

Deed of the Ireland Superannuation Fund

Founding Members Geoff Ireland
Elinor Ireland

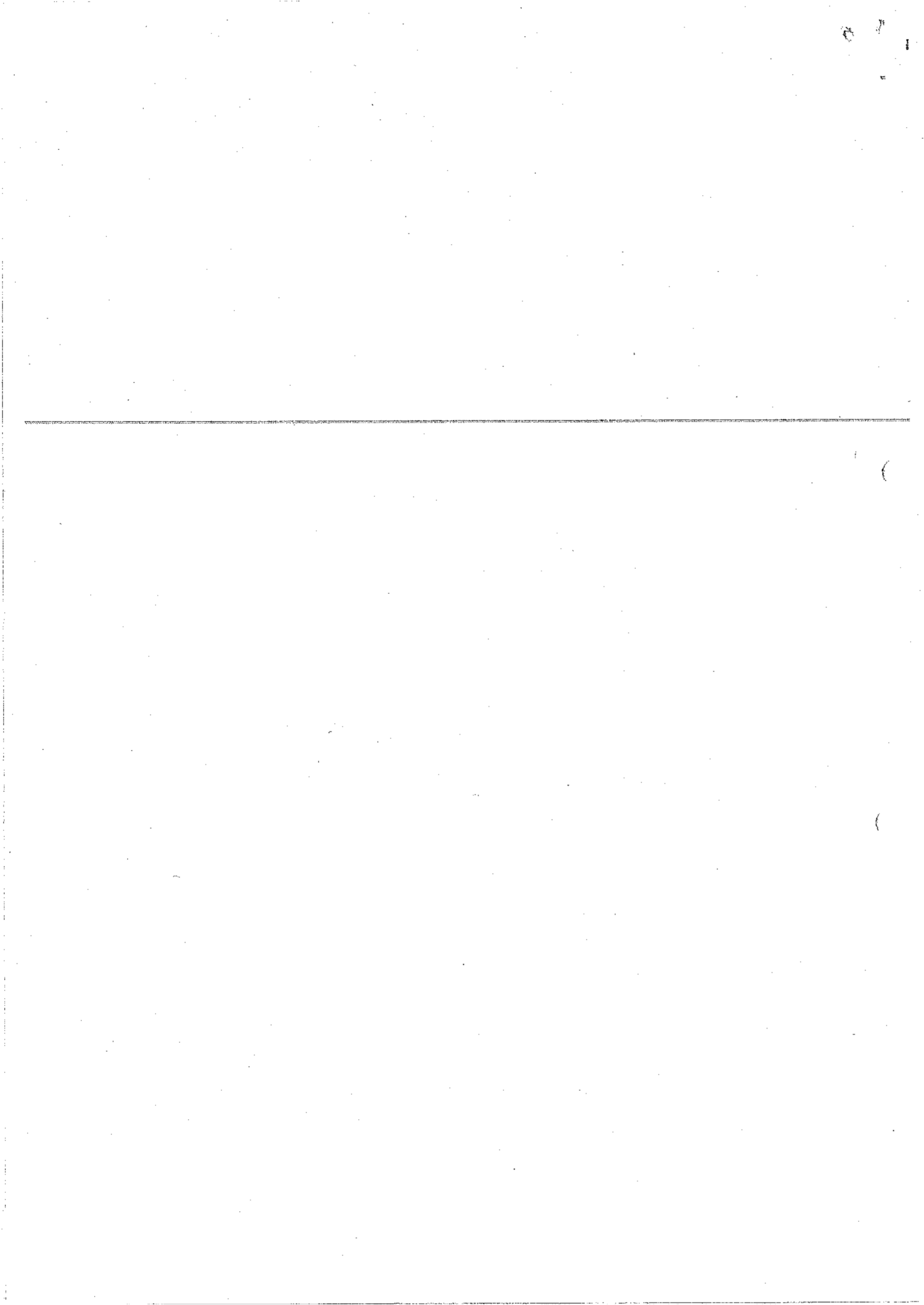
Trustee Dog Trap Investments Pty Ltd ACN 080 699 823

I certify that this is a true & correct copy

Andrew Cohen

ANDREW COHEN CA. # 48328

Macquarie Private Banking GPO Box 4294 Sydney NSW 1164 Adviser:



Trust deed

Dated

1ST APRIL

2007

Parties

Geoff Ireland
of 5/123A Darling Street, Balmain, NSW 2041

Elinor Ireland
of 5/123A Darling Street, Balmain, NSW 2041

(Founding Members)

Dog Trap Investments Pty Ltd (ACN 080 699 823)
of 4th Floor, 20-24 Wentworth Street, Parramatta, NSW 2150 (Trustee)

Recitals

- A The parties desire to establish and maintain a superannuation fund known as the Ireland Superannuation Fund (Fund).
- B The Trustee has agreed to act as the initial trustee of the Fund and to accept the trusts of the Fund.

It is agreed

- 1 The rules annexed to this Deed (**Rules**) as amended from time to time shall govern the Fund.
- 2 The Fund will commence on the date determined by the following paragraphs of this clause (**Commencement Date**).
 - (a) Subject to paragraph 2(b), the Commencement Date will be the date of this Deed provided that if this means that the Fund will not be a complying superannuation fund as defined in the SIS Act from the date of this Deed, then the Commencement Date will be the date the Trustee gives to the Regulator a written notice under section 19 of the SIS Act.
 - (b) The Trustee may, in its absolute discretion, choose a date which is either before or after the date determined by paragraph 2(a) as the Commencement Date.
- 3 If contributions are made to the Fund prior to the Commencement Date, then those contributions will be held on absolute trust for the contributor until the Commencement Date, from when the contributions will be held on trust under the terms contained in the Rules.
- 4 The parties covenant to perform and observe the agreements, covenants, trusts, stipulations and conditions of the Rules so far as they are, or ought to be, observed by each of them respectively.
- 5 The Trustee consents to its appointment as trustee of the Fund.

Signed as a deed

Signed sealed and delivered by Geoff Ireland
(as Founding Member) in the presence of:

Witness

Geoff Ireland

Print name

Wendy Hardy
Wendy Hardy

Signed sealed and delivered by Elinor Ireland
(as Founding Member) in the presence of:

Witness

Elinor Ireland

Print name

Wendy Hardy
Wendy Hardy

Executed by Dog Trap Investments Pty Ltd

Signature

Signature

Geoff Ireland

Elinor Ireland

Full name

Full name

Director

Director

Position

Position

Contents

1	Definitions	1
1.1	Annuity	1
1.2	Associated Employer	1
1.3	Benefit	1
1.4	Commencement Date	1
1.5	Category	1
1.6	Constitutional Corporation	1
1.7	Deed	1
1.8	Defined benefit pension	2
1.9	Dependant	2
1.10	Employee	2
1.11	Employer	2
1.12	Employer Financed Benefits	2
1.13	Excess Benefit	2
1.14	Existing Rules	3
1.15	Founding Member	3
1.16	Fund	3
1.17	Guarantee Act	3
1.18	ITAA	3
1.19	Member	3
1.20	Member Account	3
1.21	Member Financed Benefits	4
1.22	Non-member spouse	4
1.23	Old-Age Pension	4
1.24	Pension	4
1.25	Principal Employer	5
1.26	Public Offer Superannuation Fund	5
1.27	Regulated Superannuation Fund	5
1.28	Regulator	5
1.29	Rollover Fund	5
1.30	Rules	6
1.31	Self Managed Superannuation Fund	6
1.32	SIS Act	6
1.33	SIS Regulations	6
1.34	Splitable Contribution	6
1.35	Spouse	6
1.36	Standard Employer-Sponsored Fund	6
1.37	Sub-Plan	6
1.38	Superannuation Law	6
1.39	Superannuation Law Concession	7
1.40	Trustee	7

2	Interpretation	7
2.1	Plural terms and gender	7
2.2	Headings	7
2.3	Trustee's interpretation binding	7
2.4	Resolutions of directors	7
2.5	Notes	7
2.6	Operating Manual	7
2.7	Legislation	8
2.8	Superannuation Law	8
2.9	Trustee's discretion	8
2.10	Directions	8
2.11	Saving provision	8
2.12	Relevant law	8
2.13	Not a Public Offer Superannuation Fund	8
3	Regulated Superannuation Fund	9
3.1	Regulated Superannuation Fund	9
3.2	Constitutional Corporation	9
3.3	Primary purpose to pay Old-Age Pension	9
3.4	Change from corporate to individual trustees	9
3.5	Change from individual trustees to corporate trustee	9
4	The Trustee	9
4.1	Resignation	9
4.2	Number	9
4.3	Powers of new Trustee	10
4.4	Removal	10
4.5	Power of appointment and removal	10
4.6	Application of Trustee legislation	10
4.7	Transfer of assets	11
4.8	Trustee's discretion	11
4.9	Multiple Trustees	11
4.10	Meetings of multiple Trustees	11
4.11	Powers	11
4.12	Personal interests	12
4.13	Instructions from Employer	13
4.14	Indemnity	13
4.15	Default	13
4.16	Trustee's remuneration	13
4.17	Replacement of deceased Trustee	14
4.18	Self Managed Superannuation Fund	14
5	Eligibility and membership	14

5.1	Eligibility	14
5.2	Application for membership	15
5.3	Commencement of membership	15
5.4	Additional Fund membership	15
5.5	Temporary withdrawal from service	15
5.6	Cessation of membership	15
5.7	Categories of Members	16
5.8	Multiple Founding Members	16
5.9	Self Managed Superannuation Fund	16
6	Transfers	16
6.1	Transfer from a rollover fund	16
6.2	Transfer to a rollover fund	17
7	Contributions	17
7.1	Contributions	17
7.2	Superannuation contributions splitting	17
7.3	Standard Employer-Sponsored Fund	18
7.4	Not Standard Employer-Sponsored Fund	18
7.5	Reduction etc of contributions	19
7.6	Other contributions	19
7.7	Allocation of contributions	19
8	Vesting	19
8.1	Member Financed Benefits	19
8.2	Employer Financed Benefits	19
9	Entitlement and payment of Benefits	20
9.1	Entitlement to Benefit	20
9.2	Postponement of Benefit	20
9.3	Primary purpose to pay Old-Age Pension	21
9.4	Payments before Old-Age	21
9.5	Constitutional Corporation	21
9.6	Pensions and Annuities	21
9.7	Death of a Member	22
9.8	Payment of death Benefits	22
9.9	Alternative forms of Benefit	22
9.10	Entitlement	23
9.11	Commutation of Pension entitlement	23
9.12	Requests for payment	24
9.13	Payments to certain persons	24
9.14	Insurance	24
9.15	Variation of Pension payments	25

9.16	Binding death benefit procedure	25
9.17	Payment of a Defined Benefit Pension	25
9.18	No change to Pensions or Annuities being paid prior to adopting rules	25
9.19	Payments of pensions after death of recipient	26
9.20	Anti-detriment payment	26
9.21	Other amounts payable	26
10	Forfeiture	26
10.1	Forfeiture of Benefits	26
10.2	Application of forfeited amounts	27
11	Administration	28
11.1	Rights of Members	28
11.2	Members bound by the Rules	28
11.3	Right to inspect the Rules	28
11.4	Power of Attorney	28
11.5	Employer's right to terminate employment	28
11.6	Right to claim compensation	28
12	Amendments	29
12.1	Variation of Rules	29
12.2	Notification of amendments	29
13	Superannuation Law	29
13.1	Compliance with Superannuation Law	29
13.2	Superannuation Law Concessions	30
14	Taxation	30
15	Assets, expenses and investments	32
15.1	Assets of the Fund	32
15.2	Sub-Plans	32
15.3	Assets vested in Trustee	32
15.4	Expenses	32
15.5	Liens	32
15.6	Segregation of assets	33
15.7	Reserves	33
16	Records, accounts and valuation	33
16.1	Membership records	33
16.2	Member accounts	34
16.3	Profits and losses	34
16.4	Annual valuation	34

16.5	Adjustment of Accounts	34
16.6	Allocation of Profits or Losses	35
16.7	Actuarial Report	35
16.8	Information to Members and Others	35
16.9	Debiting of Members' Accounts	35
16.10	Audit	36
17	Associated employer	36
17.1	Admission of Associated Employer	36
17.2	Retirement of Associated Employer	36
17.3	Consequences of Retirement	37
18	Investment choice	37
19	Winding up of the Fund	38
19.1	Termination of the Fund	38
19.2	Consequences of termination	38
19.3	Determination of Benefits on termination	38
19.4	Payment of Benefits on winding-up	39
19.5	Payment of any surplus	39
20	Defined Benefit Members	39
21	Dispute resolution	40

Warning

This deed and the rules annexed to the deed (together referred to as the **Deed**) contains a very basic framework of the rights and obligations of the Trustee, the Members of the Fund and associated employers (if any). The Deed must be read, where appropriate, in conjunction with other legislation and laws such as the *Superannuation Industry (Supervision) Act 1993* (Cth) and its accompanying Regulations (**SIS Regime**), the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth), the *Corporations Act* and the common (or judge-made) law.

For example, the SIS Regime contains:

- 1 important restrictions on how the Trustee may invest the assets of the Fund
- 2 when and how Members of the Fund may be paid
- 3 important covenants which are deemed to be included in the Deed.

Such details are not included in the Deed for practical reasons. Superannuation law is constantly the subject of change and the Deed is drafted to avoid the need for frequent amendment. Also, significant detail would make the Deed more complicated and difficult to read without avoiding the need to refer to other applicable law. The Deed includes notes to assist in its interpretation. The notes do not form part of the Deed.

An Operating Manual is available in relation to the Deed to assist users in understanding some of the main rules and concepts of the SIS Regime. The Operating Manual is, however, also subject to changes in the law after its publication and it does not contain an exhaustive consideration of all relevant rules.

The Trustee should, where appropriate, consult the relevant law or seek advice from appropriately qualified persons.

The rules

1 Definitions

In the Deed, unless the context indicates otherwise, the following words and expressions have the following meanings.

1.1 ANNUITY

Unless the Trustee decides otherwise:

- (a) as defined in the Superannuation Law, and standards required by the Superannuation Law for a benefit to be taken to be an annuity that are required to be included in a contract are included in the definition
- (b) any relevant definition contained in legislation other than the Superannuation Law.
- (c) If any definition is inconsistent with another, the Trustee may decide which definition will apply from time to time.

1.2 ASSOCIATED EMPLOYER

Any company, partnership, person or other entity, if any, set out in Schedule 1 or which the Trustee from time to time declares to be an Associated Employer.

1.3 BENEFIT

Any benefit payable under these Rules in respect of a Member's membership with the Fund.

1.4 COMMENCEMENT DATE

The date determined by the Deed.

1.5 CATEGORY

As defined in Rule 5.7.

1.6 CONSTITUTIONAL CORPORATION

As defined in the SIS Act.

[Note: At the date of drafting of the Deed, 'constitutional corporation' is defined in s10(1) of the SIS Act to be a body corporate that is a trading corporation, or a financial corporation, formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution).]

1.7 DEED

The deed to which the Rules are annexed and, where the context requires, includes the Rules.

1.21 MEMBER FINANCED BENEFITS

Contributions made to the Fund by a Member or any other person (other than an Employer), including amounts transferred to the Fund from a Rollover Fund in respect of that Member, together with the net earnings of the Fund allotted to the Member on those contributions less any Benefits paid from the Fund in respect of the Member (including amounts transferred to Rollover Funds), and taxes, administration charges, insurance premiums or other amounts payable in accordance with the Rules in respect of the Member, that are attributable to such contributions and net earnings and are permitted by the Superannuation Law to be deducted from such amounts.

1.22 NON-MEMBER SPOUSE

As defined in the SIS Regulations.

1.23 OLD-AGE PENSION

As defined in the SIS Act.

1.24 PENSION

A benefit is taken to be a pension under the rules of the Fund if:

- (a) it is a benefit taken to be a pension as defined in the SIS Act, even if it does not satisfy the standards outlined in the SIS Regulations
- (b)
 - (i) it meets the standards prescribed for a benefit to be taken as a pension under the SIS Regulations and the relevant standards from time to time are incorporated in this definition
 - (ii) in relation to any standard that requires the size of the payments of benefits in a year to be fixed, but allows for variations as specified in the rules of a superannuation fund, then the payments may only be varied in accordance with Rule 9.15
- (c) it satisfies the definition of 'asset-test exempt income stream' in the *Social Security Act 1991* (Cth), or any other benefit that would be a pension under that Act as long as the payment of it does not breach the SIS Act, or
- (d) it is a benefit that the Trustee considers to be a pension so long as the payment of it does not breach the SIS Act.

Any changes to the definition or requirements of a pension in the Superannuation Law will be deemed to form part of the definition of Pension from the date they apply in the Superannuation Law.

1.14 EXISTING RULES

Any of the existing rules which governed the Fund up to the date the Rules were adopted.

1.15 FOUNDING MEMBER

Any person signing the Deed as a Founding Member.

1.16 FUND

The entire superannuation fund as constituted by the Deed.

~~1.17 GUARANTEE ACT~~

Superannuation Guarantee Charge Act 1992 (Cth) and the Superannuation Guarantee (Administration) Act 1992 (Cth) and regulations made under those Acts.

1.18 ITAA

Income Tax Assessment Act 1936 (Cth), Income Tax Assessment Act 1997 (Cth) and includes any legislation amending or replacing these Acts.

1.19 MEMBER

Any person who has met all of the requirements of the Fund and been admitted to membership of the Fund in accordance with the Rules, including former Members who continue to have rights or contingent rights to Benefits under the Fund.

1.20 MEMBER ACCOUNT

(a) The total of:

- (i) contributions made in respect of the Member to the Fund
- (ii) amounts transferred to the credit of the Member in the Fund from a Rollover Fund
- (iii) any insurance proceeds arising from the death, disablement or otherwise of the Member that the Trustee, as the Trustee considers appropriate (after taking into account any Excess Benefit issues or other issues the Trustee considers relevant), credits to the Account
- (iv) the allocation of any amounts in accordance with the Rules

less any Benefits paid from the Fund in respect of the Member (including amounts transferred to Rollover Funds), and taxes, administration charges, insurance premiums or other amounts payable in accordance with the Rules in respect of the Member.

1.21 MEMBER FINANCED BENEFITS

Contributions made to the Fund by a Member or any other person (other than an Employer), including amounts transferred to the Fund from a Rollover Fund in respect of that Member, together with the net earnings of the Fund allotted to the Member on those contributions less any Benefits paid from the Fund in respect of the Member (including amounts transferred to Rollover Funds), and taxes, administration charges, insurance premiums or other amounts payable in accordance with the Rules in respect of the Member, that are attributable to such contributions and net earnings and are permitted by the Superannuation Law to be deducted from such amounts.

1.22 NON-MEMBER SPOUSE

As defined in the SIS Regulations.

1.23 OLD-AGE PENSION

As defined in the SIS Act.

1.24 PENSION

A benefit is taken to be a pension under the rules of the Fund if:

- (a) it is a benefit taken to be a pension as defined in the SIS Act, even if it does not satisfy the standards outlined in the SIS Regulations
- (b)
 - (i) it meets the standards prescribed for a benefit to be taken as a pension under the SIS Regulations and the relevant standards from time to time are incorporated in this definition
 - (ii) in relation to any standard that requires the size of the payments of benefits in a year to be fixed, but allows for variations as specified in the rules of a superannuation fund, then the payments may only be varied in accordance with Rule 9.15
- (c) it satisfies the definition of 'asset-test exempt income stream' in the *Social Security Act 1991* (Cth), or any other benefit that would be a pension under that Act as long as the payment of it does not breach the SIS Act, or
- (d) it is a benefit that the Trustee considers to be a pension so long as the payment of it does not breach the SIS Act.

Any changes to the definition or requirements of a pension in the Superannuation Law will be deemed to form part of the definition of Pension from the date they apply in the Superannuation Law.

[Note: The purpose of the definition of pension is to include any relevant definitions wherever contained and however defined. It includes, for example, allocated pensions and market linked pensions which satisfy regulation 1.06 of the SIS Regulations.

At the date of drafting of the Deed, s10(1) of the SIS Act defines 'pension' to include a benefit provided by a fund if the benefit is taken to be a pension under the SIS Regulations. Regulation 1.06 defines a benefit to be a pension if it is provided under rules of a superannuation fund that meet certain standards. These standards are deemed to be included in this definition.

At the date of drafting of the Deed, regulation 9.04 of the SIS Regulations has the effect that Self Managed Superannuation Funds may only pay allocated pensions, market linked pensions and pensions wholly determined by reference to policies of life assurance purchased or obtained by the Trustee solely for the purposes of providing benefits to members.

However, where the person was a member of the Fund on 11 May 2004, and before 1 January 2006 ~~retires or attains 65, then other types of pensions may be payable if they commence before~~ 1 January 2006.]

1.25 PRINCIPAL EMPLOYER

The employer set out in Schedule 1 (if any) or any employer carrying on substantially the same business as that employer in succession to it by acquisition, merger or amalgamation.

1.26 PUBLIC OFFER SUPERANNUATION FUND

As defined in the SIS Act.

[Note: At the date of drafting of the Deed 'public offer superannuation fund' is defined in s18 of the SIS Act.]

1.27 REGULATED SUPERANNUATION FUND

As defined in the SIS Act.

[Note: At the date of drafting of the Deed 'regulated superannuation fund' is defined in s19 of the SIS Act.]

1.28 REGULATOR

The Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), the Commissioner of Taxation and:

- (a) any successor regulator, body or authority
- (b) any person empowered to issue any written rulings, modifications, guidelines or give any directive, approval or authorisation on behalf of any regulator.

1.29 ROLLOVER FUND

Another superannuation fund, approved deposit fund, retirement savings account or other fund from which Benefits may be transferred to or from the Fund provided that such funds which, in the Trustee's opinion, would cause adverse tax or other consequences for the Fund, are not Rollover Funds.

1.30 RULES

These rules, annexed to the Deed.

1.31 SELF MANAGED SUPERANNUATION FUND

As defined in the SIS Act.

[Note: At the date of drafting of the Deed 'self managed superannuation fund' is defined in s17A of the SIS Act.]

1.32 SIS ACT

Superannuation Industry (Supervision) Act 1993 (Cth).

1.33 SIS REGULATIONS

Any regulations made under the SIS Act.

1.34 SPLITABLE CONTRIBUTION

As defined in the SIS Regulations.

1.35 SPOUSE

As defined in the SIS Act.

1.36 STANDARD EMPLOYER-SPONSORED FUND

As defined in the Superannuation Law.

[Note: At the date of drafting of the Deed 'standard employer-sponsored fund' is defined in s16 of the SIS Act.]

1.37 SUB-PLAN

Part of the Fund for the purpose of distinguishing between different groups or classes of Members.

1.38 SUPERANNUATION LAW

- (a) The law in the SIS Act and the SIS Regulations
- (b) written rulings, modifications or guidelines issued by any Regulator
- (c) any written directive, approval or authorisation given to the Trustee from any Regulator

provided that, where the Trustee considers any provision of the Superannuation Law to be inconsistent or incompatible with any other provision, the Trustee may determine in its absolute discretion which provision will apply from time to time for any purpose. More than one provision may be used by the Trustee at the same time for different purposes.

1.39 SUPERANNUATION LAW CONCESSION

Any Superannuation Law which the Trustee in its absolute discretion determines is more concessionary than any explicit, implied or deemed provision contained in the Deed.

1.40 TRUSTEE

The trustee of the Fund for the time being and, where more than one, the term will refer to all of them if the context so requires.

2 Interpretation

2.1 PLURAL TERMS AND GENDER

Unless the context indicates otherwise, words importing the singular will include the plural and vice versa and words importing the masculine gender will include the feminine gender and vice versa.

2.2 HEADINGS

With the exception of Rule 1, headings inserted in any Rule are for convenience only and will not affect the interpretation of the Rules.

[Note: Rule 1 contains the definitions, and the words defined are in the headings.]

2.3 TRUSTEE'S INTERPRETATION BINDING

Except where otherwise expressly provided, if any question or dispute arises about the interpretation of the Rules or the incidence or application of any rights, benefits, duties or liabilities arising under the Rules, the decision of the Trustee will be binding upon all Members and Employers and other persons.

2.4 RESOLUTIONS OF DIRECTORS

Any discretion, agreement, determination or approval of any matter, or a decision, opinion, appointment or declaration to be made by any company will be made by resolution of the directors of that company or by any person appointed by the directors of that company to act on their behalf.

2.5 NOTES

The notes contained in the Rules do not form part of the Deed. They are included to assist the users of the Deed in understanding some of the issues which apply under the Superannuation Law.

2.6 OPERATING MANUAL

The Operating Manual that is available in relation to the Deed is not part of the Deed.

2.7 LEGISLATION

References to legislation include legislation replacing or amending that legislation, and references to persons include successors and permitted assigns of those persons.

2.8 SUPERANNUATION LAW

Except as expressly provided otherwise, the Deed is subject to the SIS Act and SIS Regulations.

2.9 TRUSTEE'S DISCRETION

Where any provision in these Rules permits a discretion to be exercised by a person other than the Trustee and the SIS Act or SIS Regulations requires the consent of the Trustee, then the exercise of that discretion will require the consent of the Trustee.

2.10 DIRECTIONS

Where any provision in these Rules purports to permit the Trustee to be subject to direction by any other person in contravention of the SIS Act or SIS Regulations then that provision will be a request which the Trustee may, in its discretion, comply with.

2.11 SAVING PROVISION

To the extent any provision of these Rules would be void or invalid, but for this Rule (**invalid provision**):

- (a) where a reading down or limitation of the operation of the invalid provision would remove the voidness or invalidity, that will be done in construing the Rules
- (b) where it is not possible to apply paragraph (a), the invalid provision will be severed from the Rules
- (c) in any event, an invalid provision does not affect the continued operation of the remainder of the Rules.

2.12 RELEVANT LAW

The validity of this Fund or any of the Rules will be determined under and construed according to the laws in force in New South Wales.

2.13 NOT A PUBLIC OFFER SUPERANNUATION FUND

This Fund is not a Public Offer Superannuation Fund and:

- (a) any provision that needs to be included in the Rules to ensure the Fund is not a Public Offer Superannuation Fund is deemed to be included unless the Trustee, in its absolute discretion, otherwise determines

-
- (b) any provision in the Rules which causes the Fund to be a Public Offer Superannuation Fund will be deemed not to be included unless the Trustee, in its absolute discretion, otherwise determines.

3 Regulated Superannuation Fund

3.1 REGULATED SUPERANNUATION FUND

This Fund is established as a Regulated Superannuation Fund and:

- (a) any provision that needs to be included in the Rules to ensure the Fund is a Regulated Superannuation Fund is deemed to be included
- (b) any provision in the Rules which causes the Fund not to be a Regulated Superannuation Fund is deemed not to be included.

3.2 CONSTITUTIONAL CORPORATION

Where the Trustee is a company, the Trustee must be a Constitutional Corporation, and Rule 3.3 does not apply.

3.3 PRIMARY PURPOSE TO PAY OLD-AGE PENSION

Where the Trustee is not a Constitutional Corporation, or consists of a Constitutional Corporation and one or more individuals, the primary purpose of the Fund is the provision of Old-Age Pensions and Rule 3.2 does not apply.

3.4 CHANGE FROM CORPORATE TO INDIVIDUAL TRUSTEES

Where the Trustee changes from a sole company to include one or more individuals, Rule 3.3 applies from the time of the change.

3.5 CHANGE FROM INDIVIDUAL TRUSTEES TO CORPORATE TRUSTEE

Where the Trustee changes from including one or more individuals to a sole company, Rule 3.2 applies from the time of the change.

4 The Trustee

4.1 RESIGNATION

Any Trustee may resign at any time.

4.2 NUMBER

There will be at least one Trustee. Subject to the SIS Act and SIS Regulations, an Employer may be a Trustee.

4.3 POWERS OF NEW TRUSTEE

Any new Trustee will have all the powers, authorities, discretions and duties conferred or imposed on or undertaken by the retiring Trustee under the Rules or otherwise by law.

4.4 REMOVAL

Subject to the SIS Act and SIS Regulations, the office of Trustee will become vacant if:

- (a) an effective resolution is passed for the winding-up of the Trustee
- (b) the Trustee is disqualified from office by operation of law, or
- (c) the Trustee is removed from office under this Rule or otherwise.

4.5 POWER OF APPOINTMENT AND REMOVAL

Subject to the SIS Act and SIS Regulations and Rule 4.17, the Principal Employer (if any), or if not, the Founding Member (if any) may, by written notice delivered to the Trustee remove any Trustee or appoint any new or additional Trustee at any time and from time to time. If the office of Trustee has become vacant, then the notice to the Trustee is not required.

[Note: This provision is inconsistent with a number of rules in the SIS Act which could apply, especially in relation to funds which are not Self Managed Superannuation Funds. See in particular the rules on equal representation and trustee consent discussed in the Operating Manual. Also, the victimisation provisions, which apply to all funds, must be considered.]

4.6 APPLICATION OF TRUSTEE LEGISLATION

Subject to Rule 4.17, if the Principal Employer (if any), or if not, the Founding Member (if any) is unable or unwilling to exercise the power conferred by Rule 4.5 at any time or from time to time, then the following will apply:

- (a) If there are more than two Members, the Members may by majority remove any Trustee or appoint any new or additional Trustee at any time and from time to time
- (b) if there are two or less Members, the Members may unanimously remove any Trustee or appoint any new or additional Trustee at any time and from time to time
- (c) if there is no surviving Member, the legal personal representative of the last Member to die may remove any Trustee or appoint any new or additional Trustee at any time and from time to time
- (d) if there is no surviving Member and no legal personal representative of the last Member to die, then the provisions contained in the Superannuation Law, the *Trustee Act 1925* (NSW) or any other enactment of any State or Territory which may be applicable regarding the removal of Trustees and the appointment of new or additional Trustees will apply.

Notwithstanding the above, a Member's properly appointed representative to act in the event of that person's loss of capacity (eg attorney under an enduring power of attorney) may make the decision that the Member could otherwise make if the Member loses legal capacity.

4.7 TRANSFER OF ASSETS

Upon a change of Trustee, the retiring Trustee will execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name of the new Trustee.

4.8 TRUSTEE'S DISCRETION

~~The Trustee, in the exercise of the powers, authorities and discretions given to it by the Deed,~~ will have an absolute and uncontrolled discretion and may exercise, or refrain from exercising, all or any of those powers, authorities and discretions.

4.9 MULTIPLE TRUSTEES

Where there is more than one Trustee:

- (a) subject to Rule 4.9(c) and unless prohibited by trust law or provided for otherwise in the Rules, any decision made by the Trustees when exercising any of their powers, authorities or discretions under this Deed must be made by a majority of the Trustees
- (b) any two Trustees may sign, seal, deliver and endorse all memoranda, forms, cheques and other documents in connection with the Deed; provided that the Trustees may, by giving written consent, appoint any one Trustee to sign, seal, deliver and endorse all memoranda, forms, cheques and other documents in connection with the Deed
- (c) the Trustees may, subject to the SIS Act and SIS Regulations and unless prohibited by trust law, delegate, by giving written consent, all or any Trustees' powers to one or more Trustees and if so, that Trustee or those Trustees may sign, seal, deliver and endorse all memoranda, forms, cheques and other documents in connection with the Deed.

4.10 MEETINGS OF MULTIPLE TRUSTEES

Where there is more than one Trustee, the Trustees may regulate their meetings as they think fit. They will appoint a chairperson at each meeting, and unless prohibited by trust law, they may act by a majority of votes provided that where the votes are tied, the chairperson will have an additional casting vote.

[Note: Different rules apply if the Fund is subject to the equal representation rules.]

4.11 POWERS

- (a) The Trustee has the power to do whatever the Superannuation Law requires or allows the Trustee to do.

[Note: For example, the Trustee has the power to establish election procedures if the equal representation rules apply, establish inquiry and complaint procedures where they apply, and pay unclaimed money to the relevant Regulator or to an eligible rollover fund.]

- (b) Subject to the SIS Act and SIS Regulations and any contrary provision in the Deed, the Trustee has all the powers of a natural person, including the powers of investment of a natural person, and including, without limiting the foregoing, the power to receive distributions from trusts (whether unit trusts, discretionary trusts or other types of trusts).

[Note: There are many restrictions in the Superannuation Law which apply to investments. See the Operating Manual for a discussion of these. Also, Rule 18 allows the Members to give certain directions to the Trustee in relation to investments.]

-
- (c) The Trustee may pay out of the Fund the premiums on any policy of insurance in relation to any liability of the Trustee or of a director or officer to the fullest extent permitted by the Superannuation Law, and the Corporations Act.

- (d) With the consent of the Members and subject to the SIS Act and SIS Regulations, the Trustee may make out of the Fund payments to the Employer as the Trustee thinks fit.

[Note: Great care needs to be taken when making payments to an employer. For example, s117 of the SIS Act deals with some of the rules that apply to payments to employers from funds that are not Self Managed Superannuation Funds.]

- (e) Subject to the SIS Act and SIS Regulations, title to the assets of the Fund may be held by the Trustee, one or more individual trustees (where applicable), a custodian or any other person or entity that the Trustee considers appropriate.

- (f) Subject to the SIS Act and SIS Regulations, the Trustee may do anything required or that the Trustee considers appropriate to comply with the *Family Law Act 1975* (Cth). Any costs incurred by the Trustee in complying with the Family Law Act, including costs incurred in complying with any orders under that Act, may be deducted from the Non-Member Spouse's interest in such manner as the Trustee considers appropriate.

4.12 PERSONAL INTERESTS

Subject to the SIS Act and SIS Regulations, the Trustee and, where the Trustee is a company, any director, officer or shareholder of the Trustee may exercise, or concur in exercising, all powers and discretions conferred on the Trustee by the Deed or by law, notwithstanding that such Trustee, director, officer or shareholder respectively may have a direct or other personal interest in the mode or result of exercising any such powers or discretions. Any such Trustee, director, officer or shareholder may nevertheless abstain from acting except as a merely formal party in any matter in which they may be so personally interested.

[Note: The Trustee may pay Benefits to Members who are directors of the Trustee or are Trustees.]

4.13 INSTRUCTIONS FROM EMPLOYER

For the purposes of the Deed, the Trustee can regard a discretion, instruction or other written authorisation signed by, or purported to be signed by a director or secretary for the time being of an Employer as a valid discretion, instruction or other written authorisation of the Employer. If an Employer is not an incorporated entity then a partner, principal or senior executive officer of the Employer may exercise any of the powers of the Employer set out in the Rules.

4.14 INDEMNITY

Subject to the SIS Act and SIS Regulations, the Trustee and every director and officer of the Trustee will be indemnified out of the property of the Fund against any liability incurred by the Trustee or any director or officer in his or her capacity as a director or officer, to another person and, without limiting the generality of the foregoing, including liability for legal and other costs in defending proceedings, whether civil or criminal, no matter what the outcome of those proceedings.

[Note: Sections 56 and 57 of the SIS Act contain limitations on the power to indemnify and override this and the following Rule to the extent of any inconsistency.]

4.15 DEFAULT

Subject to the SIS Act and SIS Regulations, the Trustee and each director of the Trustee will not be liable for:

- (a) any act or default done or omitted to be done in the exercise of their powers, duties and discretions
- (b) any loss or expense incurred by the Fund arising from the bankruptcy, insolvency or tortious acts of any person with whom any money or securities will be deposited, or
- (c) any loss, damage or misfortune whatever, except where this is due to their own wilful acts or defaults.

4.16 TRUSTEE'S REMUNERATION

- (a) Subject to the SIS Act and SIS Regulations, the Trustee may charge the Fund for the Trustee's reasonable remuneration and reasonable out of pocket expenses at such amount or amounts and in such manner as the Trustee may determine from time to time for acting as Trustee.
- (b) Unless the Trustee, in its absolute discretion, decides otherwise, paragraph (a) will not apply if it causes the Fund to be a Public Offer Superannuation Fund and/or if it causes the Fund not to be a Self Managed Superannuation Fund.

[Note: Section 17A of the SIS Act provides that, for a Self Managed Superannuation Fund, a trustee cannot receive remuneration for services or duties in relation to the Fund.]

4.17 REPLACEMENT OF DECEASED TRUSTEE

Upon the death of a Trustee of the Fund, the personal representative of the deceased Trustee will appoint, as soon as is reasonably possible after the death of the deceased Trustee, a person that the personal representative, in the exercise of the personal representative's absolute discretion, considers to be a suitably qualified person to act as a Trustee of the Fund (**Replacement Trustee**). The Replacement Trustee will have and exercise all the powers and duties of a Trustee of the Fund until retirement or removal from office.

[Note: Consider s17A(3)(a) and s17A(4) of the SIS Act if the Fund is a Self Managed Superannuation Fund.]

4.18 SELF MANAGED SUPERANNUATION FUND

Unless all the trustees, or all the directors of a corporate trustee, decide from time to time otherwise:

- (a) The Fund will be a Self Managed Superannuation Fund.
- (b) The trustees, or the directors of a corporate trustee, must be such persons as will mean that the Fund is a Self Managed Superannuation Fund.
- (c) The trustees, or the directors of a corporate trustee, must take whatever steps are necessary to ensure that the Fund is a Self Managed Superannuation Fund. Without limiting the generality of the foregoing, this includes refusing to admit a person as a Member, or removing a Member from the Fund against that Member's wishes.
- (d) Where at least one trustee, or one director of a corporate trustee, in their absolute discretion wish the Fund to be a Self Managed Superannuation Fund, then the trustees or directors of a corporate trustee must take whatever steps are necessary to ensure that the Fund is a Self Managed Superannuation Fund. Without limiting the generality of the foregoing, this includes removing against their will trustees or directors of a corporate trustee who would otherwise cause the Fund not to be a Self Managed Superannuation Fund, and any such persons must resign as soon as possible and take whatever steps are necessary to ensure that the Fund remains a Self Managed Superannuation Fund.

If the Fund has five or more Members and is a Standard Employer-Sponsored Fund, then (unless there is a unanimous written resolution to the contrary) the trustees, or all of the directors of a corporate trustee, will be taken as deciding that the above does not apply, and the Fund will operate as a Standard Employer-Sponsored Fund.

5 Eligibility and membership

5.1 ELIGIBILITY

The Founding Member (if any) and any other person whom the Trustee in its absolute discretion admits to the Fund as a Member will be eligible to become a Member.

[Note: The Superannuation Law imposes restrictions on who can be members of superannuation funds, and on whose behalf contributions can be made. See in particular Part 7 (regulations 7.04 and 7.05) and Part 6 (regulation 6.21) of the SIS Regulations.]

[Note: If the Fund has less than 5 members and is intended to be a Self Managed Superannuation Fund, then only persons who are eligible under s17A of the SIS Act should be Members.]

[Note: If the Fund has 5 or more Members and is intended to be a Standard Employer-Sponsored Fund, then only persons who are permitted to be members for the Fund not to be a Public Offer Fund in accordance with s18 of the SIS Act should be Members.]

5.2 APPLICATION FOR MEMBERSHIP

The Trustee may require a person to apply to the Trustee for membership in the form set out in Schedule 2 or such other form as the Trustee may from time to time approve.

5.3 COMMENCEMENT OF MEMBERSHIP

Subject to the SIS Act and SIS Regulations, a person will become a Member from the date when the Trustee accepts a contribution to the Fund in respect of that person (including a transfer from a Rollover Fund or a superannuation contribution split in accordance with Rule 7.2), or such other date as the Trustee decides.

5.4 ADDITIONAL FUND MEMBERSHIP

The Trustee may, in respect of any Member, arrange for the Member's Fund membership to be increased by a number of years and months subject to payment of such special contributions by the Member or an Employer or both, as is determined by the Trustee. The Trustee may arrange for any such additional Fund membership to apply only in respect of some and not all of the Benefits under the Fund.

5.5 TEMPORARY WITHDRAWAL FROM SERVICE

Where the Trustee is satisfied that a Member withdrawing from service with an Employer is likely to return to that service within a reasonable period, it may make such arrangements in regard to the Member's Fund membership and accrual of Benefits as it considers appropriate, provided that a Member's accrued Benefit will not thereby be reduced.

5.6 CESSATION OF MEMBERSHIP

A person ceases to be a Member:

- (a) when the Member dies
- (b) when the total amount of all amounts payable under the Rules in respect of the membership has been paid, or
- (c) when any Benefits payable to the Member under the Rules, or any person on the Member's account, cease to be payable

whichever occurs first.

5.7 CATEGORIES OF MEMBERS

- (a) The Trustee may create different classes of membership (**Category**) on such terms as the Trustee determines, and admit members to a Category with the consent of the Member concerned.
- (b) Where the Rules replace any Existing Rules, if the Existing Rules contain categories of Members, the Members will continue in the categories existing at the time the Rules are adopted unless the Trustee decides otherwise.

5.8 MULTIPLE FOUNDING MEMBERS

Where there is more than one Founding Member the following provisions apply:

- (a) one or more Founding Members may delegate all the Founding Member's powers to one or more other Founding Members
- (b) where after taking into account paragraph (a) of this Rule more than one Founding Member wish to exercise their powers under the Rules then decisions of the Founding Members must, unless they agree otherwise, be unanimous
- (c) where agreement cannot be reached within a reasonable time the Founding Members will follow the dispute resolution procedure contained in Rule 21.

5.9 SELF MANAGED SUPERANNUATION FUND

The Trustee (unless all the trustees or all the directors of a corporate trustee decide otherwise) may refuse to admit a person as a Member, or remove a Member from the Fund against that Member's wishes, to ensure that the Fund is a Self Managed Superannuation Fund.

[Note: If the Fund has five or more Members and is intended to be a Standard Employer-Sponsored Fund then this Rule would not need to be relied upon.]

6 Transfers

6.1 TRANSFER FROM A ROLLOVER FUND

The Trustee may make such arrangements as it thinks proper with:

- (a) a Member
- (b) any previous Employer of the Member
- (c) any Rollover Fund of which the Member was a member
- (d) the Trustee itself

or any of them, for the transfer of any assets or moneys to the Fund, and it may make arrangements about any other matter which, in the opinion of the Trustee, is incidental to or consequent upon the admission of such person to membership of the Fund. The Trustee may also accept, from itself, an amount which it has agreed to pay in relation to a Member.

6.2 TRANSFER TO A ROLLOVER FUND

Should a Member become eligible to join a Rollover Fund which the Trustee has reasonable grounds to believe complies with the Superannuation Law, or an amount is payable under Rule 9, the Trustee may pay to such Rollover Fund an amount equal to the credit in the Member Account corresponding to the amount that is vested in the Member and any amounts not vested in the Member as the Trustee determines. Upon making any such payment, the Trustee is discharged from the trusts relating to the Member constituted by the Fund. The Trustee may also pay to itself an amount which it has agreed to accept.

[Note: Rule 9 contains the provisions relating to entitlement and payment of benefits.]

7 Contributions

7.1 CONTRIBUTIONS

Subject to the following and the SIS Act and SIS Regulations, the Trustee may in its absolute discretion determine whether or not to accept contributions from a Member, an Employer, or any other person (including the Government). Contributions may be made by way of money, property or in any other form as the Trustee considers appropriate. Anyone contributing to the Fund will be bound by the Rules.

7.2 SUPERANNUATION CONTRIBUTIONS SPLITTING

- (a) Subject to the SIS Act and SIS Regulations, a Member may make an application, in the manner set out in the SIS Regulations or such manner as the Trustee determines from time to time, to the Trustee for all or part of a Splitable Contribution made by or on behalf of the Member to be rolled over, transferred or allotted to their Spouse. The Trustee will have an absolute discretion in determining whether to accept an application to split from a Member.
- (b) The Trustee must have regard to the Superannuation Law before accepting an application to split from a Member.
- (c) If the Spouse is not a Member and a Splitable Contribution is to be retained in the Fund, the Spouse will become a Member at the time the Trustee accepts an application to split.
- (d) Unless all trustees or all the directors of a corporate trustee decide otherwise, where a Spouse becomes a Member because of Rule 7.2(c), the Spouse must also become an individual trustee or a director of the corporate trustee of the Fund, so that the Fund satisfies the definition of Self Managed Superannuation Fund.

7.3 STANDARD EMPLOYER-SPONSORED FUND

Where the Trustee intends that the Fund is a Standard Employer-Sponsored Fund, this Rule 7.3 applies. Having regard to any Superannuation Law Concession:

- (a) an Employer may from time to time, but only under an arrangement with the Trustee, make contributions to the Fund in respect of each individual Employee who is a Member
- (b) an Employer will not contribute only under an arrangement between the Employer and the Member
- (c) ~~the Trustee may refuse contributions if they would cause the Fund not to be a Standard Employer-Sponsored Fund~~
- (d) the Trustee may make any other arrangement or do any thing to ensure that the Fund is a Standard Employer-Sponsored Fund.

Unless the Trustee resolves in writing otherwise, the Trustee will be taken to intend that the Fund is not a Standard Employer-Sponsored Fund.

[Note: If the parties act in accordance with this Rule the Fund is a 'standard employer-sponsored fund' as defined in s16 of the SIS Act.]

7.4 NOT STANDARD EMPLOYER-SPONSORED FUND

Where the Trustee intends that the Fund is not a Standard Employer-Sponsored Fund, this Rule 7.4 applies. Having regard to any Superannuation Law Concession:

- (a) a Member may request an Employer to contribute to the Fund on behalf of the Member, and if so the Trustee will (with the consent of the Trustee if required by the SIS Act and SIS Regulations) accept such contributions. For the avoidance of doubt it is declared that such contributions are not made wholly or partly under an arrangement between the Employer and the Trustee
- (b) unless approved by both the Trustee and the Founding Member (if any) an Employer will contribute only under an arrangement between the Employer and the Member
- (c) the Trustee may refuse contributions if they would cause the Fund to be a Public Offer Superannuation Fund or a Standard Employer-Sponsored Fund
- (d) the Trustee may make any other arrangement or do any thing to ensure that the Fund is not a Public Offer Superannuation Fund or a Standard Employer-Sponsored Fund.

Unless the Trustee resolves in writing otherwise, the Trustee will be taken to intend that the Fund is not a Standard Employer-Sponsored Fund.

[Note: 'Public offer superannuation fund' is defined in s18 of the SIS Act. 'Standard employer-sponsored fund' is defined in s16 of the SIS Act.]

7.5 REDUCTION ETC OF CONTRIBUTIONS

Subject to the SIS Act and SIS Regulations and any agreement with the Trustee, an Employer or a Member may at any time reduce, suspend or terminate all or any of their contributions.

7.6 OTHER CONTRIBUTIONS

The Trustee will not accept any contributions in respect of a Member by any person other than contributions authorised by the Superannuation Law.

7.7 ALLOCATION OF CONTRIBUTIONS

Contributions will be allocated as follows, without any further action of the Trustee, unless the Trustee resolves otherwise within 28 days of the end of the month in which the contributions are received:

- (a) contributions by a Member will be allocated to the Member's Account
- (b) contributions by another person (eg an Employer) on behalf of a Member will be allocated to the Member's Account.

[Note: Regulation 7.08 of the SIS Regulations provides that if a trustee of an accumulation fund receives a contribution in a month, the trustee must allocate the contribution to a member of the fund within 28 days after the end of the month, or if that is not reasonably practical, within such longer period as is reasonable in the circumstances.]

8 Vesting

8.1 MEMBER FINANCED BENEFITS

Notwithstanding anything to the contrary contained anywhere else in the Deed, Member Financed Benefits accruing in respect of a Member will vest in the Member as they accrue to that Member.

8.2 EMPLOYER FINANCED BENEFITS

Where the Rules replace the Existing Rules, and the vesting rules under the Existing Rules are more generous to the Member, then the vesting rules under the Existing Rules to the extent of any inconsistency will continue to apply, unless the Member otherwise consents in writing.

Subject to the foregoing, the following Employer Financed Benefits will vest in the Member as they accrue to that Member:

- (a) any Employer Financed Benefits which are required to vest in the Member by the SIS Act and SIS Regulations
- (b) any Employer Financed Benefits which are required to vest in the Member to ensure that contributions made by the Employer are taken into account in calculating whether a superannuation guarantee charge under the Guarantee Act is payable

-
- (c) subject to the SIS Act and SIS Regulations, any Employer Financed Benefits provided in excess of the minimum required by the SIS Act and SIS Regulations to vest in the Member as the Employer decides after notification to the Trustee and, if required by the SIS Act and SIS Regulations, with the Trustee's consent.

Any amounts not fully vested will vest as determined by the Trustee. The Trustee will advise the Member how this excess will be vested at such times as the Trustee considers appropriate.

[Note: Part 5 of the SIS Regulations (in particular, regulation 5.04) should be considered if all Employer Benefits do not fully vest immediately. The SIS Regulations override this Rule to the extent of any inconsistency. If vesting scales are desired and consistent with the SIS Act and SIS Regulations then they may be adopted by the Employer with the consent of the Trustee if necessary. The Deed need not be amended but the vesting scales should be in writing and be kept with the Deed.]

9 Entitlement and payment of Benefits

9.1 ENTITLEMENT TO BENEFIT

A Member will be entitled to be paid a Benefit when:

- (a) the Member requests the Benefit to be paid and the Superannuation Law allows a Benefit to be paid, or
- (b) the SIS Act and SIS Regulations requires a Benefit to be paid.

Subject to the SIS Act and SIS Regulations, notwithstanding any provision to the contrary, if the pay-out of a Benefit (whether as a lump sum, Pension or otherwise) would cause the Member to receive an Excess Benefit, the Trustee may transfer any amount otherwise payable that would cause the Excess Benefit into a reserve account. Subject to the SIS Act and SIS Regulations, this power applies separately to amounts that are vested and amounts that are not vested.

[Note: There are restrictions in the SIS Regulations with respect to forfeiture of benefits. For example, before exercising its power under this Rule the Trustee must consider the rules with respect to minimum benefits contained in Part 5 of the SIS Regulations and the sole purpose test. As at the date of drafting of the Deed, regulation 5.04(2) of the SIS Regulations provides that if the fund is an accumulation fund, the member's minimum benefits are all of the member's benefits in the fund.]

9.2 POSTPONEMENT OF BENEFIT

With the Trustee's consent, a Member may allow any part or all of that Member's Benefit to remain in the Fund until either:

- (a) the Member requests the Benefit to be paid, or
- (b) the SIS Act and SIS Regulations requires the Benefit to be paid.

9.3 PRIMARY PURPOSE TO PAY OLD-AGE PENSION

If Rule 3.3 applies then this Rule and Rule 9.4 apply. Subject to the following Rules:

- (a) the Benefit payable will be an Old-Age Pension and will, subject to the SIS Act and SIS Regulations, be paid in such manner as may be agreed from time to time by the Member and the Trustee and, in the absence of such agreement, as the Trustee reasonably determines
- (b) a Member or Dependant entitled to receive an Old-Age Pension may, with the consent of the Trustee, and subject to Rule 3.3, commute (either before or after the Pension commences) the Old-Age Pension to a Benefit payable in accordance with Rule 9.5.

9.4 PAYMENTS BEFORE OLD-AGE

Where the Member is entitled to a Benefit before reaching an age that must be reached for an Old-Age Pension to commence, then subject to the SIS Act and SIS Regulations and Rule 3.3, the Benefit is payable in accordance with Rule 9.5.

9.5 CONSTITUTIONAL CORPORATION

If Rule 3.2, Rule 9.3(b) or Rule 9.4 apply, then this Rule applies. The Benefit payable will, at the option of the Member but with the Trustee's consent, be any one or a combination of the following:

- (a) a Pension or Annuity that complies with the SIS Act and SIS Regulations on such terms as the Trustee and Member agree calculated in accordance with Rule 9.6
- (b) a lump sum
- (c) any other form permitted or required by the Superannuation Law

provided that the total amount payable will not exceed the vested amount in the Member's Accounts or any such additional amounts as the Trustee determines.

9.6 PENSIONS AND ANNUITIES

In relation to Pensions and Annuities payable in respect of a particular Member:

- (a) the calculation of the Pension or Annuity payable must not result in a reduction in any other Members' Accounts
- (b) the Trustee, with the consent of the Member, may purchase a Pension or Annuity or other similar product to provide a Pension or Annuity
- (c) the Pension or Annuity will be paid in such a manner and on such terms as may be agreed from time to time by the Member and the Trustee and, in the absence of such agreement, as the Trustee reasonably determines.

9.7 DEATH OF A MEMBER

On the death of a Member who has not received all the Benefits which the Member would have received if living, a Benefit consisting of the credit in the Member's Accounts, including any insurance paid to the Trustee as a result of the Member's death, disablement or otherwise that the Trustee, as the Trustee considers appropriate (after taking into account any Excess Benefits issues or other issues the Trustee considers relevant), credits to the Member's Accounts, will be payable in accordance with the following Rules, provided that the total amount payable will not exceed the vested amount in the Member's Accounts or any such additional amounts as the Trustee determines.

[Note: This Rule would apply if, for example, the Member had not yet retired or had retired and had not taken all the Benefits to which the Member would have been entitled, or if the Member was receiving a Pension or Annuity at the time of death.]

9.8 PAYMENT OF DEATH BENEFITS

This Rule applies unless the binding death benefit procedure contained in Rule 9.16 applies.

- (a) Where a Benefit is payable on the death of a Member, the Trustee will consider any election made by the Member in the Member's Application for Membership and Consent to Trustee Form (**Schedule 2**) or otherwise and, without being bound by any election, will in its absolute discretion pay the Benefit among one or more of:
- (i) the Dependant or Dependents nominated in that form
 - (ii) any other Dependant
 - (iii) the estate of the deceased Member.
- (b) The Benefit may be payable as a lump sum, Pension, Annuity or in any combination of these forms provided that if Rule 3.3 applies no benefit may be paid which would breach Rule 3.3.
- (c) If any part of the Benefit payable under Rule 9.7 would be an Excess Benefit, the Trustee may transfer any amount otherwise payable that would cause the Excess Benefit into a reserve account. Subject to the SIS Act and SIS Regulations, this power applies separately to amounts that are vested and amounts that are not vested.

[Note: The Trustee must be careful when making payments on death as several persons may claim to be entitled to the Benefit. The Trustee should also consider the claim staking rules contained in the *Superannuation (Resolution of Complaints) Act 1993* (Cth) where the Fund is not a Self Managed Superannuation Fund.]

9.9 ALTERNATIVE FORMS OF BENEFIT

The Trustee may, with the agreement of the person entitled to receive the Benefit, transfer investments of the Fund of equivalent value to a Rollover Fund or to that person in lieu of paying the whole or part of the Benefit otherwise payable under the Rules. In determining the value of

the Benefit payable, the Trustee will have regard to any taxation liability or other costs, such as brokerage fees incurred in transferring the asset.

9.10 ENTITLEMENT

- (a) All questions as to whether any person is entitled to a payment from the Fund and, if so, the amount of such payment, will be determined by the Trustee.
- (b) The payment or application of any moneys under this Rule will be a complete discharge to the Trustee.
- ~~(c) No Benefit will be payable until the Trustee has ascertained that it may be paid in accordance with the Rules.~~
- (d) Where the SIS Act or SIS Regulations requires the Trustee to obtain certain information prior to making a payment, the Trustee will obtain that information.
- (e) Benefits will commence to be paid as soon as reasonably practicable after they become payable.
- (f) Where the SIS Act or SIS Regulations requires or allows a Benefit to be payable for a period only, then the Benefit will be payable only for that period.

[Note: This would apply in cases of temporary incapacity where payments are made under Item 109 of Schedule 1 of the SIS Regulations.]

9.11 COMMUTATION OF PENSION ENTITLEMENT

- (a) Subject to the SIS Act and SIS Regulations, the terms of the Pension, and Rule 3.3 (if Rule 3.3 applies) a Member, legal personal representative of a Member or Dependant may, with the consent of the Trustee, commute all or part of that Member's or that Dependant's Pension entitlement to a lump sum benefit calculated in accordance with the Superannuation Law.
- (b) Any remaining Pension will be paid in such manner and on such terms as may be agreed from time to time by the Member, legal personal representative of the Member, or Dependant and the Trustee and, in the absence of such agreement, as the Trustee reasonably determines.
- (c) Any commutation may be paid to the Member, legal personal representative of the Member or Dependant or retained within the Fund and credited to such account as the Trustee determines, or otherwise dealt with as the Trustee and Member, legal personal representative of the Member or Dependant agree, and in the absence of such agreement, as the Trustee reasonably determines.

9.12 REQUESTS FOR PAYMENT

A request by a Member for the payment of a Benefit under this Rule will be in writing, unless the Trustee in its absolute discretion decides otherwise.

9.13 PAYMENTS TO CERTAIN PERSONS

Where authorised by the Superannuation Law, the Trustee may pay a Benefit to a person other than the persons permitted to be paid by the above provisions of this Rule.

9.14 INSURANCE

- (a) The Trustee will on the request of a Member effect insurance on the life of the Member for such risks and for such amount of cover as the Member may request with an insurance provider nominated by the Trustee.
- (b) The Member will supply the Trustee with all relevant information required by the insurance provider and submit to any medical examination required by it from time to time.
- (c) The Trustee will pay the premiums and costs of the insurance and record any amount so paid as a debit to:
 - (i) any contribution paid by the Member or the Member's Employer in respect of such premiums and costs, and/or
 - (ii) the Member's Accounts as the Member may direct or failing such direction as the Trustee may determine.
- (d) The Trustee is not bound to pay any premiums or costs unless the Member's Accounts, or contributions referred to in Rule 9.14(c)(i) are sufficient to meet them.
- (e) The Trustee will not be under any liability for the failure of the insurance provider to renew any such insurance and will not be liable to the Member if at any time by omission or oversight the Trustee fails to pay any premiums or costs to the insurance provider.
- (f) In effecting the insurance the Trustee does not act as an agent for the insurance provider and the Member will have no claim on the Trustee or on the Fund if the insurance provider fails to pay on any claim lodged by the Trustee, the Member, the Member's Dependents or the Member's legal personal representative.
- (g) Any insurance proceeds payable to the Fund on the death of a Member will be dealt with in accordance with Rule 9.7. The Trustee will credit any insurance proceeds not credited to the Member's Accounts to such other accounts (including reserve accounts) as the Trustee determines.

-
- (h) Any insurance proceeds payable to the Fund in circumstances other than the death of the Member will be credited to the Member's Accounts as the Trustee considers appropriate (after taking into account any Excess Benefits issues or other issues the Trustee considers relevant). The Trustee will credit any balance not credited to the Member's Accounts to such other accounts (including reserve accounts) as the Trustee determines.

9.15 VARIATION OF PENSION PAYMENTS

If and to the extent permitted under the definition of 'Pension', the Trustee may vary a pension benefit payable from the Fund after explaining the circumstances that make such variation necessary and obtaining the written consent of the affected beneficiary.

9.16 BINDING DEATH BENEFIT PROCEDURE

The Trustee may, in its absolute discretion with the consent of the Member and subject to the SIS Act and SIS Regulations, though notwithstanding it could otherwise be a fettering of the Trustee's discretion, enter into an arrangement with the Member for any death benefit to be payable as the Member directs. This direction can include directions in relation to specific assets of the Fund. In adopting such an arrangement, the Trustee will act in accordance with the SIS Act and SIS Regulations and obtain such written notification from the Member as the Trustee from time to time determines. If a Member directs payment to be made to someone not permitted by the SIS Act and SIS Regulations to receive such payments, the Trustee's discretion in Rule 9.8 will apply.

[Note: Great care needs to be taken before adopting a binding death benefit procedure as severely adverse consequences can arise if an inappropriate person is chosen, or if the Member does not update the nomination. Also, issues associated with the *Family Provision Act (NSW)* and other similar legislation will also need to be considered.]

9.17 PAYMENT OF A DEFINED BENEFIT PENSION

Notwithstanding anything to the contrary, where the Rules replace any Existing Rules, if the Existing Rules contain provisions which allow for the payment of a Defined Benefit Pension commencing after 11 May 2004 then those provisions continue to apply and are deemed to be incorporated in the Rules.

[Note: Regulation 9.04F(1)(b) has the effect that a Fund established before 12 May 2004 cannot pay a Defined Benefit Pension if the governing rules are amended after 11 May 2004 to provide for the payment of the pension. The purpose of Rule 9.18 is to not adversely impact on the Fund's ability to commence to pay a Defined Benefit Pension if it can take advantage of the transitional rules in Division 9.2B of the SIS Regulations.]

9.18 NO CHANGE TO PENSIONS OR ANNUITIES BEING PAID PRIOR TO ADOPTING RULES

Where the Rules replace any Existing Rules, if a Pension or Annuity is being paid prior to the Rules replacing any Existing Rules, the Pension or Annuity will continue to be payable on the same terms unless the Trustee and person receiving the Pension or Annuity decide otherwise.

9.19 PAYMENTS OF PENSIONS AFTER DEATH OF RECIPIENT

Subject to the SIS Act and SIS Regulations, and any contrary terms of the Pension being paid, on the death of a person receiving a Pension, the Trustee may, in its discretion, continue paying the Pension to one or more Dependants of the deceased and/or the legal personal representative of the deceased as a reversionary pension or otherwise, on such terms as the Trustee considers appropriate. However, the Pension must be paid to the person or persons nominated by the Member if the Member has entered into an arrangement under Rule 9.16.

9.20 ANTI-DETRIMENT PAYMENT

After the death of a Member, the Trustee may, in addition to anything else payable in accordance with the Rules, pay a benefit within the meaning of section 279D of the *Income Tax Assessment Act 1936* (Cth). Such benefit will be paid to such person or persons (including the legal personal representative of the deceased) and in such amount as the Trustee determines. However, the benefit must be paid to the person or persons nominated by the Member if the Member has entered into an arrangement under Rule 9.16.

9.21 OTHER AMOUNTS PAYABLE

Subject to the SIS Act and SIS Regulations and Rule 19, any amounts not payable in accordance with the above provisions of this Rule will be dealt with as the Trustee considers equitable. Without limiting the generality of the foregoing, the Trustee may credit such amounts to the reserve account, credit individual Member Accounts, and make payments to existing Members or former Members in such proportions as the Trustee considers appropriate.

[Note: This Rule would apply to unvested amounts not paid to the Member because the Trustee does not exercise its discretion under Rule 8.2, and amounts that are not paid because of reliance on Rule 9.1. Rule 19 relates to the winding up of the Fund.]

10 Forfeiture

10.1 FORFEITURE OF BENEFITS

Subject to the SIS Act and SIS Regulations (unless the Trustee resolves otherwise) and the *Bankruptcy Act 1966* (Cth) (**Bankruptcy Act**):

- (a) the amount of the Member's Accounts above the amount excluded from a bankrupt's divisible property under the Bankruptcy Act will be forfeited if and when:
 - (i) the Member fails to pay any amount payable under a judgment, order or arbitration award within 28 days after it is made and the Trustee, in its absolute discretion, decides to exercise this power, or
 - (ii) a secured creditor of the Member takes any steps to enforce any security and the Trustee, in its absolute discretion, decides to exercise this power.

-
- (b) Notwithstanding anything to the contrary in the Rules, if either of the events in Rule 10.1(a)(i) or (ii) occur, any amount above the amount excluded from a bankrupt's divisible property under the Bankruptcy Act will be dealt with in accordance with Rule 10.2.
 - (c) Subject to the SIS Act and SIS Regulations, though notwithstanding any provision in the Rules to the contrary, if the Trustee considers that the payout of a Benefit (whether as a lump sum, Pension or otherwise) may cause the Member to receive an Excess Benefit, the Trustee may in its absolute discretion at any time forfeit the whole or any part of such amounts that are vested in the Member under this Deed.

[Note: There are restrictions in the Superannuation Law with respect to forfeiture of benefits. For example, before exercising its power under this clause to forfeit benefits the Trustee must consider the rules with respect to minimum benefits contained in Part 5 of the SIS Regulations and the sole purpose test.]

- (d) Subject to the SIS Act and SIS Regulations, though notwithstanding any provision in the Rules to the contrary, if the Trustee considers that the payout of a Benefit (whether as a lump sum, Pension or otherwise) may cause the Member to receive an Excess Benefit, the Trustee may in its absolute discretion at any time forfeit the whole or any part of such amounts that are not vested in the Member under this Deed.

[Note: There are restrictions in the Superannuation Law with respect to forfeiture of benefits. For example, before exercising its power under this clause to forfeit benefits the Trustee must consider the rules with respect to minimum benefits contained in Part 5 of the SIS Regulations and the sole purpose test.]

This Rule does not apply to any amount which has become payable to a Member and to which the Member has become absolutely entitled before the occurrence of the events referred to above and this Rule applies separately to amounts vested and not vested in the Member.

10.2 APPLICATION OF FORFEITED AMOUNTS

- (a) The whole of the Member's Accounts forfeited under Rule 10.1(a) will, at the discretion of the Trustee, be applied by it from time to time for the benefit of such Member and the Member's Dependents, or any of them as the case may be or be applied to maintain reserves under Rule 15.7.
- (b) Such part of the Member's Accounts forfeited under Rule 10.1(c) and 10.1(d) will, at the discretion of the Trustee, be applied by it from time to time to maintain reserves under Rule 15.7.
- (c) The Trustee may open forfeited benefits accounts and transfer amounts forfeited to such accounts.

[Note: The Bankruptcy Act contains special provisions which relate to the bankruptcy of members of superannuation funds and which render certain forfeiture clauses invalid. These provisions must be considered closely if the Trustee wishes to rely on this Rule.]

11 Administration

11.1 RIGHTS OF MEMBERS

No person, whether a Member or otherwise, will have any claim, right or interest to or in respect of the Fund or any contributions to it or any claim upon or against the Trustee or an Employer except under and in accordance with the provisions of the Rules.

11.2 MEMBERS BOUND BY THE RULES

Every Member will be bound by the Rules.

11.3 RIGHT TO INSPECT THE RULES

Every Member will have the right to inspect a current copy of the Rules at the office of the Trustee during the Trustee's usual business hours and may obtain a copy of the Rules for such reasonable fee as the Trustee in its discretion determines.

11.4 POWER OF ATTORNEY

Each Member, on becoming a member, appoints the Trustee as the Member's attorney, effective immediately, to exercise authority conferred on the Member's attorney by Part 2 of the *Powers of Attorney Act (NSW) 2003* or the relevant sections of any equivalent legislation in any state or territory, to sign all such deeds and instruments and do all such things as the Trustee considers necessary or desirable in order to carry out and give effect to the Deed or the powers vested in the Trustee.

11.5 EMPLOYER'S RIGHT TO TERMINATE EMPLOYMENT

Nothing in the Rules will:

- (a) restrict the right of an Employer to dismiss an Employee, or
- (b) be used to increase damages in any action brought against an Employer in respect of such dismissal.

11.6 RIGHT TO CLAIM COMPENSATION

Nothing in the Rules will affect the rights of a Member or the Member's legal personal representative or other persons, to claim damages or compensation at common law or under workers compensation law or any other law in force governing compensation to a Member injured or dying as a result of an accident arising out of or in the course of the Member's employment with an Employer.

12 Amendments

12.1 VARIATION OF RULES

- (a) Subject to the SIS Act and the SIS Regulations, the Trustee may at any time, by oral or written resolution or by instrument in writing, amend all or any of the provisions of the Deed and Rules provided that:
- (i) no amendment will reduce or prejudice the Benefits secured to a Member prior to the date of any such amendment or impose any further liability on any Member without that Member's consent
 - (ii) no amendment introduced primarily for the purpose of complying with the Superannuation Law or of securing exemption or relief from liability for income tax, stamp duty, gift duty, death duty, or any other form of taxation imposed or to be imposed or primarily for the purpose of complying with future laws will be deemed to prejudicially vary or affect the Benefits secured to a Member
 - (iii) no amendment introduced primarily for the purpose of complying with laws governing or regulating the maintenance or operation of a superannuation, pension or like fund will be deemed to prejudicially vary or affect the Benefits secured to a Member
 - (iv) the prohibitions, if any, contained in the SIS Act and SIS Regulations on amending the governing rules of superannuation funds will be complied with.
- (b) Nothing in this Rule will be construed as applying to or restricting any reduction of Benefits made in accordance with Rule 7.5.
- [Note: Rule 7.5 provides that the Employer may stop contributing to the Fund.]
- (c) Any amendment under Rule 12.1(a) will take effect at such time as the Trustee determines even if this time is before the time of the amendment.

12.2 NOTIFICATION OF AMENDMENTS

The Trustee will notify the Members and Employers of the effect of any amendment to the Rules if and to the extent required by the SIS Act and SIS Regulations.

13 Superannuation Law

13.1 COMPLIANCE WITH SUPERANNUATION LAW

- (a) Any law which is required to be included in the Deed by the SIS Act or SIS Regulations and which is applicable to the operation of the Fund is deemed to be included in the Rules while such requirement is law.

-
- (b) If rules are required to be included in the Deed by the SIS Act or SIS Regulations, or other relevant law, for the Fund to obtain taxation concessions or, in the opinion of the Trustee, any other advantages, then those rules are deemed to be included in the Rules while such requirement is law unless the Trustee decides otherwise.
 - (c) Without limiting any other relief available to the Trustee in the Deed or otherwise, the Trustee will not be taken to be in contravention of the Deed or to be in breach of trust if:
 - (i) it does or fails to do anything in order that the Fund complies with the Superannuation Law
 - (ii) it does anything which it is required to do by the Superannuation Law
 - (iii) it does not do something which is prohibited by the Superannuation Law.
 - (d) It is in the absolute discretion of the Trustee to act in accordance with or rely upon any matter arising out of paragraphs (b) or (c) of the definition of Superannuation Law.
 - (e) Any law which is required to be included in the Deed by the Guarantee Act to ensure that contributions made by an Employer are taken into account in calculating a superannuation guarantee charge is deemed to be included in the Rules while such requirement is law.

13.2 SUPERANNUATION LAW CONCESSIONS

- (a) Superannuation Law Concessions are deemed to be included in the Deed from the time the Trustee determines that they apply. This can be from any time even before the Trustee makes the determination, provided that a Superannuation Law Concession cannot apply before it becomes operative.
- (b) Subject to the SIS Act and SIS Regulations, where a Superannuation Law Concession is inconsistent with an explicit, implied or deemed provision in the Deed, the Superannuation Law Concession will prevail, unless the Trustee determines otherwise in writing.

[Note: For example, if the Deed and the Superannuation Law provided that Benefits can only be paid when the Member turns 65, and the Superannuation Law is changed to permit payment of Benefits when the Member turns 55, generally the Benefit would still not be payable until the Member turns 65 because of the Deed. However, under this Rule, if the Trustee determines the ability to pay a Benefit when a Member turns 55 to be a Superannuation Law Concession, then that determination can be made without any amendment to the Deed.]

14 Taxation

- (a) In recognition that all or any of the contributions to the Fund, the income of the Fund and the Benefits payable to Members may from time to time be subject to payment of income tax or other tax, the Trustee is empowered generally to take such action as it considers

necessary or appropriate to ensure that such tax is paid according to law and that the burden of paying the tax falls upon the persons ultimately liable to bear payment of it.

- (b) The Trustee may from time to time make or provide, either absolutely or conditionally, for such deductions, provisions, reserve accounts, withholding or allowances as it sees fit to achieve that result.
- (c) In particular, but without limiting the generality of the foregoing, the Trustee may:
 - (i) realise assets of the Fund for the purpose of paying tax
 - (ii) ~~set aside amounts and make provisions for payment of tax in accordance with~~ assessments, instalments or estimates made by the Trustee, including any tax for which it may become liable with the passage of time or the happening of events (such as tax on any unrealised capital gains)
 - (iii) deal with tax credits or rebates as and when they arise and offset them against provisions for tax whenever the provisions have been made or the credits or rebates are received
 - (iv) pay tax when it is due out of amounts set aside for that purpose, provided that the Trustee is not obliged to make any retrospective adjustments if the tax becomes payable in relation to an earlier year of income where no amount or no adequate amount has been set aside in respect of that year of income
 - (v) hold any provisions assessed by self-assessment, estimate or otherwise which are found to be in excess of the amount required to pay the tax actually assessed as provisions for other tax, or allocate the excess to Members' accounts or other accounts, or use the excess to fund any other deficiency or any other provisions made in respect of the Fund
 - (vi) deduct and remit tax at source where such deduction is required by law or the Trustee believes it is appropriate for the efficient management of the Fund
 - (vii) where Rule 7.2 applies, debit to the maximum extent possible under the SIS Act and SIS Regulations the Member's Account with any taxes payable on contributions by or on behalf of that Member irrespective of the amount that is rolled over, transferred or allotted to their Spouse.

15 Assets, expenses and investments

15.1 ASSETS OF THE FUND

The following property, the investments for the time being representing that property and the income thereof will constitute the assets of the Fund:

- (a) contributions
- (b) any assets transferred to the Trustee under any arrangements made by the Trustee and a Rollover Fund, Member, Employer or any other person
- (c) any other moneys or assets received or receivable by the Trustee for the purpose of the Fund.

15.2 SUB-PLANS

- (a) For the purposes of managing, administering and applying the Fund the Trustee may:
 - (i) establish and maintain separate Sub-Plans, and/or
 - (ii) establish and maintain separate accounts or investments or both, in respect of any Sub-Plan, and/or
 - (iii) transfer assets between Sub-Plans as the Trustee may determine.
- (b) Where a Sub-Plan is created, the Trustee may allocate income, losses, taxation credits and anything else relevantly associated with particular assets transferred to the relevant Sub-Plan between the Sub-Plan, other Sub-Plans and the remainder of the Fund as the Trustee considers appropriate.

15.3 ASSETS VESTED IN TRUSTEE

The assets of the Fund will be vested in the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in the Rules and will be managed, administered and applied by the Trustee in accordance with the Rules.

15.4 EXPENSES

All expenses incurred from time to time in operating the Fund that are not paid by an Employer (if any) or the Founding Member (if any) will be paid out of the Fund.

15.5 LIENS

An Employer will not have any right to receive a payment from the Trustee to satisfy any claim which it may have against a Member.

15.6 SEGREGATION OF ASSETS

Where a Pension is or Pensions are payable, the Trustee may segregate the assets of the Fund in such manner and from time to time as the Trustee considers appropriate.

[Note: There may be taxation advantages in doing this. Consider, in particular, s282B of the ITAA.]

15.7 RESERVES

Notwithstanding anything to the contrary contained in this Deed:

- (a) The Trustee may maintain reserves and such reserve accounts as the Trustee considers appropriate and for such purposes as the Trustee considers appropriate, and in relation to those reserves will have all the powers available under the Superannuation Law.
- (b) Subject to the SIS Act and SIS Regulations, the Trustee may credit any amounts not vested in a Member, any insurance proceeds not credited to a Member's Account, any excess amounts transferred under Rule 9.1 or Rule 9.8, or any other amounts permitted by the Rules into such reserve accounts as the Trustee considers appropriate.
- (c) Subject to the SIS Act and SIS Regulations, the Trustee may pay all or part of the reserves to or for the benefit of the Employer whose contributions created or added to the reserves upon request by the Employer for withdrawal of those amounts. Any such amounts, at the request of the Employer and with the consent of the Trustee may be transferred by the Trustee to an account of a Member.
- (d) Subject to the SIS Act and SIS Regulations, the Trustee may transfer amounts held in reserve to the Member Accounts in any proportion that the Trustee considers appropriate. Without limiting the generality of the foregoing and subject to the SIS Act and SIS Regulations, the Trustee may transfer amounts held in reserve otherwise than in accordance with account balances (and to the credit of one or more members to the exclusion of one or more other members) if the crediting to a particular Member's Accounts would in the Trustee's opinion be likely to lead to that Member receiving an Excess Benefit.

[Note: Under certain circumstances transfers from a reserve account to a member's account, at the direction of the employer, count as contributions by the employer for superannuation guarantee purposes (see SGD94/8).]

16 Records, accounts and valuation

16.1 MEMBERSHIP RECORDS

- (a) The Trustee will keep or cause to be kept a complete record of all the Members of the Fund, the income and expenditure of the Fund and all other matters essential for the working of the Fund.

-
- (b) The Trustee may, if it so decides, arrange for these matters to be attended to by whomever it decides, notwithstanding that such person or organisation does not maintain a separate banking account for the Fund but pays moneys into an account established for the purpose of managing the assets of similar funds.

16.2 MEMBER ACCOUNTS

- (a) The Trustee may create such accounts in respect of a Member as the Trustee considers appropriate and may credit whatever amounts it considers appropriate into those accounts (for example, Employer Financed Benefits, unvested Employer Financed Benefits, allocated and other types of Pensions) and the Deed will apply, where relevant, to those accounts.
- (b) Where the Rules replace the Existing Rules, the Trustee may continue using the same accounts as were used before the Rules were adopted by the Fund.

16.3 PROFITS AND LOSSES

After the 30th day of June in each year, or at any other time the Trustee decides, the Trustee may compute the net profit or net loss of the Fund for the year ending on that date. Such net profit or net loss (as the case may be) will be computed by taking into account the income received by the Trustee from investments, any profit or loss incurred in respect of any investments and all expenses incurred by the Trustee in the administration of the Fund during the year.

16.4 ANNUAL VALUATION

After the 30th day of June in any year, or at any other time the Trustee decides, the Trustee may cause the whole or any of the assets of the Fund to be valued as at that date, taking into account, where the Trustee in its absolute discretion determines it is appropriate to do so, any accrued, deferred or potential taxation liability or benefit in relation to the assets comprising the Fund.

16.5 ADJUSTMENT OF ACCOUNTS

After every such valuation the Trustee will cause an appropriate adjustment to be made to the Members' Accounts and reserve accounts, unvested benefits accounts or other relevant accounts maintained by the Trustee so that the aggregate of all amounts standing to the credit of all such accounts equals the total net value of the assets of the Fund as at the date of the valuation.

16.6 ALLOCATION OF PROFITS OR LOSSES

- (a) Subject to Rule 16.6(b) the net profit derived or loss incurred (as the case may be) calculated under Rule 16.3 will be credited or debited (as the case may be) to Member Accounts and any other accounts maintained by the Trustee:
- (i) in the proportion which that net profit or loss bears to the total of the Member Accounts and other accounts immediately before the end of the year, or
 - (ii) in any other proportion that the Trustee considers is appropriate (including crediting or debiting to one or more Members' Accounts to the exclusion of one or more other Members' Accounts).

Without limiting the generality of the foregoing and subject to the SIS Act and SIS Regulations, the Trustee may decide not to credit a share of the net profit to a particular Member's Account if it would be reasonably likely to lead to that Member receiving an Excess Benefit.

- (b) All or part of the net profit or loss may, instead of being credited or debited to the Member Accounts, be credited or debited to a reserve account or other relevant account on whatever terms the Trustee considers appropriate.

16.7 ACTUARIAL REPORT

If required by the SIS Act or SIS Regulations or if the Trustee in its discretion so requires, an actuarial investigation will be made of the Fund and a written report of the investigation provided to the Trustee.

16.8 INFORMATION TO MEMBERS AND OTHERS

The Trustee will provide information and documents to such persons as is required by the SIS Act and SIS Regulations.

16.9 DEBITING OF MEMBERS' ACCOUNTS

A Member Account may be debited to the extent required by the Trustee for the following reasons and purposes:

- (a) to pay any Benefit due and payable to the Member or the Member's legal personal representatives, Dependants or other persons entitled to receive any benefit
- (b) to transfer the whole or part of the Member Account to another account in the Fund
- (c) to transfer the whole or part of the Member Account to a Rollover Fund
- (d) to pay any insurance premium due and payable in respect of any insurance effected in relation to the Member

-
- (e) to pay any administrative costs payable in respect of the Fund or a particular Member
 - (f) to pay any fees or other moneys properly payable to or recoverable by an Employer or Trustee
 - (g) to pay any moneys due to any third party by the Fund or by the Member including without limiting the generality of this paragraph any tax or impost payable to any government or government authority
 - (h) to pay or provide for any taxation liability in accordance with Rule 14
 - (i) to pay or refund any other moneys properly payable under the provisions of these Rules or by law.
-

16.10 AUDIT

If required by the SIS Act or SIS Regulations or if the Trustee in its discretion so requires, an audit will be made of the accounts of the Fund.

17 Associated employer

17.1 ADMISSION OF ASSOCIATED EMPLOYER

The Trustee may with the consent of the Founding Member (if any) or the Principal Employer (if any) admit to the Fund any Associated Employer. The Associated Employer will be bound by the Rules upon making a contribution to the Fund on behalf of an Employee. The Trustee may require an Associated Employer to agree in writing to be bound by the Rules. The Trustee may make such arrangements as it thinks fit with the Associated Employer regarding the terms on which its Employees are to be admitted to Membership of the Fund.

17.2 RETIREMENT OF ASSOCIATED EMPLOYER

The participation in the Fund of an Associated Employer may be terminated:

- (a) by the Associated Employer notifying the Trustee in writing and, if required by the SIS Act or SIS Regulations, with the consent of the Trustee
- (b) by the Trustee notifying the Associated Employer in writing, or
- (c) by the Principal Employer (if any) or if not the Founding Member (if any) notifying the Associated Employer and the Trustee in writing and, if required by the SIS Act or SIS Regulations, with the consent of the Trustee.

17.3 CONSEQUENCES OF RETIREMENT

On termination of participation:

- (a) the retiring Associated Employer will retire on the date agreed upon by the Trustee and the Associated Employer
- (b) the retiring Associated Employer and its Employees who are Members will forthwith pay all arrears, if any, of contributions up to the date of retirement
- (c) benefits which have become payable on or before the date of retirement of the ~~Employees of the Associated Employer who are Members will continue to be payable out~~ of the Fund
- (d) subject to the SIS Act and SIS Regulations, the Trustee in its discretion may make such arrangements in relation to the Member Accounts as the Trustee considers appropriate in respect of each relevant Member.

18 Investment choice

Subject to the SIS Act and SIS Regulations and to the Trustee's agreement, a Member may give the Trustee whatever directions relating to the investments of the Fund relevant to that Member which are able to be given under the Superannuation Law, and the Trustee may create appropriate Categories and/or Sub-Plans to cater for such directions. Without limiting the generality of the foregoing:

- (a) The Trustee, in the Trustee's absolute discretion, may give Members a choice of two or more individual investment strategies from which the Members may choose one strategy or a combination of individual strategies.
- (b) If the Trustee decides to offer the choice referred to in Rule 18(a), the Trustee will determine from time to time the strategies and the investment objectives of each of the strategies and all other matters that the Trustee considers relevant to such strategies (for example, the class of assets that will constitute each strategy and any default strategy).
- (c) In relation to each strategy (including changing between strategies and other issues that the Trustee considers relevant) the Trustee will give each Member from time to time such information as the Trustee considers appropriate.
- (d) The Members will provide such information and notices from time to time (for example, notices of choice of investment strategies) to the Trustee as the Trustee requires in relation to implementing and maintaining Member investment choice within the time required by the Trustee and failing the provision of such information or notices the Trustee will make such decisions as the Trustee in its absolute discretion considers appropriate (such as what will be the relevant default strategy for any particular Member).

-
- (e) Where the Trustee receives information or notices in accordance with Rule 18(d), the Trustee will endeavour to ensure that the investment of the relevant part of the Member's interest in the Fund is to the extent possible made in accordance with such information or notice.
 - (f) The Trustee will maintain the investment allocation of the relevant part of the Member's interest in the Fund, to the extent possible, in accordance with an investment choice received under Rule 18(d), until such time as a further investment choice is received in respect of the Member.
 - (g) The Trustee will not be liable to any Member in respect of any investment made in accordance with an investment choice or for any delay in making or realising any investment, except in the case of failing to act honestly, or wilfully or recklessly failing to act.

19 Winding up of the Fund

19.1 TERMINATION OF THE FUND

Subject to the SIS Act and SIS Regulations, the Fund will terminate if the Trustee resolves to terminate the Fund.

19.2 CONSEQUENCES OF TERMINATION

Upon the Fund terminating, the Trustee will give notice to each Employer (if required by the SIS Act or SIS Regulations or if determined by the Trustee to do so) and the Members that the Fund will be wound up on a specified date. As from the specified date:

- (a) no further contributions will be made by Employers or Members or any other person, other than arrears of contributions due up to the specified date
- (b) any arrears of contributions will be called in immediately.

19.3 DETERMINATION OF BENEFITS ON TERMINATION

Upon the Fund terminating, the Trustee will make such provision out of the Fund, after meeting expenses and current liabilities, as is necessary to provide for the payment of (in descending order of priority):

- (a) payments which on or before the specified date have become payable to retired Members or Dependants
- (b) payments in respect of each other Member of such amount of the assets of the Fund then remaining as the Trustee considers equitable taking into account, in particular, the balances in each Member's Accounts.

19.4 PAYMENT OF BENEFITS ON WINDING-UP

Subject to the SIS Act and SIS Regulations, the payments to be provided under Rule 19.3 will be made to:

- (a) the Member or other person (including a Rollover Fund) nominated by the Member that is entitled to receive such payments under the Superannuation Law, or
- (b) in the event of the death of the Member, the legal personal representative of the Member, the Dependants of the Member or any other persons permitted to receive such a payment under the Superannuation Law in such proportions as the Trustee determines.

19.5 PAYMENT OF ANY SURPLUS

Subject to the SIS Act and SIS Regulations:

- (a) if a surplus remains after providing Benefits for Members and their Dependants in accordance with this Rule, such surplus or a part thereof will be applied, in the Trustee's absolute discretion, for payment of Benefits to Members, prior Members who were Members before the Fund is wound up, estates of former deceased Members or to their Dependants
- (b) any balance remaining will be paid to the Principal Employer (if any) or, if the Principal Employer has been wound up, to an Associated Employer (if any) or, if more than one, in equal shares
- (c) any balance remaining will be paid to the Founding Member (if any).

20 Defined Benefit Members

Subject to the SIS Act and SIS Regulations, the Trustee may admit Members as defined benefit members. If so, the following provisions will apply:

- (a) The Benefits payable will be calculated as the Trustee determines with the consent of the Employer of the Member (if any). Without limiting the generality of the foregoing, this includes calculating Benefits by reference to a Member's salary or a stated amount.
- (b) The Trustee may enter into such arrangements with the Member and the Employer of the Member (if any) as the Trustee considers appropriate.
- (c) The Trustee may in accordance with Rule 15.2, create such Sub-Plans as the Trustee considers appropriate.
- (d) The Trustee may take any other action as the Trustee considers appropriate.

[Note: Before having defined benefit members, the Trustee must carefully consider all relevant issues, including in particular calculating the Benefit payable, funding those benefits, documenting the terms of those benefits, actuarial advice required, and the SIS Act and superannuation guarantee implications.

As at the date of drafting of the Deed, regulation 9.04D of the SIS Regulations provides that a defined benefit fund established after 11 May 2004, or a fund converted to a defined benefit fund after 11 May 2004, must have at least 50 defined benefit members.]

21 Dispute resolution

Any dispute arising between trustees, or between directors of a corporate trustee, or between Members, or between Members and the Trustee in relation to the Fund will not be taken to a court of law until attempts have been made to settle it in accordance with the following provisions:

- (a) ~~The party in dispute will give written notice of seven days to the other parties that a meeting will be held at which attempts will be made to negotiate a settlement of the dispute~~
- (b) The disputing party will attend this meeting alone or with a legal representative and make a bona fide attempt to resolve the dispute
- (c) If the dispute is not resolved within 14 days following this meeting, the disputing party will notify the other parties in writing of that party's intention to refer the matter to a mediator
- (d) The other parties may then agree with the disputing party to refer the dispute to a mediator in accordance with an agreed procedure and timetable
- (e) If no such agreement is reached within 14 days of the notification required by paragraph (c), the parties' obligations under this clause cease
- (f) As long as it bona fide complies with this clause, a party is also entitled to take any legal action to which it is entitled to protect its interests.

Schedule 1

(Sub-rule 1.2 and 1.22)

Principal Employer

ACN

Associated Employer

ACN

Schedule 2

(Sub-rules 5.2 and 9.8)

Application for membership and consent to trustee

Full name

Date of birth

Address

Postcode

Tax file number

I apply to become a member of the Ireland Superannuation Fund (**Fund**) and agree to be bound by the Deed and the Rules annexed to the Deed (together called **Deed**) which govern the Fund.

I understand that the Fund is an accumulation superannuation fund and that there is no guarantee by the Trustee or my Employer of the size of my benefits as my benefit depends upon the investment performance of the Fund.

I agree to Dog Trap Investments Pty Ltd ACN 080 699 823 of 4th Floor, 20-24 Wentworth Street, Parramatta, NSW 2150 being the Trustee of the Fund.

I hereby appoint the Trustee as my attorney, effective immediately, to exercise authority conferred on my attorney by Part 2 of the *Powers of Attorney Act (NSW) 2003* or the relevant sections of any equivalent legislation in any state or territory, to sign all such deeds and instruments and to do all such things as the Trustee considers necessary or desirable in order to carry out and give effect to the Deed or the powers vested in the Trustee.

I consent to the Trustee collecting, maintaining, using and disclosing any personal information about me for the purpose of carrying out its functions as Trustee of the Fund, which may include disclosure to external service providers, financial institutions, or organisations managing or administering the assets or affairs of the Fund. I am aware that under the *Privacy Act 1988*, subject to some legal exceptions, I can gain access to the personal information about me which the Trustee holds. I acknowledge that if all or part of the personal information in this Application is not provided (other than my tax file number) I may not be able to become a member of the Fund.

In the event of my death I wish the Trustee to pay any benefit payable to my dependants nominated below, though I acknowledge that the Trustee is not bound by this nomination.

Name	Relationship	Percent of Benefit

Note: You may choose to nominate one or more persons, or you may nominate your estate if you wish. You should consider the taxation and other implications in completing this notification and, if you should nominate your estate, you should ensure that your Will is appropriate.

Information you should consider before giving us your Tax File Number

As the trustees of your superannuation fund we are required to tell you the following things before you provide your tax file number (TFN) to us. Your TFN is confidential, and you should know the following things before you decide to provide it:

- 1 We can collect your tax file number under the *Superannuation Industry (Supervision) Act 1993*.
- 2 If you do provide your tax file number to us, we will use it only for legal purposes. This includes finding or identifying your superannuation benefits where other information is insufficient, calculating tax on any eligible termination payment that you may be entitled to, calculating your superannuation contributions surcharge, and providing information to the Commissioner of Taxation. These purposes may change in the future.
- 3 It is not an offence to choose not to quote your tax file number. But if you do not tell us your tax file number, either now or later, you may pay more tax on your benefits than you have to (you may reclaim this through the income tax assessment process.) You will have to pay the surcharge on all your taxable contributions or specified roll-over amounts that constitute the roll-over of amounts that are eligible termination payments (the Commissioner of Taxation must amend the assessment to the amount that would have been payable had you quoted your tax file number). It may also be more difficult to find your benefits in the future to pay you any superannuation benefits that you are entitled to, or to amalgamate or find any other benefits for you. These consequences may change in the future.
- 4 If you provide your tax file number to us, we may provide it to the trustee of any other superannuation fund to which your benefits are transferred to in the future. We will not pass your tax file number to any other fund if you tell us in writing that you do not want us to pass it on. We may also give it to the Commissioner of Taxation. Otherwise we will treat it as confidential.

Acknowledgment by Member

I acknowledge that I am aware that:

- 1 My provision, and your receipt, of my tax file number is authorised under the *Superannuation Industry (Supervision) Act 1993*.
- 2 If I provide my tax file number to you, you will use it only for legal purposes. This includes finding or identifying my superannuation benefits where other information is insufficient, calculating tax on any eligible termination payment that I may be entitled to, calculating my superannuation contributions surcharge, and providing information to the Commissioner of Taxation. These purposes may change in the future.
- 3 I don't have to provide my tax file number to you. If I don't provide it, I will commit no offence. But if I don't tell you my tax file number, I may pay more tax on my benefits than I have to (I may reclaim this through the income tax assessment process.) The fund (out of my contributions) will have to pay the surcharge on all my taxable contributions or specified roll-over amounts that constitute the roll-over of amounts that are eligible termination payments (the Commissioner of Taxation must amend the assessment to the amount that would have been payable had I quoted my tax file number when I do quote my tax file number). It may also be more difficult to find me in the future to pay me any superannuation benefits I haven't claimed, or to amalgamate or find any other benefits for me. These consequences may change in the future.
- 4 If I provide my tax file number to you, you may provide it to the trustee of any other superannuation fund to which any remaining benefits of mine might be transferred in the future. You will not pass my tax file number to any other fund if I tell you in writing that I do not want you to pass it on. You may also give it to the Commissioner of Taxation. Otherwise you will treat it as confidential.

Date _____

Signed sealed and delivered by me in the presence of:

Witness's signature

Applicant's signature

Witness's name

Witness's address