money market transaction, foreign exchange transaction, margin foreign exchange transaction, futures transaction, forward rate agreement, forward rate bill transaction, synthetic forward exchange transaction, deposit transaction, currency transaction, interest rate transaction, bond option, commodity (including precious metals, electricity or energy) option or other transaction, credit derivative, equity derivative,

- (i) no or insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not; or
- (ii) an insurer failing to pay out on an insurance policy in whole or in part for whatever reason.

## 22.6 Prudent Investment Rules

Subject to clause 23, and without limiting the matters that the Trustee may take into account when exercising a power of investment, the Trustee must, so far as they are appropriate to the circumstances of the Fund, have regard to:

- (a) the purposes of the Fund and the needs and circumstances of the Beneficiaries;
- (b) the desirability of diversifying the Fund's investments;
- (c) the nature of and risk associated with the existing investments and property of the Fund;
- (d) the need to maintain the real value of the capital or income of the Fund;
- (e) the risk capital or income loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return and timing of income return;
- (h) the length of the term of the proposed investment;
- (i) the probable duration of the Fund;
- (j) the liquidity and marketability of the proposed investment during, and on the determination of the term of the proposed investment;
- (k) the aggregate value of the Fund;
- (l) the effect of the proposed investment in relation to the tax liability of the Fund;
- (m) the likelihood of inflation affecting the value of the proposed investment or other property of the Fund;
- (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment; and
- (o) the results of a review of existing trust investments.

## 23. COMPLIANCE WITH THE ACT - INVESTMENTS

### 23.1 General Requirement

The Fund may only be invested in a manner and form which will not cause the Fund or the Trustee to be in breach of any relevant requirement of the Act.



- (iii) a continued and regular monitoring of changes in circumstances of the Fund as a whole to assess whether it remains appropriate.
- (c) If the Trustee offers Member Investment Choice, the Trustee must, if required by the Act, advise the Responsible Authority of the number of Investment Strategies which are offered as choices.
- (d) The Trustee may cease to offer or make any variation to the offering of Member Investment Choice. If so, the Trustee must:
  - (i) give Members the opportunity to provide further directions to the Trustee; and
  - (ii) advise Members of the default Investment Strategy that will be adopted unless the Member instructs otherwise.

### **23.8 Derivative Transactions**

The Trustee may invest in derivative transactions provided that:

- (a) the proposed derivative transaction complies with an Investment Strategy of the Fund;
- (b) if required by the Act, the Trustee has adopted an appropriate risk management statement; and
- (c) if the derivative transaction involves the creation of a charge over the assets of the Fund, then the Trustee must prepare a risk management statement if required by the Act.

### **23.9 Investments Involving "In-house Assets" or a Related Party**

Without limitation to clause 23.1, the Trustee must ensure that the value of the Fund's in-house assets as determined under the Act does not exceed more than the allowable prescribed percentage of the Fund's total assets (calculated on market value) and does not contravene any other restriction of the Act.

## **24. SPECIFIC INVESTMENTS OF A MEMBER**

### **24.1 Separate Investment for a Specific Member**

At the request of or with the approval of a Member, the Trustee may invest all or any part of the amount standing to the credit of the Member's Account by acquiring or entering into any investment separately and on behalf of the Member, provided the investment satisfies the Investment Strategy of the Fund.

### **24.2 Trustee to Record and Account Separately**

The Trustee must record any investments attributable to the Member and all revenue and expenses in respect of the investment must be credited or debited as the case may be directly to the relevant Member's Account.

- (ii) verification of the Fund's assets, their legal title and their valuation; and
- (iii) verification of Members' Benefits.

### **27.3 Custodian**

The Trustee may appoint in writing a Custodian to carry out custodial services on behalf of the Fund subject to compliance with the Act.

### **27.4 Investment Managers**

- (a) The Trustee may appoint in writing an Investment Manager to carry out the management of the investments of the Fund subject to compliance with this Deed and the Act.
- (b) If the Trustee enters into an agreement with an Investment Manager under which all or any part of the Fund will be placed under the control of the Investment Manager, the Trustee must ensure that the agreement contains adequate provisions to enable the Trustee to require the Investment Manager to provide to the Trustee appropriate information on the making of, and return on, the investments and to provide any other information that is necessary to enable the Trustee to assess the performance and capability of the Investment Manager in managing the investments of the Fund.
- (c) The Trustee must use reasonable endeavours to ensure that any agreement with an Investment Manager includes, as a minimum, the following obligations on the Investment Manager:
  - (i) to manage assets in accordance with set investment restrictions;
  - (ii) to keep the investment portfolio under review and to confer with and advise the Trustee regularly;
  - (iii) to exercise all due diligence and care;
  - (iv) to have appropriately qualified staff in charge at all times;
  - (v) to ensure assets are vested in the Trustee (or a Custodian, if applicable) as soon as possible; and
  - (vi) to provide upon request information to the Auditor of the Fund.

### **27.5 Qualified Advisers**

The Trustee may from time to time appoint any Qualified Advisers to give advice that the Trustee considers desirable for the proper management and administration of the Fund.

### **27.6 Revocation of Appointment**

The Trustee may revoke and remove from office any person appointed to any position under this clause.

- (b) enables the annual accounting statements to be prepared in accordance with clause 30;
- (c) enables the annual returns of the Fund to be prepared and lodged in accordance with the Act;
- (d) enables those accounting records to be conveniently and properly audited in accordance with this Deed and the Act.

## **29.2 Retention of Accounting Records**

The Trustee must retain the accounting records for at least the minimum period required by the Act after the end of the Financial Year to which the accounting records relate.

## **30. ACCOUNTING STATEMENTS**

### **30.1 Preparation**

The Trustee must in respect of each Financial Year prepare the following accounting statements in respect of the Fund:

- (a) a statement of financial position;
- (b) an operating statement;
- (c) any other accounting statements that are required by the Act.

### **30.2 Signature**

The accounting statements must be signed by or on behalf of the Trustee in a manner required by the Act or as otherwise permitted by law.

### **30.3 Retention**

The Trustee must retain the accounting statements for the minimum period required by the Act after the end of the Financial Year to which the accounting statements relate.

## **31. AUDIT OF THE FUND**

### **31.1 Audit to be Conducted each Financial Year**

If required by the Act, the accounting statements of the Fund prepared in respect of each Financial Year must be audited by an Auditor appointed by the Trustee.

### **31.2 Auditor to be Given Access to Documents/Information**

The Trustee must give the Auditor access to any accounting records and accounting statements and other documents and information connected with the Fund as requested by the Auditor to enable the Auditor to complete the audit.

## **32. ANNUAL RETURNS ETC TO RESPONSIBLE AUTHORITY**

The Trustee must in respect of each Financial Year and within the time required by the Act give to the Responsible Authority:

before the next annual report by the Trustee to the Members, be able to make payments to the Members as and when the obligation to make those payments arises.

### **34.3 Change of Fund Details**

The Trustee must give notice in writing to the Responsible Authority using the approved form specified in the Act of any change in:

- (a) the name of the Fund;
- (b) the postal address, registered address or address for service of notices of the Fund;
- (c) details of the contact person, and contact telephone number and facsimile number for the Fund;
- (d) the membership of the Fund;
- (e) the Trustee, including any change to Individual Trustees, a Corporate Trustee, or Directors of the Corporate Trustee;

within 21 days of the occurrence of the change.

### **34.4 Material Changes and Omissions in Information Previously Given**

If the Trustee becomes aware of a material change or material omission in any information given to the Responsible Authority, the Trustee must if required under the Income Tax Act give written notice to the Responsible Authority setting out particulars of the change or omission. The Trustee must do this no later than 30 days after becoming aware of the change or omission.

## **35. ACCOUNTS**

### **35.1 Separate Accounts**

The Trustee may establish and maintain such Accounts in respect of the Fund and each Member as the Trustee determines, subject to complying with the Act.

### **35.2 Types of Accounts**

Without limitation to clause 35.1, the Trustee may establish the following types of Accounts in accordance with this Deed:

- (a) Accumulation Account;
- (b) Income Account;
- (c) Reserve Account; or
- (d) Pension Account.

## **37. INCOME ACCOUNT**

### **37.1 Credits**

The Income Account may be credited with the following:

- (a) all income, investment earnings and profits of the Fund in each Financial Year;
- (b) any credits arising out of any adjustment made by the Trustee pursuant to this Deed;
- (c) the proceeds of any Policy of Insurance that the Trustee determines should be credited to the Income Account;
- (d) any distribution, dividend or gift paid to the Fund and accepted by the Trustee; and
- (e) any other amount as the Trustee may from time to time determine.

### **37.2 Debits**

The Trustee may debit the Income Account with the following amounts:

- (a) any loss arising from the disposal or dealing with any investment of the Fund;
- (b) any debits arising from an adjustment made by the Trustee pursuant to this Deed;
- (c) the cost of any Policy of Insurance that the Trustee determines should be debited to the Income Account;
- (d) any amount representing the reimbursement to the Trustee of any costs or charges incurred by the Trustee which the Trustee determines should be debited to the Income Account;
- (e) any amount which is payable or may become payable by way of Taxation in respect of the Contributions or income of the Fund which the Trustee determines should be debited to the Income Account;
- (f) any income transferred to a Reserve Account; and
- (g) any other amount as the Trustee may from time to time determine.

## **38. RESERVE ACCOUNT**

### **38.1 Credits**

Subject to the requirements of the Act, the Trustee may credit the Reserve Account with:

- (a) an amount transferred from the Income Account; or
- (b) any other amount which the Trustee so determines in the Trustee's discretion.

#### **41. CONTRIBUTIONS BY EMPLOYERS**

The Trustee may accept Employer Contributions to the Fund by an Employer on behalf of such of the Employees of the Employer who become Members, as long as the Contribution is permitted by the Act.

#### **42. RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER**

In the event that an Employer is reconstructed or merges or amalgamates with another Employer, the transfer of service by a Member as an Employee of the former Employer to the service of a new Employer as a result of the reconstruction, merger or amalgamation will be deemed to be a continuation of service by that Member for the purposes of that Member's entitlement to receive any Benefit from the Fund.

#### **43. INSOLVENCY OF TRUSTEE**

If a receiver, receiver and manager, official manager, liquidator, voluntary administrator or any other form of insolvency administrator ("the Administrator") is appointed to, or assumes control over all or part of the assets of the Trustee, then:

- (a) notwithstanding anything express or implied to the contrary in this Deed or in the instrument under which the Administrator has been appointed, all authorities, powers and discretions which are by this Deed vested in or exercisable by the Trustee will, for the duration of the appointment of the Administrator, be vested in and exercisable by the Members by resolution on behalf of that Trustee and not by the Administrator until such time as a new Trustee is appointed; and
- (b) the Administrator must do anything reasonably required by the Members to vest the control and assets of the Fund in the new Trustee appointed by the Members, and the Administrator must act in a manner that is fair and reasonable for the benefit of the Members of the Fund.

#### **44. MEMBER CONTRIBUTIONS**

The Trustee may accept any Member Contribution as long as the Contribution is permitted by the Act.

#### **45. EMPLOYER CONTRIBUTIONS**

##### **45.1 Employer may Contribute**

The Trustee may accept any Employer Contribution in respect of a Member as long as the Contribution is permitted by the Act.

##### **45.2 Contributions Pursuant to Agreement with Trustee**

If an Employer contributes to the Fund in respect of a Member under any agreement with the Trustee under which the Employer agrees, or is required, to pay Contributions to the Fund, the Employer must separately specify to the Trustee the amount of those Contributions under the Agreement and the amount of Contributions (if any) made pursuant to clause 45.1.

#### **46. OTHER CONTRIBUTIONS**

The Trustee may accept any other Contributions to the Fund made by or in respect of a Member, including any Child Contribution, Government Contribution, or Spouse Contribution as long as the Contribution is permitted by the Act.



- (vi) exceeded either the Member's Concessional Contributions Cap or Non-concessional Contributions Cap within the meaning of the Act for that relevant Financial Year,

("Excess Contribution") in a manner that complies with or is not prohibited by the Act.

- (b) The amount of the Excess Contribution that is refunded may be:
  - (i) adjusted to take account of any increase or decrease in the value of the Excess Contribution attributable to the investment of the Excess Contribution in the Fund as calculated in accordance with the Act; and
  - (ii) reduced to account for any reasonable administration costs and transaction costs that are reasonably related to the acceptance of the Excess Contribution and do not exceed the true cost of an arm's length transaction.
- (c) If the Trustee has accepted an Excess Contribution and, subject to paragraph (a), elects not to refund the Excess Contribution, or the Trustee is prohibited by the Act from refunding the Excess Contribution, to the Member, the Trustee:
  - (i) must, if required to do so by the Act; or
  - (ii) may, if permitted to do so or if not prohibited from doing so, under the Act;

use and release, in accordance with a release authority under the Income Tax Act given to the Trustee, so much of the Excess Contribution from the Member's Accumulation Account balance as is necessary to pay the Fund's liability for the additional tax (including Medicare levy) that is payable in respect of the Excess Contribution. The balance of the Excess Contribution must remain in the Member's Accumulation Account in the Fund.

#### 47.5 **Employer to remit Contributions Promptly**

All Contributions made on behalf of a Member (including by an Employer deducting an amount from the salary or wages payable to the Member) must be paid to the Trustee in the manner and within the timeframe required by the Act.

#### 47.6 **Allocation of Contributions**

If required by the Act, all Contributions in respect of a Member received by the Trustee in a month must be allocated to that Member by crediting the Accumulation Account of the Member within 28 days after the end of the month or, if that is not reasonably practicable, within such longer period as is reasonable in the circumstances.

#### 47.7 **Contributions or other Transfers that involve NSW Dutiable Property**

- (a) Without limitation to clause 47.2, this clause 47.7 applies where:
  - (i) a Member or Members (as **Transferor**) has or have transferred, or agreed to transfer, or will transfer or agree to transfer (**Transfer**) an asset (**Property**) that is *dutiable property* under the *Duties Act 1997* (NSW) (**NSW Duties Act**), to the Trustee (as **Transferee**) so that the Property becomes an asset of the Fund; and

## **50. RETIREMENT BENEFITS**

### **50.1 Entitlement**

A Member is entitled to receive from the Fund a Retirement Benefit when:

- (a) in the case of a Member who has reached a Preservation Age that is less than 60 where:
  - (i) an arrangement under which the Member was Gainfully Employed has come to an end; and
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed, either on a full-time or part-time basis; or
- (b) in the case of a Member who has attained age 60 where:
  - (i) an arrangement under which the Member was Gainfully Employed has come to an end on or after the Member attained that age; or
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed, either on a full-time or part-time basis; or
- (c) the Member attains age 65, regardless of whether the Member is or continues to be Gainfully Employed; or
- (d) the Member satisfies any relevant requirements of the Act for the payment of a Benefit notwithstanding that the Member may otherwise continue in Gainful Employment.

### **50.2 Amount**

The amount of the Retirement Benefit is the balance of the Member's Accumulation Account as advised to the Member by the Trustee.

### **50.3 Manner of Payment - Superannuation Lump Sum or Pension**

The Member may elect to receive the Retirement Benefit as a Superannuation Lump Sum or as a Pension or in the purchase of an Annuity or partly as any one or more of those forms. If the Member does not make the election, then the Benefit will be paid as a Pension.

## **51. PRESERVATION AGE BENEFITS**

### **51.1 Entitlement**

A Member is entitled to receive from the Fund a Preservation Age Benefit when the Member attains Preservation Age.

### **51.2 Amount**

The Preservation Age Benefit will be the amount determined by the Trustee subject to the requirements of the Act but must not exceed the balance of the Member's Accumulation Account.



- (b) The Trustee must not pay a Death Benefit to a Dependant of a deceased Member as a Pension if doing so is prohibited by the Act.
- (c) Without limitation to clause 52.3(b), a Beneficiary shall not be entitled to receive payment of the Member's Benefit as a Pension unless, at the time of the Member's death, the Beneficiary:
  - (i) is a Dependant of the Member within the meaning of the Act; and
  - (ii) in the case of a child of the Member:
    - (A) is less than 18 years of age; or
    - (B) being 18 or more years of age:
      - (I) is financially dependent on the member and less than 25 years of age; or
      - (II) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*.
- (d) Except where clause (c)(ii)(B)(II) applies, a Beneficiary who is a child of the deceased Member cannot continue to receive the payment of the deceased Member's Death Benefit in the form of a Pension on becoming 25 years of age, and the Benefit must then be commuted to a Superannuation Lump Sum.

#### 52.4 Beneficiary Nomination

- (a) The Trustee must allow a Member to make a Beneficiary Nomination in accordance with this Deed.
- (b) A Member who wishes to make a Beneficiary Nomination may request the Trustee to provide such information as the Member reasonably needs for the purpose of understanding the Member's rights to make a Beneficiary Nomination in accordance with this Deed, and the Trustee must comply with that request.
- (c) A Member who has given a Beneficiary Nomination to the Trustee may:
  - (i) amend or revoke the Beneficiary Nomination by giving to the Trustee a notice of amendment or revocation of that Beneficiary Nomination; or
  - (ii) replace the existing Beneficiary Nomination by giving to the Trustee a new Beneficiary Nomination made after the date of the existing Beneficiary Nomination.
- (d) Unless sooner revoked by the Member, a Three Year Binding Nomination given to the Trustee ceases to have effect at the end of the period of 3 years after the day it was first signed, or last confirmed or amended, by the Member.
- (e) If an item of information given by a Member in a Beneficiary Nomination is not sufficiently clear to allow the Trustee to pay the Death Benefit in accordance with the Beneficiary Nomination, the Trustee must seek from the Member a written statement to clarify the item as soon as practicable after the Trustee receives the Beneficiary Nomination.

- (vii) if the Legal Personal Representative of the deceased Member has not been appointed as an Individual Trustee or Director of a Corporate Trustee under clause 8.12 prior to the Trustee's determination in exercise of the Trustee's discretion, the Trustee must pay or apply the Death Benefit to or for the benefit of:
    - (A) the Legal Personal Representative of the deceased Member; or
    - (B) obtain the prior written consent of the Legal Personal Representative of the deceased Member as to the Dependant or Dependents who are to receive the Death Benefit; or
  - (viii) if the Legal Personal Representative of the deceased Member has been appointed as an Individual Trustee or Director of a Corporate Trustee under clause 8.12 prior to the Trustee's determination in exercise of the Trustee's discretion, the Trustee must comply with clause 9.8(d).
- (c) If the Trustee does not hold a Beneficiary Nomination in respect of a deceased Member, the Trustee must pay or apply the Death Benefit to or for the benefit of:
- (i) any one or more of the Dependents of the deceased Member; or
  - (ii) the Legal Personal Representatives of the deceased Member;
- in such proportions between all or any of the above persons or categories of persons as the Trustee may determine in its discretion, but subject to and provided that:
- (iii) if the Legal Personal Representative of the deceased Member has not been appointed as an Individual Trustee or Director of a Corporate Trustee under clause 8.12 prior to the Trustee's determination in exercise of the Trustee's discretion, the Trustee must pay or apply the Death Benefit to or for the benefit of:
    - (A) the Legal Personal Representative of the deceased Member; or
    - (B) obtain the prior written consent of the Legal Personal Representative of the deceased Member as to the Dependant or Dependents who are to receive the Death Benefit; or
  - (iv) if the Legal Personal Representative of the deceased Member has been appointed as an Individual Trustee or Director of a Corporate Trustee under clause 8.12 prior to the Trustee's determination in exercise of the Trustee's discretion, the Trustee must comply with clause 9.8(d).
- (d) If, after making reasonable enquiries, the Trustee determines that the deceased Member left no Dependents or that there are no Dependents whose existence, identity and whereabouts are satisfactorily known to the Trustee and the Trustee is unable to locate any Legal Personal Representative of the deceased Member, then subject to the requirements of the Act, the Trustee must as soon as practicable pay the Death Benefit in accordance with the Act.
- (e) For the avoidance of doubt, references in this Deed to the Legal Personal Representative of a deceased Member is to any person acting in the capacity of executor, trustee and/or administrator of the estate of the deceased Member, and a payment of a Death Benefit to the Legal Personal Representative means a

## **55. TEMPORARY INCAPACITY BENEFITS**

### **55.1 Entitlement**

A Member is entitled to receive from the Fund a Temporary Incapacity Benefit if the Member suffers Temporary Incapacity.

### **55.2 Amount**

The Temporary Incapacity Benefit is:

- (a) the balance of the Member's Accumulation Account (excluding the Member's *minimum benefits* as defined in the Act) at the date upon which payment is made; and
- (b) the proceeds of any Policy of Insurance for the Member that are received by the Trustee; and
- (c) provided that, subject to the requirements of the Act and prior to the Temporary Incapacity of a Member, the Trustee and that Member may agree in writing that the Temporary Incapacity Benefit which becomes payable upon the Temporary Incapacity of the Member is to be an amount other than as specified in this clause ("the Other Amount"), and if so agreed, then the Temporary Incapacity Benefit payable by the Trustee upon the Temporary Incapacity of that Member must be the Other Amount.

### **55.3 Manner of Payment**

A Temporary Incapacity Benefit must be paid to a Member as a Non-commutable Income Stream in a manner that is required or permitted by the Act.

## **56. OTHER BENEFIT PAYMENTS**

### **56.1 Prescribed Event**

A Member is entitled to receive, and to request payment of, any other Benefit that the Trustee is permitted by the Act to pay to the Member upon the Member satisfying a Prescribed Event, including benefits on account of:

- (a) the Member being a temporary resident permanently departing Australia;
- (b) the Member suffering severe financial hardship;
- (c) the Member suffering a terminal medical condition; -
- (d) compassionate grounds; or
- (e) the Trustee being given a release authority under the Act in relation to the Member.

### **56.2 Amount and Manner of Payment**

Unless otherwise expressly provided in this Deed or required or prohibited by the Act, the amount of the Benefit and the manner in which it is paid to or in respect of the

### 57.3 Amount of Pension

The Trustee will determine the amount of any Pension and may take account of:

- (a) the wishes of the Pensioner; and
- (b) if required for the purpose of that Pension, actuarial advice obtained from an Actuary as to the appropriate amount and manner of the payments of the Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, the Investment Strategy guidelines for that Pension, and any prudential requirements imposed on the Trustee by the Act; and
- (c) any other relevant requirements of the Act or the Responsible Authority.

### 57.4 Segregation of Pension Assets

The Trustee must, if required, in relation to each Pension:

- (a) segregate and set apart assets of the Fund for each Pensioner for the sole purpose of enabling the Fund to discharge the whole or part of any current or non-current liability in relation to the payment of the Pension as those liabilities fall due for payment; and
- (b) obtain actuarial certificates from an Actuary in relation to the adequacy of the segregated assets to meet the current and non-current liabilities as the Trustee considers necessary to satisfy the Act.

### 57.5 Conditions Applicable to All Pensions

The following conditions apply to the payment of any Pension from the Fund:

- (a) the Pension must be paid from the balance of the Pension Account of the Pensioner or from the Reserve Account;
- (b) the payments of the Pension are made at least annually;
- (c) the Pension must not be able to be transferred to any person unless the Act permits; and
- (d) the capital value of the Pension and the income from the Pension must not be used as security for any borrowing unless the Act permits.

### 57.6 Variation to Pension Amount

The Trustee may vary the Pension from time to time as long as the variation:

- (a) complies with any relevant requirement of the Act;
- (b) is in accordance with any ongoing actuarial advice that is required to be obtained or maintained; and/or
- (c) complies with any Pension Agreement for that Pension.

an amount that the Trustee considers appropriate subject to the compliance with any relevant requirement of the Act.

#### 57.11 Purchase of Pension or Annuity from Third Party

A Member may request that the Trustee apply the Benefit payable to the Member to purchase a Pension or Annuity for or in respect of the Member from a third party.

#### 57.12 Minimum Pension Standards

- (a) If the Agreed Pension is:
- (i) an Allocated Pension;
  - (ii) an Account-Based Pension;
  - (iii) Lifetime Pension;
  - (iv) Fixed Term Pension;
  - (v) a Market-Linked Pension;
  - (vi) a Non-commutable Allocated Pension;
  - (vii) a Non-commutable Pension;
  - (viii) a Transition to Retirement Income Stream; or
  - (ix) a Non-commutable Income Stream;

then the Agreed Pension Rules in the Pension Agreement must detail all of the minimum pension standards, as specified in the Act, that the Pension is required to meet ("**Minimum Pension Standards**").

- (b) Without limitation to clause 57.12(a), if the Agreed Pension is a Lifetime Pension or a Fixed Term Pension then, if necessary, the Trustee must obtain and act upon an actuarial certificate obtained from an Actuary as to the appropriate amount and manner of the payments of the Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for the Pension, the balance of the Pensioner's Pension Account, and any prudential requirements imposed on the Trustee by the Act in order that the Trustee can meet the requirements of the Minimum Pension Standards for the Pension.

### 58. PAYMENT OF BENEFIT BY TRANSFER IN SPECIE

#### 58.1 Transfer of Assets

The Trustee may with the written consent of a Beneficiary to whom a Benefit is payable transfer any asset of the Fund to that Beneficiary in satisfaction of the payment of the whole or part of the amount of the Benefit provided:

- (a) the amount of the Benefit which is satisfied is equivalent to the value of the transferred asset;



### **60.3 Member May Request Transfer**

A Member may request the Trustee to transfer the preserved Benefit to another Approved Superannuation Entity selected by the Member and in which the Member is a participant or eligible to participate.

### **60.4 Trustee may transfer Preserved Benefit**

If the Trustee does not receive a request from a Member under clause 60.3 and the Trustee is satisfied that there exists an Approved Superannuation Entity in which the Member is a participant or eligible to participate and the trustees thereof are authorised and willing to accept a transfer of the preserved Benefit, then the Trustee may transfer that preserved Benefit to that other Approved Superannuation Entity without the Member's request or consent.

### **60.5 Power of Attorney**

The Member will be deemed to have irrevocably appointed the Trustee as the attorney for that Member for the purpose of securing that Member's participation in the Approved Superannuation Entity to which the transfer is made and the Trustee may act unilaterally in the name of the Member for that purpose.

## **61. POSTPONEMENT OF BENEFIT PAYMENTS**

### **61.1 To Facilitate Administration**

Subject to compliance with the Act, the Trustee may for the purpose of facilitating the administration of the Fund postpone the commencement of the payment of any Benefit for any period not exceeding six months or, with the approval of the Beneficiary to which the Benefit is payable, a longer period after the happening of the event upon which the Benefit becomes payable.

### **61.2 At Request of Beneficiary**

Subject to compliance with the Act, the Trustee may, at the written request of any Beneficiary entitled to receive payment of a Benefit, withhold payment of that Benefit for a period of time that is agreed between the Trustee and the Beneficiary.

## **62. TRANSFERS FROM APPROVED SUPERANNUATION ENTITIES**

### **62.1 Trustee May Take Interest**

If a Member is or was a member of or a beneficiary under any other Approved Superannuation Entity, the Trustee may at the request of that Member receive from the trustee of the other Approved Superannuation Entity the whole or any part of the interest of that Member in the other Approved Superannuation Entity.

### **62.2 Trustee To Hold Subject to this Deed**

The Trustee must credit any interest transferred to the Trustee under this clause as part of the Fund in an Accumulation Account for that Member.



#### 63.4 **Extinguishment of Rights**

Upon the Trustee completing the transfer of the Transferred Amount in respect of a Member all of the rights and interests of that Member in the Fund and under this Deed (and all rights and interests of any Beneficiary entitled to claim in respect of the Member) in respect of the Transferred Amount will come to an end.

#### 63.5 **Adjustment of Other Benefits upon Transfer**

The Trustee may make any adjustments to the Benefit of the other Members of the Fund as the Trustee considers appropriate in the circumstances of any transfer but subject to the requirements of the Act. Any adjusted Benefits may be substituted for the Benefits otherwise provided under this Deed and this Deed will apply on the same terms to those adjusted Benefits.

#### 63.6 **Compliance with the Act**

No Benefit may be transferred to another Approved Superannuation Entity if the Trustee or the Fund would breach a relevant requirement of the Act.

#### 63.7 **Transfer to Member's New SMSF**

If the Trustee determines under clause 63.2 to transfer the Transferred Amount to an Approved Superannuation Entity which is to be a new self managed superannuation fund established for the Member ("**Member's New SMSF**"), the Trustee may rely on this Deed as a record and evidence of the Member's irrevocable consent to the Trustee:

- (a) establishing a company to act as trustee of the Member's New SMSF with the Member consenting to act as a sole director, secretary and shareholder of the company;
- (b) establishing and registering the Member's New SMSF on behalf of the Member; and
- (c) transferring the Transferred Amount to the Member's New SMSF.

#### 63.8 **Power of Attorney**

The Member will be deemed to have irrevocably appointed the Trustee as the attorney for that Member for the purpose of securing that Member's participation in the Approved Superannuation Entity to which the transfer is made and the Trustee may act unilaterally in the name of the Member for that purpose.

### 64. **MEMBER MAY REQUEST ROLLOVER PAYMENT**

If a Member wishes to make a Rollover Payment of all or any of the Member's Benefit, the Member must complete and provide to the Trustee all documentation required by the Act to enable the Rollover Payment to be completed in accordance with the requirements of the Act.

**66. DISSOLUTION OF THE FUND**

Upon the satisfactory winding up of the Fund by the Trustee pursuant to clause 65.3, the Fund will be deemed to be dissolved.

**67. AVAILABILITY OF DEED**

The Trustee must keep a copy of this Deed and make it available for inspection during normal business hours by any person who is, or was within the preceding 12 months, a Beneficiary.

**68. AMENDMENT OF DEED**

**68.1 Who may Amend**

- (a) The Trustee may at any time amend, add to, vary or rescind any of the provisions of this Deed (including this clause) ("the Amendment") subject to this clause and compliance with the Act.
- (b) The Trustee must amend, add to, vary or rescind any of the provisions of this Deed (including this clause) ("the Amendment") in accordance with and to give effect to a resolution of the Members concerning the Amendment, but subject to this clause and compliance with the Act.
- (c) In the case of any Amendment that is proposed to be made in the period after the death of a Member and prior to any Trustee resolution concerning the payment of the deceased Member's Death Benefit, the Legal Personal Representative of the deceased Member must have given prior written consent to the proposed Amendment and any such proposed Amendment is not effective if made without that consent.

**68.2 How Amendment Effected**

The Amendment must be made by:

- (a) a deed executed by the Trustee; or
- (b) an oral declaration or written resolution of the Trustee which is evidenced by a minute of meeting of the Trustee confirming the oral declaration or written resolution.

**68.3 Date of Amendment**

The Amendment may be effective from the date on which the Amendment is made or from any earlier or later date that is specified for that purpose in the deed or minute of meeting effecting the Amendment.

**68.4 Consent by Beneficiary**

If a proposed Amendment would adversely alter the Benefit of any Beneficiary, the proposed Amendment must not be made or become effective unless:

### **69.3 Taxation on Income**

If any Taxation is payable in respect of any Income of the Fund, the Trustee must if required by the Act deduct or arrange to have deducted the amount of the Taxation (including any interest payable thereon) from the Income Account or other relevant Account determined by the Trustee, and account for the Taxation to the proper Responsible Authority.

### **69.4 Taxation Deductions**

The Trustee may claim a deduction for any expense permitted under the Act, including a deduction for a future liability to pay Benefits.

## **70. PROOF OF ENTITLEMENT BY BENEFICIARIES**

Any person claiming to be entitled to any Benefit must, if requested by the Trustee produce to the Trustee satisfactory evidence of that entitlement and do the acts and execute the documents that the Trustee may reasonably require.

## **71. NO PERSONAL CLAIM OF MEMBERS OR DEPENDANTS FOR INTEREST**

No Beneficiary or person claiming through or on behalf of a Beneficiary is entitled to claim payment of any interest in the Fund, except as provided in this Deed.

## **72. COMPENSATION RIGHTS OF MEMBERS NOT LIMITED**

This Deed does not affect any rights of a Member or the Legal Personal Representative of a Member arising under any statutory enactment or at common law in circumstances where the Member is injured or dies as a result of an event arising in the course of the employment of the Member.

## **73. FAMILY LAW PROCEEDINGS**

### **73.1 Operation of this Clause**

- (a) Without limitation to clause 3 of this Deed, the Trustee must act in conformity with any obligations imposed on the Trustee under the Family Law Act even if this Deed does not authorise that act or prohibits that act.
- (b) An expression that is defined in the Family Law Act will have the same meaning when that expression is used in this clause.

### **73.2 Superannuation Agreement**

- (a) The Trustee must comply with the Family Law Act in giving effect to a superannuation agreement that is in force and made under the Family Law Act between a Member and a non-member spouse of that Member.
- (b) Whenever any splittable payment becomes payable in respect of a superannuation interest identified in the superannuation agreement which is not an unsplittable interest:
  - (i) the Trustee must pay to the non-member spouse the amount (if any) calculated in accordance with the Family Law Act; and