

Trust Deed

# D & L Ellard Superannuation Fund

**Deed of Amendment & Consolidation (Trust Deed)  
of Self managed Superannuation Fund**

**D & L Ellard Superannuation Fund**

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**David Arthur Ellard  
(Trustee)**

**Lynnette Erica Ellard**

**David Arthur Ellard  
(Members)**

**Lynnette Erica Ellard**

**Pro Forma Precedent  
Prepared by**

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Prepared by**

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## Date

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

## Parties

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

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

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

## Recitals

- A. By deed made on or about the Commencement Date of the Fund as detailed in Item 6 of the Schedule (**the Original Deed**) an indefinitely continuing superannuation fund was established to provide superannuation benefits for the members of the Fund.
- B. The Original Deed may have been amended from time to time so that the Original Deed and any duly authorised amendments shall be referred to as '**the Original Deed as amended**'.
- C. The superannuation scheme referred to in Recital A is known as the name shown at Item 5 of the Schedule, and for the purposes of this deed shall be referred to as '**the Fund**'.
- D. The operative provisions of the Original Deed as amended and any rules attached to the Original Deed as amended shall for the purposes of this deed be known as '**the Governing Provisions**' of the Fund
- E. '**The Rules**' shall mean the rules as attached to this Deed.
- F. The Governing Provisions provide that one or more of the Parties can vary the Governing Provisions.
- G. The Parties wish to vary the Governing Provisions as hereinafter provided. If applicable, the Principal consents to the variation of the Governing Provisions as provided herein.

## Operative Part

### 1. Recitals

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The Parties acknowledge & agree that the matters referred to in the Recitals are true and correct in every material particular and shall form part of this deed.

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

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### **2.1 Amendment**

The Original Deed as amended is now substituted and replaced by deleting all of the recitals, definitions, operative terms and schedules contained within the Original Deed as amended and replacing same with the recitals, definitions, operative terms and schedules contained within this Deed.

### **2.2 Governing Provisions**

The Governing Provisions of the Fund are, without termination of the Fund, now governed by the provisions of this Deed and the Rules attached which incorporate the Original Deed as amended.

### **2.3 Assets Continue to be Vested in the Trustee**

The assets of the Fund will continue to be vested in the Trustee upon trust to apply the same in the manner set out in the Rules.

### **2.4 The Rules**

The Fund shall be managed and administered in all respects according to the Rules.

### **2.5 Appointment & Removal of Trustee**

The power of appointing and removing Trustees shall be as provided in the Rules.

### **2.6 Death Benefit Nominations**

Nothing in this Deed shall operate to revoke, cancel, terminate, vary, amend or alter any nomination or agreement concerning the payment of Death Benefits made by a Member prior to the date of execution of this Deed. Such directions, nominations or agreements concerning Death Benefits by a Member shall continue to have full force and effect unless and until such direction, nomination or agreement is replaced, varied or revoked by the Member personally.

### **2.7 No Member Adversely Affected**

The Parties declare that the amendment of the provisions of the Governing Provisions effected by virtue of this Deed do not prejudicially vary or affect the benefits already accrued to any member of the Fund. All of the members of the fund have executed this deed and this deed shall be taken as notice given to the members of the Fund as may be required by the Governing Provisions.

### **3. Governing Law and Jurisdiction**

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This Deed is governed by the laws of the State or Territory of the Governing State as detailed in Item 7 of the Schedule (Governing State) and the parties submit to the jurisdiction of the Courts of the Governing State and the Courts of the Commonwealth of Australia.

### **4. Amendment**

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The provisions of this Deed may be amended in the manner set out in the Rules.

### **5. Primary Purpose**

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The primary purpose of the Fund is to provide old age pensions to the members of the Fund.

### **6. Definitions and Interpretation**

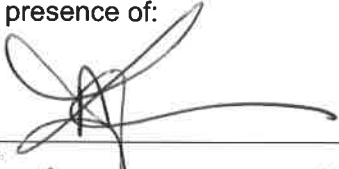
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- (a) In this Deed, an expression that appears in its context to define a fact, person or thing immediately preceding that expression, will mean that fact, person or thing.
- (b) In this Deed, the singular includes the plural and vice versa.
- (c)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

**Executed by the parties as a Trust Deed**

**Trustee**

Signed sealed and delivered by  
**David Arthur Ellard**  
in the presence of:



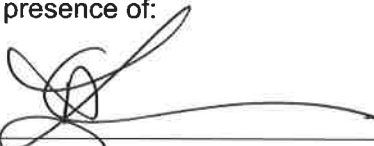
Witness

ROBERT JOSEPH ZAGAMI

Full Name of Witness

*DAVID*  

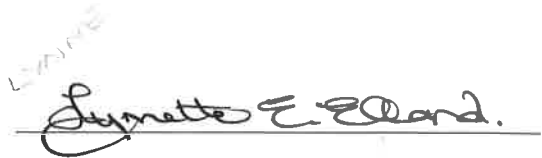

Signed sealed and delivered by  
**Lynnette Erica Ellard**  
in the presence of:



Witness

ROBERT JOSEPH ZAGAMI


Full Name of Witness

*LYNETTE*  


**Members**

Signed sealed and delivered by  
**David Arthur Ellard**  
in the presence of:


THUD  
David A. Ellard.

  
\_\_\_\_\_

Witness  
ROBERT JOSEPH ZAGAMI  
Full Name of Witness

Signed sealed and delivered by  
**Lynette Erica Ellard**  
in the presence of:

LYNNE  
Lynette E. Ellard

  
\_\_\_\_\_

Witness  
ROBERT JOSEPH ZAGAMI  
Full Name of Witness

## Schedule 1

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- Item 1 Date of this Deed:** 2 JANUARY 2019
- Item 2 Trustees:** David Arthur Ellard  
Lot 1, Boole Poole Peninsula, METUNG VIC 3904
- Lynnette Erica Ellard  
Lot 1, Boole Poole Peninsula, METUNG VIC 3904
- Item 3 Members:** David Arthur Ellard  
Lot 1, Boole Poole Peninsula, METUNG VIC 3904
- Lynnette Erica Ellard  
Lot 1, Boole Poole Peninsula, METUNG VIC 3904
- Item 4 Principal (if applicable):  
(Principal Employer, Founder  
etc)**
- Item 5 Name of the Fund:** D & L Ellard Superannuation Fund
- Item 6 Commencement Date of the  
Fund:** 29 July 1999
- Item 7 Governing State:**



## **Annexure - Rules**

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**As annexed**

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## THE RULES

### RULE 1 DEFINITIONS & INTERPRETATIONS

#### **DEFINITIONS**

- 1.1 In the Trust Deed to which these Rules are an annexure and in these Rules the meaning of terms and expressions shall have the meaning given to them by the Regulations unless the context indicates otherwise. The following words and expressions shall have the following meaning:
- 1.1.1 **Accumulated Contributions** means the total of contributions made to the Fund accumulated in accordance with Schedule 1 paragraph 1.1 hereto.
- 1.1.2 **Accrued Benefit** means the amount determined in accordance with Schedule 1 paragraph 2 herein.
- 1.1.3 **Ancillary Benefit** means the Benefit described in Rule 4.10.
- 1.1.4 **Asset Test Exempt Pension** means a Pension Benefit that is exempt from or excluded from the assets test in whole or part under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986* (and any applicable regulations).
- 1.1.5 **Beneficiary** means a Dependant, a trustee for a Dependant, a Reversionary Pensioner, other Beneficiary or Legal Personal Representative of the Member who is entitled to a Benefit under Rules 5.9, 5.10 and 5.11.
- 1.1.6 **Benefit** means any benefit payable in respect of the Member's membership of the Fund pursuant to these Rules and the Regulations (including any benefit being paid prior to the adoption of these Rules and continuing to be paid after the adoption of these Rules) but does not include any amount standing to the credit of a Member which unless required by the Regulations to be vested is not fully vested until the Trustees exercise a discretion to fully vest the whole or part of such unvested amount.
- 1.1.7 **Complying Pension** means a Pension which complies with the Regulations governing Pensions provided that where the Pension is also an Asset Test Exempt Pension, the relevant provisions of the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986* apply to the extent of any inconsistency to ensure the Pension qualifies or continues to qualify as an Asset Test Exempt Pension.
- 1.1.8 **Complying Superannuation Fund** means in relation to a year of income a fund which is a complying superannuation fund in accordance with the Regulations.
- 1.1.9 **Constitutional Corporation** means a body corporate that is either a trading corporation or a financial corporation, formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the *Commonwealth of Australia Constitution Act*).
- 1.1.10 **Contributor** means any person, company or entity who makes a contribution to the Fund (which may be money, securities or other property) for the benefit of one or more Members.
- 1.1.11 **Corporate Trustee** means a Constitutional Corporation appointed as trustee of the Fund.
- 1.1.12 **Dependants** means the Spouse and children of a Member (including any step-child, any ex-nuptial, any adopted child and any child of the Member born within 10 months after the death of the Member), any person in an interdependency relationship with the Member or any other person whom the Trustees determines for the purposes of the Regulations to be a Dependant of that Member at the relevant time (being in the case of a deceased person the date of that person's death) and any other person considered a Dependant under the Regulations.
- 1.1.13 **Eligible Fund** means an Australian Superannuation Fund, Foreign Superannuation Fund approved deposit fund, Eligible Rollover Fund, retirement savings account, small accounts holding reserve or other approved fund including a pension fund or annuity arrangement which can accept from the Fund a transfer of assets of the Fund or is authorised or permitted to transfer assets to the Fund in a manner not prohibited by the Regulations.
- 1.1.14 **Eligible Person** means any person who is not prohibited by the Regulations from becoming a Member of the Fund.

- 1.1.15 **Employee** means any Eligible Person in the employ of an Employer and who is classified as an Employee for the purposes of the Trust Deed and Rules or comes within a class of persons which is so classified. The term "employ" bears both its ordinary meaning and any expanded meaning provided by the Regulations.
- 1.1.16 **Employer** means the Employer of any particular Member who is an Employee.
- 1.1.17 **Financial Year** means a period of twelve calendar months ending on the last day of June or such other date as the Trustees may be permitted to determine.
- 1.1.18 **Fund** means the superannuation fund established by this Trust Deed to which these Rules are an annexure where this Trust Deed is establishing the Fund and in all other cases means the superannuation fund established by the deed referred to in this Trust Deed as the Original Deed establishing the Fund.
- 1.1.19 **Gainful Employment** means in relation to a Member, engagement in any business, trade, profession, vocation, calling, occupation or employment for gain or reward to the extent required pursuant to the provisions of the Regulations.
- 1.1.20 **Government Approval** means such approval of a Regulator, or other person, appointed by the Australian Government or such compliance with the Regulations (whether or not the approval of that Regulator or other person has been given to the Trustees in relation to such compliance) as may be required to ensure that the fund is regarded as a bona fide superannuation fund and qualifies for the maximum taxation concessions.
- 1.1.21 **Individual Policy**, in relation to a Member, means a life insurance policy or an interest in a group life insurance policy which the Trustees have 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 that Member.
- 1.1.22 **Legal Personal Representative**, in relation to a Member or a Trustee being an individual, means a person:
- 1.1.22.1 who has an enduring power of attorney in respect of the Member or the Trustee; or
- 1.1.22.2 who is the executor or administrator of the estate of a Member who has died including any person named as the executor in a Will of the deceased Member even though no grant of representation has issued or is required to administer the estate of the deceased Member provided the Trustees are satisfied that it is the last Will of the deceased Member; or
- 1.1.22.3 who has been appointed by law to act as the legal personal representative of a Member or a Trustee but does not include any person appointed under the laws of bankruptcy.
- 1.1.23 **Member** means any person admitted by the Trustees as a Member of the Fund and who has not ceased to be a Member of the Fund and any person required by the Regulations to be treated as a Member of the Fund and, where the context permits, if a Member:
- 1.1.23.1 is under a legal disability includes the Legal Personal Representative of that Member but not where these Rules expressly provide that the personal consent of a Member is required; and
- 1.1.23.2 is under a legal disability because of age and does not have a Legal Personal Representative includes the parent or guardian of that Member.
- 1.1.24 **Member Contributed NSW Property** means dutiable property for the purposes of the *Duties Act 1997 (NSW)*, which is transferred to the Trustees by a Transferor and, in respect of which property, duty has been assessed and paid under section 62A of the *Duties Act 1997 (NSW)*, and includes the proceeds of the sale of the whole or part of any such property.
- 1.1.25 **Nominated Beneficiary** means the person or persons nominated as Beneficiary under a notice given under Rule 5.6 or an agreement made under Rule 5.8.
- 1.1.26 **Old-Age Pensions** has the same meaning as that in paragraph 51 (xxiii) of the *Commonwealth of Australia Constitution Act*.
- 1.1.27 **Pension** means an annuity or pension contemplated by the Regulations.

- 1.1.28 **Permanent Disablement** in relation to a Member has the same meaning as that contained in any insurance policy effected to cover Permanent Disablement of the Member and in force at the time of the disablement or where such meaning would not comply with the Regulations or where there is no such insurance policy means ill-health (whether physical or mental) which the Trustees are reasonably satisfied makes it unlikely a Member will engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience or any other circumstances which are acceptable to the Trustees and which are acceptable to the Regulator. **Permanently Disabled** and **Permanent Disability** shall each have a corresponding meaning. Every question as to Permanent Disablement shall be decided by the Trustees after receipt of any relevant information and reports by such registered medical practitioners approved by the Trustees as they consider appropriate and having regard to any requirements for Government Approval of the Fund and of any insurer underwriting the Member's Permanent Disability Benefit. The decision of the Trustees shall be conclusive and binding upon all parties concerned.
- 1.1.29 **Preserved Benefit** means any Benefit (or part thereof) that, having regard to the requirements for Government Approval of the Fund, must be held in the Fund until the Member Retires or attains such age prescribed in the Regulations, dies, becomes Permanently Disabled or satisfies such other condition as would enable, or require, the Trustees to make payment of the benefit.
- 1.1.30 **Public Offer Superannuation Fund** means a fund that is a public offer superannuation fund within the meaning of the Regulations.
- 1.1.31 **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 *Finance Act 2004* (United Kingdom).
- 1.1.32 **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 *Finance Act 2004* (United Kingdom).
- 1.1.33 **Regulated Superannuation Fund** means a fund where the Trustees have caused to be made the necessary election to be such a fund as required by the Regulations.
- 1.1.34 **Regulations** means the obligations imposed upon the Fund by the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations*, the Superannuation Splitting Law, any amending or replacement legislation and any other present or future relevant legislation, regulation, rulings and explanatory notes published with the approval or knowledge of the Regulator and which the Fund must satisfy in order for the Fund to:
- 1.1.34.1 qualify as a Complying Superannuation Fund;
  - 1.1.34.2 remain entitled to concessional tax treatment;
  - 1.1.34.3 provide an income stream which is to be an Asset Test Exempt Pension;
  - 1.1.34.4 comply with the law;
- and includes the UK Regulations which the Fund must satisfy in order for the Fund to satisfy QROPS Requirements.
- 1.1.35 **Regulator** means, as the case may require, one or more of the Federal Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Department of Human Services or any other authority or government regulatory body who may be involved with the regulation of superannuation, taxation or financial products and in respect of Recognised Transfer Amounts means the Board of Inland Revenue and HM Revenue & Customs of the United Kingdom.
- 1.1.36 **Reserve Accounts** means any of the accounts that may be established by the Trustees to which is credited amounts that the Trustees determine to credit to the account and to which are debited amounts that the Trustees determine to allocate to the Members in accordance with these Rules.
- 1.1.37 **Retires** means ceasing Gainful Employment and **Retirement** shall have a corresponding meaning.

- 1.1.38 **Reversionary Pension** means a Pension payable to a Beneficiary who succeeds a Member to the entitlement of the Member's Pension. **Reversionary Pensioner** has corresponding meaning.
- 1.1.39 **Shortfall Component** has the same meaning as that contained in the *Superannuation Guarantee (Administration) Act 1992*.
- 1.1.40 **Splittable Contributions** has the same meaning as that contained in the Regulations.
- 1.1.41 **Spouse** in relation to a Member means, subject to the Regulations, a person married to the Member or a person who, although not legally married to the Member, lives with the Member or had lived with the Member immediately prior to the Member's death on a genuine domestic basis as a partner of that Member and if there is more than one spouse the Trustees shall determine whether and how the entitlement of a spouse shall be distributed between them or whether one shall be exclusively treated as spouse.
- 1.1.42 **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* (NT) apply to the Fund or any other Commonwealth, State or Territory legislation of like effect that may apply.
- 1.1.43 **Superannuation Splitting Law** means the law dealing with superannuation interests as set out in Part VIII B of the *Family Law Act 1975*.
- 1.1.44 **Temporary Disability** means physical or mental incapacity that causes the Member to cease Gainful Employment or which otherwise qualifies as temporary disablement (or its equivalent) under the Regulations but which does not qualify as Permanent Disablement. Every question as to Temporary Disablement shall be decided by the Trustees after receipt of any relevant information and reports by such registered medical practitioners approved by the Trustees as they consider appropriate and having regard to any requirements for Government Approval of the Fund and of any insurer underwriting the Member's Temporary Disability Benefit. The decision of the Trustees shall be conclusive and binding upon all parties concerned.
- 1.1.45 **Trust Deed** means the deed to which these Rules are annexed and any authorised alterations, additions, amendments, modifications or variations due to any amendment or change made to the Regulations or by amending deed or otherwise.
- 1.1.46 **Transferor** means a Member who transfers Member Contributed NSW Property to the Trustees.
- 1.1.47 **Trustees** means the individual trustees of the Fund or a Corporate Trustee of the Fund, for the time being, appointed in accordance with these Rules and where the context permits, includes the directors of a Corporate Trustee appointed as Trustee.
- 1.1.48 **UK Regulations** means the *Finance Act 2004* (United Kingdom) and regulations made by the Board of Inland Revenue of the United Kingdom.

## INTERPRETATION

- 1.2 In the Trust Deed and these Rules:
  - 1.2.1 Unless the context indicates otherwise, words importing the singular shall include the plural and vice versa, words importing one gender shall include other genders;
  - 1.2.2 References to statutes (including any section thereof) shall include all statutes amending, consolidating or replacing the same;
  - 1.2.3 Headings inserted in any Rule are for convenience only and shall not affect the interpretation of that Rule;
  - 1.2.4 The use of the words "includes" or "including" in these Rules is given by way of example and is not intended to limit the term or expression to which it applies; and
  - 1.2.5 Reference to these Rules includes the terms of any agreement made under Rule 5.8.
- 1.3 Except where otherwise expressly provided, if any question or dispute arises about the interpretation of these Rules or the incidence or application of any rights, benefit, duties or liabilities arising under these, the decision of the Trustees shall be binding upon a Member.
- 1.4 The Trustees shall, at all times administer the Fund in a manner that will ensure Government Approval of the Fund. Where there is anything contained in these Rules which would during the

course of the application to specific circumstances, require the Trustees to act in a manner that would prejudice Government Approval of the Fund, that Rule shall be void for those circumstances.

- 1.5 If any term defined in the Regulations is used in this Trust Deed but not defined herein then such term shall have the same meaning that it has for the purposes of the Regulations.
- 1.6 A reference in these Rules to the Regulations includes a reference to those Regulations as amended, consolidated, re-enacted or replaced from time to time and a reference to any provision of the Regulations includes a reference to the corresponding provision of those Regulations as amended, consolidated, re-enacted or replaced.

#### **SEVERANCE AND READING DOWN**

- 1.7 Any provision or part of a provision of these Rules that is invalid, unenforceable or unlawful must be read down or severed to avoid such invalidity, unenforceability or unlawfulness. The remainder of these Rules shall be of full force and effect.

#### **COMPLIANCE WITH REGULATIONS**

- 1.8 This Trust Deed shall be read and construed on the basis that the provisions of the Regulations are incorporated herein to the extent that they impose requirements on the Trustees or are required by the Regulations to be so incorporated but this Trust Deed shall not be so read or construed if to do so would constitute a breach of the power granted by Rules 6.20 to 6.24 inclusive to amend the provisions of this Trust Deed or where provisions of the Regulations may be lawfully excluded and are expressly excluded by these Rules. Where there is any inconsistency between a provision in this Trust Deed and a provision in the Regulations which is so incorporated, the latter shall prevail.

#### **LAW**

- 1.9 The Fund or any of the provisions thereof shall be governed by and construed according to the law of the State as detailed in the Trust Deed.

### **RULE 2 ELIGIBILITY, MEMBERSHIP & TRANSFERS**

#### **ELIGIBILITY**

- 2.1 Any Eligible Person shall be eligible to apply for membership of the Fund. Where an Eligible Person is a minor, the application for membership of the Fund shall be made on behalf of the minor by a parent, guardian or legal representative of the minor.

#### **MEMBERSHIP**

- 2.2 An Eligible Person may apply for membership to the Trustees in such form or manner acceptable to the Trustees. The Eligible Person may indicate a preference for the type of Benefit to be provided by the Fund but if no preference is made shall be deemed to have specified a Pension Benefit of such type determined by the Trustees. The Trustees may accept or refuse any such application in their absolute discretion and shall not be required to give any reason for a refusal. If an application from an Eligible Person is accepted by the Trustees, membership commences on the date of acceptance or such earlier or later date as the Trustees determine. The Trustees may:
  - 2.2.1 admit an Eligible Person as a Member without requiring a completed application for membership;
  - 2.2.2 impose such terms and conditions as the Trustees think fit on the membership of a Member; and
  - 2.2.3 remove or vary any terms and conditions imposed upon membership of a Member at any time.

#### **ALTERATION OF MEMBER'S BENEFIT**

- 2.3 The Trustees may alter a Member's preference for the type of Benefit to be provided by the Fund provided that:
  - 2.3.1 it does not increase the Member's obligation to the Fund unless the Member consents in writing;
  - 2.3.2 the Member's entitlements in the Fund are not reduced; and
  - 2.3.3 it is not in breach of the Regulations.



2.4 The Member shall be advised in writing of any alteration to the Member's preference for Benefit.

#### **INFORMATION TO MEMBERS**

2.5 The Trustees shall ensure that every Eligible Person who applies for membership of the Fund is given such information as is required by the Regulations to be given to prospective new members. The information shall be given to the Eligible Person within the time prescribed in the Regulations.

#### **COMPLAINTS AND ENQUIRIES**

2.6 If required by the Regulations, the Trustees shall ensure that all enquiries or complaints from Members, beneficiaries or their Dependants are considered and properly dealt with in the manner and within the time specified by the Regulations.

#### **TRANSFER FROM ANOTHER FUND**

- 2.7 If a Member makes a request, the Trustees,
- 2.7.1 may accept the transfer of assets from an Eligible Fund on such terms and conditions as the Trustees think fit; and
  - 2.7.2 the details of any such terms and conditions shall be recorded in a letter written by the Trustees to the Member at the time of the transfer; and
  - 2.7.3 where the transfer is made in respect of the Member's interest or entitlement in the Eligible Fund, provide a Benefit to the Member pursuant to such transfer in the manner set forth in these Rules; and
  - 2.7.4 where the transfer is not attributable to a Member's interest or entitlement in the Eligible Fund, the Trustees may treat the amount of such transfer in such manner as they consider equitable, including deeming the assets being transferred as a foregone benefit and applied accordingly, or as required by the Regulations;

provided that any transfer must not be prohibited by the Regulations and provided that any Benefit arising from funds transferred shall be a Preserved Benefit to the extent advised by the Eligible Fund and provided that where the Eligible Fund is a Foreign Superannuation Fund, the Trustees shall comply with all necessary foreign law requirements to ensure that concessional tax treatment is attained, retained or maintained in respect of the assets transferred from the Eligible Fund.

#### **TRANSFER TO ANOTHER FUND**

- 2.8 If a Member makes a request or if the Trustees resolve or are required by the Regulations to do so, the Trustees may pay or transfer all or part of the Member's interest or entitlement in the Fund to an Eligible Fund (including such portion of the assets of the Fund as the Trustees consider equitable) for the benefit of the Member or such other person and shall advise the Eligible Fund the proportions (if any) of the amount so paid which are deemed to be transferred from the Member's Accrued Benefit provided however that:
- 2.8.1 no such transfer shall be made in respect of a Preserved Benefit, unless there exists a condition in the rules of the Eligible Fund that such a transfer shall be treated as a Preserved Benefit;
  - 2.8.2 the payment or transfer must be consistent with the Regulations;
  - 2.8.3 the Trustees may not pay or transfer more than the amount requested by the Member; and
  - 2.8.4 the payment or transfer satisfies the Member's entitlement to any Benefit in relation to the amount so paid or transferred.
- 2.9 The receipt of the trustee of such Eligible Fund shall be sufficient discharge to the Trustees and who shall not be in any way responsible or liable for the application or disposal by the trustee of such Eligible Fund of the benefits or assets so paid or transferred. Upon the completion of such payment or transfer in respect of a Member, all of the rights and interests of that Member (and any person entitled to claim under or in respect of that Member) under this Trust Deed shall be extinguished or shall be adjusted in such manner and to such extent (if any) as may be determined by the Trustees.
- 2.10 Where the continuing Membership of a Member would affect the status of the Fund as a Complying Superannuation Fund, the Trustees may pay or transfer the whole or part of any Benefit or the interest or entitlement of that Member to an Eligible Fund in circumstances permitted or required by the Regulations or otherwise whether or not such Member has requested

such payment or transfer. Such payment or transfer will satisfy the Member's entitlement to any Benefit in relation to the amounts so paid or transferred. The Member shall be deemed to have consented to such payment or transfer. The Trustees shall provide any information to the Member and to the trustee of the Eligible Fund at such time and in such manner as required by the Regulations.

#### **TRANSFERS WITHIN THE FUND**

- 2.11 If a Member makes a request or if the Trustees resolve or are required by the Regulations to do so, the Trustees may pay or transfer all or part of the Member's interest or entitlement in the Fund (including such portion of the assets of the Fund as the Trustees consider equitable) to another Member provided however that:
- 2.11.1 the payment or transfer is not prohibited by the Regulations; and
  - 2.11.2 the payment or transfer is made in accordance with the provisions, if any, of the Regulations.

#### **CESSATION OF MEMBERSHIP**

- 2.12 A person ceases to be a Member of the Fund when:
- 2.12.1 the Member dies;
  - 2.12.2 all benefits which are or may be payable under these Rules in respect of the Member have been paid;
  - 2.12.3 a transfer is made to an Eligible Fund in satisfaction of all the Member's entitlement to benefits;
  - 2.12.4 the Member's entitlement to benefits is terminated;
  - 2.12.5 the Trustees require a Member to cease Membership of the Fund to comply with the Regulations;
  - 2.12.6 the Trustees determine that continued membership may cause the Fund to become a Public Offer Superannuation Fund;
  - 2.12.7 the Trustees determine that a Member is no longer required to be recognised as a Member of the Fund;
  - 2.12.8 after the Member has been accepted into membership by the Trustees and the Accrued Benefit of the Member has a nil balance and the Trustees determine that the Member is not to continue to be recognised as a Member of the Fund;
  - 2.12.9 the Fund fails to satisfy the definition of self managed superannuation fund under the Regulations by reason of the Member's continuing membership of the Fund;
  - 2.12.10 the Trustees shall otherwise reasonably determine.

#### **CLOSURE OF MEMBERSHIP**

- 2.13 In order that the Fund obtains, retains or maintains a duty exemption or nominal assessment of duty obtained under the laws of any State or Territory to the transfer of an asset to the Fund when the asset was first acquired by the Trustees and held for the benefit of those particular Members of the Fund at that time, the Trustees may close the membership of the Fund to new members permanently or until such time as such asset has been used to pay benefits to those Members. The Trustees shall do all things and execute all such necessary deeds or documents to give effect to the closure to new members.

#### **TRANSFER FROM UK REGISTERED PENSION SCHEMES**

- 2.14 Notwithstanding Rule 5, this Rule 2.14 applies to Recognised Transfer Amounts accepted by the Trustees pursuant to Rule 2.7 from a registered pension scheme in the United Kingdom:
- 2.14.1 subject to this Rule, a Member is only entitled to receive a benefit sourced from a Recognised Transfer Amount when the Member is permitted by the UK Regulations;
  - 2.14.2 the Trustees must not pay a benefit sourced from a Recognised Transfer Amount to a Member no earlier than would be payable if pension rule 1 of section 165 of the *Finance Act 2004* (United Kingdom) applied;
  - 2.14.3 this Rule 2.14 may be amended only if, after the amendment, the Rule would continue to comply with the QROPS Requirements;

- 2.14.4 a Recognised Transfer Amount may be transferred to an Eligible Fund only in accordance with Rule 2.8 and only where the provisions governing the Eligible Fund contain provisions to the same effect as this Rule 2.14 in respect of a Recognised Transfer Amount;
- 2.14.5 the Trustees must do all necessary things to comply with the QROPS Requirements including but not limited to the Benefits Tax Relief Test and the Pension Age Test.

### **RULE 3      CONTRIBUTIONS**

#### **MEMBER CONTRIBUTIONS**

- 3.1 A Member may from time to time pay contributions to the Fund.

#### **EMPLOYER CONTRIBUTIONS**

- 3.2 An Employer may from time to time pay contributions to the Fund.

#### **OTHER CONTRIBUTIONS**

- 3.3 The Trustees may accept such other contributions not covered by Rules 3.1 or 3.2 from any person including:
  - 3.3.1 government co-contribution;
  - 3.3.2 child contributions;
  - 3.3.3 spouse contributions;
  - 3.3.4 the whole or part of any Shortfall Component in respect of any Employee or Member received from the Commissioner of Taxation which shall be treated as a contribution for the Employee or Member; and
  - 3.3.5 any Downsizer Contributions as provided in the Regulations.

#### **PAYMENT OF CONTRIBUTIONS**

- 3.4 The Trustees:
  - 3.4.1 must not accept contributions where the acceptance of the contributions is contrary to the requirements of the Regulations;
  - 3.4.2 may refuse to accept the whole or part of a contribution;
  - 3.4.3 may allocate or transfer the whole or part of a contribution to a Reserve Account established for that purpose, if not prohibited by the Regulations;
  - 3.4.4 may allocate, record or treat the whole or part of a contribution in a manner not prohibited by the Regulations; and
  - 3.4.5 shall allocate, record or treat the whole or part of a contribution in a manner directed by the Regulator.
- 3.5 The Trustees may agree to accept contributions to the Fund in the form of a transfer of assets to the Fund which shall be subject to the following restrictions:
  - 3.5.1 any asset transferred to the Fund under this Rule shall comply with the provisions of Rules 7.6, 7.7 and 7.8 as if the Trustees had accepted the contribution in cash and had then invested in the asset transferred to the Fund;
  - 3.5.2 in the event that the Trustees wish to restrict the benefits arising from the assets transferred to the Fund under this Rule to particular Members, they shall either proceed under Rules 7.11 and 7.12 to hold the assets specifically to provide benefits for those Members, or, if those Members are the only Members of the Fund at the time of transfer, the Trustees may close the membership of the Fund to new members under Rule 2.13; and
  - 3.5.3 the Trustees shall not acquire any asset from a Member or a relative of a Member if that acquisition would contravene the Regulations and prejudice Government Approval of the Fund.
- 3.6 Unless the Trustees are advised otherwise by the Employer, all contributions made by an Employer shall be fully vested except to the extent that they are not required to be fully vested by the Regulations.

## **SPLITTABLE CONTRIBUTIONS**

- 3.7 Subject to the Regulations, the Trustees may allow Splittable Contributions and a Member may request the Trustees in any form approved by the Trustees to allocate the whole or part of that contribution or transfer any part of that Contribution to any other Member or person so long as any transfer or allocation is in accordance with the Regulations.

## **TAXATION DEDUCTION CLAIMED**

- 3.8 Where required by the Regulations, the Contributors shall advise the Trustees of the amount of contributions that shall be claimed and not claimed as a tax deduction by the Contributor.

## **CONTRIBUTION REPAYMENT OR RELEASE**

- 3.9 The Trustees may repay the whole or any part of a contribution and any associated earnings to the Contributor but only if the repayment is not in breach of the Regulations. The Trustees may repay a contribution which at the time of making the payment was not intended to be a contribution. The Trustees must repay the whole or part of a contribution and any associated earnings to the Contributor if directed by the Regulator. The Trustees may deduct from the repayment any liabilities or expenses incurred or provision for liabilities or expenses in relation to the contribution. If excess contributions are received by the Fund and the Trustees receive a release authority under the Regulations, then the Trustees may release funds in accordance with the release authority and the Regulations.

## **RULE 4 BENEFIT ENTITLEMENT & DETERMINATION**

### **WHEN BENEFIT PAYABLE**

- 4.1 A Member shall be entitled to receive a Benefit which shall comprise the total of the Member's Accrued Benefit, the Member's entitlement to be paid out of any Reserve Account and any insurance proceeds to which the Member is entitled and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations when:
- 4.1.1 a Member Retires provided the conditions for payment of a Preserved Benefit have been met; or
  - 4.1.2 a Member reaches such minimum age allowed under the Regulations, whether or not the Member Retires, provided the conditions for payment of a Preserved Benefit have been met; or
  - 4.1.3 permitted by the Regulations and the Trustees consent to the payment of a Benefit.
- 4.2 Subject to the Regulations, the Trustees may with the Member's consent retain a Member's Benefit in the Fund for as long as the Trustees determine, even though the Member is entitled to be paid that Benefit provided that the Benefit must be paid or commence or be transferred or paid to an Eligible Fund when it is mandatory to do so under the Regulations.

### **DISABLEMENT**

- 4.3 If a Member has a Permanent Disability, the Member shall be entitled to receive a Permanent Disablement Benefit which shall comprise the total of the Member's Accrued Benefit, the Member's entitlement to be paid out of any Reserve Account and any insurance proceeds to which the Member is entitled and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations.
- 4.4 If a Member is unable to work due to Temporary Disability, then the Member shall be entitled to receive payment of a Temporary Disablement Benefit from the time the Member is unable to continue to work.
- 4.5 Notwithstanding anything to the contrary contained within these Rules, where the Trustees receive a Benefit under an insurance policy effected to cover the Permanent or Temporary Disability of a Member then that Member will be entitled to receive a disablement benefit under these Rules providing that the payment of such a Benefit is allowed under the Regulations.

### **DEATH**

- 4.6 On the death of a Member, a Death Benefit which shall comprise the total of the Member's Accrued Benefit, the Member's entitlement to be paid out of any Reserve Account and any insurance proceeds to which the Member is entitled and any other amount which the Trustees determine is to form part of the Benefit including but not limited to an anti-detriment payment where the Member died before 1 July 2017 provided such other amount is not prohibited by the

Regulations shall become payable in accordance with Rules 5.9, 5.10 and 5.11. The Death Benefit does not include any amount paid after the Member's death in respect of any other Benefit which is payable.

#### **TERMINAL ILLNESS**

- 4.7 Where at least two (2) Registered Medical Practitioners certify to the satisfaction of the Trustees and in accordance with the requirements of the Regulations that a Member has an illness or injury that is likely to result in the death of the Member within twenty four (24) months of certification, the Member is entitled to receive payment of a Benefit which shall comprise the total of the Member's Accrued Benefit, the Member's entitlement to be paid out of any Reserve Account and any insurance proceeds to which the Member is entitled and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations.

#### **TERMINATION OF SERVICE**

- 4.8 A Member whose Employer has contributed to the Fund and who leaves the service of the Employer and who is not entitled to a Retirement Benefit or a Permanent Disablement Benefit and in respect of whom a Death Benefit is not payable shall be entitled to receive a Withdrawal Benefit being a Benefit which shall comprise the total of the Member's Accrued Benefit and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations and which will be paid subject to such restrictions imposed by the Regulations.

#### **TRANSITION TO RETIREMENT PENSION**

- 4.9 A Member born before 1 July 1960 who has reached age 55 or if born on or after 1 July 1960 who has reached such other minimum age permitted by the Regulations may receive a Benefit in the form of a Pension contemplated by Rule 5. Notwithstanding anything to the contrary contained in Rule 5, any Pension paid under this Rule subject to cashing restrictions shall not be capable of commutation except in accordance with the Regulations.

#### **ANCILLARY BENEFIT**

- 4.10 The Trustees may provide a Member with a Benefit where a minimum condition of release and/or cashing restrictions has been satisfied under the Regulations:
- 4.10.1 on severe financial hardship as approved by the Trustees or Regulator,
  - 4.10.2 on compassionate grounds as approved by the Trustees or Regulator;
  - 4.10.3 when the Member is no longer in Gainful Employment and the Member's Benefit is a Restricted Non-Preserved Benefit under the Regulations;
  - 4.10.4 when the Benefit is an Unrestricted Non-Preserved Benefit under the Regulations;
  - 4.10.5 on the Temporary Disablement of the Member where the Benefit is paid in accordance with the Regulations;
  - 4.10.6 a First Home Super Save Scheme benefit as provided in the Regulations;
  - 4.10.7 any other type of Benefit approved under the Regulations; or
  - 4.10.8 any other Benefit provided for the other ancillary purposes approved by the Regulations or the Regulator.

#### **OTHER CIRCUMSTANCES**

- 4.11 In circumstances where the Regulations would allow the Trustees to release or make a payment of part or all of the Member's Accrued Benefit to the Member or the Member's Dependants or other person authorised by the Regulations without prejudicing Government Approval of the Fund, the Trustees may release or make such payment as requested by the Member or as required by the Regulations notwithstanding that the Benefit may not be provided for in Rules 4.1 to 4.10 inclusive.

### **RULE 5      PAYMENT OF BENEFIT**

#### **TYPE OF BENEFIT**

- 5.1 Subject to Rule 2.14, the Benefit payable to a Member or a Beneficiary may be paid as:
- 5.1.1 a Lump Sum;

- 5.1.2 a Pension which may include a lump sum component subject to any applicable limitations imposed by the Regulations;
- 5.1.3 an Ancillary Benefit;
- 5.1.4 a Benefit permitted to be provided under the Regulations in such form or manner as is required under the Regulations; or

a combination of the above which may include more than one of each and may be paid to the Member or Beneficiary either in money or in other property provided the Benefit is paid in accordance with the Regulations and any Benefit payable to a Member prior to the adoption of these Rules may continue to be paid in such form and manner permitted under the Regulations.

#### **LUMP SUM BENEFIT**

- 5.2 When a Member is entitled to a Benefit and has elected to receive a Lump Sum Benefit, the Member is entitled to a Benefit which does not exceed the Member's Accrued Benefit and any other amount which the Trustees determine is to form part of the Benefit provided such amount is not prohibited by the Regulations.

#### **PENSION BENEFIT**

- 5.3 A Pension Benefit payable under these Rules shall be paid in such form and manner which complies with the Regulations if to do otherwise were to affect Government Approval of the Fund and is subject to the following conditions:

##### Terms and Conditions

- 5.3.1 Where a Benefit is payable under these Rules by way of a Pension, the Trustees and the Member may agree on when the pension shall commence and the terms and conditions upon which the pension shall be paid providing that such manner and form of payment is allowed under the Regulations. The Trustees may at any time with the consent of the Member vary the terms and conditions upon which the pension shall be paid. In the absence of agreement, the Trustees shall determine the basis on which the Pension is paid.

##### No Assignment or Encumbrance

- 5.3.2 Pensions payable from the Fund shall not be assigned or otherwise transferred by the person in receipt thereof (except to the extent permitted by these Rules) and shall not be mortgaged or encumbered in any manner whatsoever.
- 5.3.3 Neither the capital value (if any) of any pension payable from the Fund nor any income from it, may be used as a Security for a borrowing.

##### Annuities

- 5.3.4 The Trustees may, in their absolute discretion, (including where an Old-Age Pension is required to be paid) provide pensions payable under these Rules by applying a Member's Benefit to the purchase of an annuity that meets the requirements of the Regulations.

##### Imputation Credits

- 5.3.5 The Trustees may, in their absolute discretion and subject to the Regulations, debit amounts to the accounts of Members to whom current pensions are not being paid and credit corresponding amounts to the accounts of Members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

##### Asset Test Exempt Pension

- 5.3.6 Where the Pension is also an Asset Test Exempt Pension, the relevant provisions of the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986* apply to the extent of any inconsistency to ensure the Pension qualifies or continues to qualify as an Asset Test Exempt Pension.

##### Reversionary Pension

- 5.3.7 A Member's Pension may include a nomination, direction, term or condition requiring the Trustees to continue to pay the Member's Pension as a Reversionary Pension to a Reversionary Pensioner permitted under the Regulations to receive a Reversionary

Pension upon the death of the Member and which shall be binding upon the Trustees unless the nomination, direction, term or condition expressly provides otherwise.

Benefit remaining after death

- 5.3.8 Where there continues to be a remaining benefit in respect of a deceased Member after all pensions payable in respect of that deceased Member have been paid the remaining benefit shall be paid as a Death Benefit in accordance with Rules 5.9, 5.10 and 5.11.

#### **FORMS OF BENEFIT PAYMENT**

- 5.4 Any form of Benefit payment agreed to by the Trustees shall conform to the requirements of the Regulations and shall not prejudice Government Approval of the Fund. When entitled to a Benefit from the Fund, before the Benefit is paid or commences or within such time as permitted by the Trustees, a Member may, subject to the Regulations, make an election in writing (which is not binding upon the Trustees) to receive the Benefit in any manner contemplated by Rule 5 and indicate the desired amount or extent, as the case may be, that the Benefit is sought to be received as a Lump Sum or Pension. In the case of an election relating to a Pension, a Member may specify whether or not it is intended to be a Reversionary Pension and, if so, to whom and under what terms or conditions the Member requires the Pension to be subject.

#### **PAYMENT OF BENEFIT IN SPECIE - BY TRANSFER OF ASSETS**

- 5.5 The Trustees may with the agreement of a Member or Beneficiary to whom a Benefit is payable, transfer in specie investments of the Fund of equivalent value to the Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable under these Rules.

#### **BENEFICIARY AND DEATH BENEFIT NOMINATIONS**

- 5.6 A Member may from time to time prepare and give to the Trustees notice in writing (the form and content of which notice need not comply with the Regulations and which notice may be contained within a testamentary instrument and which may be given to the Trustees after the Member's death and which does not need to be given by the Member personally) as to the names of those Nominated Beneficiaries (being persons who would be Dependants, if the Trustees were determining dependency at the time of notification, or the Member's Legal Personal Representative or any other person authorised by the Regulations) to whom the Member directs any Death Benefit to be paid and, if more than one, in what proportion and may include a direction by the Member about persons to whom a Benefit is not to be paid. The Member may elect that all or some (as specified by the Member in the notice) of the directions in any such notice shall be binding upon the Trustees but to be binding the content of such notice does not require an express statement that it is a notice binding upon the Trustees and it shall be sufficient if such notice uses words or language that satisfy the Trustees that the notice was intended by the Member to be binding upon the Trustees. If the Member does not make a binding election, the Trustees shall use their discretion in distributing any Death Benefit not covered by a binding election in accordance with Rules 5.11 and 5.12. The notice may:

- 5.6.1 specify the type, amount and proportion of different components of Benefit to be paid;
- 5.6.2 specify whether a Pension including a Reversionary Pension is to be provided;
- 5.6.3 contain conditions which must be satisfied or met in order for a Death Benefit to be paid;
- 5.6.4 specify a period of time or date after which any direction which the Member elected to be binding upon the Trustees is to be no longer binding but is otherwise to remain valid;
- 5.6.5 specify a period of time or date after which the notice lapses;
- 5.6.6 specify the circumstances in which directions in such a notice intended to be binding upon the Trustees are to be treated as no longer binding upon the Trustees including but not limited to:
- 5.6.6.1 the marriage, separation, divorce or death of a Nominated Beneficiary;
- 5.6.6.2 the marriage, separation, divorce of a Member;
- 5.6.6.3 where a Nominated Beneficiary consents;
- 5.6.7 specify payment of a Benefit to a trust in which the beneficiaries are limited to those persons who are the Member's Dependants for the purposes of section 302-195 of the *Income Tax Assessment Act 1997*;

- 5.6.8 be revoked, modified, amended or varied by subsequent notice in writing given to the Trustees in the manner and at any time contemplated by the giving of notice under this Rule.
- 5.7 Notwithstanding Rule 5.6, any notice in writing in respect of any Death Benefit prepared by a Member pursuant to Rules governing the operation and administration of the Fund prior to the adoption of these Rules shall continue to have full force and effect unless and until it lapses or is subsequently revoked, modified, amended or varied,
- 5.8 The Trustees and a Member may enter into an agreement in writing about the payment of any Death Benefit to Nominated Beneficiaries and which include terms and conditions of the type set out in Rules 5.6.1 to 5.6.6. The terms of an agreement made under this Rule shall form part of these Rules of the Fund as between Member and the Trustees and shall be read together with the Fund Rules as follows:
- 5.8.1 the agreement prevails over any notice given under Rule 5.6 unless the notice expressly revokes or replaces the agreement made under this Rule 5.8;
- 5.8.2 the agreement replaces any previous agreement made under this Rule;
- 5.8.3 any previous notice given under Rule 5.6 is to be treated as not in effect for the purposes of Rules 5.6 and 5.10;
- 5.8.4 the terms of the agreement are to prevail if there is any inconsistency between the agreement and these Rules;
- 5.8.5 the agreement may specify the manner in which the terms of the agreement may be modified, revoked or amended; and
- 5.8.6 if part of an agreement is invalid because a Nominated Beneficiary is not eligible to receive a Death Benefit Payment under the Regulations then that part of the Death Benefit shall be distributed in accordance with Rules 5.11 and 5.12.

#### **PAYMENT OF DEATH BENEFIT**

- 5.9 Where the Trustees and a Member have entered into an agreement made under Rule 5.8 or any equivalent Rule contained in any prior Rules governing the operation and administration of the Fund before the adoption of these Rules, any Death Benefit must be paid or applied in accordance with the terms of that agreement. Where the agreement does not cover the whole of the Member's Death Benefit, so much of the Member's Death Benefit as is not covered by the agreement shall be paid by the Trustees in accordance with Rules 5.11 and 5.12.
- 5.10 Any Death Benefit to the extent that the Trustees are bound by a notice made under Rule 5.6 or any equivalent Rule contained in any prior Rules governing the operation and administration of the Fund before the adoption of these Rules shall be paid by the Trustees in accordance with that notice provided that if there is an inconsistency between a notice made under Rule 5.6 and a nomination, direction, term or condition requiring the Trustees to continue to pay the Member's Pension as a Reversionary Pension to a Reversionary Pensioner under Rule 5.3 then the Reversionary Pension shall prevail. Where the notice does not cover the whole of the Member's Death Benefit, so much of the Member's Death Benefit as is not covered by the notice shall be paid by the Trustees in accordance with Rules 5.11 and 5.12.
- 5.11 Subject to Rules 5.9 and 5.10, the Trustees may decide as to the type, amount and proportions of different components in any Death Benefit and whether a Pension is provided and, if so, whether it is reversionary or not and any Death Benefit may be paid as the Trustees in their absolute discretion decide but in accordance with any restrictions or conditions imposed by the Regulations to any one or more of the following persons and in such proportions as the Trustees may decide, namely:
- 5.11.1 the Member's Dependants,
- 5.11.2 the Member's Legal Personal Representative, and
- 5.11.3 any other person permitted by the Regulations;
- provided that:
- 5.11.4 the Trustees shall not exercise their discretion regarding the payment of any Death Benefit unless the Legal Personal Representative of a deceased Member, in respect of whom any Death Benefit is to be paid, is a Trustee or a director of a Corporate Trustee which is Trustee;



- 5.11.5 the Trustees may transfer a Death Benefit to an Eligible Fund for payment to a Dependant in a manner permitted by the Regulations;
  - 5.11.6 the Trustees may transfer a Death Benefit to a trust in which the beneficiaries of such trust are limited to those persons who are Dependants for the purposes of section 302-195 of the *Income Tax Assessment Act 1997*;
  - 5.11.7 any payment of a Death Benefit shall be in accordance with the Regulations if to do otherwise would affect the status of the Fund as a Complying Superannuation Fund; and
  - 5.11.8 the prior written consent of the Legal Personal Representative of the deceased Member has been obtained to the minutes and resolutions of the Trustees concerning the decision to pay a Death Benefit in respect of a deceased Member.
- 5.12 If the Trustees are unable to establish within 6 months of the death of the Member that there are any Dependants, then the Death Benefit shall be paid to the Member's Legal Personal Representative but, if a Grant of Probate or Letters of Administration in respect of the estate of the Member is not made within 3 years of the Member's date of death (or such other period that the Trustees determine), then the Death Benefit shall be paid to such person or persons that the Trustees determine or shall be dealt with pursuant to Rule 5.14 or Rule 5.15.
- 5.13 Notwithstanding Rules 5.9 and 5.10, where a Nominated Beneficiary gives notice in writing to the Trustees that the Nominated Beneficiary elects not to receive a benefit under a notice made under Rule 5.6 or an Agreement made under Rule 5.8 then so much of the Member's Death Benefit as is covered by the Nominated Beneficiary's written notice shall be paid by the Trustees in accordance with Rules 5.11 and 5.12 unless the notice made under Rule 5.6 or the Agreement made under Rule 5.8 contains provisions for the payment of a Benefit to an alternative Beneficiary.

#### **UNCLAIMED MONEY**

- 5.14 The Trustees shall comply with the Regulations relating to unclaimed money which becomes payable by the Fund to a Member or a Dependant or other person whom the Trustees are unable to locate after making reasonable efforts and enquiries which shall be paid in accordance with any applicable unclaimed money law or, in the event that no such law is applicable, to the Regulators.

#### **PAYMENT OF MONEY TO AN EMPLOYER**

- 5.15 In the event that the Trustees determine that an Employer is entitled to receive money from the Fund, the Trustees shall pay such amount to the Employer in accordance with the requirements of the Regulations and provided Government Approval of the Fund is not prejudiced.

#### **ROLLOVER OF BENEFIT BETWEEN FUNDS**

- 5.16 In the event that the Trustees determine that a Benefit (other than a Pension) is immediately payable to a Member, to an Eligible Fund in respect of a Member or to another person in respect of a Member, and the Benefit has not been paid within 90 days (or such other period of time specified by the Regulations) of the date the Benefit first became payable, the Trustees may pay the Benefit to an Eligible Fund that has been declared by the Regulator to be a fund eligible to receive such rolled-over benefits.
- 5.17 Where a Benefit has become payable and the Trustees are satisfied that at least 2 consecutive annual Member Statements and Reports, as described in Rules 8.14 and 8.15, have not been received by the Member the Trustees shall pay the Benefit to an Eligible Fund that has been declared by the Regulator to be a fund eligible to receive such rolled-over benefits.

#### **BENEFIT PAYABLE IN OTHER CIRCUMSTANCES**

- 5.18 The Trustees may, in its absolute discretion, pay part or all of a Member's Benefit to a Member, or another person, in the circumstances provided for in the Regulations, notwithstanding the restrictions imposed by these Rules.

#### **PRESERVATION**

- 5.19 The Trustees shall ensure that any Preserved Benefit is preserved within the Fund or is transferred to an Eligible Fund in accordance with the Regulations.

## **COMMUTABLE AND NON-COMMUTABLE BENEFIT**

- 5.20 In accordance with the Regulations or these Rules or on request by a Member being paid a Pension Benefit, the Trustees may commute all or any part of a Pension including any balance in excess of any legislated balance caps and apply the proceeds of that commutation in accordance with the Regulations.
- 5.21 When a Member is entitled to a Benefit which is subject to cashing restrictions, the Trustees shall ensure that the Benefit is not commuted except in accordance with the Regulations.

## **DISCHARGE OF OBLIGATIONS**

- 5.22 The payment or application of any money pursuant to Rule 5 shall be a complete discharge thereof.
- 5.23 No Benefit shall be payable until the Trustees have ascertained that it may be paid in accordance with the provisions of these Rules.
- 5.24 Payment or assignment of a Benefit in good faith to a person believed by the Trustees to be entitled to receive it shall be deemed for the purposes of these Rules to be payment or assignment to a person entitled to receive such Benefit and shall be a valid discharge by the Trustees of their obligations in respect of the payment or assignment of that Benefit.
- 5.25 The Trustees when determining questions of fact may act upon such proofs or presumptions as they may deem satisfactory whether strictly legal proofs or presumptions or not.

## **MEMBER CONTRIBUTED PROPERTY**

- 5.26 Notwithstanding any provision to the contrary in these Rules, where the Trustees hold Member Contributed NSW Property, any provisions in these Rules purporting to enable a beneficial interest to be obtained by any person other than the Transferor do not apply to that Member Contributed NSW Property.
- 5.27 Where an event occurs, which might normally create a beneficial interest in Member Contributed NSW Property for a person other than the Transferor, the Trustees must only deal with the Member Contributed NSW Property in one of the following ways:
- 5.27.1 by separating the Member Contributed NSW Property from all other assets supporting the Transferor's Accrued Benefit and dealing with the Member Contributed NSW Property in such a manner that the beneficial interest in that property remains solely with the Transferor or, if the Transferor has died, the Transferor's estate; or
- 5.27.2 after taking such professional advice as is considered prudent by the Trustees, in such other manner as the Trustees consider appropriate, but not so as to create a beneficial interest in any person other than the Transferor.

## **RULE 6 ADMINISTRATION**

### **SOLE OR PRIMARY PURPOSE**

- 6.1 The sole or primary purpose of the Fund shall be the payment of Old-Age Pensions. If the sole or primary purpose of the Fund is not the payment of Old-Age Pensions to Members, then the Trustee must be a Corporate Trustee.

### **ENTITLEMENT**

- 6.2 All questions as to whether any person is entitled to a payment out of the Fund and, if so, the amount of such payment shall be determined by the Trustees whose decision shall be final.

### **EXPENSES, TAX AND CHARGES**

- 6.3 Notwithstanding anything expressed or implied to the contrary in these Rules, the costs and expenses of the Fund shall be apportioned and deducted in a fair and reasonable manner as between all Members of the Fund and in determining what is fair and reasonable the Trustees may have regard to whether such costs and expenses were to the benefit or detriment of some or one, but not all, of the Members and:
- 6.3.1 the Trustees may deduct from any money which but for this Rule would be payable to or for the benefit of a Member or Dependant and may retain in the Fund, any amount which the Trustees determine is owing to the Trustees or the Fund by the Member or Dependant;

- 6.3.2 the Trustees shall estimate and deduct from any contribution to the Fund or debit the Fund with such amount as the Trustees shall think fit in respect of any income tax or other tax assessed or likely to be assessed in relation to the contribution received from the Fund;
  - 6.3.3 the Trustees may deduct an amount equal to any tax or charges in respect of any payment out of the Fund from such payment as they think proper and the Trustees shall not be liable to any Member or Dependant in respect of any amount so deducted and the Trustees shall only be required to pay the residual amount of the payment; and
  - 6.3.4 nothing in this Rule shall prejudice any other rights which the Trustees may have to deduct tax or charges from any payment out of the Fund, or to pay from the Fund any other tax or charges which such payment may incur.
- 6.4 For the purpose of Rule 6.3 the Trustees may alter, exchange and segregate current pension assets from non-current pension assets and deal with the Fund as different sub-funds, segments or portions and account for them in accordance with these Rules.

#### **FORFEITURE OF BENEFIT**

- 6.5 All benefit entitlements of a Member shall be forfeited unless the Trustees have determined otherwise within 6 months after the happening of any one of the following events:
- 6.5.1 the Member is or becomes insolvent or has committed or commits an act of bankruptcy;
  - 6.5.2 the Member assigns or charges the whole or part of a Member's benefit entitlement except in accordance with the Regulations;
  - 6.5.3 the whole or part of a Member's benefit entitlement becomes payable to or vested in another person, corporation or government or public authority;
  - 6.5.4 the Member is unable personally to receive or enjoy any part of the Benefit; and
- the Trustees' determination shall have effect from the date specified by the Trustees which may be a date before the happening of the event.
- 6.6 The Trustees may only forfeit benefits where such forfeiture is not ineffective under the Regulations or the Bankruptcy Act 1966.
- 6.7 Benefits forfeited under Rule 6.5 shall be applied by the Trustees as the Trustees may think fit for the benefit of any such person and the person's Dependants or any one or more of them, provided that where the person is a Member the Trustees shall not make any payment to or for the benefit of the Member or the Member's Dependants until the Member attains such age as is prescribed in the Regulations, other than for personal maintenance and support in case of hardship. Such application of the benefit shall be a discharge by the Trustees of their obligations in respect of payment.
- 6.8 Subject to the Regulations, for the purposes of Rule 6.5, if a Member is entitled to or is being paid a Benefit, the Trustees' determination may include a determination to:
- 6.8.1 pay the Member a Lump Sum Benefit; or
  - 6.8.2 cease the payment of a Pension Benefit to the Member and in lieu of such Pension Benefit pay a Lump Sum Benefit; or.
  - 6.8.3 transfer the Member's Benefit to another Eligible Fund.

#### **RIGHTS OF MEMBERS**

- 6.9 No person, whether as a Member or Beneficiary or otherwise, shall have any claim, right or interest to or in any particular part of the Fund save as provided by these Rules. Any claim against the Trustees or the Fund shall be limited to the Member's interest or entitlement in the Accrued Benefit of the Member and any cost or expense associated with any such claim may be apportioned and deducted from the Member's interest or entitlement in the Fund under Rule 6.3.
- 6.10 A Member shall be bound by these Rules.
- 6.11 A Member shall not more than once a year, be entitled to receive from the Trustees, on request, a copy of the latest accounts, balance sheet, auditor's report, actuarial report, returns to a Regulator, certificates received from a Regulator and such other information as is required by the Regulations to be provided to a Member.

## **MEMBERS TO GIVE INFORMATION**

- 6.12 A Member and every person claiming a Benefit ("claimant") shall, from time to time, give the Trustees such documents as they consider are required for the purpose of putting these Rules into effect. If any Member or claimant fails to supply all or any of such information, then the Trustees may suspend the payment of any Benefits.
- 6.13 Where information or a document is not furnished within six (6) months of the first request the Benefits payable to or in respect of such Member or claimant may cease or may be transferred in part or in whole in such amounts as shall be determined by the Trustees in their absolute discretion (subject at all times to the provisions of the Regulations) to an Eligible Fund provided however in the case of the information furnished by or in respect of a Member or claimant in any statement submitted to the Trustees being fraudulently incorrect in any material particular such Member's Benefit shall be otherwise dealt with in accordance with the provisions of the Regulations.

## **NOTICES**

- 6.14 Any notices to be given under these Rules shall be deemed to have been validly given if they were handed to the party to be served or, if posted, duly addressed to the party to be served at the last known address of such party.

## **POWER OF ATTORNEY**

- 6.15 Each Member hereby irrevocably appoints the Trustees and each of them as the Member's attorney to execute and sign and do all such deeds, instruments and things as the Trustees may consider necessary or desirable in order to carry out and give effect to the Trust Deed or these Rules or the powers vested in the Trustees.

## **SUPERANNUATION SPLITTING LAW**

- 6.16 The Trustees shall only be obliged to comply with any request for information, agreement or order made under the Superannuation Splitting Law to the extent permitted or required by the Regulations.
- 6.17 The Trustees may impose a fee not exceeding the amount, if any, prescribed by the Regulations for the administrative costs associated with complying with an agreement or order made under the Superannuation Splitting Law and such fee shall be payable by such persons and in such proportions as prescribed by the Regulations. The Trustees may add interest, at a rate the Trustees determine, to any unpaid fee that the Trustees impose and may debit the interest to a benefit or interest that the relevant Member or person deemed to be a Member has in the Fund.
- 6.18 Nothing in these Rules shall impose a duty or obligation upon the Trustees to admit as a Member of the Fund any person being a party to an agreement or order made under the Superannuation Splitting Law who is not already a Member of the Fund and the Trustees may transfer any Benefit to which such person is entitled to an Eligible Fund in accordance with the Regulations.
- 6.19 Notwithstanding anything contained in these Rules, a Benefit payable to a Member or Dependant under these Rules shall be subject to any agreement or order made under the Superannuation Splitting Law applying to that Benefit.

## **VARIATION OF TRUST DEED AND RULES**

- 6.20 Subject to Rules 6.22, 6.23 and 6.24, the Trustees may, at any time, by deed amend, delete or replace all or any of the provisions of the Trust Deed and these Rules (including this Rule 6.20) provided that no reduction of the Accrued Benefit of a Member shall be made as a result of a variation of the Trust Deed or these Rules without the Member's consent in writing, or the consent in writing of the Regulator and the consent in writing of such other persons as is necessary to avoid prejudicing Government Approval of the Fund.
- 6.21 *The provisions of section 35B of the Trustee Act 1936 (SA) shall not apply.*
- 6.22 Notwithstanding Rule 6.20, no addition, amendment, deletion or replacement of these Rules shall have the effect of invalidating, overriding or otherwise affecting:
- 6.22.1 a notice prepared by a Member under Rule 5.6; or
- 6.22.2 any agreement made under Rule 5.8;

without the express personal consent in writing of the Member who has given the notice or made the agreement and unless and until such express personal consent is given, such notice and/or agreement shall continue to apply.

- 6.23 Notwithstanding Rule 6.20, no amendment to the Trust Deed or these Rules introduced primarily for the purpose of securing exemption or relief from liability for taxation, stamp duty, gift duty, death duty, or any other form of taxation imposed or to be imposed or primarily for the purpose of complying with or conforming to future State or Commonwealth legislation governing or regulating the maintenance or operation of superannuation pension or like funds shall be deemed prejudicially to vary or to affect the Accrued Benefit of a Member.
- 6.24 Notwithstanding Rule 6.20, no amendment to the Trust Deed or Rules shall be made:
- 6.24.1 while an individual is a Trustee, to allow the sole or primary purpose of the Fund to be other than the provision of Old-Age Pensions;
  - 6.24.2 while the sole or primary purpose of the Fund is other than the provision of Old-Age Pensions to allow the Trustees to be other than a Corporate Trustee;
  - 6.24.3 which would have the effect of adding to, amending, deleting or replacing Rule 6.22 or this Rule 6.24 unless all Members personally consent in writing to such addition, amendment, deletion or replacement;
  - 6.24.4 which would have the effect of adding to, amending, deleting or replacing Rule 2.14 if to do so resulted in the Fund failing to comply with the QROPS Requirements unless all Members personally consent in writing to such addition, amendment, deletion or replacement;
  - 6.24.5 which would have the effect of changing the undertakings contained in Rule 7.13 when the Trustees hold Member Controlled NSW Property; or
  - 6.24.6 without the consent in writing of the Legal Personal Representative of a deceased Member if the Death Benefit payable in respect of the deceased Member has not been paid.

## **RULE 7 THE ASSETS, EXPENSES & INVESTMENTS**

### **THE ASSETS**

- 7.1 The following property and the property for the time being representing the same and the income thereof shall constitute the assets of the Fund namely;
- 7.1.1 contributions;
  - 7.1.2 any assets paid or transferred to the Fund,
  - 7.1.3 all profits, accumulations and earnings of the Fund, and
  - 7.1.4 any other money received or receivable by the Trustees for the purposes of the Fund.

### **ASSETS HELD BY TRUSTEES**

- 7.2 The assets of the Fund shall be held by the Trustees upon trust to be applied in accordance with the provisions of these Rules.

### **EXPENSES OF THE FUND**

- 7.3 All the expenses of operation of the Fund incurred from time to time shall be paid out of the assets of the Fund. Save as required by the Regulations, the costs and expenses of the Fund shall be distributed in a fair and reasonable manner as between all Members of the Fund and in determining what is fair and reasonable the Trustees may have regard to whether such costs and expenses were to the benefit or detriment of some or one, but not all, of the Members.

### **INVESTMENTS IN NAME OF NOMINEE**

- 7.4 Subject to the requirements of the Regulations, any investments may be held in such names including the name of a nominee (whether an individual or a corporation as the Trustees shall from time to time determine).

### **LOANS TO MEMBERS**

- 7.5 The Trustees shall not make loans, or use the resources of the Fund to give any other financial assistance, to Members or to Related Parties except to the extent permitted in the Regulations or unless the Fund was established before 16 December 1985 and either the rules or deed governing the Fund contained provisions allowing the Trustees to make loans to Members or the Trustees lent money to Members and that lending was not expressly prohibited by the rules or deed governing the Fund.

## **ACQUIRING ASSETS FROM MEMBERS**

- 7.6 The Trustees will not acquire assets from a Member or from a relative of a Member if such acquisition would contravene the Regulations and prejudice Government Approval of the Fund.

## **IN-HOUSE ASSETS**

- 7.7 The Trustees shall not invest in any In-house Assets as defined in the Regulations unless such investment can be made without prejudicing Government Approval of the Fund.

## **INVESTMENTS**

- 7.8 Subject to the provisions of the Regulations and Rules 7.5, 7.6 and 7.7 and provided investments are made on an arm's-length basis, all money received by the Trustees but not required to meet current payments may in the absolute discretion of the Trustees either be or remain on deposit or be reinvested either directly or indirectly in any manner in which the Trustees, if they were personally entitled to such assets, could invest without prejudicing Government Approval of the Fund. Without restricting the generality of the foregoing, money may be invested:

- 7.8.1 in any one or more of the modes of investment considered by law to be prudent or authorised by law for the investment of trust funds;
  - 7.8.2 on deposit with or on loan to any bank, company or business whether secured or unsecured and at such rate of interest and upon such terms as the Trustees think fit;
  - 7.8.3 on the purchase or acquisition of or at interest upon the security of such real or personal property of whatsoever nature and wheresoever situate;
  - 7.8.4 in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-governmental body or public authority;
  - 7.8.5 in options, hedging contracts, futures contracts, derivatives and other financial instruments or contracts;
  - 7.8.6 in a limited recourse borrowing arrangement or in an instalment warrant arrangement that satisfies the requirements of the Regulations;
  - 7.8.7 in units of any common fund property trust or unit trust;
  - 7.8.8 in any policies of life insurance or annuities;
  - 7.8.9 in digital currency, cryptocurrency and such other similar or like digital assets; and
  - 7.8.10 any other investment which the Trustees consider to be appropriate and which is acceptable to the Regulator.
- 7.9 The Trustees shall have full power to vary, replace and otherwise deal with such investments as fully and effectively and with the same unrestricted powers in all respects as if the Trustees were the absolute and beneficial owners.
- 7.10 Any State Trust Law which imposes any obligations on the Trustees concerning the exercise of the powers of investment granted under these Rules or the performance of those investments are excluded unless the applicable State Trust Law cannot lawfully be so excluded.

## **ASSETS SPECIFIC TO A MEMBER**

- 7.11 The Trustees, with the agreement of the Member concerned, may invest in or acquire 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 Trustees and shall hold such assets for the specific benefit of the Member concerned and which shall be recorded in the Member's account.
- 7.12 Notwithstanding anything contained in these 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 out of the Member's account and no other person shall obtain an interest in the asset unless:
- 7.12.1 the asset is being transferred to the Member as payment of a Benefit in specie to the Member;
  - 7.12.2 the asset is being sold and the proceeds are to be paid to the Member as payment of a Benefit; or
  - 7.12.3 the transfer of the asset does not affect any duty exemption or nominal assessment of duty obtained under the laws of any State or Territory to the transfer of the asset to the Fund when the asset was first acquired by the Trustees.

## **RESTRICTIONS ON MEMBER CONTRIBUTED NSW PROPERTY**

- 7.13 Notwithstanding of any other provision in these Rules, but subject to Rules 5.26 and 5.27, where the Trustees acquires Member Contributed NSW Property:
- 7.13.1 either;
    - 7.13.1.1 the Transferor of the Member Contributed NSW Property must be the only Member of the Fund and the Trustees must not admit any further Members whilst the Member Contributed NSW Property is held by the Trustees; or
    - 7.13.1.2 the Member Contributed NSW Property must be held by the Trustees solely for the benefit of the Transferor; and
  - 7.13.2 any Member Contributed NSW Property must be used solely for the purpose of providing a retirement benefit to the Transferor; and
  - 7.13.3 Member Contributed NSW Property to which the preceding Rules apply:
    - 7.13.3.1 must be held by the Trustees specifically for the benefit of the Transferor as a Member of the Fund; and
    - 7.13.3.2 cannot be pooled with any property held for another Member of the Fund; and
    - 7.13.3.3 no other Member of the Fund can obtain an interest in the Member Contributed NSW Property.

## **RESERVE ACCOUNTS**

- 7.14 The Trustees may establish and maintain the following Reserve Accounts:
- 7.14.1 a Taxation Reserve (in which is recorded any unpaid or expected taxation liabilities);
  - 7.14.2 an Expense Reserve;
  - 7.14.3 an Investment Reserve;
  - 7.14.4 a Contributions Reserve;
  - 7.14.5 a Miscellaneous Reserve;
  - 7.14.6 an Accumulation Reserve;
  - 7.14.7 a Pension Reserve;
  - 7.14.8 such Reserves or liability accounts as may assist the Trustees 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
  - 7.14.9 such other Reserves and accounts as the Trustees consider appropriate from time to time;

and the Trustees may transfer any amount from the income of the Fund including contributions for any Member to any one or more of the Reserves and vice versa and between the Reserves so established as they consider appropriate and which is acceptable to the Regulators.

## **PENSION RESERVE**

- 7.15 Based on the advice of an actuary, the Trustees may credit a Pension Reserve with:
- 7.15.1 contributions for a Member to fund a Complying Pension including any contributions which exceed the Member's maximum contribution limit in a Financial Year as determined by the Regulations;
  - 7.15.2 transfers from an Eligible Fund under Rule 2.7;
  - 7.15.3 allocations of income and profit of the Fund pursuant to paragraphs 1 and 2 of Schedule 1;
  - 7.15.4 allocations made from time to time by the Trustees from the Accumulation Reserve;
  - 7.15.5 proceeds of policies of insurance effected to provide benefits on the death or disablement of the Member;
  - 7.15.6 transfers from the Member's Accrued Benefit or any of the Reserves where the Trustees determine that an anticipated Member's Complying Pension requires further funding; and

7.15.7 such other amounts as the Trustees may determine be properly credited to a Pension Reserve in respect of a Member;

and shall debit a Pension Reserve with:

7.15.8 amounts paid by way of Benefits in respect of a Member;

7.15.9 transfers to a Member's Accrued Benefit or any of the Reserve Accounts where the Trustees determine that an anticipated Member's Complying Pension is over-funded;

7.15.10 amounts debited to pay premiums on policies of insurance effected to provide benefits to Members;

7.15.11 amounts debited to pay any tax and other expenses, or amounts to provide for them;

7.15.12 any part of an amount transferred to an Eligible Fund in respect of the Member pursuant to Rule 2.8 or Rule 2.10 which the Trustees have determined shall be debited to Pension Reserve; and

7.15.13 any other amount which shall be debited for the purposes of these Rules;

provided that the transfer, payment or provision is in accordance with the Regulations and the amounts credited are not a minimum benefit.

### **ACCUMULATION RESERVE**

7.16 The Trustees may credit an Accumulation Reserve with:

7.16.1 transfers of any balance remaining of any Member's Accrued Benefit after all benefit entitlements have been paid to a Member or is otherwise satisfied in full;

7.16.2 transfers from a Member's Accrued Benefit where the Trustees consider that it is in the interests of the Member to do so;

7.16.3 allocations of income and profit of the Fund pursuant to paragraphs 1 and 2 of Schedule 1;

7.16.4 transfers from a Pension Reserve where the Trustees determine that an anticipated Member's Complying Pension is over-funded;

7.16.5 the value of any Benefit covered by Rules 5.9, 5.10 and 5.11;

7.16.6 the value of any Benefit covered by Rule 6.5; and

7.16.7 such other amounts as the Trustees may determine be properly credited to the Accumulation Reserve in respect of a Member;

and shall debit an Accumulation Reserve with:

7.16.8 transfers to a Member's Accrued Benefit as determined by the Trustees from time to time;

7.16.9 transfers to a Pension Reserve where the Trustees determine that an anticipated Member's Complying Pension requires further funding

7.16.10 amounts debited to pay any tax and other expenses, or amounts to provide for them;

7.16.11 any part of an amount transferred to an Eligible Fund in respect of the Member pursuant to Rule 2.8 or Rule 2.10 which the Trustees have determined shall be debited to an Accumulation Reserve; and

7.16.12 any other amount which shall be debited for the purposes of these Rules;

provided that the transfer, payment or provision is in accordance with the Regulations and actuarial advice.

## **RULE 8 RECORDS, ACCOUNTS & REPORTS**

### **RECORDS**

8.1 The Trustees shall keep or cause to be kept:

8.1.1 such accounting records as correctly record and explain the transactions and financial position of the Fund, including a complete record of the income and expenditure of the Fund, personal details of the Members of the Fund including a record of their benefit entitlements, details of any orders or agreements made under the Superannuation Splitting Law and all other matters essential for the working of the Fund; and



- 8.1.2 all such records in writing in the English language in Australia for the period specified in the Regulations.

#### **ACCOUNTS**

- 8.2 The Trustees shall at the end of each Financial Year prepare a statement of financial position of the Fund and an operating statement for the Fund or alternatively such accounts and statements as are provided for in the Regulations.

#### **AUDIT**

- 8.3 The Trustees shall appoint an Auditor to the Fund in accordance with the Regulations to audit the accounts and records of the Fund and obtain from such Auditor such certificates, reports and other documents in such manner and form and at such time as required by the Regulations.

#### **ACTUARIAL REVIEW**

- 8.4 The Trustees shall when required by the Regulations or when the Trustees determine appoint an actuary to make such enquiries and investigations as they may determine and to report in writing to the Trustees.

#### **ANNUAL RETURNS**

- 8.5 The Trustees shall prepare and give to the Regulator such returns, certificates, statements and other documents and information in such manner and form and at such time as required by the Regulations.

#### **REPORTS ON SIGNIFICANT EVENTS**

- 8.6 The Trustees shall give Members information and details concerning any significant event that the Trustees reasonably believe a Member would reasonably need to understand the nature, purpose and effect of the event. The Trustees shall give the necessary information to the Member before or as soon as practicable after the occurrence of the significant event but, in any case, no later than three months after the occurrence of the event.

- 8.7 Significant events requiring the Trustees to notify the Members include:

- 8.7.1 any change to these Rules which adversely affects a Member's Benefit in any way;
- 8.7.2 a change to a Member's category of membership;
- 8.7.3 a transfer of a Member's Benefit to another fund;
- 8.7.4 the receipt by the Trustees of a notice of non-compliance.

- 8.8 In the event of the receipt of a notice of non-compliance the Trustees shall give to every Member:

- 8.8.1 a statement of the circumstances that gave rise to the notice;
- 8.8.2 a statement of the effect of the notice on the Fund and its taxation position;
- 8.8.3 details of the action to be taken to return the Fund to complying status; and
- 8.8.4 any information that the Regulator directs to be given to the Members.

- 8.9 The Trustees shall give to the Regulator notice of changes to the Fund that the Trustees must give to the Regulator in accordance with the Regulations in such form and in such manner as specified in the Regulations.

#### **RECEIVING OF INFORMATION ON REQUEST**

- 8.10 The Trustees shall make available to any Member and any person entitled, who makes a written request to the Trustees, any information or copies of any documents that the Member and any person entitled could reasonably require to understand the Member's benefit entitlements under the Fund, the main features of the Fund, the investment performance of the Fund and any other matter referred to in the Regulations. If not prohibited by the Regulations, the Trustees may charge a fee for the provision of information requested by a Member and any other person.
- 8.11 The Trustees shall specifically make available copies of these Rules, the audited accounts, the auditor's report, and advice to the extent they are relevant to the financial condition of the Fund and the person's entitlements and the latest Member Fund Report.
- 8.12 The Trustees shall not make available to a Member any information that is confidential to the Fund, other Members of the Fund and other persons provided that the Regulations allow the Trustees to keep such information confidential.

- 8.13 Where the Trustees would otherwise be required to provide a Product Disclosure Statement under the requirements of the *Corporations Act 2001* the Trustees shall provide access to any Member, or any person applying to become a Member, to any information that a Product Disclosure Statement would otherwise be required to contain.

#### **MEMBER BENEFIT STATEMENTS**

- 8.14 As soon as practicable, after the end of each Financial Year, the Trustees shall give each Member a written statement detailing such information as the Trustees reasonably believe a Member reasonably needs to understand the Member's benefit entitlements in the Fund and such information as is required by the Regulations.

#### **MEMBER FUND REPORT**

- 8.15 As soon as practicable after the end of each Financial Year, the Trustees shall give each Member a written report on the financial affairs of the Fund showing such details as the Trustees reasonably believe a Member would reasonably need to understand the management, the financial condition and the investment performance of the Fund and such information as is required by the Regulations.

#### **MEMBER LEAVING STATEMENT**

- 8.16 The Trustees shall give a person, as soon as practicable after becoming aware that the person has ceased to be a Member of the Fund, a statement detailing such information as the Trustees reasonably believe the person reasonably needs to understand the Member's benefit entitlements from the Fund and such information as is required by the Regulations.

### **RULE 9 TRUSTEES**

#### **TRUSTEES STRUCTURE**

- 9.1 The Trustee of the Fund may be a Corporate Trustee or one or more individuals but must be a Corporate Trustee if the Sole or Primary purpose of the Fund is other than the provision of Old-Age Pensions.

#### **APPOINTMENT AND REMOVAL OF TRUSTEES**

- 9.2 The Trustees and the Members shall take such action as they consider necessary and appropriate to ensure that the Trustees are constituted in a manner which complies with the Regulations including action relating to constitution or governing rules of a Corporate Trustee, the filling of vacancies in accordance with Rule 9.7 and Rule 9.8 and the eligibility, appointment, replacement, representation, removal and composition of Trustees and the board of directors of a Corporate Trustee.
- 9.3 A person shall only be appointed as a Trustee or a director of a Corporate Trustee if that person consents in writing to the appointment. Each Trustee or a director of a Corporate Trustee shall complete such other declarations, forms or notices regarding appointment as required under the Regulations. Each written consent, declaration, form or notice shall be retained by the Trustees for 10 years or such other period required by the Regulations.
- 9.4 The Members may at any time by written notice and in accordance with the Regulations and in accordance with the other provisions of these Rules remove from office any Trustee other than a Trustee appointed by the court or the Regulator and may at any time by deed appoint a new or additional Trustee provided always a Legal Personal Representative appointed as Trustee by reason of Rule 5.11.4 or Rule 9.8.1 shall not be removed until the Fund has paid the Death Benefit of the deceased Member in respect of whom the Legal Personal Representative has been appointed as Trustee. The appointment, removal or replacement of a Trustee shall be by written agreement of at least two thirds of the Members except where there are only two Members in which case unanimous agreement is required. Where there is a deadlock each individual Member's vote shall be weighted in relation to the value of the Member's interest or entitlement in the Fund. A Trustee who retires or ceases to hold office shall be replaced by the Members in the manner set out in this Rule 9.4.
- 9.5 Any requirement under State Trust Law that:
- 9.5.1 an appointment of a Trustee, new Trustee, replacement Trustee or additional Trustee must be registered for that appointment to be effective is expressly excluded; and
  - 9.5.2 the Fund must not have less than two Trustees or places a limit on the number of Trustees that may be appointed and is capable of being expressly excluded by these

Fund Rules is expressly excluded provided always that the Fund complies with the Regulations.

## **RETIREMENT OF TRUSTEES**

- 9.6 A Trustee ceases to hold that office when:
- 9.6.1 being an individual Trustee, the person dies or becomes bankrupt or legally incompetent;
  - 9.6.2 the Trustee resigns by notice in writing to the Members and the other Trustees, if any;
  - 9.6.3 the Trustee is removed by the Members pursuant to Rule 9.4;
  - 9.6.4 the Trustee is suspended or removed by the Regulator pursuant to the Regulations;
  - 9.6.5 being a company, the Trustee is placed into receivership or liquidation whether compulsory or voluntary;
  - 9.6.6 the Trustee is a disqualified person pursuant to the Regulations;
  - 9.6.7 the Fund would fail to satisfy the definition of self managed superannuation fund under the Regulations by reason of the Trustee continuing in that role;
  - 9.6.8 subject to the Regulations, complying status of the Fund would be jeopardised or altered unless the Trustee ceased to act in that role; or
  - 9.6.9 the Trustee is removed by the procedure for the removal of Trustees set out in these Rules or the Regulations.

## **VACANCY**

- 9.7 Any vacancy in the office of Trustee or the board of directors of a Corporate Trustee shall be filled within such period as and when required by the Regulations but until and unless the vacancy is filled, the continuing Trustees or the board of directors may exercise any of the powers, authorities and discretions conferred on the Trustees under these Rules unless the requirements of Rule 5.11.4 apply provided that where there is at least one Trustee or one director of a Corporate Trustee there shall be no obligation to fill any vacancy unless required by the Regulations or these Rules.
- 9.8 Notwithstanding anything contained in Rule 9.7 and noting the requirements of Rule 5.11.4:
- 9.8.1 if Trustees are individuals, where a Member dies and the Trustees are required to exercise a discretion regarding a Death Benefit to be paid in respect of that deceased Member, the Legal Personal Representative of the deceased Member shall be appointed Trustee;
  - 9.8.2 where a Trustee being an individual is under a legal disability, the Legal Personal Representative of the Trustee shall to the extent permitted by the Regulations replace that Trustee;
  - 9.8.3 notwithstanding Rules 9.8.1 & 9.8.2, if there is more than one Legal Personal Representative of the Trustee, the continuing Trustees shall determine which of the Legal Personal Representatives shall be appointed as Trustees provided always the continuing Trustees shall appoint at least one Legal Personal Representative of the Member or Trustee, as the case may be, who has died or is under a legal disability;
  - 9.8.4 A Corporate Trustee shall ensure that the constitution or governing rules of the Corporate Trustee do not prohibit the Legal Personal Representative of a director of the Corporate Trustee who dies or is under a legal disability from replacing that director as a director of the Corporate Trustee; and
  - 9.8.5 this Rule 9.8 shall not apply:
    - 9.8.5.1 to any individual Trustee or a director of a Corporate Trustee who dies or is under a legal disability who is not also a Member of the Fund;
    - 9.8.5.2 where a continuing individual Trustee or a director of a Corporate Trustee is the sole Legal Personal Representative of an individual Trustee or a director of the Corporate Trustee who dies or is under a legal disability;
    - 9.8.5.3 where a Legal Personal Representative does not consent to appointment as a Trustee or a director of a Corporate Trustee.

## **TRANSFER OF ASSETS**

- 9.9 Upon a change of Trustees, the estate and property of the Fund shall vest in the new Trustees and/or continuing Trustees (as the case may be) and the retiring Trustee shall execute all transfers, deeds or other documents necessary to transfer the estate and property of the Fund into the name of the new Trustees and/or continuing Trustees (as the case may be).

## **COVENANTS GIVEN BY THE TRUSTEES**

- 9.10 The Trustees give the following covenants:

- 9.10.1 to act honestly in all matters concerning the Fund;
  - 9.10.2 to 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 for whom the person felt morally bound to provide;
  - 9.10.3 to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;
  - 9.10.4 to keep the money and other assets of the Fund separate from any money and assets, respectively:
    - 9.10.4.1 that are held by the Trustees personally; or
    - 9.10.4.2 that are money or assets, as the case may be, of an Employer or an associate of an Employer;
  - 9.10.5 not to enter into any contract, or do anything else, that would prevent the Trustees from, or hinder the Trustees in, properly performing or exercising the Trustee's functions and powers;
  - 9.10.6 to formulate 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:
    - 9.10.6.1 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;
    - 9.10.6.2 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;
    - 9.10.6.3 the liquidity of the Fund's investments having regard to its expected cash flow requirements;
    - 9.10.6.4 the ability of the Fund to discharge its existing and prospective liabilities;
    - 9.10.6.5 whether the Trustees of the Fund should hold a contract of insurance that provides insurance cover for one or more Members of the Fund;
  - 9.10.7 if there are any Reserve Accounts of the Fund - to formulate and to 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;
  - 9.10.8 to allow a Member access to any prescribed information or any prescribed documents;
- and where the Trustee is a Corporate Trustee, each director of the 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 this Rule 9.10.

## **POWERS OF TRUSTEES**

- 9.11 Without prejudice to the powers vested in the Trustees by law, the Trust Deed and these Rules or otherwise, so as to administer the Fund and to exercise the powers, authorities and discretions conferred on the Trustees, the Trustees have all the powers in relation to the assets of the Fund that the Trustees would have if the Trustees were the legal and beneficial owner of those assets and the Trustees shall have (without limiting or to be construed as limiting the powers of the Trustees) the following powers, that is to say, power:
- 9.11.1 to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, licence, lease or otherwise deal with real or personal property and, without limiting the generality of this sub-rule, to develop any commercial or retail

- premises and hold or sell, convey, surrender, lease or licence such premises on such terms and conditions as they shall think fit;
- 9.11.2 to appoint and at their discretion remove or suspend any auditor, actuary, investment managers, investment advisers, custodian, managers, secretaries, clerks, agents and other servants, appoint them for permanent, temporary or special services as they from time to time think fit, determine their powers and duties and fix their salaries or emoluments and require security in such instances and to such amount as they may think fit and any person so employed shall be deemed for the purposes of these Rules to be employed by the Trustees;
  - 9.11.3 to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;
  - 9.11.4 to refer any claims or demands by or against the Fund to arbitration and observe and perform the awards;
  - 9.11.5 to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
  - 9.11.6 to open and operate bank accounts by cheque and by electronic means in the manner determined by Rule 9.11.7 and permit cheques and other negotiable instruments to be signed jointly or severally in the manner determined by Rule 9.11.7 and to retain on current or deposit account at any bank such money as it considers proper and to make regulations for the operation of such bank accounts;
  - 9.11.7 to determine who shall be entitled to sign on the Fund's behalf, receipts, acceptances, endorsements, releases, cheques, negotiable instruments, agreements, writings, contracts or documents of any kind whatsoever;
  - 9.11.8 to pay benefits out of the Fund to persons entitled;
  - 9.11.9 to decide as and when the need shall arise who are Dependants for the purposes of these Rules;
  - 9.11.10 in case of mental or physical ill-health, or incapacity of a person entitled to benefits to pay or apply such benefits or any part thereof at their discretion to or for the benefit of such person and the Dependants of such person or any of them as the case may be without being responsible for seeing the application of payments under this sub-clause or payments made in the exercise of any other powers vested in the Trustees by the Trust Deed and these Rules;
  - 9.11.11 to borrow or raise 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 Regulations (including for the purpose of investing in a limited recourse borrowing arrangement or an instalment warrant arrangement as permitted by Rule 7.8.6 of these Rules) and secure the borrowing or financial accommodation in such a manner and upon such terms and conditions and at such rate of interest as the Trustees determine and in particular, by assigning, pledging, charging or mortgaging all or any of the assets of the Fund;
  - 9.11.12 to invest in their name or under their control in any one or more of the investments authorised by these Rules with power at their absolute discretion either to retain the investment in that form or to sell or convert into money any of those investments for cash or on terms (so as to allow a purchaser any time for payment of the whole or part of the purchase price with or without interest and with or without security) and power at their absolute discretion from time to time to vary or transpose any investments into others authorised by these Rules;
  - 9.11.13 to grant or take any put or call option for the purchase of any real or personal property, whether the sale occurring on exercise of such option will be at a profit or not;
  - 9.11.14 to deal with the assets of the Fund whether the result of such dealing will be at a profit or not;
  - 9.11.15 to elect that the Fund become a Regulated Superannuation Fund;
  - 9.11.16 to act on a direction given by a Court or the Regulator;

- 9.11.17 to comply with the covenants of Trustees imposed by the *Superannuation Industry (Supervision) Act 1993*;
- 9.11.18 to delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustees and to execute any powers of attorney or other instruments necessary to effect such a delegation;
- 9.11.19 to provide indemnities to or on behalf of any person the Trustees see fit;
- 9.11.20 to appoint a custodian to hold assets of the Fund on such terms and conditions as the Trustees deem fit including the power to execute any deed creating a bare trust or such other form of trust permitted by the Regulations to give effect to the power to invest in a limited recourse borrowing arrangement or an instalment warrant arrangement as permitted by Rule 7.8.6;
- 9.11.21 to effect mortgage protection insurance or like insurances to cover the payment of borrowings by the Fund;
- 9.11.22 to effect life insurance policies for the purposes of providing benefits for Members including insurance policies over the life of a Member for the benefit of other Members;
- 9.11.23 to enter into agreements with Members about the payment of insurance policy premiums and the allocation of insurance policy proceeds for any insurance policy not being an Individual Policy;
- 9.11.24 to operate a business either alone or with any other person or entity;
- 9.11.25 to act upon the advice of any legal practitioner, any medical practitioner, accountant, 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 Trustees in accordance with such advice; and
- 9.11.26 to do those things permitted or required by the Regulations.

#### **DUTIES OF TRUSTEES**

##### **9.12 The Trustees must:**

- 9.12.1 ensure that any agreement made with an investment manager under which money of the Fund is placed in the control of the investment manager, is in writing and contains provisions which comply with the Regulations, including adequate provision to enable the Trustees to obtain information concerning the making of, and return on, the investments and to assess the capability of the investment manager;
- 9.12.2 keep and retain for at least 10 years minutes of all meetings of the Trustees at which matters affecting the Fund were considered;
- 9.12.3 keep and retain records of all changes to these Rules governing the operation and administration of the Fund and changes of Trustees and, in the case of a Corporate Trustee, directors of the Corporate Trustee;
- 9.12.4 keep and retain for at least 10 years copies of reports given in the same form to all Members of the Fund;
- 9.12.5 within the time, if any, specified in the Regulations give written notice to the Regulator of any event or change having a significant adverse effect on the financial position of the Fund or any other event or change specified by the Regulations requiring written notice be given to the Regulator; and
- 9.12.6 establish a procedure for the appointment and removal of member representatives to the board of directors of a Corporate Trustee, if the Trustee of the Fund is a company and it is necessary for Government Approval of the Fund.

#### **INDEMNITY TO TRUSTEES**

- 9.13 The Trustees and each person thereof in the case of a group of persons shall, unless prohibited by any law or court of competent jurisdiction, be indemnified out of the Fund against all liabilities incurred by them through any act or omission in the exercise of the powers, duties and discretions under the Trust Deed and these Rules or in the bona fide intended or purported exercise of their duties under the Trust Deed and these Rules and shall, unless prohibited by the Regulations have a lien on the Fund for such indemnity. The Trustees shall not be liable for any act or default done or omitted to be done in the exercise of their powers, duties and discretions or for any loss or

expenses incurred by the Fund through the insufficiency or deficiency of any security in or upon which any of the money of the Fund shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any money or securities shall be deposited or for any other loss, damage or misfortune whatsoever except where the Trustees fail to act honestly in a matter concerning the Fund, where the Trustees intentionally or recklessly fail to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustees were required to exercise or where the Trustees are liable for monetary penalty under a civil penalty order.

- 9.14 For the purposes of the Trust Deed and these Rules the Trustees shall be entitled to regard a discretion, instruction or other written authorisation signed by a Member as a valid discretion, instruction or other written authorisation of the Member.

#### **DISCRETIONS**

- 9.15 Save as expressly provided in these Rules and under the Regulations, the Trustees shall have an absolute and uncontrolled discretion in the exercise of the powers, authorities and discretions vested in them by the Trust Deed and these Rules and may exercise or enforce all or any of those powers, authorities and discretions from time to time or may refrain from exercising all or any of those powers, authorities and discretions from time to time or at all.
- 9.16 The Trustees or any director, employee, delegate, agent or other officer of the Trustees may be involved in the exercise of all powers, authorities and discretions conferred on the Trustees notwithstanding that they may have a conflict of interest or duty.
- 9.17 The Trustees may exercise or concur in exercising all of the powers and discretions contained in the Trust Deed and Rules or otherwise conferred by law notwithstanding that the Trustees or any person being an individual Trustee of the Fund or any person being a director or shareholder of a Corporate Trustee of the Fund or any person being a relative of a Trustee or any person being a relative of a director or shareholder of a Corporate Trustee of the Fund has or may have a direct personal interest (whether as trustee of any other trust or settlement or in his personal capacity or as a director or shareholder or as a relative of a Trustee or relative of a director or shareholder of a Corporate Trustee of the Fund or member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee may be a sole Trustee.

#### **DELEGATION**

- 9.18 The Trustees may delegate any of their powers, authorities and discretions vested in them (including the power of delegation) to any person in such manner and upon such terms and conditions as they think fit if the delegation is in accordance with the Regulations and may vary or revoke any delegation in such manner and terms as they see fit. The Trustees may exercise any power, authority or discretion in conjunction with or to the temporary or permanent exclusion of a delegate.

#### **MANNER OF EXERCISE BY TRUSTEES OF DISCRETIONS, POWERS, ETC.**

- 9.19 Where the Trustees consist of more than one person they:
- 9.19.1 may meet together in person, by telephone and/or by video conference facilities for the dispatch of business;
  - 9.19.2 may adjourn and otherwise regulate their meetings as they think fit;
  - 9.19.3 may determine the quorum necessary for the transaction of business;
  - 9.19.4 shall appoint a chairman for the time being, from time to time or of each meeting, and
  - 9.19.5 shall, subject to Rule 9.25, act unanimously but if the Trustees are unable to reach a decision unanimously then decisions will be made by poll where each individual Trustee's vote shall be weighted in relation to the value of their interest or entitlement in the Fund 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 the Regulations and the covenants given by the Trustees under Rule 9.10.
- 9.20 Where the Trustees consist of more than one person, a resolution in writing, signed by all the Trustees for the time being, shall be as valid and effectual as if it had been passed unanimously

at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Trustees.

- 9.21 Notwithstanding Rules 9.19 and 9.20, where more than one Legal Personal Representative or parent or guardian of a Member has been appointed as a Trustee in place of that Member, those Legal Personal Representatives or parents or guardians as Trustees shall have one joint vote for the purposes of any meeting and resolution but this restriction shall not apply if the Legal Personal Representatives or parents or guardians as Trustees are the only Trustees of the Fund.
- 9.22 Where a Trustee is a Trustee of the Fund in a personal capacity to comply with the Regulations and is also a Trustee in a representative capacity as the Legal Personal Representative or parent or guardian of a Member, that Trustee shall have a deliberative vote for the purposes of any meeting and resolution as Trustee in their personal capacity and a deliberative vote in their representative capacity.
- 9.23 Any minutes or resolutions so entered that purport to be signed as provided in Rules 9.19 and 9.20 shall be evidence of the proceedings or of the exercise of the discretion, authority or power to which it relates, as the case may be. When minutes or resolutions have been so entered and signed, then, until the contrary is proved:
- 9.23.1 the meeting (if any) shall be deemed to have been duly held and convened;
  - 9.23.2 all proceedings had at any such meeting shall be deemed to have been duly had;
  - 9.23.3 all determinations or decisions made at any meeting shall be deemed to be valid; and
  - 9.23.4 where the minute or resolution does not relate to a meeting, the discretion, authority or power to which the minute or resolution relates shall be deemed to have been duly exercised.
- 9.24 A Corporate Trustee may, subject to Rule 9.25, exercise or concur in exercising any discretion or power conferred on the Trustees by the Trust Deed to which these Rules are an annexure or by these Rules by a resolution of its directors or governing body in accordance with the constitution or memorandum and articles of association or other rules for the internal management of a company which is a Corporate Trustee and may delegate the rights and powers conferred on it by the Trust Deed to which these Rules are an annexure or by these Rules.
- 9.25 All minutes and resolutions of the Trustees concerning decisions made under Rule 5.11 to pay a Death Benefit in respect of a deceased Member require the prior written consent of the Legal Personal Representative of the deceased Member.

#### **TRUSTEE REMUNERATION**

- 9.26 The Trustees shall only be entitled to remuneration permitted by the Regulations.

#### **RULE 10 WINDING UP**

##### **TERMINATION OF FUND**

- 10.1 If it shall, at any time, appear to the Trustees, for such reasons as they shall think fit, appropriate so to do or if required by the Regulations then the Fund shall be terminated, and the Trustees shall determine a termination date.
- 10.2 Upon the termination of the Fund in accordance with Rule 10.1, no further contributions shall be accepted by the Trustees other than any arrears of contributions already due, which shall be called in immediately.
- 10.3 Subject to any requirement of the Regulations including any requirements relating to the preservation of Benefits, as from the termination date, the assets of the Fund shall, after provision is made for all expenses and liabilities of the Fund, be held in trust and applied in the following priority:
- 10.3.1 in payment of benefits which on or before the termination date have become payable to Members or Dependants or Legal Personal Representatives of deceased Members but not paid;
  - 10.3.2 in payment or transfer of a Member's Accrued Benefit (but not including any amount that has not vested unless the Trustees determine that such amount shall vest) or entitlements to the Pension Reserve in accordance with these Rules;



- 10.3.3 in payment of any surplus to Members, former Members, Dependants of Members and former Members, or Legal Personal Representatives of Members, former Members or Dependants in proportions the Trustees in their discretion determine is appropriate.
- 10.4 Where a Member dies before receiving a Benefit to which the Member has become entitled pursuant to Rule 10.3 such Benefit shall be paid in accordance with Rule 5.9, 5.10 and 5.11.

#### **RULE 11 SAVING PROVISIONS**

- 11.1 If a provision of the Trust Deed or these Rules would otherwise be wholly or partly invalid because it:
- 11.1.1 subjects the Trustees to direction by another person; or
- 11.1.2 permits a person to exercise a discretion without the consent of the Trustees,
- then the Trustees' consent is required for the giving of the direction or exercise of the discretion.

#### **RULE 12 INCORPORATION OF REGULATIONS**

- 12.1 The Rules include and incorporate the Regulations to the extent that Regulations impose covenants or obligations on the Trustees and these Rules shall be read on the basis that:
- 12.1.1 where there is any inconsistency between a provision in these Rules and a provision under the Regulations, the Regulations shall prevail to the extent of the inconsistency and these Rules shall be read down to the extent of the inconsistency;
- 12.1.2 where there is any doubt arising as to the effect of the Regulations or whether there is an inconsistency between the Regulations and a provision of these Rules, the decision of the Trustees shall be final;
- 12.1.3 if the Regulations no longer require any such covenant or obligation to be included then that covenant or obligation ceases to be included;
- 12.1.4 the Trustees are not taken to be in contravention of these Rules or in breach of trust if the Trustees do or omit to do anything which is in contravention of such covenant or obligation if the contravention is waived by the Regulator;
- provided that these Rules shall not be so read, and no such provision of the Regulations shall be incorporated if to do so would constitute a breach of the power granted in Rule 6 to amend all or any of the provisions of these Rules or if express provision is made in these Rules excluding provisions of the Regulations and the Trustees are permitted by law to do so.
- 12.2 This Rule is paramount, and it shall prevail over any inconsistent Rule herein.

## **SCHEDULE 1**

1. The Accumulated Contributions in respect of each Member shall be determined at the end of each Financial Year as follows:
  - 1.1 To the Accumulated Contributions in respect of the Member at the beginning of the Financial Year there shall be added:
    - 1.1.1 contributions made in respect of the Member during the Financial Year; and
    - 1.1.2 the proceeds of any Individual Policies in respect of the Member of the kind referred to in paragraph 1.1.6 below;
    - 1.1.3 the income derived from any assets held in respect of the Member in accordance with Rule 7.11 and which are deemed by the Trustees to have been secured with money debited to the Member's Accumulated Contributions as referred to in paragraph 1.1.7 below;
    - 1.1.4 Splittable Contributions transferred or allocated to a Member which the Trustees have determined shall be credited to the Member's Accumulated Contributions; and
    - 1.1.5 amounts credited to the Member out of the Reserve Accounts;and there shall be subtracted:
    - 1.1.6 premiums paid during the Financial Year under any Individual Policy in respect of the Member which the Trustees have determined shall be funded out of Member contributions, and
    - 1.1.7 amounts paid during the Financial Year to secure assets specific to the Member in accordance with Rule 7.11 and which the Trustees have determined shall be funded out of the Member's Accumulated Contributions; and
    - 1.1.8 Benefits paid in respect of the Member during the Financial Year;
    - 1.1.9 Splittable Contributions transferred or allocated from the Member to another Member or an Eligible Fund which the Trustees have determined shall be debited to the Member's Accumulated Contributions;
    - 1.1.10 any amounts by way of tax and expenses which are or may become payable and which the Trustees consider proper to be deducted from the Member's Accumulated Contributions; and
    - 1.1.11 any other amounts that the Trustees are required to deduct in accordance with the Regulations.
  - 1.2 The profit for the Financial Year shall be determined by deducting from the net assets of the Fund (which may include the proceeds of insurance policies not being Individual Policies and surpluses resulting from a revaluation of assets), as shown in the balance sheet at the end of the Financial Year, the total value of any Individual Policies, the total value of any assets held in respect of specific Members in accordance with Rule 7.11 , the total of the amounts determined under paragraph 1.1 above for all Members, any amount in the Reserve Accounts and such other amounts credited to Members in accordance with paragraph 2.3 below.
  - 1.3 The profit for the Financial Year shall, after deducting any amount that the Trustees determine to allocate to the Reserve Accounts, be allocated to each Member's Accumulated Contributions in one of the following ways, as the Trustees shall determine:
    - 1.3.1 in proportion to the Member's Accumulated Contributions as at the beginning of the Financial Year;
    - 1.3.2 in proportion to the amount determined under paragraph 1.1; or
    - 1.3.3 in proportion to the amount determined under paragraph 1.1 above but with allowance being made, on such basis as the Trustees may determine, for the time during the Financial Year at which each item required to be added or subtracted under paragraph 1.1 was received or paid.

2. The Accrued Benefit in respect of a Member shall be determined as follows:
  - 2.1 The Member's Accumulated Contributions at the beginning of the Financial Year shall be increased and decreased in the manner indicated in paragraph 1.1 above.
  - 2.2 To the amount determined under paragraph 2.1 above, shall be added an amount representing a share of the profit for the Financial Year to date. This share will be determined by the Trustees and will be calculated as a proportion of the profit allocated to the Member's Accumulated Contributions at the end of the previous Financial Year in accordance with paragraph 1.3 above but with such allowance as the Trustees think fit having regard to:
    - 2.2.1 the growth in the Member's Accumulated Contributions;
    - 2.2.2 the property held on behalf of a Member and the income earned from that property;
    - 2.2.3 the balance of any Reserve Accounts;
    - 2.2.4 the length of time since the beginning of the Financial Year;
    - 2.2.5 length of membership;
    - 2.2.6 investment strategies;
    - 2.2.7 any actuarial advice;
    - 2.2.8 the exchange and segregation of any Fund assets set aside to meet current pension liabilities or for other Fund purposes and the extent to which profit is attributable to those assets; and
    - 2.2.9 any particularly adverse or favourable circumstances known to the Trustees.
  - 2.3 To the amount determined under paragraphs 2.1 and 2.2 above, provided they have not already been added to or deducted from the Member's Accumulated Contributions under the provisions of paragraph 2.1 above, as the case may be:
    - 2.3.1 shall be added:
      - 2.3.1.1 the value of any Individual Policy or Assets held in respect of the Member in accordance with Rule 7.11;
      - 2.3.1.2 any part of an amount transferred from an Eligible Fund in respect of the Member pursuant to Rule 2.7 which the Trustees have determined shall be credited to the Member's Accrued Benefit;
      - 2.3.1.3 any other amount which shall be credited for the purposes of these Rules or required by the Regulations;
    - 2.3.2 shall be subtracted:
      - 2.3.2.1 any part of an amount transferred to an Eligible Fund in respect of the Member pursuant to Rule 2.8 or Rule 2.10 which the Trustees have determined shall be debited to the Member's Accrued Benefit;
      - 2.3.2.2 any other amount which shall be debited for the purposes of these Rules or required by the Regulations.
  - 2.4 In determining the share of profit from property under paragraph 2.2.2 above, attributing profit to assets set aside to meet current pension liabilities of the Fund or for other purposes of the Fund for the purposes of paragraph 2.2.8 above or identifying value to be credited to reserves or liability accounts established in accordance with Rule 7.14.8, the Trustees may determine that any debit, credit or adjustment to an Accrued Benefit, Reserve Account or account that impacts on a Member's Accrued Benefit, Reserve Accounts or accounts, expenses or financial position of the Fund is to be included or excluded as the case may be at the discretion of the Trustees from such determination, attribution or identification and the Trustees shall not be bound to either explain or give reasons unless required by the Regulations.

# SUPERCONCEPTS

Australia's Leading Self Managed Fund Specialists

## Self-Managed Superannuation Fund (SMSF) Product Disclosure Statement

**Issued by**  
The Trustee

**Issue date**  
2nd January, 2019

**Prepared by**  
SuperConcepts Administration Pty Ltd

ABN 67 007 437 907  
An authorised representative of  
SMSF Administration Solutions Pty Ltd (ABN , AFSL 291 195)

PO Box 324  
North Sydney NSW 2059

Phone 1800 625 644  
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8. Insurance in your super
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## 1. About the Fund

This Product Disclosure Statement (PDS) is for the Fund. The Fund is or will be a self-managed superannuation fund regulated under the Superannuation Industry (Supervision) Act & the Superannuation Industry (Supervision) Regulations (SIS legislation).

This PDS follows the requirements of the Corporations Act in relation to the issuing of a superannuation product to you, being a beneficial interest in the Fund.

The PDS will help you to:

- decide whether the Fund meets your needs; and
- compare the Fund to other financial products you may be considering.

This PDS is required to be given to you as soon as practicable and in any event within 3 months of you becoming a member of the Fund, if an up to date copy has not been given to you previously. If you have received the PDS before joining the Fund, you should read it before making a decision to join the Fund.

The PDS should not be used as a substitute for financial advice and if you want advice about superannuation products you should speak to a financial services licensee or an authorised representative.

### Issuer

#### Trustee of the Fund

The issuer of this superannuation product is the Trustee. Trustee details are as follows:

**David Arthur Ellard & Lynnette Erica Ellard**

The Trustees of:

**D & L Ellard Superannuation Fund**

Lot 1

Boole Poole Peninsula  
METUNG VIC 3904

## 2. How a self-managed superannuation fund works

### Sole Purpose

A self-managed superannuation fund is to have the sole purpose of providing retirement benefit for members, or for beneficiaries if a member dies.

#### Definition - self-managed superannuation fund (SMSF)

A self-managed superannuation fund is a Fund that has:

- fewer than 5 members;
- all its members are Fund trustees or are directors of a corporate trustee, subject to limited exceptions including if they have a legal personal representative to act as trustee or director on their behalf;
- no member who is an employee of another member, unless they are relatives;
- no trustee who is paid for their duties as trustee.

### Trusteeship of the Fund

For as long as the Fund operates as a self-managed superannuation fund, you will also be required to be an individual trustee, or a director of the trustee company, subject to the following:

- if you are under 18, you will need to have your parent, guardian or a legal personal representative act on your behalf.
- if you are not capable of managing your own affairs because of legal disability, you will need to have a legal personal representative act on your behalf.
- if you appoint a person as your legal personal representative under an enduring power of attorney, that person may act on your behalf.
- on your death, your legal personal representative may act in your place as trustee until your death benefit commences to be paid.

### Eligibility to act as a trustee or trustee director

A person is prohibited from acting as a trustee of a self-managed superannuation fund (either as an individual or as a director of a company acting as trustee) because of:

- insolvency (bankruptcy);
- being convicted of dishonesty;
- being subject to a civil penalty order under the SIS legislation; or
- the Australian Taxation Office (ATO) or Australian Prudential Regulation Authority (APRA) having disqualified the person if they are satisfied that the person is not a fit and proper person to be a trustee.

If the person is disqualified from being a trustee or a director of a corporate trustee, then the person or director cannot be a member of a self-managed superannuation fund and should immediately resign as trustee or director of the corporate trustee of the Fund.

### Members

You must operate in two capacities; one as trustee or a director of the corporate trustee of your Fund and the other as a member.

## Compliance with SIS legislation

If a superannuation fund is to receive tax concessions it must be regulated under the SIS legislation. By complying with that legislation certain contributions to the Fund will be tax deductible and the Fund's income is taxed at concessional rates. For the Fund to comply it must satisfy certain rules relating to the receipt of contributions, the payment of benefits and the investment of the Fund's money.

## Trust Deed

The Trust Deed is the legal document which sets out the rights and obligations of the Trustee and Fund members in detail. You can inspect the Trust Deed of the Fund by contacting the Trustee of the Fund.

## Investment Strategy

The trustees of all superannuation funds are required to have an investment strategy which takes into account the circumstances of the whole Fund.

A copy of the current investment strategy is available to you on your request to the Trustee.

## Annual Reporting

Each year you will be provided with a report which will show details of your member account. Certain other information will be available to you on request from the Trustee.

## Contributions

Under the rules of the Fund, contributions can be made by you or on your behalf. Tax deductions for contributions are available to employers for their employees and generally to persons who are self-employed or who receive some employment income.

Contributions can be broadly divided into two categories – concessional (or pre-tax) and non-concessional (post-tax).

## Concessional contributions

Concessional contributions include employer contributions (including salary sacrifice contributions), personal contributions for which a tax deduction has been claimed, certain foreign superannuation fund benefits, directed termination payments and some amounts allocated from fund reserves.

Concessional contributions are subject to 15% contributions tax as such contributions are considered assessable income of the Fund.

## Concessional contribution cap

An annual cap on concessional contributions applies on a financial year basis. The cap is \$25,000 for 2018/19 and will be indexed to average weekly ordinary time earnings (AWOTE) but will only increase in \$2,500 increments.

Concessional contributions which are split to a spouse are assessed against your cap and not your spouse's cap.

The taxable portion of a foreign superannuation fund amount is exempt from the concessional contributions cap.

Concessional contributions above the annual cap may be refunded to the individual and taxed at their marginal tax rate less a 15% offset for contributions tax already paid. If an excess concessional contribution is not refunded to the individual, an equivalent amount is added to their assessable income and taxed at their marginal tax rate. Excess concessional contributions not released from the Fund automatically become non-concessional contributions.

## Concessional contribution charge

The excessive concessional contributions charge is an

interest penalty that applies when the concessional cap is exceeded. The charge applies on the increase in tax liability as a result of adding excess concessional contributions to assessable income.

The excessive contributions charge begins to apply on the first day of the income year relating to the excessive concessional contributions and ceases to apply on the day prior to the due date of the individual's first notice of assessment.

The charge is payable at the same rate as the Shortfall Interest Charge (SIC). The SIC rate is adjusted quarterly and the charge is calculated and compounded daily. The SIC rate is available from the ATO.

## Non-concessional contributions

Non-concessional contributions are not subject to tax in the superannuation fund. They include:

- personal contributions for which no tax deduction has been claimed
- spouse contributions
- Government co-contributions and certain foreign superannuation benefits.

Excess concessional contributions that are not refunded to the individual will be treated as a non-concessional contribution.

Tax offsets may also be available to a person who contributes to superannuation on behalf of their low income spouse.

## Non-concessional contribution cap

An annual non-concessional contributions cap applies on a financial year basis. The non-concessional cap is \$100,000 for 2018/19. The non-concessional cap for an income year is a multiple of the concessional contributions cap (four times the standard concessional cap).

If you are under age 65 at any time during the financial year, you may invoke the three year 'bring forward' rule and use a maximum cap of \$300,000.

Individuals may be able to access the bring forward period for their non-concessional contributions cap equal to two or three times the annual cap, depending on their total superannuation balance.

An additional test applies since 1 July 2017 which may reduce the level of non-concessional contributions that may be made.

Total Super Balance at 30 June	Maximum non-concessional contribution	Bring forward period
Less than \$1.4 million	\$300,000	3 years
\$1.4 million to less than \$1.5 million	\$200,000	2 years
\$1.5 million to less than \$1.6 million	\$100,000	No bring forward period
\$1.6 million or more	Nil	N/A

Where total superannuation balance is the aggregate of a person's accumulation phase interests (both accumulation accounts and Transition to retirement pensions), modified transfer balance (including current pension account values) and any rollover benefits not already in an accumulation account.

There are exemptions to the non-concessional cap which include:

- Government co-contributions
- eligible proceeds that relate to Capital Gains Tax (CGT) small business concessions up to a lifetime limit of \$1.48m (indexed) for 2018/19

- payments that relate to structured settlements or orders for personal injuries.

Non-concessional contributions that in total exceed the relevant cap are not refunded to the individual and may be subject to additional tax.

If non-concessional contributions made by an individual in the 2013/14 or later years exceed the relevant cap, the individual can elect to withdraw the excess amount plus 85% of an associated earnings amount from their superannuation fund. If this election is made the excess non-concessional contributions are received tax free, while 100% of associated earnings will be taxed at the member's marginal tax rate.

### How can contributions be made to the Fund?

Contributions may be made in cash or by transferring assets to the Fund. There are restrictions on the types of assets that can be transferred to a superannuation fund from a related party. The types of assets that can be transferred in these circumstances are:

- in-house assets where the Fund will continue to have no more than 5% of the Fund's total assets in in-house assets
- listed securities (e.g. shares, units or bonds listed on an approved Stock Exchange)
- Business Real Property
- insurance policies owned by a related party except those owned by a member or a relative of a member
- investments in widely held trusts, such as managed funds.

#### Definition - In-house Assets

An in-house asset is a loan to or an investment in a related party of the Fund or an investment in a related trust or an asset of the Fund which is leased to a related party.

#### Definition - Business Real Property

Business real property is any real estate which is used wholly and exclusively for business purposes. In the case of farming property which is used in a primary production business, up to 2 hectares of the property can be used for domestic or private purposes.

#### Definition - Related Party

A related party is a member of the Fund, a standard employer-sponsor of the Fund, or an associate of a member or standard employer-sponsor. Associates include relatives, certain business partners and entities which a member or standard employer-sponsor and/or their associates are capable of controlling.

In-house Assets and Related party rules can be complex and professional advice should be sought prior to undertaking transactions.

#### Definition – Standard Employer-Sponsor

If an employer so contributes, or would contribute, wholly or partly pursuant to an arrangement between the employer and a trustee of the regulated superannuation fund concerned, the employer is a standard employer-sponsor.

### Rules that apply to contributions to the Fund

Member or employer contributions can be made to the Fund at any time for any member under 65. To accept member contributions, the Fund must have received the member's Tax File Number.

If you have reached your 65th birthday you must be working or have worked at least 40 hours over 30 consecutive days in the financial year prior to making the contribution. However, this rule is not required to be satisfied for contributions made for Superannuation Guarantee or industrial award purposes.

Contributions can be made by you or on your behalf up until age 75 (with the exception of eligible spouse contributions, which cannot be made once the receiving spouse has reached age 70). However, from age 75 contributions are permitted only if they are made for purposes of an industrial award or the Superannuation Guarantee.

In special circumstances contributions can be accepted after the relevant age where the Trustee is prepared to exercise discretion to accept late contributions.

**Important - Contributors should obtain advice from a qualified professional concerning the tax consequences of any contribution they make to the Fund.**

### Splitting contributions with a Spouse

You are able to make a request to the Trustee to split an amount of your benefit to your spouse. However, there are restrictions on your ability to split and on the maximum amount of the split, as follows:

1. the requested split amount must be in respect of "splittable contributions". An individual may only split concessional contributions with a spouse.
2. your receiving spouse who is to receive the split must be:
  - a. under preservation age; or
  - b. between preservation age and age 65 providing they have not permanently retired;

which is intended to ensure your spouse is not able to immediately access the split amount;
3. the maximum splittable amount to your spouse must be the lesser of your concessional contributions cap for the financial year and 85% of your concessional contributions made to the Fund;
4. your request (application) to split must be made:
  - a. within the next financial year after the year in which the splittable contributions have been made to your account in the Fund; or
  - b. the financial year in which your application is made if your entire benefit is to be rolled over or transferred in that year;
5. if you intend to claim a tax deduction for any personal superannuation contributions you must make the election to claim the deduction before the application to split the contribution with your spouse; and
6. you can only make one application to split in each year.

The Trustee must give effect to your split request as soon as practicable and in any event within 90 days of receiving the request.

#### Definition - Spouse

The spouse of a person is:

- another person, whether of the same sex or a different sex, with whom the person is in a relationship registered under a law of a State or Territory prescribed for purposes of section 2E of the Acts Interpretation Act 1901 as a kind of relationship prescribed for the purposes of that section;
- another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple; or
- any other person who is recognised by the legislation as a spouse of that person.

**Rollover benefits from another superannuation fund**

You can rollover benefits you have in another superannuation fund, approved deposit fund or retirement savings account to the Fund at any time.

**3. Benefits of investing with the Fund**

**Significant benefits and pensions**

The Fund allows your superannuation benefit to accumulate for your retirement and may provide benefits to your dependants or your estate should you die. The Fund may provide other benefits, such as total and permanent disability benefits, which are paid in circumstances permitted by the Fund's governing rules and the SIS legislation.

If the Fund provides a benefit to you as an income stream, then the amount that you can withdraw each year is subject to payment limits set by legislation. It may not provide an income stream for your lifetime and payments will only be made while there is enough money in your account.

**Definition - Dependant**

A dependant includes your spouse (as defined above), child, your spouse's child, an adopted or ex-nuptial child, stepchild or a child for the purposes of the Family Law Act 1975. In addition, a dependant includes any person with whom you have an interdependency relationship. Two persons generally have an "interdependency relationship" if they satisfy all of the following:

- have a close personal relationship
- live together
- one or each of them provides the other with financial support
- one or each of them provides the other with domestic support and personal care.

There is also an interdependency relationship where there is a close personal relationship and either or both people suffer from a physical, intellectual or psychiatric disability. There is no requirement for co-habitation or provision of financial or domestic support in this circumstance.

Step-children are not normally considered dependants if the legal marriage of the natural parent to the step-parent ceases (as a result of divorce or the death of the natural parent) unless they are formally adopted under State or Territory law.

**The amount of your benefit**

After you have been accepted as a member, the Fund will keep an account in your name. Your account may be credited with:

- contributions;
- proceeds of insurance policies;
- transfers or rollovers from other superannuation funds, approved deposit funds and retirement savings accounts;
- the member's share of the Fund income; and
- other amounts as determined by the Trustee.

Your account may be debited with:

- transfers or rollovers to other superannuation entities;
- benefits paid to you, your dependants or your legal personal representative;
- costs of any insurance policy;
- costs associated with the Fund's operation;

- any taxes; and
- other amounts as determined by the Trustee.

The amount of your benefit is the net credit amount in your account at any time.

The Fund may keep a number of accounts in your name at the same time for ease of administration. This may include an accumulation account and a pension account.

**When your benefits can be paid**

The Government has placed restrictions on when a person can have access to benefits. Benefits can generally only be paid from the Fund when certain conditions of release are satisfied. These include when you:

- have ceased a gainful employment arrangement and have reached your preservation age (see below) and satisfy the trustee you never intend to be gainfully employed part-time or full-time again;
- have reached age 60 and ceased a gainful employment arrangement;
- have reached age 65, irrespective of whether you have permanently retired;
- are unable to work because of permanent or temporary incapacity;
- are experiencing severe financial hardship (subject to the relevant legislation being met);
- have been diagnosed with a terminal medical condition (subject to the relevant requirements being met);
- satisfy the release of benefits on compassionate grounds (subject to the relevant legislation being met); or
- die.

It is also possible to withdraw benefits from the Fund if you are a temporary resident in Australia on certain temporary visas and you have permanently left Australia.

You can rollover your benefit to another complying superannuation entity. Also, you can cash the part of your benefit that is an unrestricted non-preserved benefit. Under the SIS legislation a benefit may comprise three categories as follows:

Preservation Status	Cashing Status
Unrestricted Non Preserved Benefits	These amounts can be cashed at any time
Restricted Non Preserved Benefits	These amounts can only be cashed if you meet a condition of release or you leave the service of a contributing employer
Preserved Benefits	These amounts can only be cashed if you meet a condition of release

**Note:** Contributions you make to the Fund are fully preserved. Rolled over benefits retain their preservation status. However, all earnings on benefits are fully preserved.



Your preservation age depends on your date of birth as shown in the following table:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 to 30 June 1961	56
1 July 1961 to 30 June 1962	57
1 July 1962 to 30 June 1963	58
1 July 1963 to 30 June 1964	59
After June 1964	60

Once you reach your preservation age you can commence a pension which has restricted commutation rules without ceasing gainful employment.

### How benefits can be paid

Your benefits can be paid as a lump sum or pension or a combination of both. Subject to certain restrictions in the SIS legislation, your benefit may be paid in cash or as a transfer of assets or you can rollover the benefit to another complying superannuation entity.

### What type of pensions can be paid?

Account-based pensions, market-linked income streams and pensions as agreed with the Trustee are available to be paid from the Fund, subject to certain restrictions in the SIS legislation. In particular circumstances these pensions can be fully or partially commuted to lump sums.

Allocated pensions, fixed term income streams and lifetime income streams may also be currently payable from an established Fund. However, it is no longer possible to commence one or more of these pensions due to changes in the SIS legislation.

Since 1 July 2017 pensions that are in retirement phase (all pensions other than Transition to Retirement pensions) are measured against a Transfer Balance Cap. This cap is initially equal to \$1.6 million which is indexed to Average weekly ordinary time earnings (AWOTE) but will only increase in \$100,000 increments. Any amount over this Cap must either be rolled over to an accumulation account or withdrawn from superannuation.

There are limited exceptions if the excess over the cap resulted from a Lifetime, Fixed term or Market-linked pension.

It is possible when establishing a new pension to nominate a reversionary beneficiary to whom the pension will automatically continue on your death. The capacity to use this option will be based on whether the person nominated is permitted to receive the death benefit as a pension under the Super Law.

### Account based pensions

An account based pension is an income stream where the level of income is at the option of the pensioner, but must be at least equal to the minimum limit set by government regulation and paid at least once each year. The minimum limit depends on the person's age and the balance of the pension account at 1 July in each year. There is no maximum limit to the amount of the pension except where it is taken as a non-commutable (transition to retirement) pension. Where an account based pension commences part way through a financial year the minimum amount is pro rated on a daily basis. If the account based pension ceases and is converted to a lump sum, or transferred to another income stream during a year, then you may be required to take a pro rata payment on conversion or transfer. If your account based pension commences on or after 1 June in a financial year there is no requirement to

take a pension payment until after 1 July but a payment must be made before the end of that financial year.

Age at each 1 July	Minimum Factor
Under age 65	4%
65-74	5%
75-79	6%
80-84	7%
85-90	9%
90-94	11%
95 or more	14%

### Non commutable pensions

(also known as transition to retirement income streams)

When a member reaches their preservation age and has not met a condition of release they may choose to commence any other types of pensions with limited commutation rules. The limited commutation rules apply between preservation age and the member satisfying another condition of release. Under the limited commutation rules a non-commutable account based pension may be commuted prior to a person satisfying a condition of release if it is to:

- cash an unrestricted non-preserved component of the benefit;
- give effect to a payment split under the family law;
- return the benefit to accumulation phase; or
- rollover the benefit to purchase another income stream.

Upon your Retirement, Permanent Incapacity or attaining age 65, your Transition to Retirement Pension becomes a Transition to Retirement pension "in retirement phase" and is reported against your Transfer Balance Cap.

**Note:** Where an account based pension is taken as a non-commutable pension, the maximum amount of the payment in any year must not exceed 10% of the pension account balance at commencement of the pension and at each subsequent 1 July.

### Market-linked income streams

(also referred to as term allocated pensions (TAPs))

A market-linked income stream is a fixed term pension. The level of income is at the option of the pensioner, but must use set criteria published by government regulation. The annual pension payable is calculated by using the balance in your account at 1 July each year divided by a pension valuation factor. The pension valuation factor is published by government regulation. The pensioner may alter the amount payable in each year by up to plus or minus 10% of the market linked pension payments determined in accordance with the calculation in the legislation, to provide the pensioner with more flexibility to manage their income payments from year to year. The rules that apply to a market-linked income stream depend on whether it commenced prior to 1 January 2006, or on or after 1 January 2006.

Where a market-linked income stream commences part-way through a year the pension amount is pro rated on a daily basis or as determined in your pension agreement. If you decide to commute or transfer your market-linked income stream to another income stream during a year, then you may be required to take a pro rata payment on transfer.

Generally, market-linked income streams are non-commutable. The main exception is where an existing market-linked income stream is rolled over to commence a

new market-linked, fixed term or lifetime income stream.

**Note:** From 20 September 2007 it is not possible to commence a market-linked income stream unless it is from the rollover of another market-linked income stream or complying lifetime or fixed term income stream and it meets certain new minimum payment requirements. Also, market-linked income streams that commence from 20 September 2007 will not receive the 50% assets test exemption for Centrelink purposes.

**Important:** The following income streams can no longer be commenced from a SMSF. If you require information on the continuation or commutation of these income streams please contact the Trustee or seek advice from a suitably qualified professional.

### Allocated pensions

An allocated pension is an income stream where the level of income paid is at the option of the pensioner, but must be within certain maximum and minimum limits set by government regulation. If the allocated pension ceases and is converted to a lump sum or transferred to another income stream during a year then you may be required to take a pro rata payment on conversion or transfer. Allocated pensions must be paid at least once each year.

### Fixed term income streams

A fixed term income stream is a pension that is payable for a predetermined period. The level of income that you receive is calculated by an actuary each year and depends on the amount you had to commence the pension, its terms, the investments used to support the pension and the level of indexation (yearly increases in the amount of the income stream).

### Lifetime income streams

A lifetime income stream is payable for your lifetime and that of the reversionary or child, if applicable. The level of income that you receive is calculated by an actuary each year and depends on the amount you have to commence the pension, the term of the pension, the investments used to support the pension, the level of indexation (yearly increases in the amount of the income stream) and whether your dependants will receive a pension in the event of your death.

Lifetime income streams that commenced prior to 20 September 2004 continue to be assets test exempt for Centrelink purposes. However, for lifetime income streams that commenced from 20 September 2004, 50% of the purchase price of the income stream will be counted for assets test purposes.

### When your benefits must be withdrawn from the Fund

There is no requirement for you to compulsorily withdraw your superannuation benefit from the Fund. On your death, benefits must be paid as soon as practicable as a lump sum, pension or a combination of both.

### Relationship breakdown

Superannuation benefits may be split between spouses on relationship breakdown. Couples that have separated can agree on splitting the superannuation interest before, during or after the relationship breakdown. If no agreement can be reached, the Family Court is able to make orders concerning the superannuation interest.

The Trustee may be required to provide information so that a superannuation agreement may be properly negotiated.

Any costs and/or legal fees associated with the Trustee implementing agreements or orders for flagging and/or splitting of superannuation interests may be deducted from

the balance of your member account in the Fund. The rules for relationship breakdown now apply to same sex relationships and de facto couples.<sup>1</sup>

**<sup>1</sup> The laws affecting de facto couples currently do not apply in all States and Territories and independent legal advice should be sought where relevant.**

### Nominating beneficiaries

#### Binding death benefit nominations

When joining the Fund you are asked whether you would like to nominate who should receive your superannuation benefits on your death. Under the SIS legislation nominations are limited to your dependants being a spouse (including a same sex spouse), children of any age and persons who rely on you for maintenance and support or someone with whom you have an interdependency relationship. In addition, you may also nominate the legal personal representative (executor) of your estate.

If you have provided a valid binding nomination the Trustee will pay the death benefit to those nominated and in the proportions you have directed. The Trust Deed allows for two types of binding nominations; a non lapsing binding nomination and a three year binding nomination.

It is important to review your nomination, if your circumstances change, particularly if you have a non-lapsing binding nomination. To remain valid, your three year binding nomination must be updated at least every three years. It is recommended that you seek professional advice in relation to making a binding nomination.

If you don't make a binding death benefit nomination, the Trustee may pay benefits to your dependants at the time of your death or your legal personal representative. The payment will be made at the Trustee's discretion, however, the Trustee can have regard to any non-binding nomination or statement of wishes you have made.

### 4. Risks of super

A member who leaves the Fund within a few years of joining the Fund may get back less than the amount of contributions paid because of the level of investment returns and the Fund's charges.

#### Investment risks

The risk associated with the investments of the Fund is generally the relationship between the type of investment and the potential returns. Each investment of the Fund generally has different risk and return profiles. Investments that earn higher returns usually carry higher risk and their value may rise and fall much more than those with lower risk. For example, more stable investments such as cash earn lower long term returns but their capital value and returns are less likely to fluctuate. Returns are not guaranteed and the value of investments may rise or fall.

### 5. How we invest your money

The rules of the Fund permit the Trustee to make a wide range of investments, including the use of certain types of borrowing arrangements that are consistent with the Fund's investment strategy and subject to the Fund meeting the requirements of the investment standards in the SIS legislation.

**Important:** The Trustee of all superannuation funds is required to have an investment strategy which takes into account the circumstances of the whole Fund.

## Investment strategy

When deciding on the Fund's investment strategy the Trustee must take into account the:

- risk associated with buying, holding and selling different types of investments;
- Fund returns and the level of the risk of the investment;
- diversification of Fund assets;
- ability of the Fund to discharge existing and prospective liabilities;
- liquidity of the Fund so that liabilities of the Fund can be met in a timely manner; and
- insurance needs of the members.

Labour standards, environmental, social or ethical considerations are generally not taken into account in the selection, retention or realisation of the Fund's investments.

A copy of the current investment strategy is available to you on your request to the Trustee.

## Member choice of investments

The Fund also permits the Trustee to have particular Fund investments kept in your name when requested. This is known as segregation. It is up to the Trustee to decide whether any investment you have selected is suitable to be segregated and any income, costs and charges associated with the nominated investment will be credited or debited to your account.

## Investment restrictions

A key area of responsibility for the trustee of an SMSF is investment management. Superannuation law places certain duties and responsibilities on Trustees when making investment decisions. The following outline some of the investment restrictions under superannuation law.

### Loans/financial assistance to members or a member's relative

Trustees of SMSF's are not allowed to provide lending or financial assistance from the Fund to a member or a member's relative.

### Borrowings

SMSF's are prohibited from borrowing money except in some limited circumstances. Trustees are able to borrow for a maximum of 90 days to meet benefit payments due to members as long as the borrowing does not exceed 10% of the Fund's total assets.

Trustees can also borrow for a maximum of seven days to cover the settlement of security transactions if the borrowing does not exceed 10% of the Fund's total assets. However, trustees cannot, as a matter of course, borrow to settle security transactions, unless at the time the transaction was entered into it was likely that the borrowing would not be needed.

Under the SIS legislation superannuation funds are permitted to borrow under limited circumstances as long as certain conditions are met. It is recommended that appropriate tax and financial advice, including further information about the risks of gearing, are sought before implementing this strategy.

### Acquisition of assets from a related party

See 'How can contributions be made to the Fund' under 'How a self-managed super fund works' on page 4.

### Investments to be made and maintained on an arms-length basis

Investments by SMSFs must be made and maintained on a strict commercial basis. The purchase and sale price of Fund assets should always reflect a true market value for the asset. Income from assets held by the Fund should always reflect a true market rate of return.

## Liquidity and cash flow considerations

While it is possible to invest up to 100% of a Fund's cash holdings, from a prudent management and investment perspective all Funds should hold sufficient cash to cover expenses and taxes that are payable throughout the year. Where benefits are being paid additional cash reserves may be held to meet these requirements.

## 6. Fees and costs

There are no fees or charges on contributions you make to the Fund or on the benefits paid from the Fund.

However, the Trustee may incur fees and charges from time to time. The types of expenses expected to be incurred may include:

- costs, charges and expenses incurred or to be incurred in relation to the acquisition, registration, custody, disposal of or other dealings with the Fund investments
- all fees, wages and expenses of any person engaged by the Trustee, including auditors, actuaries, advisors, investment managers or custodians
- payment of tax by the Trustee in relation to the operation of the Fund and on behalf of any member in connection to the Fund
- costs, charges and expenses incurred or to be incurred for the preparation, maintenance and distribution of any accounting records, returns, reports or other documents in relation to the Fund
- any other costs, charges and expenses in relation to the Fund's management and administration.

If you wish to compare the impact of the fees and charges that may apply in your circumstances, the Australian Securities and Investments Commission (ASIC) has a number of calculators to assist you. They are available on the internet from [www.moneysmart.gov.au](http://www.moneysmart.gov.au) and are useful when considering moving funds.

You may also incur charges when you obtain advice in connection with an adviser recommending a particular type of superannuation arrangement or investment. The cost of obtaining this advice would be incurred by you and not by the Fund.

For as long as the Fund is a self-managed superannuation fund, the trustees, and if the Trustee is a company, its directors, are not permitted to receive payments for their role as trustees or Trustee Directors of the Fund.

## 7. How your super is taxed

The following general taxation information is based on the understanding of the tax laws and rulings current at the date of issue of this Product Disclosure Statement. It is prudent to seek professional taxation advice on your particular taxation position.

### Tax on contributions

All tax deductible personal contributions to the Fund and all employer contributions that are within the concessional contributions cap are taxed in the Fund at 15%. Contributions that are in excess of the concessional contributions cap may be included in the individual's assessable income and taxed at their marginal tax rate.

From 1 July 2013, an individual's assessable income may include any excess concessional contributions for that financial year. On receipt of an excess concessional contributions determination from the Australian Taxation Office, the individual can elect to release up to 85% of the amount of their excess concessional contributions for that financial year directly from their benefit in the Fund. A tax offset of 15% of their excess concessional contributions

(equating to contributions tax already paid) can also be claimed by the individual in their income tax return. This offset is not able to be refunded, carried forward or transferred.

Where a tax file number has not been quoted and an employer contribution is received, the Trustee is required to deduct tax from the contribution at the rate of 47%.

If a member's total non-concessional contributions exceeds the non-concessional contribution cap, then additional tax at the rate of 45% plus Medicare levy will be due if the excess contribution amount remains within the fund. This tax amount must be deducted from the person's superannuation balance. Alternatively, the excess non-concessional contribution may be returned to the member, with tax being payable on the earnings associated with contribution.

### Tax on investment earnings

Superannuation fund investment earnings are taxed at a maximum rate of 15%. However, in exceptional circumstances investment earnings that are regarded as excessive may be taxed at 45%. There are special rules that apply to capital gains. Where fund assets are held by the Fund for at least 12 months a maximum tax rate of 10% may apply to taxable capital gains after deducting any capital losses. Any income and capital gains on fund assets used to pay pensions are not taxable.

The Fund may need to obtain an actuarial certificate if the Fund has both accumulation and pension accounts to determine the tax exempt portion of the Fund's investment earnings for the financial year.

### Tax on benefits and withdrawals

Any member benefit payments may be taxed depending on the age of the person receiving the benefit, whether it is paid as a superannuation lump sum or income stream, and the type of component in the benefit.

A superannuation benefit may comprise three components:

- the tax free component;
- a taxable component which includes:
- an element taxed in the Fund and/or
- an element untaxed in the Fund.

In most cases the tax free component is made up of contributions made from after-tax income and that part of your superannuation benefit that accrued prior to 1 July 1983. The taxable component is the total amount of the superannuation benefit less the tax free component. It usually consists of tax deductible contributions made on your behalf or by your employer and earnings on all contributions made to the Fund. An amount that is untaxed in the Fund usually relates to the payment from an insurance policy on a member's death where a tax deduction has been granted to the Fund for the insurance premiums paid.

All lump sums and pensions paid from the Fund after you have reached age 60 are tax free.

If you receive a lump sum or pension from the Fund and you are under age 60 it may be taxed. No tax will be payable on the tax free component of the lump sum. However, the taxable component may be taxed at up to 15% (excluding Medicare Levy) for someone between their preservation age and age 60. For a person younger than their preservation age who receives a lump sum, tax of 20% (excluding Medicare Levy) is payable on the taxable component of the benefit.

If you receive a pension from the Fund and you are under age 60, it is taxed as your income and may be reduced by a proportional amount which relates to the tax free component. You may also be eligible for a tax offset on the taxable part of the pension depending on your age and the circumstances in which the pension is paid. The Trustee is

obliged to deduct relevant Pay As You Go (PAYG) tax from the amount of pension paid to you.

#### **Definition - PAYG Instalment**

Pay As You Go Instalment is payable by the Fund either quarterly or annually. The time for payment of the instalment depends on the notional tax liability of the Fund. A self-managed superannuation fund is also required to prepare an Activity Statement (either a Business Activity Statement if registered for Goods and Services Tax (GST), or an Instalment Activity Statement if not registered for GST).

#### **Definition - PAYG Withholding**

Pay As You Go Withholding is required to be deducted where the Fund is paying a lump sum or pension to a member under the age of 60. The amount of tax deducted is paid to the ATO and recorded on a Payment Summary which is included in the recipient's income tax return.

If a member exceeds their Transfer Balance Cap, then The ATO will issue a determination of the excess amount including a calculation of notional earnings which will need to be removed from a member's nominated pension account either rolled to an accumulation account or withdrawn as a lump sum superannuation benefit. In both cases a tax liability will arise for the fund on the notional earnings.

### Providing your tax file number (TFN) to the Trustee

If the Fund does not hold a member's Tax File Number (TFN) higher tax may apply to the member's employer concessional contributions and the Fund cannot accept non-concessional and member concessional contributions. Any additional tax you pay due to the Fund not being advised of your TFN can (but is not required to) be claimed back by the Fund if the TFN is quoted in the subsequent 3 year period for the benefit of the relevant member.

## 8. Insurance in your super

The Trustee may take out insurance to secure your benefit in the Fund.

You may also request the Trustee to take out insurance on your behalf. You can nominate the type of policy to be effected in these circumstances.

Typically the insurance will be death insurance, disability insurance or a combination of both. You may be required to give information about your health before being eligible for insurance cover. You would typically be covered from the time the insurer accepts you under the policy, and cover would cease when the policy lapses or you cease to be a member, whichever first occurs.

The Trustee may deduct the cost of premiums from the Fund's income account or a member's account. The Trustee may also insure the assets of the Fund and maintain Trustee liability insurance.

## 9. How to open an account

You may become a member of the Fund if your application, or if any contribution made by you or on your behalf, is accepted by the Trustee.

## 10. Other Information

If you would like further information about the Fund, you may contact the Trustee in writing at the address specified on page 2. The Trustee will provide you with the information if it is available and may also provide you with any other information the Trustee reasonably believes a member would need to make an informed assessment of:

- the management and financial condition of the Fund;  
and
- the investment performance of the Fund.

### **Dispute Resolution**

If you have a complaint concerning the Trustee, or your membership of the Fund, you should lodge your complaint in writing to the Trustee. The Trustee will then deal with your complaint in accordance with any applicable dispute resolution system contained in the Fund's governing rules, and/or under the SIS legislation.

### **Conflict between this PDS, the Trust Deed and SIS Act**

Should there be any conflict between the PDS and the Trust Deed, the provisions of the Trust Deed prevail.

Should there be any conflict between the Trust Deed and the SIS legislation, the provisions of the SIS legislation prevail.