



## **VOYTAS FAMILY SUPERANNUATION FUND**

### **SMSF DEED OF VARIATION**

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# Deed of Variation

This Deed of Variation (“**Deed**”) is made on the Deed Date specified in the Schedule.

## Parties

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This Deed is made between the Trustee and Members referred to in the Schedule.

## Background

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- A. On the Creation Date referred to in the Schedule, the superannuation fund named in the Schedule (**‘the Fund’**) was established by deed as amended on the Variation Dates, if any, also referred to in the Schedule (**‘the Trust Deed’**).
- B. The Trustee named in the Schedule is the trustee of the Fund.
- C. Each person named as Members in the Schedule is a member of the Fund.
- D. The Trust Deed provides that one or more of the parties to this Deed may amend the provisions of the Trust Deed.
- E. The parties wish to amend the Trust Deed pursuant to the power contained in the Trust Deed.

## Operative Provisions

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### 1. Amendment

- 1.1 In accordance with the powers under the Trust Deed, the party having the power to amend the Trust Deed, with the consent of the other party to this Deed, amends the Trust Deed by deleting the operative provisions of the Trust Deed and replacing them with the Rules in Annexure A to this Deed.
- 1.2 The parties agree that the provisions of this Deed executed by the parties are intended to satisfy any provision of the Trust Deed, the Superannuation Industry (Supervision) Act 1993 (Cth) and the Corporations Act 2001 (Cth), requiring notice of the amendments contained in this Deed.

### 2. Variation of Trust Deed

Notwithstanding anything contained in this Deed (including in Annexure A) to the contrary, if any amendment to the Trust Deed would have the effect of:

- 2.1 reducing or adversely affecting the rights of a Member to accrued entitlements arising before the date of this Deed;
- 2.2 reducing the amount of any other entitlement that is or may become payable in respect of a period before the date of this Deed;
- 2.3 ceasing, commuting or otherwise altering the terms and conditions of any current pension;
- 2.4 revoking any instrument/s in writing (in this Deed referred to as **Instrument/s**) requiring the Trustee to pay benefits on the death of a Member to a person or persons specified in the Instrument/s, being the legal personal representative and/or one or more dependants of the Member; or
- 2.5 varying or deleting any provision of the Trust Deed declaring the trust, or that is incapable of variation or deletion, which provisions, if any, remain operative to that extent only;

then that amendment shall be of no effect and the provisions purported to be amended shall continue to be determined in accordance with the provisions of the Trust Deed as they existed prior to the date of this Deed.

**3. No Redeclaration of Trusts**

3.1 Despite anything contained in this Deed (including in Annexure A), the trusts declared under the Trust Deed, wherever so declared in the Trust Deed, are not redeclared, restated or otherwise effected by this Deed and the same trusts continue as amended by this Deed.

3.2 For the avoidance of doubt, by executing this Deed the parties to this Deed are not resettling the Fund, declaring a new trust or causing the transfer, vesting, or accruing of property to or in any person. To the extent any provision of this Deed would have the effect of resettling the Fund, or declaring a new trust, or causing the transfer, vesting, accruing of property in any person, that provision will have no effect.

**4. Priority of Transfer or Payment of Benefits on Death of a Member**

Subject to Clause 2.5, as and from the date of this Deed, the priority of transfer or payment of benefits on the death of a Member shall be in accordance with the Rules in Annexure "A" of this Deed (whether or not the Instrument/s are made prior to, on, or after the date of this Deed).

**SCHEDULE**

1. **Deed Date:**
2. **Name of Super Fund:** Voytas Family Superannuation Fund
3. **Trustee:** David Robert Voytas and Donna Leanne Voytas
4. **Members:** David Robert Voytas and Donna Leanne Voytas
5. **Creation Date:** 1 March 2011
6. **Variation Dates:** not applicable
7. **Governing Law:** Queensland



**Voytas Family Superannuation Fund**

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**Executed as a Deed**

**SIGNED by the Trustees of the Voytas Family Superannuation Fund:**

**The Trustee**

---

Signed by David Robert Voytas and Donna Leanne Voytas in the presence of:

---

**David Robert Voytas**  
Trustee

**Dated:** \_\_\_\_\_

---

Witness Name / Signature

---

**Donna Leanne Voytas**  
Trustee

**Dated:** \_\_\_\_\_

---

Witness Name / Signature

**The Member**

---

Signed by David Robert Voytas and Donna Leanne Voytas in the presence of:

---

**David Robert Voytas**  
Member

**Dated:** \_\_\_\_\_

---

Witness Name / Signature

**Voytas Family Superannuation Fund**

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**Donna Leanne Voytas**  
Member

---

Witness Name / Signature

**Dated:** \_\_\_\_\_

**'Annexure A'**

**Voytas Family Superannuation  
Fund**

**The Rules of the Fund**

## The Rules of the Fund

### 1. Purpose of the Fund – Core and Ancillary Purposes

1.1 The Fund is to be maintained:-

- (a) solely for one or more Core Purposes; or
- (b) solely for one or more Core Purposes and one or more Ancillary Purposes.

1.2 Despite any other provision of these Rules, the Trustee must be a Constitutional Corporation unless the Trustees are individuals in which case the sole or primary purpose of the Fund is the provision of Old-Age Pensions.

1.3 The Trustee will do all things necessary to ensure that the Fund is a Complying Self Managed Superannuation Fund.

### 2. Trustee

#### 2.1. Trustee Structure

The Trustee of the Fund may be a Corporate Trustee or one or more individuals if the sole or primary purpose of the Fund is the provision of Old-Age Pensions and the Trustee and the Members shall take such action as is considered necessary and appropriate to ensure that every Trustee is constituted in a manner complying with the Superannuation Law including action relating to the filling of vacancies in accordance with **Rule 2** and the eligibility, appointment, replacement, representation, removal and composition of every Trustee and the directors of a Corporate Trustee.

#### 2.2. Appointment and Removal of Trustee

- (a) Subject to any requirements of the Superannuation Law, the Members in accordance with the other applicable provisions of the Rules may, at any time by deed or written resolution, remove from office a Trustee and/or may appoint a new Trustee or additional Trustee, subject to their consent to act as Trustee.
- (b) If the Trustee is a Corporate Trustee, the appointment of a director of a Corporate Trustee shall be determined in accordance with the Corporate Trustee's constitution and shall be subject to compliance with the Superannuation Law including the Corporations Act 2001 (Cth), the Corporate Trustee's constitution and these Rules.
- (c) Despite **Rule 2.2(a)** and subject to the Superannuation Law:-
  - (i) a Trustee appointed by the court or the Regulator shall not be removed by the Members; and
  - (ii) a Legal Personal Representative of a deceased Member appointed as Trustee or a director of the Corporate Trustee, shall not be removed until the Fund has commenced payment of the Death Benefit of the

deceased Member in respect of whom the Legal Personal Representative has been appointed as Trustee, unless removal is required to facilitate the Death Benefit payment.

- (d) Each Trustee and every director of a Corporate Trustee (including an LPR appointed under **Rule 2.2(h)**) must:-
- (i) agree in writing to be bound by the Deed and the Rules; and
  - (ii) sign a trustee declaration in a form approved by the Regulator under section 104A of the SIS Act, (or otherwise as may be permitted by the Regulator) among other matters, acknowledging the duties and responsibilities as a Trustee or a director of a Corporate Trustee of the Fund; and
  - (iii) not be a Disqualified Person; and
  - (iv) be a Member of the Fund and satisfy any eligibility criteria to be an individual trustee or director of a Corporate Trustee as prescribed by the Superannuation Law; or
  - (v) satisfy such alternative requirement that is permitted by the Superannuation Law and these Rules for other situations such as:-
    - (A) if the Fund has a single Member;
    - (B) if a Member has died;
    - (C) if a Member suffers from a legal disability;
    - (D) if a Member has appointed a Legal Personal Representative under an enduring power of attorney; or
  - (vi) satisfy such other requirements permitted by the Superannuation Law or the Regulator.
- (e) A Trustee will continue to hold office until:-
- (i) the Trustee resigns by notice in writing to the Members and to any other Trustees;
  - (ii) if an individual, the Trustee dies;
  - (iii) if an individual, the Trustee is under a legal disability and is incapable of performing the duties of a Trustee;
  - (iv) the Trustee is a Disqualified Person;
  - (v) the Fund would fail to satisfy the definition of a self managed superannuation fund under the Superannuation Law by reason of the Trustee continuing in that role;

- (vi) subject to the Superannuation Law, the Fund's status as a Complying Self Managed Superannuation Fund would be jeopardised or altered if the Trustee continued to hold office;
  - (vii) the Trustee is removed from office by the Members pursuant to the provisions of the Rules or the Superannuation Law; or
  - (viii) the Trustee is suspended or removed from office by the Regulator pursuant to the Superannuation Law.
- (f) Any vacancy in the office of Trustee or in the directorship of a Corporate Trustee shall be filled as and when required by these Rules or the Superannuation Law but until and unless any vacancy is filled, the continuing Trustee(s) or the Corporate Trustee may continue to exercise the role and function of Trustee subject to **Rule 14.12(c)**. There shall be no obligation to fill any vacancy, unless required by the Superannuation Law, if there is at least one Trustee or one director of a Corporate Trustee.
- (g) **Rule 2.2(h)** does not apply if a continuing Trustee or a director of a Corporate Trustee is the LPR of a Member under a legal disability subject to the Superannuation Law.
- (h)
- (i) **Trustee/Director under legal disability – LPR appointment**  
If a Member is under a legal disability and is:-
    - (A) an individual Trustee, the LPR of the Member shall replace that Trustee and if there is more than one LPR, the continuing Trustee may appoint all the LPRs (or any one or more of them if the Superannuation Law permits); or
    - (B) a director of a Corporate Trustee, the other director(s) of the Corporate Trustee will use their best endeavours to have the Member's LPR (or if there is more than one of them, all or any one or more of them if the Superannuation Law permits), appointed as director(s) of the Corporate Trustee in place of the Member.
  - (ii) **Trustee/Director where Member deceased – LPR appointment**  
If a Member dies and that Member was:-
    - (A) an individual Trustee, the LPR of the Member may be appointed as a Trustee and if there is more than one LPR, the continuing Trustee may appoint all the LPRs (or any one of them if the Superannuation Law permits); or
    - (B) a director of a Corporate Trustee, the surviving director(s) of the Corporate Trustee will use their best endeavours to have the Member's LPR (or if there is more than one of them, all or any one of them if the Superannuation Law

permits), appointed as director(s) of the Corporate Trustee.

- (i) Any State Trust Law requiring that:-
  - (i) an appointment of a Trustee, new Trustee, replacement Trustee or additional Trustee must be registered for that appointment to be effective is expressly excluded to the extent not prohibited by that State Trust Law; and
  - (ii) the Fund must not have less than two Trustees or places a limit on the number of Trustees that may be appointed which is capable of being excluded, is expressly excluded if the Fund complies with the Superannuation Law.
- (j) Subject to the Superannuation Law, if no person has the power under **Rule 2.2** to appoint or remove a Trustee, then the LPR of the last person who was a Trustee (or the director of a Corporate Trustee) may exercise that power by deed.

### **2.3. Transfer of Assets**

- (a) If a Trustee ceases to hold office, that Trustee or their LPR must:-
  - (i) provide to any new or continuing Trustee all records, information and other property relating to the Fund in its control; and
  - (ii) co-operate with any new or continuing Trustee and do and sign such things as are required to ensure the assets of the Fund are transferred out of the outgoing Trustee's name and/or out of the control of the outgoing Trustee and into the name of and/or into the control of the new and/or continuing Trustee; and
  - (iii) do and sign all things necessary to complete the appointment of a new Trustee.
- (b) If a new Trustee is appointed, then the new Trustee must do and sign such things as are necessary to ensure that the assets of the Fund are transferred into the name of and/or into the control of the new Trustee (and any continuing Trustee).

### **2.4. Trustee Meetings – Individual Trustees**

Subject to any obligations imposed by the SIS Law:-

- (a) Any individual Trustee may at any time convene a Trustee meeting by reasonable notice to the other Trustee.
- (b) A Trustee meeting may be held in person or by any technological means by which the Trustees are able simultaneously to hear each other and to participate in discussion.
- (c) Subject to these Rules, the Trustees may meet together, adjourn and regulate their meetings as they think fit.

- (d) The Trustees may determine the quorum necessary for the conduct of business.

**2.5. Decisions of Individual Trustees**

- (a) Subject to compliance with **Rule 14.12(c)**, business arising at a Trustee meeting will be decided by a majority of the Trustees present and voting and all such decisions of the Trustees shall be binding on all Trustees provided always that in making any decision the Trustees have regard to the covenants or obligations imposed on the Trustees under **Rule 3** and the Superannuation Law.
- (b) If there is more than one LPR or parent or guardian of a Member appointed as a Trustee in place of that Member, those LPRs or parents or guardians as Trustees have one joint vote or must nominate one of them to vote for the purposes of any meeting and resolution.
- (c) Where a Trustee is a Member of the Fund and is also the LPR of a Member who is unable to vote, that Trustee or Member shall have a deliberative vote in addition to any other vote they may have for the purposes of any meeting and resolution, subject to **Rule 2.5(b)**.
- (d) Subject to **Rule 2.5(b), 2.5(c) and 2.5(e)**, each Trustee will have one vote in respect of all matters to be determined by the Trustees.
- (e) Prior to a vote on any matter or if there is no binding majority decision under **Rule 2.5(a)** in respect of a matter, a Trustee may request a formal vote in which event each Trustee who is also a Member (or the LPR of a Member in which case **Rule 2.5(b)** applies to the LPR), will have a vote or votes in proportion to the dollar value (to the nearest \$10) of the Member's Total Superannuation Balance as recorded in the most recently prepared financial accounts of the Fund provided that each Trustee (other than a Trustee who is a Member or the LPR of a Member with no Superannuation Interest in the Fund) has at least one vote.

**2.6. Written Resolutions – Individual Trustees**

A resolution in writing signed by all the Trustees will:-

- (a) have the same effect and validity as a resolution of the Trustees present and voting at a Trustees' meeting; and
- (b) be deemed to have been passed on the day on which the document was last signed by a Trustee, notwithstanding that the written resolution may have been signed in two or more counterparts and may be on paper and/or signed electronically.

**2.7. Conflict of Interest**

- (a) A Trustee or any director, employee, delegate, agent or other officer of the Trustee may exercise or be involved in the exercise of all powers, authorities and discretions conferred on the Trustee notwithstanding that they may have a conflict of interest of any kind.



- (b) A Trustee or a director of a Corporate Trustee may vote in respect of a contract or arrangement or any other matter in which the Trustee or a relative or associate of the Trustee or the relative or associate of a director or shareholder of a Corporate Trustee has a direct or indirect interest.
- (c) No contract or arrangement shall be void or voidable because the Trustee has a direct or indirect interest in it.

**2.8. Validity of Acts of Trustee**

The acts of the Trustee will remain valid notwithstanding that it is subsequently found that there was a defect in the appointment of a Trustee or in the appointment of a Corporate Trustee or if the individual Trustee or director was or becomes a Disqualified Person.

**2.9. Constituent documents of a Corporate Trustee**

A Corporate Trustee must use its best endeavours to ensure that its constituent documents are not inconsistent with the Rules and any requirements under the Superannuation Law. Without limitation a Corporate Trustee must ensure that the constituent documents of the Corporate Trustee do not prohibit the LPR of a Member who has died or is under a disability from replacing the Member as a director of the Corporate Trustee.

**3. Covenants of Trustee**

**3.1 The Trustee must:-**

- (a) act honestly in all matters concerning the Fund;
- (b) exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another person for whom the person felt morally bound to provide;
- (c) perform the Trustee's duties and exercise the Trustee's powers in the best financial interests of the Beneficiaries;
- (d) keep the money and other assets of the Fund separate from any money and assets:-
  - (i) that are held by the Trustee personally; and
  - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the Fund;
- (e) not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) formulate, review regularly and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:-

- (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments, having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments, having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities; and
  - (v) considering if insurance should be held by the Fund for any one or more of the Members and if so, to formulate and give effect to that insurance strategy;
- (g) if there are any Reserves of the Fund, to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
- (h) allow a Beneficiary of the Fund access to any prescribed information or any prescribed documents.

3.2 Each director of a Corporate Trustee covenants to exercise a reasonable degree of care and diligence for the purposes of ensuring that the Corporate Trustee carries out the covenants referred to in **Rule 3.1**. A reference to reasonable degree of care and diligence is a reference to the degree of care and diligence that a reasonable person in the position of director of the Corporate Trustee would exercise in the circumstances.

#### **4. Trustee's Powers**

##### **4.1. All Powers**

Subject to the Superannuation Law, the Trustee will have all the powers of a natural person, and without limitation, the Trustee will have the powers enumerated in this Rule and power to do everything necessary or desirable to manage, operate, develop, administer, wind up and deal with the Fund and all proceedings, matters and things connected with the Fund in accordance with the Deed and Rules and the Superannuation Law and as if the Trustee was the legal and beneficial owner of the assets of the Fund, including the power of:-

- (a) ***Deal with Fund assets***: entering into and executing all contracts, deeds and documents and doing all such matters and things considered expedient for the purpose of investing Fund monies and carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by the Deed and Rules and without limitation acquiring and holding investments or property of the Fund (whether legal or equitable) for the time being in the circumstances contemplated by the Limited Recourse Borrowing Exception in the name of one or more individuals or in the name of a corporation having power in that regard as nominee, custodian or trustee for and on behalf of the Trustee;

- (b) **Bank accounts**: opening and operating, by any means including electronically, any account of any description with any financial institution and making regulations for the operation of such accounts and in accordance with those regulations to jointly or severally draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferrable instrument;
- (c) **Sign, authorise and approve**: determining who shall be entitled to and who shall sign, authorise and approve receipts, acceptances, endorsements, releases, promissory notes, bills of exchange and lading, cheques, negotiable and transferrable instruments, agreements, writings, contracts, documents or electronic transactions of any kind whatsoever;
- (d) **Agreements**: entering into such agreements as the Trustee considers appropriate including agreements to transfer taxable contributions for the purpose of section 295-260 of the Tax Act or any other provision of the Tax Act;
- (e) **Fund obligations**: giving such undertakings and incurring all such obligations relating to the Fund as the Trustee thinks fit;
- (f) **Legal proceedings**: instituting, conducting, defending or abandoning, settling, compromising or submitting to arbitration or mediation any claim, proceedings, matter or thing relating to the Fund or to the rights of Members or other persons claiming to be entitled to be paid a Benefit from the Fund and allowing time for payment or satisfaction of any debts owed to or by the Fund;
- (g) **Vary investments**: varying or realising an investment of any part of the Fund at any time and reinvesting money resulting from the realisation in any form of investment;
- (h) **Establish, Acquire, Conduct businesses and profit making undertakings**: establishing, acquiring, conducting, transferring, selling, dealing with or terminating any trade, business or profitmaking undertaking or scheme anywhere in the world, either alone, in partnership or by joint venture, and under any name as the Trustee thinks fit;
- (i) **Engage**: engaging and paying remuneration to any person (including a Member or Trustee), taxation agents, legal and other advisers and agents, auditors, actuaries, administrators, providers of an electronic messaging service for the purpose of receiving or making electronic messages and payments [whether contributions, transfers or rollovers] consistently with the Data and Payment Regulations and Standards made for the purposes of Part 3B of the SIS Act as those standards apply to the Fund and engaging and paying remuneration to any other service provider or person the Trustee considers it appropriate to engage in connection with anything required to be done pursuant to or having regard to the Superannuation Law, the Deed, the Rules and the assets of the Fund; and may remove or suspend or terminate the engagement of any such person;

- (j) **Maintain, Repair, Improve Property**: maintaining, repairing or improving any property and, without limiting the foregoing, developing (by constructing, repairing, renovating, altering or decorating or furnishing) any property;
- (k) **Borrowing**: borrowing or raising any financial accommodation including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument for the purposes permitted by the Superannuation Law (including for the purpose of an arrangement permitted by the Limited Recourse Borrowing Exception or an instalment warrant arrangement) and securing the borrowing or financial accommodation in such a manner and upon such terms and conditions and at such rate of interest as the Trustee determines and in particular, by assigning, pledging, charging or mortgaging all or any of the assets of the Fund;
- (l) **Lending**: lending money and securing the repayment of that money in any manner and upon any terms which the Trustee may consider advisable within the confines of the Superannuation Law;
- (m) **Insurance**: insuring or re-insuring any assets, risks, contingencies or liabilities of the Fund or relating to it;
- (n) **Insurance in respect of Members**: effecting insurance in respect of any Member for the purpose of providing an insured benefit for that Member including insurance for death, a Terminal Medical Condition, Permanent Incapacity or Temporary Incapacity or insurance of any other type which the Trustee is permitted to maintain in respect of that Member, having regard to SIS Regulations;
- (o) **Mortgage Protection Insurance**: effecting mortgage protection insurance or like insurances to cover repayment of borrowings by the Fund;
- (p) **Leasing, Hiring**: leasing, hiring or granting rights to use or exploit any assets; and to surrender any lease, hiring, usage or exploitation arrangement;
- (q) **Payment**: paying or reimbursing out of the Fund all costs, taxes and expenses properly borne by the Fund and without limitation, paying or reimbursing costs and expenses of establishing the Fund (and if applicable establishing a Constitutional Corporation to act as Trustee), amending the Rules of the Fund and such other costs or expenses relating to the establishment, maintenance or operation of the Fund and a Corporate Trustee, including payment of fees and expenses of any advisers or agents and the remuneration of persons appointed under the Rules;
- (r) **Discharge liabilities**: making and giving receipts and releases or discharges of any kind;
- (s) **Guarantee/Indemnification**: giving any guarantee, indemnity or undertaking to indemnify any person in respect of any claim, matter or thing relating to the Fund or to the rights of Members, or other persons entitled in respect of the Fund;
- (t) **Allocation of insurance premiums and proceeds**: subject to the Superannuation Law, entering into agreements with Members about the

- payment of insurance policy premiums and the allocation of insurance policy proceeds for any insurance policy;
- (u) **Receive gifts or distributions**: receiving property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person;
  - (v) **Payment of Benefits**: paying or applying a Benefit out of the Fund to persons entitled without being responsible for seeing to the application of payments made in the exercise of this or any other power vested in the Trustee by the Deed and the Rules;
  - (w) **Delegation**: delegating in writing the exercise of all or any of the powers or discretionary authorities conferred on the Trustee and executing any powers of attorney or other instruments necessary to effect such a delegation;
  - (x) **Act on advice**: acting upon the advice of any legal practitioner, any medical practitioner, accountant, auditor, actuary, superannuation consultant or any investment or financial adviser or any other professional person without being liable to any Members or their Dependants or their Legal Personal Representative in respect of any act done by the Trustee in accordance with such advice;
  - (y) **Provide information**: providing information about Members or Beneficiaries and their balances to the Australian Taxation Office and to any government body (such as Centrelink) with the consent of the relevant Members or Beneficiaries or otherwise as required by law and/or the Superannuation Law;
  - (z) **Charge a fee**: charging fees for doing anything permitted or required under the Superannuation Law and for which a fee may be charged;
  - (aa) **Call or put options**: granting or exercising call or put options in respect of any property;
  - (bb) **Irrevocable election**: irrevocably electing that the Fund become a Regulated Superannuation Fund;
  - (cc) **Status of the Fund; taxation**: making any election, choice or determination and giving any notice that may be given by the Trustee to the Regulator or anyone else in connection with the status of the Fund or its tax (including capital gains tax) treatment or status or the tax treatment of benefits, any discount, concession, relief or objections and making any decision in relation to the Transfer Balance Cap, Total Superannuation Balance, excess contributions, goods and services tax, pay as you go withholding or any other withholding payment or other taxation arrangement including making adjustments or notifications in relation to taxation matters including the Transfer Balance Account, Transfer Balance Cap and the allocation, estimation and apportionment of taxes in the Fund;
  - (dd) **Actions arising from the Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016**: without limitation, doing anything that is required to be done or that the Trustee decides should be done including anything requested by a Member to be done, in connection with transfers, elections

and any other acts arising from the Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016, whether relating to Transfer Balance Caps, Transfer Balance Accounts, commutation authorities, resetting of cost bases for the purpose of obtaining capital gains tax relief, segregating or ceasing segregation of current Pension assets, the deferral of the inclusion of notional capital gains, the exclusion of such gains and seeking relief for transfer cap breaches or any other breaches or otherwise;

- (ee) **Management of the Fund**: exercising such other powers as are necessary, desirable or appropriate to the fulfilment of the purposes of the Fund and its proper and efficient maintenance, management, operation, promotion and advancement and its compliance with and exercise of powers authorities and discretions available under the Superannuation Law;
- (ff) **Comply with any notice or authority of the Regulator**: complying with any notice or authority issued by the Regulator or other determination by the Regulator, and in this regard doing all such things as may be necessary or desirable and without limitation, including the payment of tax, transfer of monies or the making of elections or giving of notice to the Regulator and/or the Member;
- (gg) **Obtain legal opinions**: obtaining legal opinions in relation to the Deed and the Rules and in respect of any course of action proposed or taken by the Trustee or a Member without liability for acting on that advice from any person who may be directly or indirectly affected by that action or inaction;
- (hh) **Powers conferred by statute or general law**: giving any receipts, discharges and releases the Trustee considers appropriate in exercising its duties or powers and such other powers conferred on a Trustee by statute or general law;
- (ii) **Deed of Confirmation**: entering into and signing a Deed of Confirmation;
- (jj) **Power to become a Small APRA Fund or other type**: if the Fund ceases to be a Complying Self Managed Superannuation Fund and if the Trustee considers it necessary or reasonable to do so, the Trustee shall do all things necessary or appropriate to change the status of the Fund to a Small APRA Fund or any other type of fund permitted by the SIS Law and in doing so the Trustee shall comply with the Superannuation Law, notify and consult with the Members and amend these Rules so far as is appropriate;
- (kk) **Additional powers**: in addition to the powers expressly conferred upon the Trustee by the SIS Law and the Rules, taking any other action permitted, or not prohibited, by the SIS Law; and
- (ll) **Incidental power**: doing anything incidental to the exercise of any of the preceding powers.

#### 4.2. Absolute Discretion

- (a) Except as expressly provided to the contrary in the Rules, the Trustee in the exercise of its authorities, powers and discretions has an absolute and unfettered discretion, and may from time to time exercise or enforce all or

any such powers, authorities and discretions, and will have power generally to do all such things as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under the Deed, the Rules and the Superannuation Law.

- (b) Subject to the Superannuation Law and **Rule 14.12(c)**, the Trustee may, in its absolute discretion, waive any requirement of the Rules imposed on any Member or their nominated Beneficiary including any requirement that a document be signed by a Member or their nominated Beneficiary.

**4.3. Delegation and Appointment of Attorney by Trustee and Appointment of Custodian**

- (a) The Trustee may delegate in writing the exercise of all or any of the powers or discretionary authorities conferred on the Trustee and execute any powers of attorney or other instruments necessary to effect such a delegation.
- (b) The Trustee may appoint one or more attorneys under power of attorney upon such terms as the Trustee thinks fit to perform any of the powers, authorities, duties or functions conferred on the Trustee. Any such power of attorney will remain valid and effectual for the period nominated by the Trustee or until revoked by the Trustee.
- (c) The Trustee may appoint any person as custodian or nominee to hold legal title of any asset acquired or to be acquired by the Trustee on such terms as the Trustee thinks fit.

**4.4. Remuneration of the Trustee**

- (a) The Trustee will not receive any salary or remuneration from the Fund in respect of its services as trustee unless permitted under the Superannuation Law.
- (b) Any Trustee or director of a Corporate Trustee who is a solicitor, accountant or other professional person, or any firm, corporation or partnership of which the Trustee or any of its directors is a partner, director, shareholder, employee or related body corporate as defined in the Corporations Act:-
  - (i) may be employed or engaged by the Trustee to advise or transact any business or do any act required to be done in connection with the Trust; and
  - (ii) if so engaged shall be entitled to be paid all proper fees or remuneration and expenses for professional or other services (except for services as Trustee) rendered in connection with the Fund.

**4.5. Enquiries and Complaints**

The Trustee must, to the extent required by the Superannuation Law, establish arrangements to deal with enquiries or complaints about the operation or management of the Fund.

**4.6. Dependants and Other Beneficiaries**

The Trustee may exercise all its powers under the Deed the Rules and the Superannuation Law in respect of Dependants and any other person entitled to a Benefit. All such persons must comply with the provisions of the Rules and any direction the Trustee is entitled to give under the Rules in relation to the payment of any Benefit.

**4.7. Indemnity**

(a) Subject to **Rule 4.7(b)** and **Rule 4.7(c)**, no Trustee or, where there is a Corporate Trustee, none of its directors or officers, will be personally liable for any loss, damage, detriment, mistake, omission, expense or damage or costs ("**Detriment**") whatsoever incurred by any person in connection with the Fund for any reason and without limitation including:-

- (i) any Detriment arising from reliance on professional advice; or
- (ii) any Detriment arising from the failure of an investment; or
- (iii) any Detriment consequent upon the Trustee complying with the Superannuation Law, despite the Trustee's action or inaction being a breach of the Rules.

(b) **Rule 4.7(a)** does not apply:-

- (i) to the extent that the Detriment is due to the Trustee's, director's or officer's dishonesty or intentional or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer or other person or entity was required to exercise; or
- (ii) to the extent that it is inconsistent with the Superannuation Law.

(c) The Trustee and, where there is a Corporate Trustee, its directors and officers, are entitled, to the maximum extent permitted by law and in the circumstances referred to in **Rule 4.7(a)** and subject to **Rule 4.7(b)** to be indemnified from the Fund against all liabilities incurred by each of them in connection with the execution, attempted execution, or non-execution of the Trustee's performance, powers, duties and discretions except for an administrative penalty or a civil penalty order under the Superannuation Law.

(d) **Payment and reimbursement**

- (i) Subject to the Superannuation Law, the Trustee and, in the case of a Corporate Trustee, its directors and officers, may recover from the Fund amounts required:-
  - (A) to meet the indemnities referred to above; and
  - (B) to meet all liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with the Deed and the Rules.



- (ii) For the purpose of these indemnities, and to the maximum extent permitted by law and subject to the Superannuation Law, the Trustee or, in the case of a Corporate Trustee, its directors and officers have, and may exercise, a lien over the Fund.

**4.8. Release**

Subject to the Superannuation Law, the Trustee (and in the case of a Corporate Trustee, each director) is released from all liabilities, losses, costs and expenses incurred in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in the Trustee or at law, including in respect of any payments made to any person the Trustee in good faith believes to be entitled to the payment and it is subsequently found that the person was not in fact so entitled.

**4.9. Limited Indemnity and Release**

Nothing in the Rules has the effect of indemnifying or releasing the Trustee (and in the case of a Corporate Trustee, its directors) in respect of any liability:-

- (a) for a breach of trust, where the Trustee fails to act honestly, or fails intentionally or recklessly to exercise, the degree of care and diligence that the Trustee was required to exercise; or
- (b) for a monetary penalty under a civil penalty order.

**4.10. Confidentiality**

The Trustee shall keep confidential all material and information concerning the administration and management of the Fund and concerning Members and their Dependants and only use that material and information in the administration and management of the Fund, and unless required by these Rules or by the Superannuation Law shall not be obliged to give reasons for any decisions or acts or omissions of the Trustee.

**4.11. Lost Documentation**

Where:-

- (a) the original deed establishing the Fund, Governing Rules or any document amending the deed or Governing Rules cannot be found (**'Lost Original Document'**); and
- (b) the Trustee holds either a copy of the Lost Original Document or other document(s) which in the Trustee's opinion constitutes the terms of the Lost Original Document (**'Document on Which the Trustee Relies'**)

the Trustee may (with the consent of others including Members if required), sign a Deed of Confirmation in relation to the Lost Original Document and the Document on Which the Trustee Relies and the Deed of Confirmation may permit the Trustee to rely on the Document on Which the Trustee Relies as if it were the Lost Original Document.

**5. Membership**

**5.1. Admission**

- (a) The Trustee may in its absolute discretion admit to membership of the Fund any person the Trustee regards as eligible for membership with effect from such date, whether retrospective or prospective, as the Trustee determines.
- (b) The Trustee may require an application for membership in such form as the Trustee thinks fit.

**5.2. Bound by the Deed and the Rules**

Every person admitted to membership of the Fund becomes a Member and is bound by the Deed and the Rules.

**5.3. Variation of Membership Terms**

The Trustee may, by written agreement with any Member, vary the terms and conditions applicable to that Member's membership of the Fund, including the contributions and Benefits payable to or in respect of the Member.

**5.4. Information to Members**

The Trustee must, as soon as practicable after the admission of a Member, and/or at such other times as is required by the Superannuation Law give to that Member and any other entitled person any information and details about the Fund required by the Superannuation Law.

**5.5. Information from Members**

- (a) Every Member and Beneficiary must provide such information and documents, submit to such medical examinations, and generally do such things as the Trustee considers necessary for the Trustee to administer the Fund and for the Trustee to otherwise be satisfied that such person is entitled to a Benefit from the Fund. The Trustee may suspend the payment of any Benefit if the Member or Dependant fails to comply with any Trustee request for this purpose.
- (b) Subject to the Superannuation Law, if the Trustee's first request is not complied with within six (6) months, the Benefit payable to or for such Member or Dependent may cease or may be transferred in part or in whole in such amounts as shall be determined by the Trustee to an Approved Fund.

**5.6. Cessation of Membership**

Subject to the Superannuation Law, a person ceases to be a Member of the Fund:-

- (a) if the Member dies, when all their Superannuation Interests in the Fund have been paid, applied or transferred from the Fund; or
- (b) when all Benefits which are or may be payable under these Rules in respect of the Member have been paid; or

- (c) when a transfer of the balance of their Member Account is made to an Approved Fund; or
- (d) when the Trustee requires a Member to cease membership of the Fund to comply with the Superannuation Law; or
- (e) when the Member has a nil balance in the Fund and the Trustee determines that the Member is not to continue to be recognised as a member of the Fund; or
- (f) when the Trustee otherwise reasonably determines.

Subject to the Superannuation Law, a person who ceases to be a Member may continue to act as a Trustee (or director of a Corporate Trustee).

## **6. Contributions to the Fund**

### **6.1. Acceptance of Contributions**

The Trustee, subject to the Superannuation Law and the Rules:-

- (a) may accept contributions in respect of a Member including, without limitation:-
  - (i) government contributions;
  - (ii) Child contributions;
  - (iii) Spouse contributions;
  - (iv) the whole or part of any Shortfall Component in respect of any employee or Member received from the Commissioner of Taxation;
  - (v) Splittable Contributions; and
  - (vi) any Downsizer Contribution;
- (b) may accept different types of contributions including concessional contributions, non-concessional contributions, work test exempt contributions, contributions relating to the First Home Super Saver Scheme, amounts relating to structured settlements, contributions counting toward the CGT cap amount, contributions towards any prior financial year's unused concessional contributions cap, bring forward contributions and any other classification of contributions permitted by the Superannuation Law, including where a contribution falls within more than one category, whether in money or in kind and in respect of any period or financial year;
- (c) must not accept any contribution if, in the opinion of the Trustee, the acceptance of the contribution would be in breach of the Superannuation Law or the Rules;
- (d) may allocate, record or treat the whole or part of a contribution in a manner not prohibited by the Superannuation Law including the allocation of the whole or part of a contribution to a Reserve or under **Rule 7.5**; and

- (e) may refuse to accept, part or all of any contribution as the Trustee deems appropriate (including where the contribution would cause a Member's Total Superannuation Balance to exceed the Transfer Balance Cap amount or any other relevant threshold unless the relevant Member requires otherwise).

**6.2. Form of Contributions**

- (a) Subject to the Superannuation Law, contributions may be made either in money or by in specie transfer of assets not prohibited by the Superannuation Law.
- (b) If a contribution is made by an in specie transfer:-
  - (i) the value of the transfer will be the market value of the asset determined by the Trustee at the time of its transfer;
  - (ii) any other terms and conditions of the transfer will be as determined by the Trustee; and
  - (iii) in the event that the Trustee wishes to restrict the Benefits arising from the assets transferred to the Fund under this Rule to particular Members, the Trustee shall either proceed under **Rule 7.5** or **Rule 7.6** as applicable, and hold the assets accordingly.

**6.3. Splittable Contributions**

- (a) A Member may request the Trustee to implement for the benefit of a Member's Spouse, a Contributions Split in respect of the Splittable Contributions of the Member. The Member's request shall be in such form as the Trustee approves or accepts for the purpose of this Rule.
- (b) The Trustee may, as and when requested by a Member, implement a Contributions Split in respect of the Member provided the amount and form of that request is valid under the Superannuation Law however if the request exceeds the maximum splittable amount of the Contributions Split allowed by the Superannuation Law, the Trustee may treat the request as relating to an amount not exceeding the maximum splittable amount (**'Relevant Contributions Split Amount'**).
- (c) Subject to the Superannuation Law, the Trustee may implement a Member's Contributions Split request:-
  - (i) by crediting the Member Account of the Spouse with the Relevant Contributions Split Amount if the Member's Spouse has an Account with the Fund;
  - (ii) creating a membership Interest and account for the Member's Spouse and crediting the Relevant Contributions Split Amount to that account;
  - (iii) by paying the Relevant Contributions Split Amount to the Member's Spouse subject to **Rule 6.3(b)**, where the Member's Spouse has satisfied a Condition of Release; or

- (iv) by transferring or rolling over the Relevant Contributions Split Amount to an Approved Fund for the benefit of the Member's Spouse.

**6.4. Contribution Repayment or Release**

- (a) The Trustee may repay the whole or any part of a contribution and any associated earnings to a Member but only if the repayment or the associated earnings is not in breach of the Superannuation Law.
- (b) Subject to the Superannuation Law, the Trustee may repay a contribution if the Trustee is satisfied that it was paid to the Trustee by mistake.
- (c) The Trustee must repay the whole or part of a contribution and any associated earnings to the Member if directed by the Regulator. The Trustee may deduct from the repayment any liabilities or expenses incurred or provision for liabilities or expenses in relation to the contribution.
- (d) If excess contributions are received by the Fund and the Trustee receives a release authority under the Superannuation Law, then the Trustee may release funds and pay Excess Contributions Tax in accordance with the release authority and the Superannuation Law.

**7. Investments**

**7.1. Investment Strategy**

The Trustee must formulate in writing, give effect to and review regularly an investment strategy that complies with the requirements of the Superannuation Law.

**7.2. Authorised Investments**

- (a) Subject to the Superannuation Law, the Trustee may, in addition to any powers enumerated in **Rule 4.1**:-
  - (i) directly or indirectly invest in any investment the Trustee considers appropriate, all or so much of the assets of the Fund not required immediately for the payment of Benefits or other amounts authorised by the Rules; and
  - (ii) hold all or so much of the assets for so long as the Trustee thinks fit or vary or sell such investments as and when the Trustee thinks fit including to enable the payment of Benefits or other amounts authorised by the Rules.
- (b) Without limiting **Rule 7.2(a)** or any other Trustee powers, the Trustee may invest alone, in partnership or jointly with any other entity in:-
  - (i) any investment authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust funds;
  - (ii) the acquisition of any interest in real or personal property including intangible property, and the improvement or extension of that property;

- (iii) any mortgage on freehold or leasehold property situated in Australia or elsewhere;
- (iv) any deposit with any bank, building society, other financial institution or any person or organisation whatsoever and at such rate of interest and upon such terms as the Trustee may deem reasonable;
- (v) the making of any loan to any entity (except to a Member or a relative of a Member) with or without security, and at such rate of interest and upon such terms as the Trustee considers reasonable;
- (vi) the acquisition of foreign currencies, commodity contracts, hedging contracts or futures contracts of any kind quoted on a recognised stock exchange;
- (vii) the acquisition of shares or stock of any class or description, or of any type of bond, mortgage, debenture, note option, warrant, derivative or other like security in any company or trust fund, society, unincorporated association or other entity in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up, and whether secured or unsecured, registered or unregistered;
- (viii) the acquisition of, or subscription for, any unit or interest in any unit trust established or situated anywhere in the world, and whether such units or interests are fully paid up or whether their issue involves any contingent or reserve liability;
- (ix) the acquisition of any financial product (including instalment warrants or other derivatives) over any assets in which the Trustee is authorised to invest;
- (x) the acquisition of any precious metals, coins, stamps, works of art, antiques, collectables, personal use assets and any other precious objects;
- (xi) the acquisition of any insurance policy or annuity of any kind whatsoever and wherever made;
- (xii) the discounting of loans, mortgages, contracts, hire purchase agreements or leases;
- (xiii) the acquisition of digital currency, cryptocurrency and such other similar or like digital assets;
- (xiv) bills of exchange, bill of lading, promissory notes or other negotiable or transferable instruments;
- (xv) any rights arising from leases, licences or other rights of any description;
- (xvi) any business whether constituted as a partnership, joint venture or otherwise; and

(xvii) any other investment the Trustee considers appropriate.

**7.3. Power to Sell and Vary Investments**

The Trustee may sell or otherwise dispose of any investments and may vary and transpose any investments into other investments permitted by the Rules.

**7.4. Storage of collectables and personal use assets**

Where the Trustee has invested in collectable or personal use assets, unless the Trustee has recorded other reasons, the Trustee's reasons for any decision regarding the storage of such items shall be convenience, suitability, service and cost factors.

**7.5. Assets Specific to a Member**

(a) The Trustee, with the agreement of the Member concerned, may invest in or acquire or segregate, certain identifiable investments or assets for the benefit of any Member and to make a specific investment for the benefit of any Member providing that such investment complies with the investment strategy of the Fund and shall hold such assets for the specific benefit of the Member concerned and which shall be recorded in the Member's Account.

(b) Despite anything contained in the Rules, any asset held for the specific benefit of a Member shall be segregated from other assets of the Fund and shall not be transferred from the Member's Account and no other person shall obtain an interest in the asset unless:-

(i) the asset is being transferred to the Member as payment of a Benefit in specie to the Member; or

(ii) the asset is being sold and the proceeds are to be retained in the fund or paid to the Member as payment of a Benefit; or

(iii) the transfer of the asset does not affect any duty exemption or concessional or nominal assessment of duty obtained under the laws of any State or Territory applying to the transfer of the asset to the Fund when the asset was first acquired by the Trustee.

**7.6. Restrictions on Member Contributed Property.**

(a) Despite any other provision of the Rules to the contrary, and subject to the passing of a resolution by the Trustee that this Rule (and any relevant prior Rule made before the date of acquisition) irrevocably applies while the Trustee holds Member Contributed Property, if the Trustee acquires or intends to acquire Member Contributed Property:-

(i) either:-

(A) the Transferor of the Member Contributed Property must be the only Member (or Members) of the Fund and the Trustee must not admit any further Members to the Fund whilst the Fund holds the Member Contributed Property; or

- (B) the Member Contributed Property must be segregated from other assets of the Fund solely for the benefit of the Transferor Member; and
- (ii) any Member Contributed Property must be used solely for the purpose of providing a retirement benefit for the Transferor as Member; and
- (iii) the Member Contributed Property:-
  - (A) must be held by the Trustee specifically for the benefit of the Transferor as a Member of the Fund (or if there is more than one, each of them in the same proportions as that property was held before the transfer); and
  - (B) cannot be pooled with any property held for another Member of the Fund; and
  - (C) no other Member of the Fund can obtain an interest in the Member Contributed Property.
- (b) For the purposes of seeking any duty exemption or concession on the acquisition of Member Contributed Property, the Trustee may sign a written document that will on execution be deemed to be an irrevocable Rule of the Fund while the Trustee holds Member Contributed Property, containing such provisions as the Trustee considers necessary to ensure that the exemption or concession applies or continues to apply.

**7.7. Gifts and Distributions**

- (a) Subject to the Superannuation Law, the Trustee may accept gifts or distributions made to the Fund from any person or organisation whatsoever.
- (b) The Trustee may allocate such gifts or distributions to any Account of the Fund for any purpose as it sees fit.

**7.8. Investment Income**

The Trustee must, to the extent required by the Superannuation Law, as at the Review Date:-

- (a) value all of the assets of the Fund; and
- (b) determine the net income and net capital gains of the Fund (whether realised or unrealised) for the period since the last Review Date, after deducting any capital losses, expenses and Taxes as the Trustee considers appropriate.

**7.9. Fund Earning Rate**

At the Review Date, the Trustee will determine the rate or amount at which the income of the Fund is to be credited or debited to Member Accounts and other Accounts and Reserves established by the Trustee, having regard to:-



- (a) the amount of income for the Financial Year ending on the relevant Review Date;
- (b) the Taxes, costs and other liabilities of the Fund;
- (c) investment strategies of the Fund;
- (d) whether the Trustee holds assets Specific to a Member or Member Contributed Property; and
- (e) any other matters the Trustee considers relevant.

**7.10. Interim Fund Earning Rate**

During a Financial Year, the Trustee may determine an interim rate or amount at which the income of the Fund is to be credited or debited to any Member Account for the purpose of calculating the Member's entitlement to Benefits.

**8. Borrowing**

**8.1. Borrowing**

- (a) The Trustee may borrow money or maintain an existing borrowing of money and assign, pledge, mortgage or charge any of the assets of the Fund as security for any financial accommodation, if the Superannuation Law permits.
- (b) Subject to the Superannuation Law, the Trustee may raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument and the Trustee may provide security for the repayment of any such moneys with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit, and:-
  - (i) any money raised by the Trustee will form part of the Fund; and
  - (ii) interest payable on such borrowings as referred to in this **Rule 8.1** is a proper outgoing of the Fund.

**8.2. Limited Recourse Borrowing**

The Trustee has all the necessary powers to enter into any arrangement complying, to the extent necessary, with the Limited Recourse Borrowing Exception and the Trustee may, subject to the SIS Act:-

- (a) borrow money;
- (b) maintain an existing borrowing of money;
- (c) assign, pledge, mortgage or charge assets of the Fund as security for a borrowing or financial accommodation;
- (d) enter into and execute all documents including documents in connection with acquiring a beneficial interest of an original asset or replacement asset as defined in section 67B of the SIS Act;

- (e) pay the expenses incurred in any such borrowing from the borrowed money;
- (f) refinance or vary the terms of a borrowing;
- (g) do and sign all such things as may be ancillary or necessary including, without limitation, the variation and transposing of any asset so acquired including such acts and the entering into of such deeds or documents as may be necessary with any person or entity holding or to hold legal title to an asset; and
- (h) if an asset is held in the Trustee's name for the Fund, the Trustee may transfer the legal title to a custodian trustee, subject to the Superannuation Law, to be held for the Trustee in its capacity as trustee of the Fund.

### **8.3. Loan Applications & Conditions**

The Trustee may make a loan application to any lender and utilise the services of any custodian and make such arrangements and do such things and execute such documents as may be required to comply with any conditions of approval in respect of such loan, subject to the Superannuation Law.

## **9. Member Estate Planning**

### **9.1. Member Estate Planning Documents**

Subject to **Rule 9.7(c)**, a Member's Estate Planning Documents may comprise one or more of the following:-

- (a) Automatic Reversionary Pension;
- (b) Binding Death Benefit Nomination; or
- (c) Non-Binding Death Benefit Nomination

**(‘Estate Planning Documents’ or ‘EPD’).**

### **9.2. Priority of Transfer or Payment of Benefits on death of a Member**

Subject to **Rule 9.7(c)**, following the death of a Member, the order of priority for transfer or payment of Benefits in respect of the deceased Member is as follows:-

- (a) Automatic Reversionary Pension;
- (b) to the extent **Rule 9.2(a)** does not apply, in accordance with the Member's Binding Death Benefit Nomination;
- (c) to the extent **Rule 9.2(a)** and/or **Rule 9.2(b)** do not apply, as the Trustee determines in accordance with **Rule 14.12(d)**. The Trustee may take into account but is not bound by any Member's Non-Binding Death Benefit Nomination.

**9.3. Automatic Reversionary Pension**

Subject to the Superannuation Law and any prohibition in a relevant Pension Agreement:-

- (a) a Member may nominate a Reversionary Beneficiary in a Pension Agreement;
- (b) a Member may at any time, in respect of a Pension Agreement, by providing a written direction to the Trustee signed by the Member on or after the Commencement Day of the Pension:-
  - (i) nominate a Reversionary Beneficiary;
  - (ii) revoke the nomination of a previously named Reversionary Beneficiary including one nominated in the relevant Pension Agreement and may nominate a replacement Reversionary Beneficiary; and/or
  - (iii) nominate a Successor Reversionary Beneficiary to take the place of a named Reversionary Beneficiary in any circumstances specified by the Member;
- (c) any revocation or nomination of a Reversionary Beneficiary made after the Commencement Day of a Pension shall not have the effect of and shall be made without ceasing or commuting the Pension unless required by the Superannuation Law or the Member;
- (d) a revocation or nomination under this **Rule 9.3** is effective provided:-
  - (i) it is signed by the Member and may be included in a resolution of the Trustee or in minutes of a meeting of the Trustee if the resolution or minutes include that Member's signature; and
  - (ii) it is received by the Trustee prior to the first Pension payment to a Reversionary Beneficiary.

**9.4. Binding Death Benefit Nomination**

Subject to the Superannuation Law:

- (a) A Member may provide the Trustee with a written signed binding direction notifying the Trustee to whom and in what proportions or amounts the Member requires their Benefits to be distributed upon the Member's death (**'Binding Death Benefit Nomination' or 'BDBN'**).
- (b) A BDBN must contain a statement that it is binding and this may be satisfied if the document contains a title or words to the effect that it is binding.
- (c) Once the Trustee has received a Member signed BDBN, subject to **Rule 9.2** [*Priority of Transfer or Payment of Death Benefits*], **Rule 9.4(d)** [*invalid nomination*], **Rule 9.4(e)** [*revocation/variation of BDBN*] and **Rule 9.4(g)(vii)** [*BDBN to be received by Trustee prior to first payment of a Benefit by Trustee after Member's death*], a BDBN shall be binding on the Trustee.

- (d) The Trustee shall not be bound by the whole or that part of a BDBN that makes provision for a Beneficiary who has predeceased the Member subject to **Rule 9.4(g)(ii)** below, or who is not a Dependant or the Legal Personal Representative of the deceased Member or otherwise permitted to receive Death Benefits under the Superannuation Law.
- (e) A Member may revoke a BDBN by written notice to the Trustee and may make a new BDBN.
- (f) The BDBN may specify the manner and form in which Benefits are to be paid to one or more Beneficiaries including as a lump sum, transfer of a specific Fund asset, pension or combination and if not specified the Trustee will determine the manner and form in which Benefits are to be paid under **Rule 14.12(f)**.
- (g) A BDBN, subject to **Rule 9.4(d)**:-
  - (i) may specify a period, event or date after which it completely lapses or partly lapses, otherwise a BDBN does not lapse;
  - (ii) may contain conditions which must be satisfied or met in order for a Benefit to be paid to a nominee, including, without limitation, conditions such as surviving another person and/or another Death Benefit nominee, reaching a certain age, nominating successor beneficiaries, for example children of a nominee parent or other nominee who would not benefit unless their parent or some other person is deceased;
  - (iii) may specify the circumstances in which directions intended to be binding are to be treated as no longer binding including but not limited to:-
    - (A) the marriage, separation, divorce or death of a Beneficiary; or
    - (B) the marriage, separation or divorce of the Member; or
    - (C) if a Beneficiary consents; or
    - (D) such other circumstances as the Member specifies;
  - (iv) may specify the amount or proportions of the Benefit to be paid to one or more Beneficiaries including the in specie transfer of part or the whole of a specific Fund asset in satisfaction of part or the whole of the Benefit;
  - (v) must be signed by the Member but is not required to be signed on every page;
  - (vi) is effective even if there is no witness or only one witness (and if there is a witness even if the witness has not signed every page);
  - (vii) is effective provided it is received by the Trustee prior to the first payment of a Benefit after the Member's death (excluding any payment to a Reversionary Beneficiary); and

(viii) may specify payment of a Benefit to a Superannuation Proceeds Trust in which the beneficiaries of such trust are limited to Death Benefits Dependants.

(h) Regulation 6.17A of the SIS Regulations does not apply to a BDBN made under these Rules.

**9.5. Deemed Revocation of BDBN if Proceedings commenced**

Subject to the Superannuation Law, if a Member and their Spouse have separated and either of them have filed initiating process commencing legal proceedings under the Family Law Act 1975 (Cth) or under similar laws for dissolution of marriage and/or property settlement and/or Spousal maintenance, and that Member has nominated their Spouse as a Beneficiary in a BDBN, then the nomination in favour of that Spouse is deemed to have been revoked unless the Member's nomination provides the nomination is not to be revoked in any one or more of the aforesaid circumstances.

**9.6. Non-Binding Death Benefit Nomination**

(a) A Member may provide the Trustee with a written signed direction that is not a BDBN notifying the Trustee to whom and in what proportions and the manner in which the Member would prefer their Benefit to be distributed upon the Member's death (**'Non-Binding Death Benefit Nomination' or 'NBDBN'**).

(b) A Trustee shall not be bound by a NBDBN.

(c) A Member may revoke or vary all or part of or issue a new or replacement NBDBN from time to time by providing the Trustee with a further written signed document in accordance with **Rule 9.6(a)**.

**9.7. Member Directed Superannuation Benefit Plan**

(a) In addition to or instead of a Member's EPD, a Member and Trustee may enter into an agreement in writing signed by the Member and Trustee about the transfer or payment of Benefits to Beneficiaries upon the Member's death (**'Member Directed Superannuation Benefit Plan' or 'MDP'**).

(b) Subject to the Superannuation Law and **Rule 9.7(a)**, a MDP may contain any or all of the conditions and directions that otherwise may be contained in one or more of a Member's EPD.

(c) Despite the priority of documents referred to in **Rule 9.2**, a MDP may expressly provide that it takes priority over all or any of the documents referred to in **Rule 9.2(a)** and/or **9.2(b)** and/or **9.2(c)** or alters that priority. If no priority is expressly provided for in the MDP, then to the extent of any inconsistency between the MDP and any or all of the Member's EPD, the MDP prevails.

(d) A MDP is binding on the Trustee after it is signed by the Member and Trustee subject to **Rule 9.7(e)** [*invalid nomination*] and **Rule 9.7(f)** [*revocation/variation of MDP*].

(e) The Trustee is not bound by the whole or that part of a MDP that makes provision for a Beneficiary:-

- (i) who predeceases the Member subject to **Rule 9.7(h)(ii)**; or
  - (ii) who is not a Dependant (or in the case of a MDP nominating a Reversionary Beneficiary, who is not a Death Benefits Dependant); or
  - (iii) who is not the Legal Personal Representative of the deceased Member or otherwise permitted to receive Death Benefits under the Superannuation Law.
- (f) A Member may revoke or vary all or part of or issue a new or replacement MDP from time to time. Any such revocation, variation or new or replacement MDP must be signed by the Member and Trustee.
- (g) The MDP may specify the manner and form in which the Benefits are to be paid to one or more Beneficiaries including as a lump sum, pension or the transfer of a particular Fund asset or a combination of the aforesaid (or the MDP may be silent as to the manner and form in which the Benefits are to be paid and in that event the Trustee will exercise their discretion as to the manner and form of payment).
- (h) A MDP, subject to **Rule 9.7(e)**:-
- (i) may specify a period, event or date after which it lapses as to the whole or part. A MDP does not lapse unless it specifies otherwise;
  - (ii) may contain conditions which must be satisfied or met in order for a Benefit to be paid to a nominee, including, without limitation, conditions such as surviving another person and/or another Death Benefit nominee, reaching a certain age, nominating successor beneficiaries for example children of a nominee parent or other nominee who would not benefit unless their parent or some other person is deceased;
  - (iii) may specify the circumstances in which a nominated Beneficiary is no longer to be a Beneficiary under the MDP including but not limited to:-
    - (A) the marriage, separation, divorce or death of a Beneficiary; or
    - (B) the marriage, separation or divorce of the Member; or
    - (C) where a Beneficiary consents; or
    - (D) such other circumstances as the Member specifies;
  - (iv) must be signed by the Member and Trustee but is not required to be signed on every page; and
  - (v) is effective whether or not it is attested by a witness.
- (i) A valid MDP becomes a Rule of the Fund and binds the Member and the Trustee and may be varied by the Member and Trustee despite **Rule 17**. Subject to the Superannuation Law, if there is any inconsistency between a MDP and the Rules, the MDP prevails.

**9.8. Enduring Power of Attorney**

- (a) An LPR who holds an enduring power of attorney granted by a Member (and no other LPR) (**'an EPA LPR'**) may on behalf of a Member:-
- (i) enter or amend the terms of a Pension Agreement for the benefit of the Member;
  - (ii) revoke or nominate a Reversionary Beneficiary in respect of a Pension Agreement;
  - (iii) revoke, vary or make a BDBN;
  - (iv) revoke, vary or make a NBDBN; and/or
  - (v) revoke, vary or make a MDP

(each an **'EPA LPR Change'**) PROVIDED THAT:-

- (A) the instrument signed by the Member appointing the EPA LPR (**'Instrument'**) expressly authorises the EPA LPR to do such acts or sign such documents to deal with the Member's Superannuation Interests or to carry out or give effect to the relevant EPA LPR Change; and
  - (B) the EPA LPR Change does not directly benefit the EPA LPR unless the Instrument expressly authorises the EPA LPR to do so.
- (b) An EPA LPR Change will not be taken to directly benefit an EPA LPR if a Member's benefits are paid to the deceased Member's LPR or the Member's estate even if the EPA LPR would be a beneficiary of the Member's estate.

**10. Fund Accounts**

**10.1. Fund Accounts**

The Trustee must keep Accounts and Reserves that the Trustee considers appropriate for the purpose of administering the Fund, determining the value of each Member Account and all other accounts of the Fund and calculating Benefits payable to each Member.

**10.2. Member Accounts**

The Trustee must keep separate Accounts for each Member and if permitted by the Superannuation Law, separate Accounts and or records for the purposes of:-

- (a) differentiating between contributions made by a Member and contributions made by others for the benefit of the Member;
- (b) differentiating between a Member's preserved and non-preserved benefits;
- (c) calculating the tax free and taxable components of a Member's Benefit within the meaning of the Superannuation Law;

- (d) identifying particular assets which are funding a Member's Pension;
- (e) enabling Members to have one or more Pensions; and
- (f) any other purpose as the Trustee considers appropriate.

**10.3. Crediting and Debiting Member Accounts**

The Trustee may credit or debit (as the case may be) each Member's Accounts with:-

- (a) contributions received from the Member or for the benefit of the Member;
- (b) income or losses of the Fund as determined by the Trustee;
- (c) amounts transferred to or from a Reserve of the Fund;
- (d) amounts transferred to or from an Approved Fund;
- (e) the amount of any Splittable Contributions as agreed between the Member and the Trustee;
- (f) the amount of any payment split that the Trustee is required to apply in accordance with the *Family Law Act 1975 (Cth) (Part VIII B or Part VIII C)*;
- (g) any Taxes, expenses or liabilities in relation to the contributions received in respect of the Member;
- (h) any Taxes, expenses or liabilities of the Fund that the Trustee considers appropriate;
- (i) any Benefit paid to the Member or any other person as approved by the Trustee;
- (j) any premiums and other expenses of any insurance policies in respect of the Member;
- (k) any proceeds of insurance effected for the benefit of the Member;
- (l) any amount required to comply with the Regulator's authority, notice, direction or request;
- (m) any other amount which shall be credited or debited for the purposes of the Rules; and
- (n) any other amounts that the Trustee considers appropriate.

**10.4. Reserves**

The Trustee may establish and maintain the following reserve Accounts:-

- (a) a reserve for smoothing any fluctuations in the value and earnings of investments of the Fund;
- (b) a taxation reserve for making provision for any existing or prospective liability for Taxes or any other liability;



- (c) such reserves or liability accounts to assist the Trustee to identify the value of assets that may be exchanged or segregated as either current Pension assets, non-current Pension assets or that are dealt with as a different sub-fund, segment or partition; and
- (d) such other reserves and Accounts for any other purpose the Trustee considers appropriate

**(‘Reserves’).**

#### **10.5. Transfer Balance Cap**

- (a) The Trustee has power to facilitate, maintain and monitor the Transfer Balance Cap, Transfer Balance Account and Transfer Balance records required by the Superannuation Law in respect of any Member and subject to the Superannuation Law the Trustee may do or refrain from doing any related act or thing as the Trustee thinks fit, including making any related disclosure, objection or appeal or dealing with any commutation.
- (b) If:-
  - (i) a Member has or is likely to exceed that Member’s Transfer Balance Cap, or the Trustee or the Member receives a transfer determination under the Superannuation Law in respect of the Member; or
  - (ii) the Member has been or is to be paid a new Pension (whether from the Fund or from an amount transferred into or rolled over into the Fund on the death of another person) or from another Fund;

then the Trustee and that Member will promptly liaise and agree or in default of agreement the Member will decide and instruct the Trustee on whether any, and if so which, of the Member’s Pensions will be commuted in whole or in part, if that is required under the Superannuation Law taking into account the Member’s Transfer Balance Cap.

### **11. Fund Expenses, Taxation and Insurance**

#### **11.1. Expenses**

The Trustee may debit Member Accounts, Reserves and any other Accounts as it considers appropriate to reflect the payment, or the provision of expenses and notwithstanding anything expressed or implied to the contrary in the Rules, the expenses of the Fund shall be distributed in a fair and reasonable manner as between all Members and in determining what is fair and reasonable the Trustee may have regard to whether such expenses were to the benefit or detriment of some or one, but not all, of the Members.

#### **11.2. Taxes**

- (a) The Trustee must pay all Taxes assessed to the Fund.
- (b) The Trustee may deduct from a Member’s Account, a Reserve or any other Account any Taxes referable to:-

- (i) contributions made to the Fund for the benefit of a Member;
  - (ii) earnings attributed to a Member's Account;
  - (iii) any Benefit from which the Trustee considers Taxes may be payable.
- (c) The Trustee may deduct from a Member's Account any Excess Contributions Tax payable by that Member in accordance with **Rule 6.4**.
- (d) Subject to the Superannuation Law, the Trustee may allocate any refund of Taxes to a Member's Account, Reserve or other Account.

**11.3. Insurance**

- (a) The Trustee may establish and implement an insurance plan for the Benefit of the Fund to enable the Fund to make payments (including the payment of Benefits on a Member's death or disability) to a Member, a Member's Dependant or the Legal Personal Representative of a Member in the event of a Member's death, disablement, illness or otherwise as permitted by the Superannuation Law.
- (b) The Trustee is prohibited from paying or providing insured benefits other than those that are consistent with the Conditions of Release in the SIS Regulations for death, Terminal Medical Condition, Permanent Incapacity or Temporary Incapacity.
- (c) The Trustee has absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the insurance proceeds to any Member's Account or to Reserves held in the Fund.
- (d) No Member nor their Legal Personal Representative nor any other person has any interest in any insurance proceeds that might be received by the Fund.
- (e) If a Benefit would ordinarily include an insured component under an insurance policy (for example a benefit payable on the Member's death or disablement) but:-
- (i) no amount is paid under that policy; or
  - (ii) the amount paid under the policy is less than the amount that would ordinarily be payable
- the amount payable to the Member may be adjusted by the Trustee accordingly.
- (f) This Rule is:-
- (i) for the protection of the Trustee and the Fund; and
  - (ii) not to be taken as conferring any rights on Beneficiaries in respect of benefits additional to those conferred under other provisions of the Rules.

- (g) Where under any prior rules governing the Fund provision was made for purchasing policies of any type of insurance and paying the premiums of those insurance policies, the Trustee may, in their absolute discretion, continue those policies and do such things as may be necessary in that regard, subject to the Superannuation Law.
- (h) The Trustee, in their absolute discretion, may vary the policies, subject to the Superannuation Law.

**12. Records, Notifications, Reporting, Audit**

**12.1. Records and Accounts to be kept**

The Trustee must in such manner and form and at such time as required by the Superannuation Law:-

- (a) keep appropriate minutes of meetings;
- (b) keep account of all moneys received by or for, and disbursed from, the Fund and of all dealings of the Fund;
- (c) collect and promptly pay into a bank or other account of the Fund all moneys due to the Fund;
- (d) keep appropriate records, books and accounts, including any related to a Member's Transfer Balance, Transfer Balance Account and Transfer Balance Cap having regard to the requirements of the Superannuation Law;
- (e) make suitable arrangements for the custody of documents relating to the investments of the Fund;
- (f) record details of any order or agreement for a Payment Split that the Trustee is required to apply in accordance with the *Family Law Act 1975 (Cth)*;
- (g) prepare accounts, returns and statements in relation to the Fund as at the end of the Financial Year;
- (h) comply with SuperStream data and payment standards; and
- (i) comply with all reporting obligations imposed by the Superannuation Law including reporting events to the Regulator that affect a Member's Transfer Balance Cap as and when required.

**12.2. Notifications, Reporting**

- (a) The Trustee must, where required by the Superannuation Law, provide information to prospective Members, Members, Beneficiaries, the Regulator and such other persons as required in connection with the Fund. Without limiting the foregoing the Trustee will report to the Regulator movements in the Transfer Balance Account of all Pension Members at intervals required by legislation and will provide any other reports or notices to the Regulator in such form and such manner and at such times as specified by the Superannuation Law.

- (b) Subject to **Rule 12.2(c)**, if a Member is also a Trustee or a director of a Corporate Trustee then any notification signed by that person:-
  - (i) as Trustee or director of a Corporate Trustee shall be deemed to have been given by the Trustee to that person in their capacity as a Member on the date of that document or if undated, on the date the document was signed;
  - (ii) as a Member shall be deemed to have been given by the Member to that person in their capacity as a Trustee or a director of a Corporate Trustee on the date of that document or if undated, on the date the document was signed.
- (c) **Rule 12.2(b)** does not apply to the provision by a Member of a written direction or nomination or revocation to the Trustee under **Rule 9.3** (*Automatic Reversionary Pension*) or **Rule 9.4** (*BDBN*).

**12.3. Audit**

The Trustee must appoint an Auditor to audit the accounts and statements of the Fund and to report in writing to the Trustee in respect of such audit within the time specified by the Superannuation Law.

**12.4. Inspection of records**

The Trustee must allow Members to inspect such documents and information if required by the Superannuation Law.

**13. Transfers of Benefits**

**13.1. Transfers within the Fund**

The Trustee with the consent of the Member when required by the Superannuation Law, may pay or transfer in the form of money or assets of the Fund or a combination of both, all or part of the Member's Interest or entitlement in the Fund to another Member's Account provided that:-

- (a) the payment or transfer is not prohibited by the Superannuation Law;
- (b) the Member shall be deemed to have consented to payment or transfer:-
  - (i) if the payment or transfer is required by the Superannuation Law; or
  - (ii) if the Member is a Trustee or a director of the Corporate Trustee; and
- (c) the payment or transfer is made in accordance with the provisions, if any, of the Superannuation Law.

**13.2. Transfers to Other Funds**

Subject to the Rules and the Superannuation Law, the Trustee may pay or transfer to an Approved Fund all or part of a Member's Interest or entitlement to Benefits in the Fund on terms and conditions determined by the Trustee:-

- (a) when requested by the Member;
- (b) when permitted or required by the Superannuation Law whether or not requested or consented to by the Member and the Member shall be deemed to have consented to such payment or transfer; and

such payment or transfer may be in the form of money or assets of the Fund or a combination of both.

**13.3. Benefits Cease**

If a payment or transfer is made under **Rule 13.2**:-

- (a) the payment or transfer will satisfy the Member's Interest or entitlement to those Benefits to the extent of the amount paid or transferred;
- (b) the receipt of the payment or transfer by the trustee of the Approved Fund will discharge the Trustee with respect to any liabilities referable to the amount paid or transferred; and
- (c) after the payment or transfer, the Trustee will not be responsible for the future application of the amount paid or transferred.

**13.4. Transfers from Other Funds**

- (a) Upon a Member's request, the Trustee may accept a payment or transfer of money or assets from an Approved Fund:-
  - (i) on such terms and conditions imposed by the Approved Fund;
  - (ii) on such terms and conditions determined by the Trustee; and
  - (iii) which is not prohibited by the Superannuation Law.
- (b) The Trustee shall have regard to the provisions governing the preservation of benefits in the Approved Fund to ensure that any Benefit arising from the assets transferred will only be paid to or in respect of the Member in circumstances similar to those provided for in the provisions governing the Approved Fund:-
  - (i) if the Approved Fund is an overseas pension scheme or foreign superannuation fund, to the extent required by foreign law; and
  - (ii) to extent required by the Superannuation Law.
- (c) Subject to the requirements of this **Rule 13.4** and the Superannuation Law, the Trustee will credit the Member's Accounts in the manner agreed between the Trustee and the Member with the money or assets paid or transferred under this **Rule 13.4**.

**13.5. Transfers from UK Registered Pension Schemes**

- (a) This **Rule 13.5** only applies if any Recognised Transfer Amounts have been accepted and are held by the Trustee pursuant to **Rule 13.4** from a registered

pension scheme in the United Kingdom. If there is any inconsistency between this **Rule 13.5** and any other Rule then this Rule applies to the extent of the inconsistency.

- (b) Subject to this **Rule 13.5**, a Member is only entitled to receive a Benefit sourced from a Recognised Transfer Amount if permitted by the UK Regulations and the Trustee must not pay a Benefit sourced from a Recognised Transfer Amount to a Member unless so permitted.
- (c) If a Recognised Transfer Amount is held by the Trustee, this **Rule 13.5** may be amended only if, after the amendment, the amended Rule would continue to comply with the QROPS Requirements.
- (d) A Recognised Transfer Amount may be transferred to an Approved Fund in accordance with **Rule 13.2** only where the provisions governing the Approved Fund contain provisions to the same effect as this **Rule 13.5** in respect of a Recognised Transfer Amount.
- (e) If a Recognised Transfer Amount is held by the Trustee, the Trustee must do all things necessary, or refrain from doing anything in relation to that amount, to comply with the QROPS Requirements.

## 14. Benefits

### 14.1. Payment Eligibility

Subject to the Superannuation Law and these Rules, a Benefit may be paid when:-

- (a) the Member has reached the Preservation Age;
- (b) the Member has reached the Retirement Age;
- (c) the Member has ceased to be Gainfully Employed;
- (d) the Member suffers Temporary Incapacity;
- (e) the Member suffers Permanent Incapacity;
- (f) the Member suffers from a Terminal Medical Condition;
- (g) the Member has died;
- (h) there are compassionate grounds;
- (i) a First Home Super Saver Scheme benefit as provided in the Superannuation Law is permitted; or
- (j) such other events or circumstances allow a Benefit to be paid including without limitation any other Condition of Release.

### 14.2. When Payable

- (a) A Benefit must be paid by the Trustee if required under the Superannuation Law.

- (b) Subject to the Superannuation Law and these Rules, if a Member becomes eligible to receive a Benefit under **Rule 14.1** then:-
  - (i) the Member may provide the Trustee with a written request (**'Request'**) to pay their Benefit in accordance with one or more of the methods of payment referred to in **Rule 14.3**;
  - (ii) before partial commutation of a Pension occurs, the Member may make an election that payment of the Benefit is a superannuation lump sum for income tax purposes and in the absence of such election the partial commutation will, where required by the Tax Act, be treated as an Income Stream benefit for income tax purposes;
  - (iii) the Trustee may pay a Benefit or any part of it in accordance with one or more of the methods of payment referred to in **Rule 14.3** even if a Member has not provided the Trustee with a Request.
- (c) If immediately before entitlement to a lump sum Benefit the prospective Beneficiary of that Benefit is an undischarged bankrupt or has entered into a personal insolvency agreement or debt agreement under the Bankruptcy Act 1966 (Cth) which has not been completely performed, or assigned or the prospective Beneficiary has attempted to assign their Interest in the Fund, the Trustee may only pay that portion of the lump sum Benefit that the Trustee considers the Beneficiary would be able to retain for their own enjoyment.
- (d) If a Trustee becomes aware that a Member is under a legal disability, this **Rule 14.2(d)** shall apply. Subject to the Superannuation Law, before paying a Benefit to or in respect of that Member:-
  - (i) If the Member has an LPR at the time payment is requested or due, the Trustee shall request the Member's LPR to provide a written consent as to the quantum and manner and form of any Benefit payable and subject to receipt of that consent within a reasonable time the Trustee shall pay such Benefit to the Member's LPR on behalf of the Member unless otherwise agreed in writing with the Member's LPR; or
  - (ii) If the Member's LPR has not provided a written consent in accordance with **Rule 14.2(d)(i)** or if the Member does not have an LPR at the time payment is requested or due, the Trustee shall exercise their discretion acting reasonably to determine:-
    - (A) whether and if so the quantum and manner and form of any Benefit payable; and
    - (B) whether such Benefit is paid to the Member (or if the Trustee thinks fit, to some other person or entity on behalf of or for the Member).
  - (iii) Despite **Rule 14.2(d)(i)** and **14.2(d)(ii)** , if a Member has commenced a Pension prior to the Trustee becoming aware that the Member is under a legal disability, the Trustee shall continue to pay that Pension to or for the benefit of the Member.

- (e) If a Member has died, **Rule 14.12** applies.

#### **14.3. Method of Payment**

- (a) Subject to the Superannuation Law and **Rule 14.12(h)** a Benefit may be paid:-
  - (i) in one or more lump sums;
  - (ii) by way of one or more Pensions;
  - (iii) by way of one or more Temporary Incapacity income streams;
  - (iv) by one or more annuities acquired by the Trustee;
  - (v) by an in specie transfer of assets of the Fund;
  - (vi) in any other way permitted by the Superannuation Law and these Rules; or
  - (vii) as a combination of any of the above

provided that the sum of all Benefits does not exceed the Member's Total Superannuation Interests in the Fund.

- (b) The Trustee must pay a Benefit in a particular way if required by the Superannuation Law or the Rules.

#### **14.4. Payment Conditions**

- (a) Subject to the Superannuation Law and the Rules, the Trustee may impose any reasonable conditions regarding payment of Benefits including requiring a Member or the Member's Legal Personal Representative:-
  - (i) to produce evidence of entitlement; and/or
  - (ii) to sign a discharge or receipt and/or an indemnity in respect of payment.
- (b) Despite any other Rule, a Benefit must not be paid if doing so would result in the Fund not complying with the Superannuation Law and/or, if applicable, the UK Regulations.

#### **14.5. Lump Sum**

- (a) Subject to **Rule 14.2(b)(ii)** and **14.12(h)** a lump sum may be paid:-
  - (i) in money as a single payment or in instalments; or
  - (ii) by an in specie transfer of assets of the Fund of equivalent value, with the value determined by the Trustee on an arms' length basis at the date of transfer.
- (b) Subject to **Rule 14.5(c)**, the amount of any lump sum Benefit must not:-
  - (i) exceed the balance of the Member's Accounts; or



- (ii) be less than any amount required under the Superannuation Law.
- (c) Subject to the Superannuation Law and the Trustee's discretion, the Trustee may pay an amount from a Reserve of the Fund to a Member.

**14.6. Pension**

- (a) The following shall comprise a Pension Agreement between a Member and Trustee:-
  - (i) a pension agreement signed by the Member and Trustee; and/or
  - (ii) a written request by the Member to the Trustee to pay a Pension, and acceptance of that request by the Trustee evidenced by a resolution of the Trustee and/or written acceptance notified by the Trustee to the Member and/or payment of the first Pension instalment by the Trustee to the Member; or
  - (iii) where **Rule 14.6(a)(i)** and/or **14.6(a)(ii)** do not apply and payment of a Pension has commenced and the commencing Pension Account amount and any other conditions relating to the Pension have been agreed by the Member and Trustee in writing and/or implied by the actions of the Member and Trustee including where the Trustee has commenced payment of a Pension as required by the Superannuation Law and the Member has commenced to receive a Pension payment.
- (b) Subject to the Superannuation Law and any contrary provision in an MDP which takes priority under **Rule 9.7(c)**, where a Member nominates a Reversionary Beneficiary in accordance with **Rule 9.3**, the relevant Pension Agreement may include a requirement, or if it does not shall be deemed to include a requirement, that on the death of the Member, the Member's nominated Reversionary Beneficiary is automatically entitled to receive the Pension and (subject to any revocation or amendment of the Reversionary Beneficiary nomination by the Member under **Rule 9.3**), the Pension automatically reverts to that Reversionary Beneficiary on the death of the Member without the exercise of any discretion by the Trustee ('**Automatic Reversionary Pension**').
- (c) A Pension Agreement may at any time be varied by the Member with the consent of the Trustee. Where that variation comprises a Member's nomination or revocation of a Reversionary Beneficiary and **Rule 9.3(d)** is complied with, the Trustee will be deemed to have consented to that nomination or revocation.
- (d) Variation of a Pension Agreement shall not create a new Pension unless expressly provided otherwise in writing.

**14.7. Pension Conditions**

- (a) Any Pension paid or provided to a Member must be paid or provided in compliance with the Superannuation Law, any relevant Pension Agreement and the Rules.

- (b) In paying or providing a Pension to a Member, subject to **Rule 14.7(a)** and the Trustee's discretion, the Trustee may apply any amount from the Member's Account and/or a Reserve of the Fund.
- (c) If a Pension is also an Asset Test Exempt Pension, the relevant provisions of the Social Security Act 1991 (Cth) or the Veterans' Entitlements Act 1986 (Cth) apply to the extent of any inconsistency to ensure the Pension qualifies or continues to qualify as an Asset Test Exempt Pension unless the Member and the Trustee agree in writing that this **Rule 14.7(c)** does not apply.
- (d) All Pensions commencing after 20 September 2007 must satisfy compliance with the minimum standards prescribed by the SIS Regulations which include:-
  - (i) The Pension must be account-based, except where otherwise permitted;
  - (ii) Capital supporting the Pension cannot be increased by contributions or rollover amounts; and
  - (iii) The capital value of the Pension or the income from it cannot be used as security for any borrowing.

**14.8. Type of Pension**

Subject to the Superannuation Law, the Trustee has power to pay any Pension and to continue the payment of a Pension commenced before the date of these Rules if permitted by and subject to the Superannuation Law. Pensions permitted under the Superannuation Law include the following however the Trustee cannot commence any Pension or commute any Pension if that is contrary to Superannuation Law:-

- (a) An account based pension in accordance with SIS Regulations 1.06(9A) and 1.07D;
- (b) A TRIS;
- (c) A TRIS in Retirement Phase;
- (d) An allocated pension in accordance with SIS Regulations 1.06(4);
- (e) A Complying Fixed-Term Pension in accordance with SIS Regulations 1.06(7) & 1.07B and where applicable, 1.06(1B);
- (f) A flexi-pension in accordance with SIS Regulations 1.06(6) & 1.07B;
- (g) A market linked pension in accordance with SIS Regulations 1.06(8), 1.07C and where applicable, 1.06(1B); and
- (h) A lifetime pension in accordance with SIS Regulations 1.06(2) & 1.07B.

**14.9. Conversion of a TRIS to a TRIS in Retirement Phase or Account Based Pension**

- (a) Where a Member has commenced a TRIS and subsequently meets a Condition of Release that satisfies section 307-80 of the Tax Act, the TRIS will automatically become a TRIS in Retirement Phase PROVIDED THAT if

automatic conversion of the TRIS to a TRIS in Retirement Phase would result in a breach of the Member's Transfer Balance Cap, the excess amount is deemed and will be treated as having been rolled back, moved or transferred to the Member's accumulation Account.

- (b) Despite **Rule 14.9(a)** and subject to the Superannuation Law, the Member may request the Trustee in writing to convert a Transition to Retirement Income Stream to an account-based pension (as defined in the SIS Regulations) as a replacement superannuation Income Stream and if the Trustee agrees, there shall be a deemed commutation and rollback of the TRIS to a new and separate replacement superannuation Income Stream as an ordinary account-based Pension in retirement phase made in compliance with the Superannuation Law. Prior to making a request under this **Rule 14.9(b)** the Member should consider obtaining financial and legal advice as to whether such a conversion can occur without adverse implications.

#### **14.10. Recommencement of a Ceased Pension**

If a Pension has ceased because any minimum Pension payment requirement of the Superannuation Law has not been satisfied then that Pension shall recommence on the same terms and conditions as the ceased Pension on the first day of July following the day that the Pension ceased unless a new Pension is requested by the Member or if the Pension cannot be recommenced under the Superannuation Law.

#### **14.11. Commutation**

- (a) Unless otherwise required by and subject to the Superannuation Law, the Trustee may, in its discretion, commute part or the whole of a Pension, if requested by a Member.
- (b) Subject to the Superannuation Law, any amount or part of an amount arising from the commutation of a Pension may be applied by the Trustee:-
  - (i) to pay a lump sum Benefit to the Member;
  - (ii) to pay one or more Pensions to the Member;
  - (iii) to be allocated to the Member's Accounts; or
  - (iv) in any other way not prohibited by the Superannuation Law or these Rules.

#### **14.12. Death Benefits**

##### **(a) Transfer or Payment of Benefits**

The transfer or payment of Benefits in the event of the death of a Member ('**Death Benefits**'):-

- (i) is subject to the Superannuation Law and the Rules; and
- (ii) shall be transferred or paid by the Trustee in the order of priority referred to in **Rule 9.2** subject to **Rule 9.7(c)**.

(b) **Automatic Reversionary Pension, BDBN, MDP**

Subject to **Rule 14.12(a)(ii)**:-

- (i) if an **Automatic Reversionary Pension** applies the Pension automatically reverts to the Member's nominated Reversionary Beneficiary and the Trustee must continue to pay the Pension to the Reversionary Beneficiary;
- (ii) if a **BDBN** applies, the Trustee shall transfer or pay Death Benefits as directed by the Member's BDBN provided or to the extent that the BDBN is binding on the Trustee in accordance with **Rule 9.4(c)**; and
- (iii) if a **MDP** applies, the Trustee shall transfer or pay Death Benefits in accordance with that MDP provided or to the extent that the MDP is binding on the Trustee in accordance with **Rule 9.7(d)**.

(c) **Benefits that are not subject to an Automatic Reversionary Pension, BDBN or MDP**

If or to the extent **Rule 14.12(b)** does not apply, the Trustee shall not exercise any discretion or power concerning the payment of a Death Benefit to a deceased Member's Beneficiary unless:-

- (i) the prior written consent of the deceased Member's LPR has been obtained to the manner and form of payment and to whom payment is to be made; or
- (ii) the deceased Member's LPR is or becomes a Trustee or director of a Corporate Trustee under **Rule 2.2(h)(ii)** and the exercise of any discretion by the Trustee under this **Rule 14.12(c)** occurs after the deceased Member's LPR's appointment as Trustee or director of a Corporate Trustee.

(d) **Trustee Discretion**

In relation to any of the deceased Member's Benefits not dealt with under **Rule 14.12(b)**, subject to **Rule 14.12(c)**, the Trustee having considered but not being bound by any NBDBN, will allocate, transfer and/or pay such Benefits in the Trustee's discretion:-

- (i) to the LPR of the estate of the deceased Member; and/or
- (ii) to one or more Dependants of the Member; and/or
- (iii) to an Approved Fund for the benefit of a Dependant in a manner permitted by the Superannuation Law; and/or
- (iv) to a Superannuation Proceeds Trust in which the beneficiaries of such trust are limited to those persons who are Death Benefits Dependants

in such proportions as the Trustee determines and on such conditions as the Trustee thinks fit.

(e) **Circumstances in which a Named Executor may be treated as a deceased Member's LPR**

Subject to the Superannuation Law, the Trustee may in their absolute discretion treat a person who is named as an executor in a deceased Member's last Will who, in the reasonable opinion of the Trustee, will formally be appointed as executor upon Probate being granted ('**Named Executor**') as being the Member's LPR for the purpose of **Rules 2.5(c), 14.12(c)(i), 16.2(a)** and **17.3**.

(f) **Circumstances in which Trustee may pay a Benefit in a form different to that nominated or where there is no form of Benefit specified**

Subject to the Superannuation Law:-

(i) Where in respect of a Pension a Member has nominated a Reversionary Beneficiary who is not eligible to receive the Pension under Superannuation Law, the Trustee shall pay the Benefit to that Beneficiary as a lump sum provided the Beneficiary is a Dependant who has survived the deceased Member;

(ii) if a BDBN provides that in relation to a Benefit the form of Benefit is 'lump sum', 'pension' or 'as agreed' without specifying any further conditions, terms or requirements or if there is no form or method of Benefit specified, then the nomination will be taken as permitting the Trustee and the nominated Beneficiary to agree that the Benefit shall be paid in such form/s and on such terms and conditions as the Trustee and the nominated Beneficiary agree within a reasonable period after the death of the relevant Member or, alternatively in such form and on such terms as the Trustee determines in the absence of an agreement within a reasonable time.

(g) **Disclaimed Benefit**

If a Beneficiary provides to the Trustee an irrevocable written disclaimer of the Benefit they would have received or have received under **Rule 14.12 ('Disclaimer Notice')** the Trustee shall deal with that Benefit as if the person providing the Disclaimer Notice had predeceased the Member PROVIDED THAT the Disclaimer Notice is provided as soon as reasonably possible after the Beneficiary becomes aware of their entitlement or in any event within a time accepted by the Trustee and PROVIDED FURTHER that the Beneficiary has not received the Benefit or if the Beneficiary has received the Benefit, has repaid the Benefit.

(h) **If deceased Member has no Dependants and no LPR**

Whether or not there exists a Member's EPD or MDP at the Member's date of death, if in respect of that Member after reasonable enquiries the Trustee has not identified any Beneficiaries named in any binding EPD or MDP at the date of death, nor any Dependant nor any LPR of the deceased Member, subject to the Superannuation Law, the Trustee shall pay the Benefits of the deceased Member as a superannuation lump sum to the Regulator or to a person or persons selected by the Trustee.

(i) **Trustee may pay additional amount from other Accounts and/or Reserve**

Subject to the Superannuation Law, and despite any other provision of this **Rule 14.12**, the Trustee may in its absolute discretion pay an additional amount from other Accounts and/or Reserve, to the Legal Personal Representative or one or more of the deceased's Dependants however these payments will not form part of the Member's Death Benefits.

**14.13. Suspension of Benefit**

Subject to the Superannuation Law, the Trustee may suspend, alter or withhold any Benefit where a Member or Dependant:-

- (a) fails to provide any information or to do anything required by **Rule 5.5(a)** or if information provided is carelessly incorrect, or deliberately misleading; or
- (b) otherwise fails to comply with the other provisions of the Rules or the requirements of the Superannuation Law.

**14.14. Preserved Benefits**

Nothing in the Rules requires or permits the payment of a Benefit to a Member where the Superannuation Law requires that Benefit to be preserved except in relation to a TRIS in circumstances where certain benefits may be treated as unrestricted non-preserved benefits under Superannuation Law.

**15. Family Law Splitting**

**15.1. Complying with Agreements and Orders**

- (a) The Trustee shall only be obliged to comply with any request for information, agreement or order made under Part VIII B or VIII C of the *Family Law Act 1975 (Cth)* to the extent permitted or required by the Superannuation Law.
- (b) The Trustee may impose a fee for the administrative costs associated with complying with a request for information, agreement or order made under Part VIII B or VIII C of the *Family Law Act 1975 (Cth)* and such fee shall be payable by such persons and in such proportions as prescribed by the Superannuation Law or Part VIII B or VIII C of the *Family Law Act 1975 (Cth)*. The Trustee may add interest, at a rate the Trustee determines, to any unpaid fee that the Trustee imposes and may debit the interest and the unpaid fee to a Benefit or interest and the unpaid fee that the relevant Member or person deemed to be a Member has in the Fund.
- (c) Nothing in the Rules shall impose a duty or obligation upon the Trustee to admit as a Member any person being a party to an agreement or order made under Part VIII B or VIII C of the *Family Law Act 1975 (Cth)* who is not already a Member and the Trustee may transfer to an Approved Fund any Benefit to which such person is entitled.
- (d) Despite anything contained in the Rules, a Benefit payable to a Member or Dependant under the Rules shall be subject to any agreement or order made under Part VIII B or VIII C of the *Family Law Act 1975 (Cth)* applying to that Benefit.

- (e) Where a Member's Superannuation Interest in the Fund is subject to a Payment Split, then subject to the Superannuation Law, the Trustee may:-
  - (i) pay the Spouse of that Member an amount equal to the transferable Benefits of the Spouse in relation to that Payment Split; or
  - (ii) transfer to another superannuation entity for the benefit of the Spouse of the Member an amount equal to the transferable benefits of the Spouse in relation to that Payment Split; and/or
  - (iii) take such other action the Trustee considers necessary or desirable.
- (f) Where a Payment Split interest has not been satisfied within six months of the operative time of the Payment Split, the Trustee must transfer, for the benefit of the Spouse of the Member whose interest is subject to the Payment Split, an amount equal to the transferable benefits of the Spouse under the Payment Split to a superannuation entity agreed by the Trustee and Spouse or in default of agreement to an Approved Fund selected by the Trustee.

## **16. Winding Up and Termination**

- 16.1 The Trustee may wind up the Fund by passing a resolution to the effect that the Fund is to be terminated on a date nominated in that resolution (**'Termination Date'**) and must notify the Beneficiaries of that date.
- 16.2 The Trustee must resolve to wind up the Fund and nominate a Termination Date:-
  - (a) if there are no Members in the Fund; or
  - (b) if all the Members or one or more Members having at least a combined aggregate of 50% of all Members' Total Superannuation Interests in the Fund request the Trustee in writing to wind up the Fund; or
  - (c) if the Fund is required to be wound up to comply with the Superannuation Law.
- 16.3 As at the Termination Date the Trustee must determine the amount or value of assets available for satisfying the Superannuation Interests of each Member after taking into account and making necessary adjustments of any Reserves and provision for the liabilities and costs referred to in **Rule 16.4(a)** and **16.4(b)**.
- 16.4 Subject to the Superannuation Law, the Trustee must apply the assets of the Fund, to the extent that there are sufficient assets in the following order of priority:-
  - (a) to pay any liabilities of the Fund;
  - (b) towards the costs of administering and winding up the Fund;
  - (c) in paying or transferring every Member's Total Superannuation Interests in accordance with these Rules;
  - (d) any remaining amounts may be paid by the Trustee, subject to the Superannuation Law:-

- (i) to Members, Dependants, former Members, deceased Members or Legal Personal Representatives on behalf of the Members or Beneficiaries, in such proportions as the Trustee in its discretion determines is appropriate; or
- (ii) if after reasonable enquiry the Trustee is unable to identify and locate any person referred to in **Rule 16.4(d)(i)** above:-
  - (A) to any other person or entity the Trustee chooses in the proportions the Trustee considers reasonable and equitable; or
  - (B) the Trustee may pay any unclaimed money (as the term is defined in sections 12 and 14 of the Superannuation Industry (Unclaimed Money and Lost Members) Act 1999 to the Commissioner of Taxation.

16.5 The receipt by any person of any amount under this Rule will be in full discharge of any claims in respect of the Fund.

## **17. Amendment of the Rules**

### **17.1. Amendment**

- (a) Subject to **Rule 17.2**, **Rule 17.3** and the Superannuation Law, the Trustee may:-
  - (i) by amending deed or written resolution at any time and from time to time amend all or any of the Rules; or
  - (ii) periodically adopt Replacement Rules including Replacement Rules which are created and stored electronically.
- (b) Without limiting **Rule 17.1(a)** the Trustee may subscribe to a service that provides Replacement Rules for the Fund on an annual or other basis and that service may permit automatic adoption of Replacement Rules with or without the Trustee being required to execute any documentation.
- (c) Any adoption of an amendment to the Rules pursuant to **Rule 17.1(a)(i)** shall take effect from the date of the amending document or written resolution unless that document specifies another date which may be prospective or retrospective.
- (d) Any adoption of Replacement Rules under **Rule 17.1(a)(ii)** shall take effect from the date contained in the Replacement Rules or in the absence of such a date from the date of electronic publication of the Replacement Rules or such other date that is determined and notified to the Trustee in accordance with any subscription Replacement Rules service.
- (e) If the Member Contributed Property Rule has been made irrevocable, then despite that fact, if in the Trustee's opinion, the Superannuation Law and/or circumstances warrant amendment of the Member Contributed Property Rule the amendment may be made if:-



- (i) the amendment will not result in the Trustee (or any custodian trustee of property for the Trustee of the Fund) not obtaining or not being entitled to obtain or retain the benefit of any duty, tax or other exemption or concession that would otherwise apply or continue to apply in respect of the transfer of the Member Contributed Property; or
- (ii) the Trustee holds no or has ceased to hold any Member Contributed Property.

**17.2. Amendment Restrictions**

- (a) Despite **Rule 17.1**, no amendment of all or any of the provisions of the Rules shall be made by the Trustee which would:-
  - (i) have the effect of the Fund ceasing to be a Complying Self Managed Superannuation Fund; or
  - (ii) permit the sole or primary purpose of the Fund to be other than the provision of Old-Age Pensions while the Trustee is one or more individuals; or
  - (iii) permit the Trustee to be other than a Constitutional Corporation while the sole or primary purpose of the Fund is other than the provision of Old-Age Pensions; or
  - (iv) have the effect of reducing a Member's Interests accrued prior to the date of the amendment unless:-
    - (A) the reduction is required due to Tax payable on income of the Fund or any costs payable by the Trustee in relation to the Fund; or
    - (B) the amendment is required to enable compliance with the Superannuation Law or the amendment is approved by the Regulator; or
    - (C) the Trustee has obtained that Member's prior written consent to the amendment;
  - (v) have the effect of:-
    - (A) ceasing, commuting or otherwise altering the terms and conditions of any Pension;
    - (B) changing or revoking a Member's prior BDBN or MDP;
    - (C) changing the priority or payment or transfer of a Member's Benefits on their death;without the Member's prior written agreement or written consent; or
  - (vi) vary or delete any Rule that is incapable of amendment or deletion

unless and to the extent **Rule 17.2(b)** applies.

- (b) Amendment restrictions referred to in **Rule 17.2(a)** do not apply if and to the extent an amended or Replacement Rule is repeated or is to the same effect as the Rule it amended or replaced.
- (c) To the extent any amendment or Replacement Rule would be in breach of **Rule 17.2(a)**, then subject to **Rule 17.2(b)**, that amendment or Replacement Rule will be of no effect.

**17.3. Amendments requiring Consent of Members and Others**

- (a) During a period commencing from the death of a Member ending on the date that all that deceased Member's Benefits have been paid or transferred in accordance with **Rule 14.12(a)** and/or **Rule 14.12(b)** and/or **Rule 14.12(d)** (as the case may be), the priority or payment or transfer of those Benefits cannot be amended unless and then only to the extent the Trustee, the deceased Member's LPR and the relevant nominated Beneficiary (or if they are under a legal disability their LPR, or in the case of a minor their parent or guardian) agree in writing.
- (b) **Rule 17.3** may only be amended by the Trustee with the written consent of all the Members, (or if a Member is unable to give that consent, with the written consent of the LPR of that Member or in the case of a minor, their parent or guardian).
- (c) If a Recognised Transfer Amount has been accepted by the Trustee, an amendment to **Rule 13.5** may only be made if the relevant Member has provided their written consent and after the amendment, the Fund complies with the QROPS Requirements.
- (d) **Rules 17.3(a)** and **17.3(b)** do not apply if and to the extent an amended or Replacement Rule is repeated or is to the same effect as the Rule it amended or replaced.

**18. Definitions**

In these Rules unless the contrary intention appears:-

- 18.1 **'Account'** means an account established by the Trustee for the purpose of administering the Fund or calculating the Benefit payable in respect of a Member or for any other purpose under the Rules;
- 18.2 **'Ancillary Purposes'** means those purposes that are defined in subsection 62(1)(b) of the SIS Act; and includes voluntary transfers to the Commissioner of Taxation;
- 18.3 **'Approved Fund'** means, payment to the Regulator, a superannuation fund, an approved deposit fund, a rollover annuity, or any other like fund or annuity which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not, in the opinion of the Trustee, be in breach of the Superannuation Law and includes the Regulator where permitted under the Superannuation Laws;

- 18.4 **'Asset Test Exempt Pension'** means a Pension that is exempt from or excluded from the assets test in whole or part under the Social Security Act 1991 (Cth) or the Veterans' Entitlements Act 1986 (Cth) (and any applicable regulations);
- 18.5 **'Auditor'** means an 'approved SMSF auditor' (as defined by subsection 10(1) of the SIS Act) appointed for the purposes of auditing the Fund;
- 18.6 **'Automatic Reversionary Pension'** has the meaning given by **Rule 14.6(b)** and also means a Pension commenced by a Member at any time (whether before, on or after the adoption of the Rules), where a Reversionary Beneficiary has been nominated by the Member;
- 18.7 **'Beneficiary'** includes a Member and any person entitled at the relevant time to receive a Benefit from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the SIS Act;
- 18.8 **'Binding Death Benefit Nomination'** or **'BDBN'** has the meaning given in **Rule 9.4(a)** and also means a binding death benefit nomination made at any time (whether before, on or after the adoption of the Rules);
- 18.9 **'Benefit'** means any amount paid, payable or a transfer of a property or asset of the Fund to or in respect of a Member or Beneficiary including a lump sum, a Pension, an Income Stream and any other payment or transfer under the Rules but excludes a Defined Benefit Pension;
- 18.10 **'Child'** in relation to a person, includes:-
- (a) an adopted child, a stepchild or an ex-nuptial child of the person; and
  - (b) a Child of the person's Spouse; and
  - (c) someone who is a child of the person within the meaning of the Family Law Act 1975;
- 18.11 **'Commencement Day'** of a Pension is the first day of the period to which the first payment of the pension relates and shall be determined having regard to the terms of the relevant Pension Agreement;
- 18.12 **'Complying Self Managed Superannuation Fund'** means a fund that satisfies the requirements of section 42A of the SIS Act;
- 18.13 **'Condition of Release'** means an event which is listed in Column 2 of Part 1 of the table in Schedule 1 to the SIS Regulations;
- 18.14 **'Constitutional Corporation'** means a trading or financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Commonwealth of Australia Constitution Act);
- 18.15 **'Contributions Split'** in respect of a Member means the rollover or transfer to the superannuation Account of the Member's Spouse (for the benefit of the Member's Spouse) or the allotment to the superannuation Account of the Member's Spouse, of all or a portion of the Member's superannuation contributions in relation to a financial year;

- 18.16 **'Core Purposes'** means those purposes for which the Fund is established that are defined in subsection 62(1)(a) of the SIS Act;
- 18.17 **'Corporate Trustee'** means a Constitutional Corporation that is the trustee of the Fund;
- 18.18 **'Death Benefits Dependant'** of a person who has died, in relation to a Reversionary Beneficiary nomination or a Superannuation Proceeds Trust means:-
- (a) the deceased person's Spouse or former Spouse; or
  - (b) the deceased person's Child, aged less than 18; or
  - (c) any other person with whom the deceased person had an interdependency relationship under section 302-200 of the 1997 Tax Act just before he or she died; or
  - (d) any other person who was a Dependant of the deceased person just before he or she died or who is a Death Benefit Dependant under 302-195 of the 1997 Tax Act;
- 18.19 **'Death Benefits'** has the meaning given by **Rule 14.12(a)**;
- 18.20 **'Deed'** means the deed establishing the Fund as amended, novated, supplemented, varied or replaced from time to time and includes any annexure, schedules and appendices (**'Attachment'**) to the Deed except where the Attachment indicates that it is not part of the Deed;
- 18.21 **'Deed of Confirmation'** includes a deed signed by the Trustee (and/or others) addressing any matters concerning the Fund which may require ratification or confirmation or relate to lost documentation;
- 18.22 **'Defined Benefit Pension'** has the meaning given to it by Regulation 9.04E of the SIS Regulations;
- 18.23 **'Dependant'** in relation to a person, means the Spouse of the person, any Child of the person, or any other person who is a dependant within the meaning of the SIS Act;
- 18.24 **'Disqualified Person'** has the same meaning as in section 120 of the SIS Act;
- 18.25 **'Downsizer Contribution'** means a non-concessional contribution made by a Member or made in respect of a Member by their Spouse which satisfies the requirements of section 292-102 of the Tax Act;
- 18.26 **'EPA LPR'** has the meaning given by **Rule 9.8(a)**;
- 18.27 **'EPA LPR Change'** has the meaning given by **Rule 9.8(a)**;
- 18.28 **'EPD'** has the meaning given in **Rule 9.1**;
- 18.29 **'Excess Contributions Tax'** means any tax imposed by reason of the Superannuation (Excess Concessional Contributions Tax) Act 2007 (Cth) or the Superannuation (Excess Non-Concessional Contributions Tax) Act 2006 (Cth) or successor legislation;

- 18.30 **'Financial Year'** means a period of twelve (12) months ending on 30 June or such other date determined by the Trustee;
- 18.31 **'Gainfully Employed'** means employed or self-employed for gain or reward in any business, trade, profession, occupation, vocation or calling on a full time or part time basis and **'Gainful Employment'** has a corresponding meaning;
- 18.32 **'Fund'** means the fund governed by the Rules;
- 18.33 **'Governing Law'** means the governing law given in **Rule 21.4**;
- 18.34 **'Governing Rules'** has the meaning given to it in section 10 of the SIS Act;
- 18.35 **'Individual Policy'**, in relation to a Member, means a life insurance policy or an interest in a group life insurance policy which the Trustee has nominated as being held specifically for the purpose of providing benefits in respect of that Member and which may include an insurance policy over the life of a person other than the Member;
- 18.36 **'Interest'** has the same meaning as **'Superannuation Interest'**;
- 18.37 **'Legal Personal Representative'** or **'LPR'** means as the context requires the executor of the will or administrator of the estate of a deceased person, the trustee or administrator of the estate of a person under a legal disability; a person who holds an enduring power of attorney granted by a Member or Beneficiary, a Named Executor where **Rule 14.12(e)** permits, or an administrator or financial manager appointed under State or Territory guardianship legislation that the Trustee in its discretion is willing to recognise as an LPR, however LPR excludes a trustee in bankruptcy for a Member or Beneficiary or any other person who has been appointed in that position arising from insolvency or from the need to deal with creditors of a Member or Beneficiary;
- 18.38 **'Limited Recourse Borrowing Exception'** means the exception provided by the SIS Act to the general prohibition on trustees of regulated superannuation funds from borrowing whether such exception is set out in section 67A, section 67B, former section 67(4A) or elsewhere in the SIS Act;
- 18.39 **'Member'** means a person who has been admitted to membership of the Fund and who has not ceased to be a Member of the Fund and any person required by the Superannuation Law to be treated as a Member of the Fund and, where the context permits, includes:-
- (a) the Legal Personal Representative of a Member subject to **Rule 9.8**; or
  - (b) a parent or guardian of a Member under a legal disability by reason of age and who does not have a Legal Personal Representative;
  - (c) a Reversionary Beneficiary by reason of receiving an Automatic Reversionary Pension;
- 18.40 **'Member Contributed Property'** means dutiable property for the purposes of the Duties Act 1997 (NSW) and the Duties Act 2008 (WA) which is transferred to the Trustee by a Transferor and, in respect of which property, duty has been assessed and paid under either section 62A of the Duties Act 1997 (NSW) or section 122 of the

Duties Act 2008 (WA) and includes the proceeds of the sale of the whole or part of any such property;

- 18.41 **'Member Contributed Property Rule'** has the meaning given by **Rule 7.6**;
- 18.42 **'Member Directed Superannuation Benefit Plan'** or **'MDP'** has the meaning given by **Rule 9.7(a)**;
- 18.43 **'Named Executor'** has the meaning given in **Rule 14.12(e)**;
- 18.44 **'Non-Binding Death Benefit Nomination'** or **'NBDBN'** has the meaning given in **Rule 9.6(a)** and also means a non binding death benefit nomination made at any time (whether before, on or after the adoption of the Rules);
- 18.45 **'Old-Age Pension'** means an old age pension for the purposes of paragraph 51(xxiii) of the Commonwealth of Australia Constitution Act;
- 18.46 **'Payment Split'** has the same meaning as in Part VIII B or Part VIII C of the Family Law Act 1975 (Cth); and **'Payment Split Interest'** means the interest which a Member's Spouse (whether or not that Member's Spouse is a Member of the Fund) has in relation to the Interest of a Member which is the subject of a Payment Split;
- 18.47 **'Pension'** includes a pension or annuity recognised by the SIS Regulations, an income stream recognised by the Income Tax Assessment Regulations 1997, an Old-Age Pension and such other periodic payment prescribed or permitted by the Superannuation Law, and includes a Pension that is payable pursuant to a Pension Agreement and an Automatic Reversionary Pension or an annuity that is a reversionary annuity, and **'Income Stream'** has a corresponding meaning;
- 18.48 **'Pension Agreement'** has the meaning given by **Rule 14.6(a)**;
- 18.49 **'Permanent Incapacity'** in relation to a Member, subject to the Superannuation Law, has the same meaning as that contained in any insurance policy effected to cover Permanent Incapacity of the Member and in force at the time of the incapacity or where there is no such insurance policy means after having regard to the requirements of the Superannuation Law, the Trustee is reasonably satisfied that the Member's ill health (whether physical or mental) makes it unlikely that the Member will engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;
- 18.50 **'Preservation Age'** means:-
- (a) for a person born before 1 July 1960 – 55 years; or
  - (b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years; or
  - (c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years; or
  - (d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years; or
  - (e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years; or
  - (f) for a person born on or from 1 July 1964 – 60 years;

- 18.51 **'QROPS Requirements'** means any requirements under laws relating to superannuation funds that the Fund must satisfy to be a qualifying recognised overseas pension scheme under section 169 of the UK Regulations;
- 18.52 **'Recognised Transfer Amount'** means the amount transferred to the Fund or a previous superannuation arrangement in respect of a Member as a recognised transfer under section 169 of the UK Regulations;
- 18.53 **'Regulated Superannuation Fund'** has the same meaning as contained in section 19 of the SIS Act;
- 18.54 **'Regulator'** means the Commissioner of Taxation or any person or entity appointed to regulate a self managed superannuation fund as described in section 10(1) of the SIS Act and in respect of Recognised Transfer Amounts means the Board of Inland Revenue and HM Revenue & Customs of the United Kingdom;
- 18.55 **'Relevant Contributions Split Amount'** has the meaning given in **Rule 6.3(b)**;
- 18.56 **'Replacement Rules'** means replacement Rules adopted by the Trustee in accordance with the Rules;
- 18.57 **'Reserves'** has the meaning given to it by **Rule 10.4**;
- 18.58 **'Retirement Age'** means:-
- (a) age 65; or
  - (b) such other age at which benefits can generally be paid from a Regulated Superannuation Fund under the Superannuation Law even if a Member has not ceased Gainful Employment;
- 18.59 **'Retirement Phase'** in relation to a superannuation Income Stream, has the same meaning as given by the section 995-1 of the 1997 Tax Act;
- 18.60 **'Reversionary Beneficiary'** means a Death Benefit Dependant nominated as a reversionary beneficiary under **Rule 9.3** or in receipt of an Automatic Reversionary Pension, and if the context requires means or includes a Successor Reversionary Beneficiary;
- 18.61 **'Review Date'** means the final day of each Financial Year and/or any other date the Trustee determines in its absolute discretion;
- 18.62 **'Rules'** mean the rules that apply to the Fund as amended, novated, supplemented, varied or replaced from time to time (including Replacement Rules) and includes any annexure, schedules and appendices (**'Attachment'**) to the Rules except where the Attachment indicates that it is not part of the Rules;
- 18.63 **'SGA Act'** means the Superannuation Guarantee (Administration) Act 1992 (Cth);
- 18.64 **'SGA Regulations'** means the Superannuation Guarantee (Administration) Regulations 2018 (Cth);
- 18.65 **'Shortfall Component'** has the meaning given to that term in the Superannuation Guarantee (Administration) Act 1992 (Cth);

- 18.66 **'SIS Act'** means the Superannuation Industry (Supervision) Act 1993 (Cth);
- 18.67 **'SIS Law'** means the SIS Act and the SIS Regulations, as the context requires;
- 18.68 **'SIS Regulations'** means the Superannuation Industry (Supervision) Regulations 1994 (Cth);
- 18.69 **'Small APRA Fund'** means a fund with no more than six members with the trustee being an RSE Licensee (as defined by the SIS Law) and that otherwise complies with the Superannuation Law in relation to such funds;
- 18.70 **'Splittable Contribution'** has the meaning given to that term in Regulation 6.42 of the SIS Regulations;
- 18.71 **'Spouse'**, in relation to a Member, includes:-
- (a) a person who is married to the Member pursuant to the Marriage Act 1961 (Cth);
  - (b) a person who lives with the Member on a genuine domestic basis in a relationship as a couple, whether or not legally married to the Member;
  - (c) a person (whether of the same sex or a different sex) with whom the Member is in a relationship that is registered under a law of a State or Territory which has been prescribed for the purposes of s2E of the Acts Interpretation Act 1901 (Cth) as a kind of relationship prescribed for the purposes of that section; and/or
  - (d) any other person who is a spouse of the Member for the purposes of the SIS Act;
- and **'Spousal'** has a corresponding meaning.
- 18.72 **'State Trust Law'** means whichever of the Trustee Act 1958 (VIC), the Trustee Act 1925 (NSW), the Trustees Act 1962 (WA), the Trusts Act 1973 (QLD), the Trustee Act 1936 (SA), the Trustee Act 1898 (TAS), the Trustee Act 1925 (ACT) and the Trustee Act 1893 (NT) apply to the Fund or any other Commonwealth, State or Territory legislation of like effect that may apply;
- 18.73 **'Successor Reversionary Beneficiary'** means a Death Benefits Dependant who becomes entitled to a deceased Member's Pension if another person (being a named Reversionary Beneficiary) does not survive the deceased Member or otherwise is not entitled to the deceased Member's Pension;
- 18.74 **'Superannuation Interest'** or **'Interest'** means a Benefit, amount or entitlement that exists in the Fund in respect of a Member (including a deceased Member), or a separate interest that is recognised by the Tax Act and if a Member receives one or more Pensions from the Fund, each such Pension is a separate Interest;
- 18.75 **'Superannuation Law'** means as the context requires:-
- (a) relevant provisions of the SIS Law, Superannuation Legislation Amendment (Stronger Super) Act 2012, SGA Act, Superannuation (Departing Australia Superannuation Payments Tax) Act 2006; Superannuation (Excess



Concessional Contributions Tax) Act 2006; Superannuation (Excess Non-concessional Contributions Tax) Act 2006, Superannuation (Self-Managed Superannuation Funds) Supervisory Levy Amendment Act 2006;

- (b) relevant provisions of the Tax Act which apply to the operation and administration of or interests in self-managed superannuation funds including provisions which are required to be met to permit the Fund to be taxed concessionally or which permit contributors to the Fund, tax deductibility or other taxation benefits in respect of those contributions except to the extent that a contributor does not seek that concession or tax benefit;
- (c) applicable provisions of the Corporations Act 2001 (Cth), the Social Security Act 1991 (Cth), Veterans' Entitlements Act 1986 (Cth), the Family Law Act 1975 (Cth) and the Bankruptcy Act 1966;
- (d) applicable State Trust Law that cannot lawfully be excluded and applicable provisions of State Trust Law that the Trustee considers appropriate to apply for the benefit of the Fund or its Members or Beneficiaries;
- (e) any applicable regulations made pursuant to the abovementioned acts;
- (f) applicable provisions of such other Commonwealth Acts, regulations and standards which apply to self managed superannuation funds; and
- (g) any other legislation, regulation, provision, determination, ruling, guideline, legislative instrument or other document of similar effect relating to superannuation including any proposed legislation that may apply to the Fund, where the Trustee considers it appropriate to be utilised, complied with or adopted for the benefit of the Fund or its Members or Beneficiaries;

18.76 **'Superannuation Proceeds Trust'** means a trust, the only beneficiaries of which are Death Benefits Dependents;

18.77 **'SuperStream'** means the superannuation data and payment standards in the SIS Regulations that relate to certain rollovers between superannuation funds, certain contributions to superannuation funds and certain release authorities;

18.78 **'Tax Act'** means as the context requires, the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997 (Cth), the Taxation Administration Act 1953 (Cth) and/or their respective regulations; and **'1997 Tax Act'** means the Income Tax Assessment Act 1997;

18.79 **'Tax'** includes income tax (including capital gains tax) land tax, goods and services tax, stamp duty and any other taxes or duties;

18.80 **'Temporary Incapacity'** in relation to a Member, subject to the Superannuation Law, who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental) that caused the Member to cease to be Gainfully Employed or which otherwise qualifies as temporary disablement (or its equivalent) under the Superannuation Law but does not constitute Permanent Incapacity;

18.81 **'Terminal Medical Condition'** has the meaning given by SIS Regulation 6.01A;

- 18.82 **'Total Superannuation Balance'** has the meaning given by the Tax Act;
- 18.83 **'Total Superannuation Interests'** in relation to a Member, means the total of all Interests and Benefits in the Fund attributable to that Member;
- 18.84 **'Transfer Balance'** has the meaning given by the Tax Act;
- 18.85 **'Transfer Balance Account'** has the meaning given by the Tax Act;
- 18.86 **'Transfer Balance Cap'** has the meaning given by the Tax Act, and also means the General Transfer Balance Cap as defined by the Tax Act, as the case requires;
- 18.87 **'Transferor'** means a Member or Members together who transfer Member Contributed Property to the Trustee;
- 18.88 **'Transition to Retirement Income Stream'** or **'TRIS'** means a transition to retirement income as defined in SIS Regulation 6.01(2);
- 18.89 **'TRIS in Retirement Phase'** has the meaning given by **Rule 14.9(a)**;
- 18.90 **'Trustee'** or **'Trustees'** means the trustee(s) for the time being of the Fund; and
- 18.91 **'UK Regulations'** means the Finance Act 2004 (United Kingdom) and regulations made by the Board of Inland Revenue of the United Kingdom as may be amended from time to time.

## **19. Interpretation**

In these Rules unless the contrary intention appears:-

- 19.1 the **singular** includes the plural and vice versa;
- 19.2 a **gender** includes all other genders;
- 19.3 a reference to a **person** includes any company, partnership, joint venture, trust, association, government, or public authority and vice versa;
- 19.4 a reference to a **person** that comprises two or more persons means those persons jointly and severally;
- 19.5 a reference to **amend** includes to add to, modify, vary, replace or delete and **amendment** and **amending** have corresponding meanings;
- 19.6 a reference to a **document** other than the Deed or the Rules is to that document as amended, novated, supplemented, varied or replaced from time to time and includes any annexures, schedules and appendices (**'Attachment'**) to that document except where the Attachment indicates that it is not part of the document;
- 19.7 a reference to **writing or a document** includes writing or a document sent by electronic means (including via email and attachments to email) or published electronically via use of technology including published on a website;
- 19.8 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;

- 19.9 a reference to **pay** includes to credit or distribute or transfer;
- 19.10 mentioning anything after **include, includes** or **including** does not limit what else might be included;
- 19.11 a reference to any **legislation** or legislative provision or regulation includes any amendment, statutory modification, substitution, re-enactment and any subordinate legislation issued under that legislation or provision;
- 19.12 the Rules are to be interpreted subject to the Superannuation Law and any term used but undefined in the Rules which is defined in the Superannuation Law has the same meaning that it has in the Superannuation Law;
- 19.13 the instrument that implements the Rules and any amendment or Replacement Rules, to the greatest extent permitted by law, is effective even if it has not been signed or dated;
- 19.14 if any question arises in respect of the interpretation of the Rules, the Trustee, acting reasonably shall determine the matter (following consultation with the Fund's advisors if appropriate) and the Trustee's determination shall be final and binding;
- 19.15 without limiting the preceding Rule, a reference to a Rule that is in error shall be taken to be a reference to the most appropriate Rule as determined by the Trustee (following consultation with the Fund's advisors if appropriate); and
- 19.16 the table of contents, **headings** and sub-headings are for convenience only and do not affect the interpretation of these Rules.

**20. Compliance with the Superannuation Law**

**20.1. Inconsistency**

Subject to **Rule 20.3** if there is any inconsistency between the provisions of the Deed, the Rules and the Superannuation Law, the Superannuation Law will prevail to the extent of any such inconsistency.

**20.2. Power to Act in Accordance with Superannuation Law**

The Trustee has the power to do, or omit to do, all acts and things as the Trustee considers necessary for the Fund to be a Complying Self Managed Superannuation Fund.

**20.3. Deemed Inclusion of Superannuation Law**

- (a) This **Rule 20.3** has a paramount effect to ensure that the Fund and these Rules comply with the Superannuation Law.
- (b) Despite any provision of the Rules other than **Rule 20.3(c)** all the provisions of the Superannuation Law that must be included in the Rules from time to time in order for the Fund to qualify or remain as a Complying Self Managed Superannuation Fund under the Superannuation Law are deemed to be included in the Rules as if every such provision was set out in the Rules but only for so long as that deemed inclusion is necessary for the Fund to qualify

or remain a Complying Self Managed Superannuation Fund under the Superannuation Law.

- (c) To the extent the Superannuation Law:-
- (i) requires the Rules to contain a provision that is not contained or to not contain a provision which the Rules do contain; and/or
  - (ii) requires compliance by the Trustee with the minimum requirements of the Superannuation Law;

all requisite provisions, having regard to the Fund's status at the relevant time, are deemed to be part of the Rules for so long as is necessary for the Fund to qualify as or remain a Complying Self Managed Superannuation Fund, and to the extent of any inconsistency they are to prevail over the express provisions in the Rules.

- (d) To the extent the Superannuation Law:-
- (i) allows the Trustee to do something that the Trustee would not otherwise have power to do;
  - (ii) allows the Trustee to refrain from something that the Trustee would otherwise be required to do; and/or
  - (iii) allows the Trustee or a Member to obtain any concessional tax treatment, to obtain a tax deduction, utilise an election, a favourable rule or flexibility under the Superannuation Law,

the Trustee may, subject to **Rule 17**, by deed or resolution determine generally or in any specified circumstances that all or any relevant permitting provisions are deemed to be part of the Rules, and to the extent of any inconsistency such provisions are to prevail over other provisions in the Rules. The Trustee may similarly remove or amend any of those permitting provisions.

## **21. General**

### **21.1. Failure to enforce rights**

The failure or omission of the Trustee to enforce or require strict compliance with a provision of the Deed or the Rules does not affect or impair the Trustee's right to subsequently enforce or require strict compliance with that provision or to avail itself of any remedies it may have in respect of any breach of that provision.

### **21.2. Preservation of rights**

All rights given to a Member under the Deed or the Rules are cumulative of each other and in addition to and do not abrogate, limit or reduce any other rights that Member may have at law, under any other agreement, or otherwise.

### **21.3. Further assurance**

The Trustee must promptly execute all documents and do all things to effect, perfect or complete the Deed and all transactions incidental to it.

**21.4. Governing law**

The Deed and Rules are governed (**'Governing Laws'**) by the laws of the Commonwealth of Australia and the State or Territory specified in the Schedule to the Deed; or in the absence of such specification:-

- (a) of the location of the registered office of the Corporate Trustee (if the Trustee is a Corporate Trustee); or
- (b) of the location of the place of residence of the Trustee or if they reside in different locations, the location of the first named Trustee in the Deed (if the Trustees are individuals).

**21.5. Severance**

A provision or any part of a provision of the Rules that is void or invalid is severed. All other Provisions of the Rules continue to be valid and enforceable in accordance with their terms.

**21.6. Use of Technology**

Subject to the Superannuation Law:-

- (a) any notice required to be given may be sent by email or electronic means; and
- (b) any document required to be signed may be signed by electronic means including by electronic signature; and
- (c) any meeting required to be held may be held by electronic means including by video and/or audio means.