

Superannuation Trust Deed for a Self-Managed Fund

for

Burn Notice Super Fund

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THE TRUSTEE FOR BURN NOTICE SUPER FUND
91 HILLY ST
MORTLAKE NSW 2137

Date of Issue
30 JUL 14

TAX FILE NUMBER ADVICE

Your tax file number (TFN) is:

388 858 302

Keep this notice in a safe place for further reference.

This TFN has been issued either in response to your recent application/enquiry, or at the discretion of the Commissioner of Taxation.

Under the law the Commissioner may issue a TFN as necessary, even if you did not apply for one. This only occurs after we have conducted a comprehensive search of our records and were unable to establish that any TFN belonged to you.

While our TFN searches are comprehensive, we appreciate that you may already have a TFN. If you do already have a TFN please call us on 13 28 66 between 8am and 6pm Monday to Friday so that we may amend our records.

Yours sincerely

Robert Ravello
Deputy Commissioner of Taxation

Certificate of Registration of a Company

This is to certify that

BURN NOTICE SUPER PTY. LTD.

Australian Company Number 600 903 759

is a registered company under the Corporations Act 2001 and
is taken to be registered in New South Wales.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is
the twenty-fifth day of July 2014.



ASIC

Australian Securities & Investments Commission

Issued by the
Australian Securities and Investments Commission
on this twenty-fifth day of July, 2014.

A handwritten signature in black ink, appearing to read 'G. Medcraft'.

Greg Medcraft
Chairman

CERTIFICATE

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Overview

For the convenience of users, this superannuation trust deed is written in plain language. It contains only those clauses that are appropriate for the particular form of self-managed superannuation fund that you have chosen. *It is not suitable for any other form of fund.*

If you decide to change the trustees of the fund, for example, replace individual trustees with a corporate trustee or replace a corporate trustee with individual trustees, you will have to use the Cleardocs system to create a replacement deed that incorporates the necessary clauses for the new form of fund.

You cannot change the form of the fund in any other way.

A Establishment of the fund

The establishment of the fund

- 1 The person named in Schedule 1 as the 'person establishing the fund' establishes the Burn Notice Super Fund as a self-managed superannuation fund under the SIS Act. It is an indefinitely continuing superannuation fund.

Purpose of the fund

- 2 The sole or primary purpose of the fund is to provide old age pensions and other benefits to members on their retirement.

Trustee of the fund

- 3 The initial trustee is named in Schedule 1 of this deed. The trustee accepts the appointment. The fund is vested in the trustee. No other person (including a member) has any legal or beneficial interest in any asset of the fund except to the extent expressly stated elsewhere in this deed. The trustee must manage the fund in accordance with this deed.

Method of decision by trustee under this deed

- 4 The trustee may only make decisions under this deed in the manner set out in the trustee's constitution.

Deed subject to superannuation law

- 5 This deed is to be interpreted so as to comply with superannuation law. In particular, it is to be construed so that the fund it establishes qualifies as a self managed superannuation fund under superannuation law and so that it qualifies for, and payments from it qualify for, concessional tax treatment under the Tax Act. To the extent that anything in this deed is inconsistent with superannuation law, it is to be severed from the deed. Any obligation imposed by superannuation law in respect of the fund established by this deed that is not expressed in this deed is nonetheless to be regarded as incorporated in it by reference.

Trustee must comply with law

- 6 The trustee must not do or fail to do anything as trustee of the fund that would result in either of the following:
 - a breach of law, including superannuation law; or
 - the fund ceasing to qualify as a self managed superannuation fund under superannuation law or to qualify for, or for payments made from the fund to qualify for, concessional tax treatment under the Tax Act.

B Membership

Initial members of the fund

- 7 The initial members of the fund are named in Schedule 1. Each of them has completed and signed the 'Application to become a Member' in a form that is equivalent to the form set out in Schedule 2.

Trustee may appoint additional members

- 8 The trustee may appoint a person as an additional member of the fund if he or she has completed and signed an 'Application to become a Member' in a form that is equivalent to the form for initial members set out in Schedule 2, or on another form approved by the trustee.

The additional member must consent to doing all things necessary to become a director of the trustee of the fund upon appointment unless the additional member is unable to become a director of a trustee under superannuation law.

Beneficiaries as additional members

- 9 Subject to clause 13, a person who is to receive a death benefit from the fund in the form of a pension becomes a member of the fund when:
- the trustee has accepted that person as an additional member; and
 - that person has received a pension payment from the fund.

Applicant to provide information to trustee

- 10 On written request by the trustee, a member or applicant for membership of the fund must supply the trustee with information that the trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the trustee.
- 11 If a member fails to do so, the trustee may refuse to accept further contributions in respect of that member.
- 12 If an applicant fails to do so, the trustee may decline to accept the applicant as a member.

Conditions must be met

- 13 Subject to clause 29, a person does not become an additional member of the fund, and the trustee must not accept a person as an additional member of the fund, unless each of the following conditions is met:
- the total number of members would be no more than 4;
 - the person is not disqualified from being a director of the trustee of the fund;
 - the person is not in an employment relationship with another member of the fund except another member who is also a relative of that person;
 - the trustee is satisfied that the person will become a director of the trustee of the fund on being accepted as a member of the fund.

Effect of becoming member

- 14 An additional member becomes bound by this deed on being accepted as an additional member.

Date of commencement of membership of additional member

- 15 An additional member's membership commences on the date the trustee specifies, when accepting the person as a member. If the trustee does not specify a date, then the additional member's membership commences on the date the trustee received his or her application or the date referred to in clause 9 (if applicable).

Date of additional member's commencement as trustee

- 16 An additional member becomes director of the trustee of the fund on the date his or her membership commences provided that the trustee has done everything necessary to appoint the additional member as a director of the trustee.

Back-dating of membership

- 17 With the trustee's consent, the relevant participating employer may back-date the commencement of an additional member's membership for any period the employer thinks fit. Unless the employer decides otherwise with the agreement of the trustee, that additional period will count as a period of membership.

Conditions on membership

- 18 The trustee may impose any conditions the trustee thinks fit on the membership of an additional member and the additional member's rights and duties. The trustee may remove or vary any condition at any time.

Trustee must notify new member

- 19 As soon as practicable after a person becomes a member of the fund (and not later than 3 months after the person becomes a member), the trustee must ensure that the member is given a product disclosure statement (in the form set out in Schedule 6, updated as required) which the superannuation law requires to be given to new members of the fund.

Trustee must disclose and report

- 20 The trustee must ensure that members, former members and beneficiaries are provided with information in writing, or copies of accounts, records and documents of the fund, that the superannuation law requires them to be given.

Trustee must notify exiting member

- 21 As soon as practicable after a person ceases to be a member of the fund, the trustee must ensure that that person (or his or her legal personal representative) is given a written statement of the information the superannuation law requires to be given to persons who cease to be members of the fund.

Limit on disclosure

- 22 A dependant of a member is not entitled to any additional information relating to the operation or conduct of the fund which the trustee thinks it is inappropriate to disclose.

Members must inform trustee of change affecting fund compliance

- 23 A member must immediately inform the trustee if the member becomes aware that either of the following may happen:
- the member may enter into an employment relationship with another member who is not also a relative of the member; or
 - the member may be disqualified from being a director of the trustee of the fund.

Members and trustee must ensure fund compliance

- 24 A member and the trustee must ensure that the member ceases to be a member of the fund within 6 months after either of the following happens:
- the member enters into an employment relationship with another member who is not also a relative of the member; or
 - the member is disqualified from being a director of the trustee of the fund.

Trustee and members must rectify non-compliance

- 25 If a member of the fund enters into an employment relationship with another member who is not also a relative of the member, or becomes disqualified from being a director of the trustee of the fund, the trustee and the members must do whatever is necessary to ensure that, within 6 months after the member entered into the employment relationship or became disqualified:
- no member of the fund is in an employment relationship with another member who is not also a relative of the member; and
 - no member of the fund is disqualified from being a director of the trustee of the fund.

Types of compliance arrangement

- 26 The types of things that may be done to ensure compliance include each of the following:
- a member may request the member's benefits or entitlement in the fund to be paid in accordance with this deed or to be transferred or rolled over to an approved benefit arrangement under clause 151.
 - the trustee may transfer a member's benefits or entitlement in the fund to an eligible roll over fund under clause 152.

Ceasing to be a member

- 27 A person ceases to be a member of the fund as soon as the first of the following happens:
- the person dies.

- the person ceases to be a director of the trustee of the fund.
- when payment of all the member's benefits is made to the member or to an approved benefit arrangement for the member.
- when benefits payable to or for the member cease to be payable.

When a person ceases to be a member of the fund, the person ceases to be a director of the trustee of the fund, if he or she has not already ceased to act in that role.

Exception to ceasing to be a member

- 28 A person (**first person**) does not cease to be a member of the fund when the first person ceases to be a director of the trustee of the fund if:
- another person (**second person**) has been appointed to act as a director of the trustee of the fund in the place of the first person; and
 - that second person is the first person's legal personal representative, while he or she holds an enduring power of attorney in respect of the first person or while the first person is under a legal disability.

Minor as a member

- 29 A minor, being a person who is under 18 years of age, may be a member of the fund provided the superannuation law is complied with. In relation to a member who is a minor:
- the minor's parent or guardian must make the application for the minor to become a member in the form set out in Schedule 5 or in the form otherwise approved by the trustee;
 - decisions in relation to the minor's membership must be made by the minor's parent or guardian until:
 - the minor turns 18; or
 - after the minor turns 16, the time at which the parent or guardian notifies the fund that the minor will be making decisions in relation to the minor's membership;
 - when the minor turns 16, any parent or guardian acting as a director of a corporate trustee in place of the member, may continue acting in that role; and
 - when the minor turns 18, the parent or guardian acting as a director of the trustee of the fund must do everything necessary to procure that the minor be appointed as a director of the trustee of the fund in place of them acting in that role.

C Accounts of the fund

Trustee must establish certain types of account

- 30 The trustee must establish:
- an accumulation account or a pension account, or a combination of both, in respect of each member or beneficiary for each class; and
 - an income account.

Credits to accumulation accounts

- 31 The trustee may credit (and in the case of clause 31.11, allot and credit) each of the following to the accumulation account of a member according to the class to which they are relevant:
- 31.1 Contributions made by a member.
 - 31.2 Contributions made in respect of the member or a beneficiary of that member by an employer.
 - 31.3 Other contributions allowed under this deed and superannuation law that are made in respect of the member.
 - 31.4 Positive earnings transferred from the income account.
 - 31.5 A shortfall component paid in respect of that member after any tax that is payable in relation to it has been deducted from it.
 - 31.6 An amount paid to the trustee as a transfer or roll over payment in respect of that member which the trustee thinks it appropriate to credit to the account.
 - 31.7 A forfeited amount allocated to the member or beneficiary under clause 126.
 - 31.8 An amount transferred from the pension account of a beneficiary of the member.
 - 31.9 The proceeds of an annuity or insurance policy effected by the trustee in respect of the member or a beneficiary of the member which the trustee thinks it appropriate to credit to the account.
 - 31.10 Financial assistance under part 23 of the SIS Act which the trustee thinks it appropriate to credit to the account.
 - 31.11 An amount deducted from the accumulation account of another member pursuant to a contributions-split request made by that other member and accepted by the trustee.
 - 31.12 Any other amount the trustee thinks it appropriate to credit to the account.

Debits to accumulation accounts

- 32 The trustee may debit each of the following from the accumulation account of a member according to the class to which they are relevant:
- 32.1 The proportion that the trustee thinks appropriate of the expenses of the fund.
 - 32.2 The proportion that the trustee thinks appropriate of either of the following:
 - tax payable in respect of contributions or any shortfall component that are paid to the fund; or
 - any earnings of the fund credited to the accumulation account or arising as a result of a roll over payment.
 - 32.3 A payment of a benefit to or in respect of the member or a beneficiary of the member except a payment from a pension account.
 - 32.4 An amount paid out of the fund in respect of the member or a beneficiary of the member as a transfer or roll over payment.

- 32.5 The cost of any annuity or policy of insurance effected by the trustee in respect of the member or a beneficiary of the member; and the proportion that the trustee thinks equitable of any group policy effected by the trustee in respect of the member or beneficiary and another member or beneficiary.
- 32.6 The amount of a lien in respect of an indemnity exercised by the trustee in accordance with this deed.
- 32.7 An amount forfeited in accordance with this deed.
- 32.8 The proportion that the trustee thinks appropriate of any negative earnings of the fund determined in accordance with this deed.
- 32.9 An amount paid to indemnify the trustee in accordance with this deed.
- 32.10 An amount credited to the pension account of a beneficiary.
- 32.11 The proportion that the trustee thinks appropriate of a levy.
- 32.12 The amount of tax attributable to the member or a beneficiary of the member.
- 32.13 An amount to be allotted and credited to the accumulation account of another member pursuant to a contributions-split request made by the member whose accumulation account is to be debited and accepted by the trustee.
- 32.14 Any other amount the trustee thinks it appropriate to debit.

Contributions-split requests

- 33 A member may ask the trustee (in a way that satisfies the requirements of superannuation law) that contributions made to the fund in respect of that member in the previous financial year be:
- 33.1 allotted to the accumulation account of that member's spouse; or
- 33.2 rolled-over or transferred to the trustee of an approved benefit arrangement of which that member's spouse has joined or is eligible to join.
- 34 The trustee must allot, roll-over or transfer the relevant contributions pursuant to a request received under clause 33 provided:
- The request satisfies the requirements of superannuation law.
 - The trustee is satisfied that the allotment, roll-over or transfer complies with superannuation law; and
 - The amount of the contributions that the trustee allots, rolls-over or transfers does not exceed the amount in the member's accumulation account, taking into account any amount that the trustee otherwise determines to debit from the member's accumulation account.

Credits to the income account

- 35 The trustee may credit each of the following to the income account of the fund:
- 35.1 Income and profits of the fund.
- 35.2 Adjustment credits made in accordance with clause 38.

- 35.3 The proceeds of an insurance policy which the trustee decides not to credit to a member's or beneficiary's accumulation or pension account.
- 35.4 A surplus resulting from a valuation under clause 42.
- 35.5 Financial assistance received by the fund under part 23 of the SIS Act which the trustee decides not to credit to a member's or beneficiary's accumulation or pension account.

Debits to the income account

- 36 The trustee may debit each of the following to the income account of the fund:
 - 36.1 The expenses of the fund, except those the trustee debits from a member's or beneficiary's accumulation or pension account.
 - 36.2 Tax payable or likely to become payable in respect of contributions, shortfall components, or income and profits of the fund, except tax the trustee debits from a member's or beneficiary's accumulation or pension account.
 - 36.3 Adjustment debits made in accordance with clause 38.
 - 36.4 The cost of an insurance policy which the trustee decides not to debit from a member's or beneficiary's accumulation or pension account.
 - 36.5 A deficiency resulting from a valuation under clause 42.
 - 36.6 The amount of a levy, except an amount the trustee debits from a member's or beneficiary's accumulation or pension account.
 - 36.7 Any loss on the disposal of an investment of the fund.

Tax on income

- 37 The trustee must make provision for the payment of any tax payable in relation to the taxable income of the fund and must deduct any tax that is payable and that has not already been deducted from the income account or an accumulation or pension account.

Distribution from income account

- 38 At the end of each fund year, the trustee must determine the fund earning rate. The trustee must allocate amounts from the income account to each accumulation or pension account in proportion to the amount standing to the credit of that account at the beginning of the relevant fund year. The trustee must make an appropriate adjustment for any amount credited or debited to the account since the beginning of that year.

Trustee may establish equalisation account

- 39 The trustee may establish an equalisation account which the trustee may use for any of the following purposes:
 - 39.1 To give effect to the reserving strategy the trustee establishes to smooth the investment earnings of the fund.
 - 39.2 To increase the fund earning rate.
 - 39.3 To pay tax payable by the fund.

- 39.4 To pay the expenses of the fund.
- 39.5 To provide for any contingencies the trustee decides to provide for.
- 39.6 To provide an amount to or for a member, former member, pensioner, beneficiary, including adding to an accumulation or pension account, provided there is no breach of superannuation law.
- 39.7 To do anything else the trustee decides to do, provided there is no breach of trust or superannuation law.

Credits to equalisation account

- 40 The trustee may credit the equalisation account with any of the following:
- the portion the trustee thinks fit of an amount paid into the fund as a transfer or roll over payment.
 - an amount transferred from the forfeiture account under clause 126.
 - an amount transferred from a pension account under clause 89.

Trustee may establish or maintain other accounts or reserves

- 41 The trustee may establish or maintain any other account for or reserve of the fund that the trustee thinks necessary or desirable or that is required or permitted by superannuation law. The trustee may use such accounts or reserves for any purpose permitted by superannuation law and may credit or debit amounts from such accounts or reserves as the trustee sees fit.

Valuation of fund

- 42 The trustee must value the assets of the fund at market value when superannuation law requires it and when the trustee thinks it appropriate to do so. The trustee may also determine whether there is a surplus or deficiency which it is equitable in the trustee's opinion to transfer to the income account.

Interim fund earning rate

- 43 If the trustee is required to establish an interim fund earning rate, the trustee must do so in accordance with superannuation law on a basis the trustee believes to be equitable. If the Regulator or superannuation law requires it, the trustee must inform members of that basis.

D Contributions

Member contributions

- 44 With the trustee's consent, a member may make any contributions to the fund that the member decides to. With the member's and the participating employer's consent, contributions can be paid by deduction from wages or salary. In that case, the member's employer must pay them to the fund in the way the trustee directs.

Employer contributions

- 45 A participating employer of a member may make any contributions to the fund in respect of that member that the trustee and the employer agree to.

Other contributions

- 46 With the consent of the trustee and the member, any other person including:
- a spouse of that member;
 - another member;
 - another trustee of a regulated superannuation fund (including pursuant to a contributions-split requested by the member's spouse);
 - any State, Territory or Federal government (including under the Federal government's co-contribution scheme);
- may make contributions to the fund in respect of that member.

Participating employers

- 47 The trustee may allow an employer to become a participating employer and to make contributions in respect of a member or an eligible person who wishes to become a member. The trustee may require the employer to apply in the form in Schedule 3 'Application to become a Participating Employer'. The employer becomes a participating employer either on the date appointed by the trustee or the date it begins making contributions on behalf of a member, whichever is the earlier.

How contributions to be made

- 48 A contribution to the fund must be made in the way the trustee directs. It must be made within the time specified by superannuation law. It may be made in cash, or by the transfer of assets in accordance with superannuation law. The only assets that may be transferred are those that are authorised investments under clause 62.

Late contributions

- 49 Despite clause 48, if the trustee agrees then an employer may make an employer contribution after the time the superannuation law requires the payment to be made. If the trustee agrees, and the employer makes the payment, this does not relieve the employer's liability to pay any additional charges or penalties arising under superannuation law because of the late payment.

Failure to contribute

- 50 In the absence of an agreement, neither a member nor his or her employer is under an obligation to make a contribution to the fund in respect of that member. A failure to do so does not affect the member's membership of the fund.

Contributions etc not accepted

- 51 The trustee must not accept any of the following:

- a contribution that is not permitted by superannuation law;
- a contribution or shortfall component the acceptance of which would prevent the fund from qualifying as a complying superannuation fund; and
- an employer contribution or shortfall component which the regulator lawfully directs the trustee not to accept.

Breach of clause headed 'Contributions etc not accepted'

52 If the trustee becomes aware that a contribution or shortfall component has been accepted in breach of clause 51, the trustee must refund the amount within any time specified by, and only as permitted by, superannuation law. However, the trustee may deduct each of the following from that amount:

- any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
- reasonable administration charges; and
- any other amount the trustee considers appropriate, acting reasonably.

The trustee may reduce the benefits of the member to those which the member would have had if the contribution or shortfall component had not been accepted.

Other contributions not accepted

53 The trustee may refuse to accept:

- a contribution that the trustee has determined not to accept because the trustee has not been informed of the relevant member's tax file number;
- excess contributions.

Permissible actions if excess contributions accepted

54 If excess contributions are made to the fund by or in respect of a member, then the trustee may:

- release funds to the member if the trustee has received a member release authority;
- release funds to the Commissioner of Taxation where the trustee has received an ATO release authority; and
- release funds in any other circumstances, and to such persons, as is permitted under superannuation law.

Allocation of contributions

55 If the trustee receives a contribution in a month, the trustee must allocate the contribution to the relevant member of the fund:

- within 28 days after the end of the month, or any other period as required by

superannuation law (**relevant period**); or

- if it is not reasonably practicable to allocate the contribution to the relevant member of the fund within the relevant period – within any longer period as is reasonable in the circumstances.

Reduction of contributions by employer

- 56 An employer who is under an obligation to make contributions in respect of a member may, with the trustee's consent, reduce the amount of those contributions to the extent that it becomes required to make contributions in respect of that member to another fund of which the member is also a member.

Tax on contributions and shortfall components

- 57 Either the trustee or the employer or other appropriate body must deduct any tax that is payable in relation to any contribution or shortfall component before it is credited to the member's accumulation account.

Surcharge

- 58 The trustee must make provision for any surcharge or other amount that is payable under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and related legislation, and must deduct the amount from the relevant contributions.

Termination of employer's contributions

- 59 A participating employer ceases being a participating employer and may cease making contributions to the fund if any of the following occurs to the employer:
- an administrator, receiver, receiver and manager, controller or similar officer is appointed to the employer (or its property) or a resolution is passed to appoint such an officer;
 - an order is made to appoint a liquidator or provisional liquidator of the employer;
 - the employer, being a corporation, gives the trustee a written notice that it is, or under applicable legislation the employer is taken to be, unable to pay its debts as and when they fall due;
 - the employer, being an individual, commits an act of bankruptcy or becomes insolvent;
 - the employer gives the trustee written notice that it is permanently terminating its contributions to the fund.

Effect of termination on member's contributions

- 60 A member whose participating employer has ceased to make contributions under this deed under the previous clause may not make any contributions without the trustee's consent.

No termination on transfer of business to another employer

- 61 If a participating employer amalgamates with another participating employer or disposes of its business to another participating employer, members who were employees of the former participating employer are deemed for the purposes of this deed to have become employees of the latter participating employer, which may then make contributions in respect of them.

E Investment

Authorised investments

- 62 The trustee must invest any assets of the fund that are not required for payment of benefits or other amounts under this deed. The trustee must do so in accordance with the current investment strategy or strategies. The following are the types of investment in which the assets may be invested:
- 62.1 Investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia.
 - 62.2 Securities in any company incorporated anywhere, whether carrying on business in Australia or not.
 - 62.3 Deposit (whether secured or not) with a bank, friendly society, building society, credit co-operative, trustee company, or other registered financial institution.
 - 62.4 Real or personal property, including an improvement to that property.
 - 62.5 Units (including sub-units) in a unit trust established or situated anywhere in the world by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant.
 - 62.6 Futures, options or any other synthetic investment.
 - 62.7 Hedging, swapping or any similar arrangement, even though it is not linked to any property of the fund.
 - 62.8 Deposit (whether secured or not) with, or loan (whether secured or not) to, any person (including an employer) on any terms the trustee thinks reasonable. The fact that the trustee has a direct or indirect interest in the deposit or borrowing or may benefit directly or indirectly from it is irrelevant.
 - 62.9 A policy or annuity with an insurer, whether by proposal or purchase.
 - 62.10 Instalment warrants or receipts.
 - 62.11 By way of a limited recourse borrowing arrangement in accordance with clause 142.
 - 62.12 Any other investment allowed by superannuation law that the trustee thinks appropriate.

Forbidden investments

- 63 The trustee must not invest in any investment that is forbidden by superannuation law. The trustee must not make an investment in the form of a loan or other financial assistance to a member or a relative of a member.

Strategy

- 64 The trustee must formulate one or more investment strategies for the fund in accordance with superannuation law. The trustee must inform members and beneficiaries of the strategies adopted by the trustee. The trustee may review and change a strategy at any time. The trustee must continually monitor the strategies to ensure that they remain appropriate.

Power to deal with investments

- 65 The trustee may sell, transfer or vary any investment at the trustee's absolute discretion in accordance with this deed. The trustee must do so in the interests of members and beneficiaries. The trustee must continually monitor the investments to ensure that they remain appropriate.

Investment choice by members

- 66 The trustee may decide to allow one or more members or beneficiaries to choose between investment strategies. If the trustee does this, the trustee must establish a range of possible investment strategies, and may designate particular assets for those strategies. The trustee must provide the members or beneficiaries with information concerning the strategies and the relevant investment objectives to enable the member or beneficiary to choose between them on an informed basis. The trustee must also provide them with information concerning their rights under this deed.

Member or beneficiary may choose strategy

- 67 A member or beneficiary who has been offered investment choice by the trustee may choose one or more of the strategies prepared by the trustee by completing any documents the trustee requires. On having done so, the member or beneficiary may direct the trustee to invest any part of the fund that is held for that person in accordance with those strategies. Any direction must be in accordance with superannuation law.

Member or beneficiary may not choose particular investments within strategy

- 68 A member or beneficiary who has directed the trustee to invest any part of the fund that is held for that person in accordance with those strategies may not direct the trustee to invest in any particular investment. However, the member or beneficiary may request the trustee to develop an investment specific strategy and to make it available to that member or beneficiary. The trustee may accept or reject the request.

Chosen strategies to be monitored

- 69 The trustee may continually monitor any strategies adopted by members or beneficiaries for investment choice to ensure that they remain appropriate for the members or beneficiaries to whom they are available.

Sub-accounts etc for investment choice

- 70 If a member adopts a strategy for investment choice, the trustee may do each of the following:
- 70.1 Establish a sub-account of the income account in respect of that strategy.
 - 70.2 Credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the income account itself.
 - 70.3 Allocate earnings attributable to that strategy to the member's or beneficiary's accumulation account or pension account in a way that the trustee thinks equitable.
 - 70.4 Determine a fund earning rate for that sub-account.

Power to deal with investment choice investments

- 71 The trustee may sell, transfer or vary any investment made in accordance with a strategy for investment choice, at the trustee's absolute discretion in accordance with this deed. The trustee must do so in the interests of the relevant members or beneficiaries. The trustee must continually monitor the investments to ensure that they remain appropriate.

F Benefits: general

Limit on payment of preserved payment benefits

- 72 The trustee must not pay out to a member or a dependant of a member any preserved payment benefit that superannuation law does not allow the trustee to pay out.

When payment of preserved payment benefits allowed

- 73 The trustee may pay a member or, if applicable, a dependant of a member, a preserved payment benefit in any of the following circumstances:
- 73.1 The member reaches the relevant preservation age and takes a transition to retirement pension in accordance with Part G.
 - 73.2 The member retires from gainful employment on or after reaching the relevant preservation age.
 - 73.3 The member becomes totally and permanently disabled.
 - 73.4 The member becomes totally and temporarily disabled.
 - 73.5 The member reaches age 65.
 - 73.6 The member dies.
 - 73.7 Any other circumstance allowed by superannuation law.

Payment of non-preserved amount

- 74 With the trustee's consent, a member may withdraw any part of the non-preserved amount in the member's accumulation account. The member must apply to the trustee in writing for the withdrawal in a form acceptable to the trustee. The trustee may set a minimum withdrawal amount by notifying the members of the fund.

Vesting and compulsory payment

- 75 A member's benefit entitlement will vest in accordance with superannuation law. The trustee must cash or commence to cash a member's benefit entitlement as soon as practicable after the member dies or the entitlement has vested. If a lump sum is payable, the trustee may pay it in several stages: an initial payment and then subsequent payments.

Possible addition to entitlement when member ceases to be member

- 76 If a member ceases to be a member of the fund, the trustee may pay an amount that the trustee thinks appropriate from the equalisation account (if any) into the member's accumulation account.

Anti-detriment payments (section 295-485 of the *Income Assessment Act 1997*)

- 77 Where the trustee is to make a payment because a member has died (a **death benefit**), the trustee may pass on to the recipient of that payment any benefit that would accrue to the fund if a deduction were allowed under section 295-485 of the *Income Tax Assessment Act 1997*.

Trustee may retain benefit in fund

- 78 If a member or beneficiary requests it, the trustee may retain any part of a benefit in the fund. The trustee may do so until one of the following occurs:

- 78.1 The member or beneficiary decides otherwise.
- 78.2 The member or beneficiary dies.
- 78.3 The amount has to be paid under this deed or superannuation law.
- 78.4 The trustee decides otherwise.

Subject to Part H, the payment the trustee then makes must be the amount standing to the credit of the member's or beneficiary's accumulation and pension account at that time.

Transfer of insurance policy

- 79 If a member or beneficiary is entitled to a benefit which includes an interest in an insurance policy, the trustee may assign that policy to the member or beneficiary, or to any of the dependants of the member the trustee thinks fit. The trustee must debit the value of the policy to the relevant accumulation or pension account. Neither the trustee nor an employer is liable for any further payment of premiums in relation to the policy.

Information to be provided to trustee

80 On written request by the trustee, an applicant, member or beneficiary must supply the trustee with information that the trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the trustee.

If an applicant, member or beneficiary fails to do so, the trustee may suspend collection of contributions in respect of that person, may withhold benefits from that person, and may impose conditions on the person, as the trustee thinks fit.

Trustee may adjust benefits for wrong information

81 The trustee may adjust any benefit payable to or in respect of a member if an applicant, member or beneficiary has supplied false or misleading information to the trustee, or has deliberately withheld information from the trustee, that affects or is likely to affect benefits payable to or in respect of that member.

G Pensions: general

Trustee's power to pay pension

82 When any part of a benefit becomes payable to a member under this deed or in accordance with superannuation law, the trustee has a discretion to decide whether to pay one or more pensions to the member or to use the benefit payable to acquire one or more annuities in the name of the member. The pensions or annuities may be of any type permitted by superannuation law (including, without limitation, an account-based pension) and will be in substitution for the relevant part of any lump sum benefit that was payable to the member for the amounts credited to the member's pension account as a transfer of a roll over payment under clause 88.2.

Member or beneficiary may choose type of pension

83 The relevant member or beneficiary may choose the type of pension that is to be paid, including a transition to retirement pension. However, the pension must be of a type that is allowed by superannuation law or is acceptable to the Regulator. It may include a pension wholly determined by reference to policies of life assurance purchased or obtained by the trustee of a regulated superannuation fund solely for the purposes of providing benefits to members of that fund. The pension must be paid in accordance with the requirements of the superannuation law.

Actuarial certificate

84 The trustee must obtain an actuarial certificate in accordance with superannuation law in relation to any pension that the trustee decides to pay, unless either section 295-390 (or any other provision) of the *Income Tax Assessment Act 1997* (Cth) provides otherwise in which case the trustee has a discretion as to whether to obtain an actuarial certificate.

Funding pension through annuity

85 The trustee may fund a person's pension by purchasing an annuity payable to the trustee.

Trustee may allocate benefit between 2 or more spouses

- 86 If there are 2 or more spouses of a member, the trustee may decide in what proportion each is entitled to a benefit payable under this deed to the member's spouse.

Trustee must establish pension account

- 87 If the trustee decides to pay a pension to a person in accordance with this deed, the trustee must establish a pension account in the name of that person.

Credits to pension account

- 88 The trustee may credit each of the following amounts to the person's pension account, subject to superannuation law:
- 88.1 The amount the trustee believes necessary to fund the pension.
 - 88.2 The amount paid into the fund in respect of the pensioner as a transfer or roll over payment which the trustee thinks it appropriate to credit to that account.
 - 88.3 Earnings of the fund which the trustee thinks it appropriate to credit to that account.
 - 88.4 A shortfall component paid in respect of the pensioner.
 - 88.5 Contributions lawfully paid in respect of the relevant member.
 - 88.6 Adjustment credits made in accordance with clause 38.
 - 88.7 The proceeds of an annuity or insurance policy effected by the trustee in respect of the pensioner which the trustee thinks it appropriate to credit to the account.
 - 88.8 Financial assistance under part 23 of the SIS Act which the trustee thinks it appropriate to credit to the account.
 - 88.9 Any other amount the trustee thinks it appropriate to credit to the account.

Debits to pension account

- 89 The trustee may debit each of the following amounts to the person's pension account, subject to superannuation law:
- 89.1 The proportion that the trustee thinks appropriate of the expenses of the fund.
 - 89.2 The proportion that the trustee thinks equitable of any negative earnings of the fund determined in accordance with clauses 38, 70 or 90.
 - 89.3 The proportion of the loss on the disposal of investments of the fund that the trustee thinks equitable.
 - 89.4 Amounts transferred from the fund in respect of the pensioner as a transfer of a roll over payment which the trustee thinks it appropriate to debit to the account.
 - 89.5 Payments made to or in respect of the pensioner or a reversionary beneficiary under this deed.
 - 89.6 The cost of an insurance policy or annuity effected by the trustee in respect of the pensioner which are not debited from the member's accumulation account.

- 89.7 The proportion of an amount payable as taxation in respect of the earnings of the fund that are credited to the pensioner's account or arise from a roll over payment that the trustee thinks equitable.
- 89.8 The proportion of an amount paid in respect of an indemnity to the trustee or other person under this deed that the trustee thinks equitable.
- 89.9 The amount of a levy that the trustee thinks equitable.
- 89.10 An amount transferred to the accumulation account of a beneficiary.
- 89.11 Any other amount that the trustee thinks it appropriate to debit from the account.

Adjustment based on fund earning rate

- 90 In determining the amount standing to the credit of an accumulation account at the time a benefit or pension is calculated or becomes payable, the trustee must make an adjustment to the account that the trustee thinks equitable on the basis of the interim fund earning rate at that date. The adjustment must be made in respect of the period from the beginning of the current fund year to the relevant date. The income account must be credited or debited accordingly.

Segregation of assets and valuation

- 91 The trustee may segregate from other assets those assets which are to fund the pension of a person under this deed. The trustee must value those assets as required by superannuation law. If they are insufficient or more than sufficient to fund the pension, the trustee must do anything that superannuation law requires. The trustee must obtain any certificate of adequacy that the trustee considers necessary in respect of those assets in order to comply with the Tax Act or superannuation law.

Pensions: residue in account

- 92 On the death of a pensioner being paid a pension the trustee must, subject to superannuation law:
 - act in accordance with the terms on which the relevant pension is paid, including as to the payment of the pension to a reversionary beneficiary; and
 - then, if there is no reversionary beneficiary, or if there is any residue in the pension account for any other reason, pay that residue as a death benefit in accordance with Part H of this deed.

Trustee's right to commute pensions generally

- 93 On written request by a pensioner, or in accordance with superannuation law or this deed, the trustee may commute all or any part of a pension and apply the proceeds of that commutation in accordance with superannuation law, including by commuting it to a lump sum and paying it to the relevant person or his or her estate. The following general conditions apply in respect of all types of pension:
 - The commutation must be allowed by, and be in accordance with, superannuation law.
 - The commutation must not disadvantage the fund, an employer, a member or

pensioner.

If the trustee commutes only part of a pension, the trustee must then adjust the amount of the pension payable as required by superannuation law.

Qualification of pensions as asset test exempt income streams

- 94 The trustee may decide that a pension should qualify as an asset test exempt income stream (as that term is defined by the *Social Security Act 1991*). If the trustee so decides:
- 94.1 the superannuation law prevails over the terms of this deed to the extent of any inconsistency;
 - 94.2 this deed is deemed to contain any provision that is required by superannuation law; and
 - 94.3 this deed is deemed not to contain any provision that is required to be excluded by superannuation law.

H Death, disability and retirement benefits

Death benefit payments

- 95 The trustee may pay the death benefit on the death of a current member of the fund. The trustee can do that under:
- 95.1 a death benefit agreement, clause 97;
 - 95.2 a binding death benefit notice, clause 99; or
 - 95.3 a non-binding death benefit notice, clause 100.
- 96 In the ways set out in this Part H, the trustee must pay the full amount standing to the credit of the accumulation account, and any pension account residue referred to in clause 92, either as a lump sum, or as one or more pensions or annuities, or both.

Death benefit agreement payment arrangements

- 97 On the death of a member or beneficiary who has a death benefit agreement:
- 97.1 the death benefit agreement prevails over clause 99 and over any binding death benefit notice or non-binding nomination form;
 - 97.2 the trustee must pay, or apply, the relevant benefit in accordance with the rules set out in the death benefit agreement; and
 - 97.3 Part I of this deed applies to the payment of the relevant benefit.
- 98 A death benefit agreement need be executed only by the trustee and the relevant member or beneficiary. On execution, the terms of any death benefit agreement form part of this deed. They are to be read together with this deed and in accordance with the following rules:
- 98.1 a death benefit agreement replaces any previous death benefit agreement;

- 98.2 if there is a death benefit agreement, then any binding death benefit notice is to be treated as not in effect for the purposes of this deed and of regulation 6.17A(4) of the SIS Regulations (but see also clause 98.4 which can overrule this clause);
- 98.3 if there is any inconsistency between the death benefit agreement and the remaining provisions of this deed, then the terms of the death benefit agreement prevail to the extent of that inconsistency — except that clause 5 of this deed prevails over the agreement; and
- 98.4 if part of the death benefit agreement is invalid because it directs the trustee to pay part, or all, of the benefits to a person to whom those benefits may not be paid in accordance with superannuation law (**disallowed benefits**) then:
- clause 98.2 does not apply in respect of the disallowed benefits;
 - clauses 97 and 98.1 to 98.3 apply to any part of the death benefit agreement which remains valid (and to the payment of death benefits other than disallowed benefits); and
 - clauses 98.1 to 98.3 apply for the purpose of determining the disallowed benefits, and the disallowed benefits must be paid in accordance with the remainder of this Part H.

Binding death benefit notice payment arrangements

- 99 After the death of a member or beneficiary who has given the trustee a binding death benefit notice, the trustee must comply with that notice subject to clauses 97 and 98.

Non-binding death benefit notice payment arrangements

- 100 If after the death of a member or beneficiary, not all death benefits have been paid or applied in accordance with a death benefit agreement or binding death benefit notice, then the trustee must pay or apply the relevant benefit in the way the trustee thinks fit in accordance with the following rules:
- 100.1 If the member or beneficiary has left dependants, then the trustee must pay or apply the benefit to or for the benefit of any one or more of the dependants of the member or beneficiary and the legal personal representatives of the member or beneficiary. The trustee may do so in any proportions the trustee thinks fit and may take into account a member's wishes contained in a non-binding nomination form.
- 100.2 If the member or beneficiary has not left any dependants but does have a legal personal representative, then the trustee must pay the benefit to the legal personal representatives of the member or beneficiary.
- 100.3 If the member or beneficiary has not left any dependants and has no legal personal representative, then the trustee may pay or apply the benefit to or for the benefit of any individual at the trustee's discretion. The trustee may do so in any proportions the trustee thinks fit.
- 100.4 If the trustee has not paid or applied the benefit to or for the benefit of any person under the preceding sub-clauses 100.1 to 100.3, then the trustee must treat the benefit as a forfeited benefit entitlement.

Death of member or former member

- 101 If a member or former member who has become entitled to a lump sum benefit dies before the payment is made, then the trustee must pay the amount in accordance with clauses 97 to 100.

Discharge of trustee

- 102 If a dependant, legal personal representative, relative or other person receives any part of a benefit in accordance with clauses 97 to 101, then that discharges the trustee from liability in relation to the benefit. The trustee is not responsible for seeing how the benefit is applied.

Total and permanent disablement benefit

- 103 The trustee must pay a benefit to a member whom the trustee believes to be totally and permanently disabled unless requested otherwise by the member. The benefit may be either of the following:
- A lump sum equal to the full amount standing to the credit of the accumulation account of the member; or
 - One or more pensions or annuities representing that amount.

Temporary total disablement benefit

- 104 The trustee must pay a benefit to a member whom the trustee believes to be temporarily totally disabled unless requested otherwise by the member. The benefit must be in the form of a pension or annuity that represent the following amounts:
- In the case where the trustee is entitled to a benefit under an insurance policy in relation to the member's temporary total disablement, the amount payable to the trustee.
 - In any other case, the amount decided by the trustee, provided it does not reduce the minimum withdrawal benefit of the member under superannuation law.

The member is not entitled to commute any part of this benefit.

Period of payment: temporary total disablement

- 105 The trustee must cease paying the benefit for temporary total disablement:
- In a case where the trustee is entitled to benefit under an insurance policy in relation to the member's temporary total disablement, when the trustee ceases to be entitled to that benefit.
 - In any other case, when the member ceases to be temporarily totally disabled, or reaches normal retirement age, or becomes entitled to another benefit under this deed or requests that the benefit ceases to be paid.

Method of payment: temporary total disablement

- 106 The trustee must pay the benefit in respect of temporary total disablement in the following way:

- In a case where the trustee is entitled to benefit under an insurance policy in relation to the member's temporary total disablement, in the way the benefit is paid by the insurer.
- In any other case, in the way the trustee decides.

Member contributions may be suspended: temporary total disablement

107 A member may suspend his or her contributions during a period while he or she is receiving a benefit in relation to temporary total disablement.

Membership not affected by temporary total disablement

108 A member does not cease being a member because he or she is receiving a benefit in respect of temporary total disablement.

Retirement benefit

109 The trustee may pay a member the retirement benefit at the member's request if either of the following applies:

- the member retires from employment on or after reaching normal retirement age; or
- the member becomes entitled under superannuation law to the payment of a benefit despite still being employed.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of one or more lump sums representing the amount standing to the credit of the member's accumulation account. However, the trustee may also use part, or all, of that amount to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

Early retirement

110 On request by a member, the trustee must pay a benefit to that member in each of the following cases:

- the member ceased to be employed before normal retirement age, but has reached the relevant preservation age.
- the member retired from an arrangement under which the member was gainfully employed and has reached 60 or another age prescribed by superannuation law.
- in any other case as permitted by superannuation law.

The trustee must pay the benefit in any form permitted by superannuation law, including in the form of one or more lump sums representing the amount standing to the credit of the member's accumulation account. However, the trustee may also use part, or all, of that amount to purchase one or more pensions or annuities decided on in consultation with the member. The trustee must immediately inform members of the election.

I Payment of benefit

Trustee must notify that benefit is payable

- 111 The trustee must give notice that a benefit is payable to the following persons:
- If the benefit is payable to a member, to that member.
 - If the benefit is payable on the death of a member, to the nominated beneficiary, the reversionary beneficiary, the legal representatives of the member, known dependants of the member and any other person the trustee reasonably believes may have an entitlement or interest in the benefit.
 - In any other case, any persons the trustee reasonably believes may have an entitlement or interest in the benefit.

Method of notice

- 112 The trustee must give a person written notice of the time within which that person may claim an entitlement to the benefit and of how to make that claim. If the person satisfies the trustee that he or she is entitled to a benefit, the trustee must notify any persons to whom a notice was required to be sent under clause 111 to enable them to object to a payment to that person. If no objection is received or the specified period for objecting has passed, the trustee must pay the relevant part of the benefit to that person.

Claim out of time

- 113 If a person makes a claim out of time to an entitlement to a benefit, the trustee is not bound to make any payment to that person.

Unclaimed benefit

- 114 The trustee must give the Regulator a statement of any unclaimed benefits and must pay them to the Regulator as required by superannuation law.

Tax on benefit

- 115 Either the trustee or an insurer or other appropriate body must deduct any tax that is payable in relation to a benefit before that benefit is paid.

Where benefit is payable

- 116 A benefit is payable at the trustee's principal office, or at a substitute place the trustee notifies to the member or beneficiary.

Trustee may send benefit to person entitled

- 117 The trustee may send a benefit to the postal address that the person entitled to it has last notified to the trustee, or to the bank account into which that person has asked the benefit to be paid, or to some other place the trustee decides on.

Notification of address etc

118 A person to whom a benefit becomes payable must notify the trustee of his or her full residential address, and of any change in that address. He or she must also notify the trustee of a bank account into which he or she asks the benefit to be paid.

Receipt to be given

119 On request by the trustee, a person to whom a benefit is paid must give the trustee a receipt and release for the payment in the form required by the trustee.

Person under legal disability

120 If a person to whom the trustee is to pay any part of a benefit is under a legal disability, or the trustee believes that it would be in that person's best interests for the trustee not to make the payment to that person, the trustee may make the payment in any of the following ways as the trustee thinks fit:

- To or for the maintenance, education, advancement, support or benefit of the person on any conditions.
- To, and for the benefit of, another person who appears to the trustee to be any of the following: the trustee, spouse, child, parent or guardian of the person, or a person having custody of that person.

Discharge of trustee

121 The receipt by a person of a payment in accordance with clause 120 discharges the trustee from liability in relation to it. The trustee is not responsible for seeing to its application.

Transfer of assets

122 With the consent of a member or beneficiary to whom a benefit is payable, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

J Forfeiture of benefit entitlements

Note: Forfeiture accounts are now generally prohibited. Maddocks recommends that you seek professional advice before establishing such an account.

Forfeiture account

123 The trustee may establish or maintain a forfeiture account into which the trustee must pay any amount forfeited under this deed. Money held in that account does not form part of an accumulation account. The trustee must credit any income from that money to the forfeiture account.

Circumstances of forfeiture

124 All benefit entitlements of a person are forfeited in each the events in 124.1-124.6 — unless the trustee has determined otherwise within six months after the relevant event. The trustee's determination has effect from the date specified by the trustee which may be a date before the date of the event.

124.1 The person assigns or charges, or attempts to assign or charge a benefit entitlement, except in accordance with superannuation law.

124.2 The person's interest in a benefit entitlement becomes payable to or vested in another person or a government or public authority.

124.3 The person is or becomes insolvent or has committed or commits an act of bankruptcy.

124.4 The person is unable personally to receive or enjoy any part of the entitlement.

124.5 In the trustee's opinion, the person is incapable of managing his or her affairs.

124.6 In the trustee's opinion, the person is guilty of fraud or dishonesty.

This clause does not apply to the extent that it would be made ineffective by the *Bankruptcy Act 1966* or superannuation law.

Forfeiture of residue

125 A person forfeits the residue in an accumulation account if the trustee is satisfied that the person has been paid all benefits that he or she is entitled to be paid under this deed.

Application of forfeiture account

126 The trustee may pay or apply forfeited money held in the forfeiture account in any one or more of the following ways in accordance with superannuation law:

126.1 To or for the benefit of the relevant person or the dependants of the relevant member in any proportions the trustee decides on.

126.2 To the trustee of the relevant member's estate.

126.3 To or for the benefit of other members or their dependants who have rights to receive benefits under this deed.

126.4 To provide additional benefits to other members or their dependants in accordance with superannuation law.

126.5 To the equalisation account (if any).

126.6 To any employees of the member or former member the trustee thinks appropriate.

126.7 To any other person or entity the Regulator approves in writing.

Limit in relation to payments to member or dependants

127 The trustee must not make a payment under clause 126 to a member who is still being employed by an employer, except for the purpose of relieving the hardship of that member or his or her dependants.

Possible adjustment to entitlements

- 128 If the event that gave rise to forfeiture of an entitlement in respect of a member ceases to affect that member, the trustee may re-establish any rights in the member that the trustee thinks fit. They must not be greater than they were before the forfeiture.

K Provisions relating to the *Family Law Act*

Payment splits

- 129 If the trustee receives a splitting agreement or court order under Part VIII B of the *Family Law Act*, then provided the agreement or court order has been properly served and subject to superannuation law, the trustee may:
- vary the relevant member's benefit or benefit entitlement on such bases (including by commutation of any pension having regard to the advice of an actuary) and at any time the trustee determines from time to time, to the extent permitted by superannuation law; and
 - make a payment to the non-member spouse or a transfer in respect of the non-member spouse in accordance with clause 133.

Rules for payment splits

- 130 The trustee may as it determines from time to time subject to superannuation law, make rules dealing with:
- the valuation of a non-member spouse's benefit or benefit entitlement (including any adjustments);
 - the timing of the calculation of the non-member spouse's benefit or benefit entitlement;
 - other matters relating to the payment split or the non-member spouse's benefit or benefit entitlement.

Deferred payment splits

- 131 If the trustee is required by superannuation law or considers that it is appropriate to defer giving effect to a payment split, then provided the splitting agreement has been served properly, the trustee must:
- record the existence of the agreement or court order; and
 - keep a record of the non-member spouse's benefit or benefit entitlement on such basis (including a notional basis) and in such manner as the trustee determines from time to time subject to superannuation law.

Flagging agreements

- 132 If the trustee receives a flagging agreement or court order under Part VIII B of the *Family Law Act*, then provided the agreement or court order has been properly served, the trustee must:
- record the existence of the agreement or court order; and

- defer payment of the benefit to or in respect of the relevant member until the agreement or court order is lifted.

Transfer of non-member spouse interests

- 133 If the trustee receives a splitting agreement or court order under Part VIII B of the *Family Law Act*, the agreement or court order has been validly served, then if any amount becomes payable in respect of the non-member spouse under that agreement or order:
- the trustee must pay that amount to the non-member spouse – if the non-member asks for that payment in writing; or
 - the trustee must transfer that amount to another fund (including an eligible rollover fund) in respect of that non-member spouse if the non-member asks for that transfer in writing.

Any payment amount under this clause must be in accordance with superannuation law. The receipt by the non-member spouse or the trustee of that other fund will sufficiently discharge the trustee of its liability in respect of that non-member spouse.

Refusal to admit as member

- 134 Provided that the trustee acts in accordance with superannuation law, the trustee may refuse to admit a non-member spouse as a member of the fund.

L Trustee's powers

All the powers of an individual

- 135 The trustee has all the powers in relation to the assets of the fund that the trustee would have if the trustee were the legal and beneficial owner of those assets. It also has all the powers that a trustee has at law and the powers specifically conferred on the trustee by this deed.

Trustee's discretion

- 136 The trustee has an absolute discretion in relation to exercising or not exercising any power under this deed or at law, and in relation to the way in which any power is exercised. The trustee's decision on such a matter is final and binding.

Delegation of power

- 137 The trustee may delegate to another person, including one or more directors of the trustee, any power or duty on any terms the trustee thinks fit, including by appointing an attorney under a power of attorney. The trustee may alter or revoke any delegation including any power of attorney.

Trustee not subject to direction

- 138 The trustee is not subject to direction in exercising any power under this deed or at law, except to the extent indicated under superannuation law.

Specific powers

- 139 To exclude any possible doubt, the trustee has the power to do any of the following to the extent allowed by superannuation law:
- 139.1 To underwrite or sub-underwrite risks, contingencies or liabilities under a superannuation arrangement conducted by an employer under an agreement for the transfer of employees to the fund.
 - 139.2 To indemnify a person.
 - 139.3 To open and operate bank accounts in the usual way, and to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities.
 - 139.4 To do anything the trustee considers necessary or desirable in connection with performing its obligations under this deed.

Limit on borrowing

- 140 The trustee must not (except as provided by this deed in clause 142 and superannuation law):
- 140.1 borrow money; or
 - 140.2 maintain an existing borrowing of money.

Trustee may grant security over asset

- 141 The trustee may, to the extent allowed by superannuation law, mortgage, pledge, charge, assign or otherwise provide as security, any asset of the fund for the purpose of the trustee borrowing or maintaining a borrowing of money including (without limitation) for the purpose of a "limited recourse borrowing arrangement" referred to in clause 142.3.

Note: There are strict requirements which must be met for a borrowing, and any associated mortgaging or charging of assets, to be lawful (see Part 7 of the SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act). Maddocks recommends that you seek professional advice before entering into any arrangements under which the fund borrows money or mortgages or charges its assets.

When borrowing is allowed (including "limited recourse borrowing arrangements")

- 142 The trustee may borrow or maintain a borrowing of money in any one or more of the following cases:
- 142.1 to enable the trustee to pay a surcharge or advance instalment which the trustee is required to pay under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* — as long as the borrowing complies with section 67(2A) of the SIS Act;
 - 142.2 to enable the trustee to settle a transaction to acquire any one or more of the securities listed in section 67(3)(a) of the SIS Act — as long as the borrowing complies with all of the requirements of section 67(3) of the SIS Act;
 - 142.3 under an arrangement (a "limited recourse borrowing arrangement") which the trustee enters, or has entered into, in which the money borrowed is, or has been,

used to acquire an asset that superannuation law allows the trustee to acquire — as long the borrowing complies with Part 7 of the SIS Act.

- 143 Clause 142 does not limit the circumstances in which the trustee may borrow or maintain a borrowing of money.

Note: There are strict requirements which must be met for a borrowing to be lawful (see Part 7 of the SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act). Maddocks recommends that you seek professional advice before entering into any arrangements under which the fund borrows money.

Trustee's power to effect insurance

- 144 The trustee may arrange one or more insurance policies with one or more insurers to secure the benefit of a member. A policy may be a group policy or an individual policy.

Trustee bound to exercise power in limited cases

- 145 The trustee is not bound to arrange one or more insurance policies, except where the trustee has informed the member or beneficiary that the trustee will arrange a policy of a specified type and amount and the member or beneficiary has not asked the trustee in writing not to do so, or has withdrawn his or her request for the trustee to arrange that policy.

Even so, the trustee is not bound to arrange a policy that the trustee is unable to arrange.

Inconsistent conditions in policy

- 146 If an insurer will only insure a member or beneficiary on conditions that are inconsistent with the conditions in respect of a benefit payable in respect of the member or beneficiary, the trustee may impose the policy conditions on that benefit despite the conditions stated in this deed.

Powers not affected by conflict of interests

- 147 The trustee may exercise any power under this deed or at law despite the fact that the trustee, or a director of the trustee, has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise. An indirect interest or benefit includes, without limitation, where the trustee, or a director of the trustee, obtains or may obtain an interest or benefit as a director, officer, shareholder, partner, unitholder or beneficiary of a third party with whom the trustee enters into a transaction or arrangement.

Disclosure of conflict of interest

- 148 The trustee and any director of the trustee must disclose conflict of interests of the type described in clause 147 in accordance with superannuation law.

Trustee's power to effect transfer on written request

- 149 On written request by a member or beneficiary, the trustee may transfer to the trustee of an approved benefit arrangement any part of the amount in the fund that represents the

member's or beneficiary's benefit or benefit entitlement. The trustee may only do so if the following conditions are met:

- The member or beneficiary is eligible to join or has joined the arrangement.
- The trustee is satisfied that the transfer complies with superannuation law.
- The amount the trustee transfers must not exceed the amount in the member's or beneficiary's accumulation account, except to the extent of any amount that the trustee decides to add to that account from the equalisation account (if any) under clause 39.

Form and effect of transfer

- 150 The member or beneficiary must complete and execute any documents required by the *Tax Act* for the transfer to be completed as a roll over payment. A receipt from the approved benefit arrangement discharges the trustee from all liability in respect of the amount transferred. The trustee is not responsible for seeing to the application of that amount by the approved benefit arrangement. On completion of the transfer, the member or beneficiary (and anyone entitled to claim in any way in respect of that person) ceases to have any rights against the trustee or the fund in respect of the relevant amount.

Trustee's power to transfer to successor fund

- 151 The trustee may transfer to the trustee of an approved benefit arrangement that is a successor fund to the fund under superannuation law any part of the amount in the fund that represents a benefit entitlement. The consent of the member or beneficiary is not required. Nor is it necessary that the member already be a member of the successor fund.

Trustee's power to transfer to eligible roll over fund

- 152 In accordance with superannuation law, the trustee may transfer to an eligible roll over fund any part of the amount in the fund that represents a member's or beneficiary's benefit entitlement. The trustee must do so if superannuation law requires it.

Transfer of assets

- 153 With the consent of a member or beneficiary to whom or in respect of whom a transfer is to be made under clauses 151 or 152, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

The trustee's power to receive transfer

- 154 The trustee may take over or acquire by transfer from an approved benefit arrangement any part of the assets of that arrangement that represent the interest of a participant in that arrangement who has become or is to become a member or beneficiary of the fund. The trustee will hold the amount on trust for that person in the relevant accumulation or pension account. The person will have rights in respect of that amount that are equivalent to the rights he or she had under the approved benefit arrangement. The trustee may decide that the person is to be treated as having been a member of the fund from the time he or she became a member of the approved benefit arrangement.

M Administration of fund

Dealing with money received

155 The trustee must ensure that any money received by the fund is dealt with as soon as practicable in one of the following ways:

- Deposited to the credit of the fund in an account kept with a bank, friendly society, building society, or other similar body chosen by the trustee.
- Paid to the credit of an insurer for the payment of premiums in relation to a policy of insurance effected by the trustee for the purposes of the fund.
- Paid into the trust account of a lawyer, accountant or investment manager appointed in accordance with this deed.

Effect of receipts

156 A receipt given by the trustee or the secretary of the fund or another person authorised by the trustee in writing to issue receipts is a sufficient discharge to the person by whom money is paid to the fund.

Employers to provide information to trustee

157 On written request by the trustee, an employer must give the trustee any information which it has or can obtain that is, in the trustee's opinion, necessary or desirable for managing and administering the fund. The trustee may act on that information and is not required to verify it.

Compliance

158 The trustee must comply with superannuation law and with any directions of the Regulator in relation to the fund.

Trustee may not charge fees

159 The trustee must not charge any fees in relation to acting as trustee under this deed or performing any services in respect of the fund.

Trustee entitled to be reimbursed for expenses

160 The trustee is entitled to be reimbursed from the fund for all expenses, taxes, levies, charges, fees and other amounts necessarily or reasonably incurred in acting as trustee under this deed.

Trustee to keep records and accounts

161 The trustee must keep proper records and accounts of all money received by the fund and paid out by it, including adequate details of all dealings by the fund in connection with that money.

Trustee to collect money owing to the fund

- 162 The trustee must ensure that money owing to the fund is collected promptly and dealt with in accordance with this deed.

Trustee to keep records, accounts, books etc

- 163 The trustee must ensure that all records, books, accounts, minutes, reports and other documents are maintained and kept safe in accordance with superannuation law for the period required by that law.

Documents to be prepared

- 164 The trustee must ensure that each of the following is prepared in respect of the fund in accordance with superannuation law:
- A statement of its financial position.
 - An operating statement.
 - Any other account or statement required by superannuation law.

Annual return

- 165 The trustee must ensure that an annual return and any other documents required under superannuation law are prepared and lodged with the Regulator in accordance with that law.

Audit

- 166 The trustee must arrange for the books, accounts and records of the fund to be audited annually or as required by superannuation law by an auditor qualified in accordance with superannuation law.

Disclosure requirements

- 167 The trustee must ensure that information and documents are provided to each of the following persons if required by, and in accordance with the requirements of, superannuation law:
- employers.
 - the Regulator.
 - the actuary (if one is appointed).
 - the auditor.
 - any other person.

Availability of books and records

- 168 The trustee must ensure that the books of the fund and information relating to it are available for inspection and copying, and that access is provided to premises where the

books and information are available to be inspected and copied, in accordance with superannuation law.

Availability of deed and documents

169 The trustee must ensure that this deed and any other documents (or copies of the deed and documents) are made available for inspection by a member, or by a beneficiary on the beneficiary's request, as required by superannuation law. It is sufficient if they are available for inspection at the trustee's office while that office is open.

Appointment of auditor

170 The trustee may appoint a suitably qualified person as auditor of the fund.

Appointment of actuary

171 The trustee may appoint as actuary of the fund:

- an actuary who is a Fellow of the Institute of Actuaries of Australia;
- a member of a firm or company of which at least one member or director is a Fellow of the Institute of Actuaries of Australia; or
- an auditor who is appropriately qualified and is independent according to criteria specified by superannuation law.

Appointment of administration manager

172 The trustee may appoint one or more suitably qualified persons to act as administration manager of the fund or a specified part of the fund.

Appointment of investment manager

173 The trustee may appoint one or more suitably qualified persons to act as investment manager of the fund or a specified part of the fund in accordance with superannuation law.

Appointment of custodian

174 The trustee may appoint one or more suitably qualified persons to act as custodian of the fund or a specified part of the fund, including (without limitation) as part of a limited recourse borrowing arrangement referred to in clause 142.3.

Superannuation law to be observed

175 Any appointment by the trustee must be in accordance with superannuation law.

Trustee may remove person from office

176 The trustee may remove from office a person the trustee has appointed to an office.

Trustee not bound by advice

- 177 Except to the extent required by superannuation law, the trustee is not bound to follow the advice of a person the trustee has appointed.

Liability of the trustee is limited

- 178 To the extent allowed by superannuation law, neither the trustee nor any of its directors, officers or employees is liable for anything done or not done in connection with acting as trustee, unless at least one of the following applies:
- The person fails to act honestly.
 - The person intentionally or recklessly fails to exercise the degree of care and diligence the person is required to exercise.
 - The person incurs a monetary penalty under a civil penalty order made in accordance with superannuation law.

Indemnity

- 179 To the extent allowed by superannuation law, the trustee and each of its directors, officers and employees are entitled to an indemnity from the fund in all cases where the person is not liable under the preceding clause. The trustee has a lien on the assets of the fund for this purpose.

Other persons who may act

- 180 Subject to superannuation law, the trustee may appoint the following persons to act as director of the trustee of the fund.
- the legal personal representative of a deceased member, from the date of the member's death until the member's death benefits begin to be paid;
 - the legal personal representative of a member, while he or she holds an enduring power of attorney in respect of the member or while the member is under a legal disability;
 - the legal personal representative, parent or guardian of a member who is a minor; or
 - any other person if the superannuation law allows that person to be a director of the trustee and the fund would remain a self managed superannuation fund.

Appointment of members as trustee

- 181 The trustee may appoint the members of the fund as trustees in place of the trustee by executing a deed to that effect. It may only do so if immediately afterwards it executes another deed which provides the mechanisms to enable the members of the fund to act as trustees.

Appointment of replacement corporate trustee

- 182 The trustee may appoint as a replacement trustee a corporation of which the members of the fund are the only directors. The trustee must do everything necessary to vest the fund

in the replacement trustee and must deliver all records and other books to the replacement trustee.

Continuity of office

- 183 When a person ceases to be a trustee or becomes a trustee, any other person acting as trustee must do everything necessary to vest the fund in the new or remaining trustees and must deliver all records and other books to the new or remaining trustees.

Appointment and resignation of trustee

- 184 The trustee will determine who acts as trustee in accordance with this deed and superannuation law for the fund to continue as a self managed superannuation fund and will take the necessary steps to appoint or remove the persons or body to or from the office of trustee. The trustee may accept the trustee's resignation in writing for this purpose.
- The appointment or removal of a trustee must be in writing and must immediately be advised to any other trustee.
 - Where the trustee is unable or unwilling to determine who will act as trustee then the majority of members of the fund will determine who will act as trustee. If there are no members in the fund, the former members of the fund (or their legal personal representatives) will determine who acts as trustee of the fund.
 - To the extent permitted by law, these provisions apply to the exclusion of any statutory provisions relating to the appointment of new trustees, including statutory provisions which may otherwise require registration of the relevant deed or instrument.

N Miscellaneous

Trustee may elect to wind up fund

- 185 The trustee may elect to wind up the fund on a specified date in either of the following cases:

185.1 The trustee decides to wind up the fund.

185.2 There are no longer any members of the fund.

The trustee must elect to wind up the fund on a specified date if the Regulator requires the fund to be wound up.

Notice of winding up

- 186 The trustee must give notice to each participating employer and member that the fund is to be wound up on the specified date.

Payment etc on winding up

- 187 After deducting from the assets of the fund the costs of administering and winding up the fund, the trustee must pay the benefits in the following order to the extent that the assets of the fund are sufficient to do so:

- Benefits to which members, former members or their dependants are entitled but which they have not been paid on the day before the termination date.
- Additional benefits to members, former members or their dependants as the trustee thinks appropriate.
- Payment to the participating employers that have made contributions in respect of members or former members as the trustee thinks appropriate.

Employment relationship not affected by this deed

- 188 Nothing in this deed affects any powers an employer has in relation to a contract of employment. An actual or prospective right under this deed, or the ending of such a right, is not to be taken into account in relation to any legal action, including one based on termination of employment.

Legal rights of member not affected by this deed

- 189 Nothing in this deed affects any right a person may have to claim compensation or damages at common law or under statute.

Variation

- 190 Subject to clauses 191 to 193, the trustee may vary this deed either prospectively or retrospectively. The trustee may do so by oral declaration, written resolution or deed. If superannuation law requires it, the trustee must promptly give a certified copy of the resolution or a copy of the deed to the Regulator.

Limits on effect of variation

- 191 If one or more death benefit agreements are in place under this deed, then any variation of the deed does not vary any death benefit agreement or clauses 97 or 98 – unless that variation expressly states that it does vary any one or more of those things. Instead, those agreements and clauses continue to apply in respect of the fund.
- 192 If one or more agreements or arrangements are in place in respect of the fund relating to payment of a pension, then any variation of the deed does not vary those agreements or arrangements – unless that variation expressly states that it does vary one or more of those things. Instead, those agreements and arrangements continue to apply in respect of the fund.

Limits on power to vary

- 193 The trustee does not have power to vary this deed so as to do either of the following:
- Reduce or adversely affect the rights of a member to accrued entitlements that arise before the variation is effected.
 - Reduce the amount of any other entitlement that is or may become payable in relation to a time before the date of the variation.

However, this (the rule in the previous sentence with the 2 dot points) does not apply if the reduction is necessary to enable the fund to comply with superannuation law or if each affected member, or the Regulator, consents in writing to the reduction.

The trustee also does not have power to vary this deed in a way that would have either of the following effects:

- unless the trustee is a corporation, altering the purpose of the fund so that it is no longer solely or primarily the provision of old age pensions under superannuation law.
- unless the sole or primary purpose of the fund is to provide old age pensions to members, allowing any person except a corporation to be appointed trustee of the fund.

Notice of variation

- 194 If superannuation law requires it, the trustee must inform members and beneficiaries in writing of the nature and purpose of the variation and its effect on their entitlements or rights. The trustee must do so in accordance with superannuation law.

Dispute resolution

- 195 If superannuation law requires it, the trustee must establish a system complying with that law for dealing with enquiries and complaints from members, beneficiaries and dependants.

Interpretation

- 196 A reference in this deed to:
- a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 - a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
 - a person includes the legal personal representatives, successors and assigns of that person;
 - any body which no longer exists or has been reconstituted, renamed, replaced or whose powers and functions have been removed or transferred to another body or agency, whether expressly or impliedly, is a reference to the body which most closely serves the purpose or objects of the first-mentioned body;
 - a clause, schedule or appendix is reference to a clause, schedule or appendix in or to this deed;
 - this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - the singular includes the plural and vice versa; and
 - a gender includes the other gender.

Proper law

197 This deed is governed by the law of New South Wales. The parties consent to the exercise of jurisdiction by the courts of that place.