

SUPERANNUATION INDUSTRY (SUPERVISION) ACT (1993)

SUPERANNUATION DEED

for

**RW & MB HOWARD SUPERANNUATION
FUND**

Prepared by:

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THIS DEED

is made on the date set forth in the Schedule hereto as the date of making of this Deed

BY The person or persons whose name is set forth in the Schedule hereto beside the words "The Trustee" (hereinafter called "the Trustee" or the "the Trustees")

WHEREAS:-

A. The Trustee wishes to establish an indefinitely continuing superannuation trust fund to provide superannuation benefits for such approved persons who may by application become members of the fund.

B. The Fund will be a Regulated Superannuation Fund.

1. **THE FUND**

1.1 The trust fund constituted by this Trust Deed ("the Fund") shall be called by and be known as the name set forth in the Schedule hereto beside the words "Name of the Fund".

1.2 The Fund shall consist of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Deed who shall hold the same on trust for the objects and the purposes of this Deed.

2. **PROPER LAW**

This Deed and the Rules annexed hereto shall in all respects be governed and construed in accordance with the law of the State or Territory set forth in the Schedule hereto beside the words "Law of this Fund".

3. **REQUIREMENTS TO BECOME A REGULATED SUPERANNUATION FUND**

3.1 If the Initial Trustee of the Fund is a Constitutional Corporation then it shall be a requirement under this Deed that the Trustee shall only be a Constitutional Corporation.

3.2 If the Initial Trustee of the Fund is not a Constitutional Corporation then the sole or primary purpose of the Fund is the provision of Old-Aged Pensions.

3.3 Where the Trustee is a Constitutional Corporation and the Trustee by a resolution or minute recorded in writing resolves that the sole or primary purpose of the Fund is the provision of Old-Aged Pensions then subject to clause 3.4, the Fund shall have the sole or primary purpose for the provision of Old-Aged Pensions notwithstanding anything to the contrary otherwise provided in this Deed and in such circumstances where the sole or primary purpose of the Fund is the provision of Old-Aged Pensions it shall not be a requirement of this Deed that the Trustee be a Constitutional Corporation.

3.4 Where the Trustee is a Constitutional Corporation and the sole or primary purpose of the Fund is the provision of Old-Aged Pensions then the Trustee may by resolution or minute recorded in writing resolve that the requirement that the sole or primary purpose of the Fund is the provision of Old-Aged Pensions no longer applies whereupon it shall be a requirement that the Trustee is a Constitutional Corporation.

4. **INTERPRETATION**

4.1 This Trust Deed shall be read and construed subject to clauses 35.1 and 35.6 (a) of this Deed.

4.2 If any clause or part thereof contained in this Deed and the Schedules and Rules forming part of this Deed shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Deed including the Schedules and Rules forming part hereof and such invalid clause or part thereof shall be deemed to have been deleted from this Deed.

4.3 The headings herein are for reference purposes only and shall not affect the interpretation of the Trust Deed. In this Trust Deed and the Rules annexed hereto, unless the context otherwise requires, the words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa and the following expressions shall have the meanings herein attributed to them:-

"Account" means an account established by the Trustee in accordance with this Deed for the administration of the Fund;

"Allocated Pension" means a Pension Benefit as referred to in Rule 14.2 of the Rules;

"Ancillary Benefit" means a benefit not paid as a Pension Benefit or a Lump-Sum Benefit and may include benefits provided under Rules 10 or 11 of the Rules;

"Annuity" means an annuity or pension not inconsistent with the requirements of the Relevant Legislation;

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"Beneficiary" means a person presently and absolutely entitled to receive a Benefit at the relevant time which shall include a Reversionary Beneficiary but shall not unless the context otherwise permits include a person who is then a Member;

"Benefit" or "Benefits" means any amount paid or payable by the Fund to or in respect of a Member in accordance with the provisions of this Deed and the Rules and shall include:-

- (i) Lump-Sum Benefit
- (ii) a Pension Benefit; or
- (iii) an Ancillary benefit (if not paid as a Pension benefit or a Lump Sum benefit) under the provisions of this Trust Deed

or any combination of the above in accordance with this Deed and the Relevant Legislation;

"Binding Beneficiary Nomination" means the written direction provided by a Member or Beneficiary directing how the benefits of a Member or a Beneficiary shall be paid after their death which is subject to the Relevant Legislation and the provisions of this Trust Deed binding upon the Trustee.

"Binding Beneficiary Nomination Form" is the form of written direction by a Member to the Trustee for the payment of his or her benefits upon his or her death otherwise referred to in Rule 2.1 of the Rules which subject to the Relevant Legislation is binding upon the Trustee.

"Commissioner" means either the Commissioner of Taxation or the Commissioner of the Australian Prudential Regulation Authority (formerly known as the Insurance and Superannuation Commission) and includes a reference to any person appointed by an Act of Parliament to supervise the conduct of superannuation funds;

"Complying Pension" means a pension benefit that meets the requirements of Rule 15 in the Rules;

"Complying Superannuation Fund" means a complying superannuation fund for the purposes of the Relevant Legislation or a fund which is entitled to concessional taxation treatment as a superannuation fund;

"Compulsory Cashing Age" means 65 years of age or such other age prescribed by the Relevant Legislation for the compulsory cashing of Benefits where the Member is no longer on either a Full-Time Basis or Part-Time Basis Gainfully Employed;

"Contributor" shall mean any person or entity making a contribution on behalf of a Member or Members in accordance with the Relevant Legislation and shall include an Employer or spouse of a Member;

"Constitutional Corporation" means a trading corporation or a financial corporation within the meaning of paragraph 51(xx) of the Commonwealth of Australia Constitution Act;

"CPI" shall mean the Consumer Price Index or any replacement index as published by the Australian Statistician or any other official Federal Government authority which is adopted or utilised for the purposes of administering superannuation or the taxation of Benefits under the Relevant Legislation.

"Dependants" means the spouse (including de facto spouse), widow, widower, or children of a Member or any other person who in the opinion of the Trustee was dependant on the Member at the relevant date;

"Disbursements" means unless the Trustee determines otherwise the costs associated with the establishment, administration, termination and management of the Fund together with Taxation costs and insurance costs of the Fund.

"Eligible Fund" means a superannuation fund, retirement savings account, an Approved Deposit Fund, an Eligible Roll-Over Fund, a roll-over Annuity or any like fund or Annuity or any other entity which the Trustees determine to be an Eligible Fund in respect of which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not be in breach of the Relevant Legislation.

"Eligible Person" means, subject to the requirements of the Relevant Legislation the following which shall be applicable:

- (a) an individual who has not been the subject of a Civil Penalty Order made under the Relevant Legislation and is not otherwise prohibited from acting in the capacity of a Eligible Person under the terms of this Deed;
- (b) an individual who has not died;
- (c) an individual who is not bankrupt or Insolvent Under Administration;
- (d) an individual who has full legal capacity to enter into legal relations;

- (e) an individual who has not been convicted of an offence involving dishonest or fraudulent conduct anywhere in the world which would result in the person from being a Disqualified Person;
- (f) an individual whose relationship with other co-trustees is such that the fund would not breach the Relevant Legislation including the requirements for Self Managed Superannuation Funds;
- (g) an individual who is not precluded by the Relevant Legislation from acting as a trustee;
- (h) a company which has not gone into liquidation, receivership or been placed under official management or has not otherwise become Insolvent Under Administration or had a winding up order made against the company; or
- (i) a corporate trustee which is permitted by the Relevant Legislation to act as trustee of the Fund including an Approved Trustee;
- (j) a corporate trustee if all the directors are also Eligible Persons; and
- (k) a corporate trustee if all the directors by virtue of their relationship to each other would not breach the requirements of the Relevant Legislation including the requirements for a Self Managed Superannuation Fund, if applicable.

"Employer" means a Member's Employer or an associate of a Member's Employer who makes contributions to the Fund for and on behalf of a Member in accordance with the Relevant Legislation;

"Financial Period" means a Financial Year or other period applied by the Trustee to determine the Net Fund/Loss of the Fund.

"Financial Year" means the year ended 30th June unless the Trustee adopts a different financial year which is not in breach the Relevant Legislation.

"Forfeited Benefits Reserve Account" has the meaning as referred to in clause 11 hereof;

"Full-Time Basis" means a Member who is employed or self-employed on a full-time basis within the meaning of the Relevant Legislation;

"Fund Reserve Account" has the meaning as referred to in clause 11 hereof;;

"Initial Trustee" refers to the Trustee or Trustees of the Fund referred to in the Schedule of this Deed;

"Lump-Sum Benefit" means a Benefit or any component of it paid otherwise than as a Pension or an Ancillary Benefit;

"Maximum Cashing Age" means the age of 70 years or any other age prescribed by the Relevant Legislation for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed on a Full -time basis;

"Member" subject to the Relevant Legislation means a person whom the Trustee has admitted as a Member of the Fund and has not ceased being a Member by virtue of clause 6.4 hereof;

"Member's Account" in respect of a Member shall include the net amount then standing to his or her credit in the accounts of the Fund made up of contributions by or on behalf of the Member, contributions made by Contributors, insurance proceeds, monies transferred from Reserves or any amounts transferred to the Fund by or on behalf of the Member plus any Net Fund Income/Loss allocated to that Member less any amounts transferred to a Reserve Account or payments made pursuant to this Deed or pursuant to the requirements of the Relevant Legislation;

"Member's Benefit" in respect of a Member shall include the net amount then standing to his or her credit in the Member's Account plus that proportion of the value (if any) at that time of any policy of insurance which relates to premiums paid out of that Member's Account and which the Trustee has allocated to that Member;

"Member's Maximum Tax Deductible Contribution" shall mean the relevant maximum income tax deductible contribution limit applicable to a Member as prescribed in respect of the relevant Financial Year by the Relevant Legislation.

"Net Fund Income" means the Net Fund Income/Loss when same is determined to be a positive earnings amount.

"Net Fund Income/Loss" means the net fund income or loss amount which the Trustee in its absolute discretion determines for a Financial Period in accordance with the following formula:-

$$NFI/L = (I+ Credits) - (Disbursements + Debits)$$

Whereas:-

- NFI/L- means the Net Fund Income/Loss determined by the Trustee for the Financial Period.
- I - means income of the fund as determined by the Trustee for the Financial Period which may also include amounts which would otherwise be construed as being of a capital nature and realised and unrealised gains.
- Credits - means such amounts as determined by the Trustee should be credited towards determining the NFI/L including amounts transferred or posted from reserves or other Accounts and may also include insurance proceeds or amounts which may otherwise be of a capital nature.
- Disbursements - has the same meaning as defined in clause 4.3.
- Debits - means such amounts as determined by the Trustee should be debited towards determining the NFI/L including amounts transferred or posted to reserves or other Accounts and may also include Taxes or amounts which may otherwise be of a capital loss nature, whether realised or unrealised, provisions for contingencies and accrued expenses.

"Net Fund Loss" means the Net Fund Income/Loss when same is determined to be a negative earnings amount.

"Nominated Dependant" means a person nominated by a Member as the Nominated Dependant;

"Old-Aged Pensions" or "Old-Aged Pension" has the same meaning as in paragraph 51(xxiii) of the Commonwealth of Australia Constitution Act.

"Part-Time Basis" refers to a Member who is employed or self-employed for at least 10 hours per week or such other number of hours as are prescribed under the Relevant Legislation;

"Pension" means an income stream that is a pension for the purposes of the Relevant Legislation which may take the form of a pension or an Annuity and shall not include a Reversionary Pension unless the Trustee and the Member or the Beneficiary have agreed in writing that the Pension shall be a Reversionary Pension;

"Pension Benefit" means a Pension or any part of which can be paid or provided from the Fund to a Member or Beneficiary in the form of a Pension in compliance with the Relevant Legislation;

"Pension Funding Member" means a Member under the terms of this Deed is bound to make contributions to fund a Complying Pension;

"Pensioner" means a Member who receives or is entitled to receive or who has applied to receive benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of or entitled to receive a Pension;

"Pension Reserve Account" refers to the account described as a Pension Reserve Account in clause 11;

"Permanently and Totally Disabled" subject to the provisions of the Relevant Legislation means -

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member permanently incapable of engaging in full-time work for which he is reasonably fitted by education, training or experience; or
- (ii) where the benefit payable on permanent and total disablement is insured, the definition of permanent disablement contained in the policy document evidencing the contract of insurance;
- (i) where there is no insurance policy, the physical or mental ill-health of the Member as certified by two registered medical practitioners who certify that, in the opinion of those practitioners, the Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education training or experience;
- (ii) any other circumstances which are acceptable to the Trustee and which are permitted under the Relevant Legislation.

"Preservation Age" shall have the same meaning as prescribed in the Relevant Legislation and subject to fulfilling such overriding requirements shall mean:-

- (a) for a person born before 1 July 1960 – 55 years; or
- (b) for a person born during the year before 1 July 1960 to 30 June 1961 – 56 years;
- (c) for a person born during the year before 1 July 1961 to 30 June 1962 – 57 years;
- (d) for a person born during the year before 1 July 1962 to 30 June 1963 – 58 years;

- (e) for a person born during the year before 1 July 1963 to 30 June 1964 – 59 years; or
- (f) for a person born after 30 June 1964- 60 years.

“Primary Beneficiary” means a Pension Funding Member who is or may be entitled to a Complying Pension;

“RBL” means the Reasonable Benefits Limit applicable to a Member as determined by the Trustee from time to time in accordance with Relevant Legislation to determine the maximum amount of concessionally taxed benefits a Member can receive;

“Relevant Legislation” means the Income Tax Assessment Act, 1936 (C’th), Income Tax Assessment Act, 1997 (C’th), Occupational Superannuation Standards Act, 1987 (C’th), Social Security Act 1991 (C’th), Superannuation Industry (Supervision) Act 1993 (as the case may be) and any regulations made under such legislation and any rules, orders or determinations made pursuant to such legislation and binding as law issued under those Acts and any amending, replacement or additional legislation in respect to superannuation administration, superannuation benefits or superannuation in general which is applicable to the Fund and any reference to the provisions or requirements of the Relevant Legislation means the provisions or requirements of such legislation and the regulations made thereunder and any rules, orders or determinations made pursuant to such legislation and binding as law issued under those Acts which must be complied with in order for the Fund to obtain the maximum income tax concessions available in respect of superannuation or so as to enable the Fund to be deemed a Complying Superannuation Fund;

“Reserve Account” shall be an account set up by the Trustee in accordance with proper accounting standards and practices for contingencies associated with the administration of the Fund and subject to the requirements of the Relevant Legislation, no Member shall be presently entitled to any monies allocated to a Reserve Account.

“Retirement shall mean subject to any requirements to the contrary contained in the Relevant Legislation:-

- (a) in the case of a person who has reached the Preservation Age that is less than 60 – if:
 - (i) an arrangement under which the member was Gainfully Employed has come to an end; and
 - (ii) the Trustee is reasonably satisfied that the person intends never again to become Gainfully Employed, either on a Full-Time or Part-Time basis; or
- (b) in the case of a person who has attained age 60 – an arrangement under which the member was Gainfully Employed has come to an end on or after the member attained that age.

“Retirement Pre-Requisite Preservation Age” shall mean the Preservation Age where the Trustee must be satisfied of Retirement of the Member prior to the payment of all or part of a Member’s Benefit from the Fund or where the Trustee must be satisfied that the Member has ceased to be Gainfully Employed;

“Revenue Account” has the meaning given to it in clause 11 hereof;

“Reversionary Pension” means a Pension payable to a Beneficiary who succeeds a Member or Beneficiary to the entitlement of the Member or Beneficiary to Pension Benefits.

“Reversionary Pensioner” means a Beneficiary entitled to a Reversionary Pension.

“Reversionary Beneficiary” means a beneficiary who succeeds a Member or Beneficiary and is entitled to a Reversionary Pension;

“Rules” means the Rules contained in the Schedule annexed hereto and any alterations to, additions to or variation thereof made from time to time;

“Self employed” subject to the terms of the Relevant Legislation refers to a Member who is self employed in a business, trade, profession, vocation, calling or occupation;

“SIS Act” refers to the Superannuation Industry (Supervision) Act 1993 (C’th);

“SIS Reg’s” refers to the Superannuation Industry (Supervision) Regulations;

“Segregated Current Pension Asset Account” includes the account(s) referred to in clause 11.2(g);

“Spouse” shall have the same meaning as referred to in the Relevant Legislation and unless contrary to the requirements of the Relevant Legislation or where the Trustee otherwise determines that the SIS Act definition of the term applies in lieu of the following definition, shall also include a person, although not legally married to the Member, cohabits with the Member or had cohabited with the Member immediately prior to the Member’s death on a bona fide domestic basis as husband, wife or lover (including a lover of the same sex if such permitted by or not contrary to the Relevant Legislation) and if at the time of death of the Member there was more than one spouse the Trustee shall have absolute discretion subject to the Relevant Legislation to

determine the distribution of the Benefits amongst such spouses including the exclusive payment or vesting in one spouse to the exclusion of another or others.

“Tax” or “Taxes” includes income tax, goods and services tax, surcharges, levies, imposts, duties, penalties associated with any of the foregoing or any similar charges levied or imposed by government which the Trustee determines as being of a taxation nature for the purposes of this Deed and “Taxation” has a corresponding meaning.

“Taxation Reserve Account” has the meaning given to it in clause 11 hereof;

“Trust Deed” means this Trust Deed and the Rules annexed hereto or alterations to, additions to or variation thereof made from time to time.

“Trust Law” means primary legislation of a jurisdiction regulating trusts applicable to the Fund and without limiting the above shall include whichever of the Trustee Act 1936 (SA), Trustee Act 1925 (NSW), Trusts Act 1973 (Qld), Trustee Act 1958 (Vic), Trustees Act 1962 (WA), or the Trustee Act 1898 (Tas) as shall apply or any other corresponding or replacement legislation of the Commonwealth, State or Territory legislatures.

“Unconditional Preservation Age” means the age of 60 years or any age prescribed as the Preservation Age by the Relevant Legislation for payment of all or part of a Member’s benefit from the Fund upon the Retirement of the Member where the Trustee does not have to satisfy itself as to the Retirement of the Member upon application for payment of benefits by the Member;

4.4 Unless a contrary intention appears the following terms have the same meanings they have from time to time in the Superannuation Industry (Supervision) Act 1993 and regulations made thereunder:

- “Actuary”
- “Annuity”
- “Approved Auditor”
- “Approved Deposit Fund”
- “Approved Trustee”
- “Civil Penalty Order”
- “Condition Of Release”
- “Beneficiary”
- “Constitutional Corporation”
- “Disqualified Person”
- “Eligible Roll-Over Fund”
- “Exempt Business Real Property”
- “Gainfully Employed”
- “In-House Assets”
- “Insolvent Under Administration”
- “Legal Personal Representative”
- “Life Expectancy”
- “Listed Security”
- “Mandated Employer Contribution”
- “Old Age Pension”
- “Post-65 Employer-Financed Benefits”
- “Regulated Superannuation Fund”
- “Retirement”
- “Self Managed Superannuation Fund”.

5. **DATE OF COMMENCEMENT**

The Fund was constituted on the date hereinbefore mentioned.

6. **ADMISSION AND CESSATION OF MEMBERS**

6.1 Persons who are engaged on a Full-Time Basis or a Part-Time Basis in a business, trade, profession, vocation, calling, occupation or employment OR such persons which the Trustee may otherwise approve **PROVIDED THAT** the requirements of the Relevant Legislation are satisfied, who wish to become Members shall apply for membership by completing a form of application in a style and format permitted or approved by the Trustee.

6.2 All applicants for membership and Members of the Fund shall provide the Trustee with such information that the Trustee may require or demand, including proof of their correct age.

6.3 A Member shall inform the Trustee, as soon as practicable, after he ceases:

- (a) to be Gainfully Employed or self employed on a Part-Time Basis after attaining age 65 or such other age as is prescribed under the Relevant Legislation as being the age when benefits must be taken upon ceasing Part-Time employment ; and
- (b) to be Gainfully Employed or self employed on a Full-Time Basis after attaining age 70 or such other age as is prescribed under the Relevant Legislation as being the age when benefits must be taken upon ceasing Full-Time employment.

6.4 A person shall cease to be a Member when:-

- (a) all benefits which are or may be payable in respect of a Member have been paid; or
- (b) a transfer is made to an Eligible Fund in satisfaction of all the Member's entitlement to Benefits; or
- (c) the Member's entitlement to Benefits is terminated or forfeited; or
- (d) where the Trustee shall otherwise reasonably determine in circumstances not otherwise in breach of the Relevant Legislation.

6.5 A person shall not be admitted as a Member of the Fund and will not be a Member of the Fund if the admission of that person would result in the Fund not being a Self Managed Superannuation Fund unless:-

- (a) the Fund has an Approved Trustee in accordance with the requirements of the Relevant Legislation; or
- (b) The Trustee is acting in accordance with Relevant Legislation so that it will comply as a Self Managed Superannuation Fund; or
- (c) The Trustee has by express resolution resolved that the membership of the fund shall exceed four persons and that the fund shall not be a Self Managed Superannuation Fund and no contrary resolution has been made by the Trustee.

Any contributions received in contravention of this provision shall subject to the Relevant Legislation be deemed to be rejected contributions and shall be held by the Trustee in accordance with clause 7.11 or clause 8.10.

6.7 In the case where the Trustee has determined that through representations, omissions or deception that a Member has or is likely to obtain, by reason of their conduct:-

- (a) a greater Benefit than which the Member would have otherwise have been entitled to; or
- (b) a benefit contrary to the requirements of the Relevant Legislation; or
- (c) a benefit derived as a result of insurance cover effected by the Trustee;

the Trustee may, subject to the Relevant Legislation, reduce the Member's Benefit to the amount corresponding with an amount which the member would have been entitled to if the conduct or omission had not occurred or a full and true disclosure had been made to the Trustee or an insurer arranged by the Trustee and the Trustee upon becoming aware of any such representation, omission or deception may notify any insurer for policies or proposed policies to be effected by the Trustee for the benefit of the Member.

6.8 The Trustee may at its complete discretion attach conditions to the admittance of a person as a member of the Fund and upon acceptance of the application by the Trustee the person making the application shall be bound by this Trust Deed and the conditions of acceptance in all respects as if he or she were an original party to this Deed.

6.9 Notwithstanding the provisions of clause 6.1 the Trustee may admit a person to be a member of the Fund in accordance with the requirements of the Relevant Legislation or provided such form of admission is not contrary to the Relevant Legislation.

6.10 The Trustee may attach as a condition of membership of the fund that a Member is bound to make contributions to the Fund for the purposes of making provision for the payment of a Complying Pension to the Member.

7. CONTRIBUTIONS ON BEHALF OF A MEMBER

7.1 An Employer, the spouse of a Member or any other person authorised by the Relevant Legislation to make contributions to the Fund for the benefit of a Member or Members, may contribute to the Fund in respect of each Member or a particular Member any amount whatsoever agreed or approved by the Trustee **PROVIDED THAT** such contributions are in accordance with the Relevant Legislation.

- 7.2 At the time of making such contribution, the Contributor shall advise the Trustee of the contribution in respect of each Member, whether the contribution is a Mandated Employer Contribution and such information which the Trustee requests.
- 7.3 Subject to the requirements of the Relevant Legislation any payment of contributions by the Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.
- 7.4 The Trustee may accept an in specie contribution of an asset from a Contributor provided that the Trustee is satisfied that the contribution is made at an arms length market value and the requirements of the Relevant Legislation are otherwise satisfied and such contribution shall be deemed to be a contribution to the Fund on behalf of one or more Members as directed by the Contributor.
- 7.5 Provided the requirements of the Relevant Legislation are satisfied and subject to the Trustee consenting in writing prior to any transactions being entered into, a Contributor may purchase assets directly in the name of the Trustee of the Fund and the consideration paid by the Contributor shall be deemed to be a contribution to the Fund on behalf of one or more Members as directed by the Contributor.
- 7.6 The Trustee shall refuse to accept contributions where to accept such contributions would constitute a breach of the Relevant Legislation or the Trustee is of the opinion that such a contribution would breach the Relevant Legislation.
- 7.7 The Trustee may accept contributions in such manner, which complies with the requirements of the Relevant Legislation.
- 7.8 The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to clause 8.1 hereof from the Member's Salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice thereof.
- 7.9 The Trustee may reject any contribution amount, tendered to the Trustee without being bound to give any reason for its rejection, and may return to the contributor, any contribution which in the Trustee's opinion, could detrimentally affect the Fund's ability to comply with the Relevant Legislation and the Trustee may also reject any contribution monies which exceed a Member's Maximum Tax Deductible Contribution.
- 7.10 The Trustee may request information or documentary evidence from a Contributor to ensure the Contributor is eligible to contribute to the Fund or for any other reason where the Trustee is of the opinion that the information provided in the application for Membership by the Member is deficient.
- 7.11 Where the Trustee rejects contributions from a Contributor pursuant to this Deed the Trustee subject to the requirements of the Relevant Legislation may hold such rejected contributions amounts in a separate trust in the capacity as a bare trustee for the Contributor or the person otherwise entitled to the amounts and such amounts shall not form part of the Fund.
- 7.12 Subject to clause 7.14 a Contributor is not bound to make any contribution to the Fund.
- 7.13 A Contributor may make an application in a form and style approved of or determined by the Trustee to the Trustee to fund a Complying Pension for the benefit of a Member or Members and upon acceptance of the application by the Trustee the relevant Contributor will thereafter be bound to make contributions to the Fund whilst the Member is in the Gainful Employment of the Employer Contributor in accordance with the provisions of this Deed, the agreement entered into with the Trustee or as otherwise agreed with the Trustee.
- 7.14 In the event a Contributor is bound to make contributions to the Fund for the purposes associated with funding a Complying Pension or proposed Complying Pension the Employer Contributor shall make and the Trustee shall accept contributions to the Fund for the benefit of the relevant Members in accordance with the determination of an Actuary taking into account the Pension RBL and otherwise in accordance with the Relevant Legislation for the provision of a Complying Pension to a Member or Members.
- 7.15 The Trustee may as a condition of being admitted as an Employer of the Fund stipulate conditions that the Employer as a Contributor will make contributions to the Fund to fund a proposed Complying Pension and upon admittance of the person or entity as an Employer of the Fund the Employer shall thereafter be bound to make contributions to the Fund in accordance with the preceding sub-clause as long as the relevant Member or Members is or are in the Gainful Employment of the Employer Contributor.

8. **CONTRIBUTIONS BY MEMBERS**

- 8.1 Each Member may contribute to the Fund such amount as is agreed upon between the Member and the Trustee PROVIDED THAT the contribution is in accordance with the requirements of the Relevant Legislation.

- 8.2 A Member is not bound to make any contribution to the Fund unless the Member is bound under the terms of their admission to the Fund as a Member to make such contributions to the Fund for the purposes associated with the provision of a Complying Pension or alternatively a separate contributions agreement is entered into between the Member as a Contributor and the Trustee.
- 8.3 At the time of paying the Member's contribution to the Trustee, the Member shall advise the Trustee of the contribution in respect of the Member.
- 8.4 Subject to the requirements of the Relevant Legislation any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the insurance company or investment manager.
- 8.5 The Trustee may accept an in specie contribution of an asset from a Member which may include a Listed Security or Exempt Business Real Property provided that the Trustee is satisfied that the contribution is made at an arms length market value and the requirements of the Relevant Legislation are otherwise satisfied.
- 8.6 Provided the requirements of the Relevant Legislation are satisfied and subject to the Trustee consenting in writing prior to any transactions being entered into, a Member may purchase assets directly in the name of the Trustee of the Fund and the consideration paid by the Member shall be deemed to be a contribution to the Fund for the Member. Any contributions made under this sub-clause must also comply with sub-clause 8.1.
- 8.7 The Trustee shall refuse to accept contributions where to accept such contributions would constitute a breach of the Relevant Legislation.
- 8.8 The Trustee may reject any contribution amount, tendered to the Trustee without being bound to give any reason for its rejection, and may return to the Contributor, any contribution which in the Trustee's opinion, could detrimentally affect the Fund's ability to comply with the Relevant Legislation and furthermore the Trustee may reject any contribution which exceeds the Member's Maximum Tax Deductible Contribution.
- 8.9 The Trustee may request information or documentary evidence from a Contributor to ensure the Contributor is eligible to contribute to the Fund where the Trustee is of the opinion that the information provided in the application for Membership by the Member is deficient.
- 8.10 Where the Trustee rejects contributions from a Contributor pursuant to this Deed the Trustee subject to the requirements of the Relevant Legislation may hold such rejected contributions amounts in a separate trust in the capacity as a bare trustee for the Contributor or the person otherwise entitled to the amounts and such amounts shall not form part of the Fund.
- 8.11 A Member may make an application in a form and style approved of or determined by the Trustee to the Trustee to fund a Complying Pension for the benefit of the Member and upon acceptance of the application by the Trustee the Member Contributor will thereafter be bound to make contributions to the Fund in accordance with the provisions of this Deed, the agreement entered into with the Trustee or as otherwise agreed with the Trustee.
- 8.12 In the event a Member Contributor is bound to make contributions to the Fund for the purposes associated with funding a Complying Pension or proposed Complying Pension the Contributor shall make and the Trustee shall accept contributions to the Fund for the benefit of the relevant Members in accordance with the determination of an Actuary taking into account the Pension RBL and otherwise in accordance with the Relevant Legislation for the provision of a Complying Pension to the Member.
- 8.13 The Trustee may as a condition of being admitted as a Member of the Fund stipulate conditions that the Member will make contributions to the Fund to fund a proposed Complying Pension and upon admittance of the person as a member of the Fund the Member shall thereafter be bound to make contributions to the Fund in accordance with the preceding sub-clause.

9. **INVESTMENTS**

- 9.1 The Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee in exercising its absolute discretion thinks fit and without limiting the generality of the foregoing either directly or indirectly:-

- (a) in investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) in the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
- (c) any mortgage, charge or other security on real property, personalty or leasehold property even though the amount of the loan may exceed such amount which a trustee may be empowered to make as an authorised investment under the Trust Law;
- (d) on deposit with any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustee, in its absolute discretion, determines **PROVIDED THAT** the Trustee may not loan any part of the moneys or assets of the Fund to Members or shall not invest in "In-House Assets" within the meaning of the Relevant Legislation or otherwise loan or invest monies if to do so would result in the Fund not complying with the Relevant Legislation;
- (e) in shares, stock, options, debentures, bonds, unsecured notes, instalment warrants, hot warrants, bills of exchange, promissory notes, derivatives, or other securities of any company or financial institution carrying on business in Australia or elsewhere in the world;
- (f) in units or sub-units of any unit trust and in bills of exchange and other negotiable instruments;
- (g) the purchase or acquisition of any personal property including but not limited to any choses in possession, chattels of any kind, stock, goods, plant, machinery, inventory stock-in-trade, patents, choses in action, trade marks, registered designs and copyrights or any interest in them wheresoever situated in the world;
- (h) without limiting the operation of any other power specified in this clause, acquire, purchase vend, sell or invest in jewellery, artworks, antiques, coins, stamps or any form of collectable.
- (h) the granting, acquisition, entering, assignment, transfer or surrender of leases, sub-leases, licenses, sub-licenses or options over real property or personal property or any interest in respect to any of such property;
- (i) acquire a direct or indirect interest in any business anywhere in the world;
- (j) any partnership or joint venture; or
- (k) any form of investment which would not breach the Relevant Legislation,

PROVIDED THAT the proportion of Fund assets invested in any single investment shall be limited to the amount provided for in the Relevant Legislation, if any, in order for the Fund to comply with the Relevant Legislation and **PROVIDED FURTHER THAT** the investments made by the Trustee shall not breach or contravene the Relevant Legislation.

- 9.2 The Trustee shall not invest in In-House Assets if to do so would result in the Fund not complying with the Relevant Legislation.
- 9.3 The Trustee shall invest in a manner that shall not contravene the Relevant Legislation.
- 9.4 The Trustee may hold an interest in a part of any such investment and shall have power to vary, transpose and replace such investments in such manner as it, in its absolute discretion, thinks fit, without being responsible for loss occasioned by so varying, transposing or replacing.
- 9.5 Upon a Member being admitted as a Member or at any time whilst a Member or Beneficiary remains a Member or Beneficiary of the Fund, that person may complete a Request (a "Member-Choice Investment Request") that the Trustee make the specific investment specified in the Member-Choice Investment Request. The Member-Choice Investment Request shall contain the following details:
 - (a) the particulars of the said specific investment;
 - (b) the terms and conditions upon which the specific investment is to be made;
 - (c) the amounts to be invested in the specific investment; and
 - (d) an acknowledgment by the Member or Beneficiary that the Trustee has an absolute discretion to accept or reject any investment specified in a Member-Choice Investment Request without giving any reasons for the making of its decision; and

(e) such other matters as determined by the Trustee.

9.6 The Trustee may in its sole and absolute discretion accept the Member-Choice Investment Request **PROVIDED:**

- (a) the amounts specified to be so invested and the Trustee's estimated costs of acquiring the investment shall not exceed the Member's Benefit at the date of the investment adjusted to take into account such reserves and contingencies and other factors that the Trustee may in its sole and absolute discretion determine appropriate;
- (b) such specific investments are within the powers conferred by Clause 9 and the other provisions of the Deed;
- (c) such specific investments are in accordance with the investment strategy or strategies formulated by the Trustee;
- (d) such form of investment shall not be prohibited by the relevant Legislation.

9.7 Upon accepting or rejecting the Member-Choice Investment Request, the Trustee shall inform the Member or Beneficiary of its decision forthwith, and where the Trustee has accepted the Request the Trustee shall thereupon acquire the specific investment upon the terms specified therein.

9.8 A Member or Beneficiary may submit a further request (a Request for a Variation) by which he/she requests the Trustee to vary or dispose of any specific investments already made by the Trustee pursuant to a Member-Choice Investment Request and the Trustee shall vary the specific investment upon such terms as it shall in its discretion determine.

9.9 The Net Fund Income/Loss and any incomings and/or outgoings arising from or in connection with the acquisition, holding, management and disposal of any specific investments shall be dealt with pursuant to Clause 11.4.

9.10 The Trustee shall formulate and document in writing an investment strategy or investment strategies for the Fund and thereafter implement and give effect to one or more investment strategies for the Fund as required by the Relevant Legislation, which strategies shall be formulated in light of all of the circumstances of the Fund and shall be reviewed from time to time.

9.11 Where the Trustee receives an in specie contribution of an asset from a Member or a Contributor pursuant to the provisions of this Deed the Trustee may at the Trustee's discretion retain such asset as an investment asset of the Fund.

10. POLICIES OF INSURANCE AND ANNUITIES

10.1 The Trustee may, in its absolute discretion, invest the whole or any part of the amount standing to the credit of a Member in the books of the Fund in the payment of premiums on a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest or in payment of the consideration for an Annuity.

10.2 The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee thinks fit. The Trustee shall also have the power to accept an assignment of a policy of life, disability or accident insurance or of an Annuity on such terms as the Trustee, in its absolute discretion, determines.

10.3 The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the Member's Account in such proportion as is agreed upon by the Trustee and the Member and in the absence of any such agreement, on such basis as the Trustee determines. The proceeds of such policies shall, subject to the requirements of the Relevant Legislation, be credited at the Trustee's discretion to any number of the following accounts:

- (i) the Member's Account;
- (ii) to a Reserve Account established by the Trustee;
- (iii) such other accounts which the Trustee may determine.

10.4 The Trustee shall have power to continue such policies or annuities for such periods as the Trustee thinks fit and to discontinue or surrender such policies or annuities.

10.5 The Trustee of the Fund may abandon, reduce or change the terms of insurance cover in relation to a Member by reason of ill-health, age, medical condition, non-disclosure of material information or such

other circumstances determined by the Trustee, where the Trustee is of the opinion that the circumstances would lead to excessive or high premium costs for the insurance cover or the premium costs would be disproportionate with the costs incurred for other Members.

11. **RECORDS, ACCOUNTS AND AUDITING**

11.1 The Trustee shall keep a complete record of all matters essential to the administration of the Fund as required by the Relevant Legislation and in accordance with applicable accounting standards or proper accounting practices.

11.2 In fulfilling the requirements of clause 11.1 above the Trustee may keep or maintain the following records:-

- (a) A Minute Book in which proceedings and resolutions of the Trustee are recorded.
- (b) A Member's Account for each Member in which is recorded:-
 - (i) contributions to the Fund by the Employer or any other Contributor in respect of that Member pursuant to clause 7 of this Trust Deed;
 - (ii) contributions by a Member pursuant to clause 8 of this Trust Deed;
 - (iii) amounts credited to such account pursuant to clause 30 of this Trust Deed;
 - (iv) Net Fund Income/Loss credited or debited to such account pursuant to clauses 12.1, 12.2 or other relevant clauses of this Trust Deed;
 - (v) forfeited benefits credited to such account pursuant to clause 15 of this Trust Deed;
 - (vi) amounts debited to such account to pay premiums on policies of insurance or annuities pursuant to clause 10 of this Trust Deed;
 - (vii) the proceeds of policies of insurance credited to such account pursuant to clause 10.3 of this Trust Deed;
 - (viii) amounts debited to such account to pay Taxes;
 - (ix) amounts which are not required to meet Tax liabilities and which are credited to the Taxation Reserve Account;
 - (x) amounts debited or credited from any Reserve Account established by the Trustee pursuant to this Trust Deed;
 - (xi) amounts which are debited or credited pursuant to any provision or power conferred on the Trustee under this Trust Deed provided however such amounts or entries are not contrary to the Relevant Legislation;
 - (xii) Amounts transferred to a Segregated Current Pension Asset Account kept by the Trustee for the Member or credited from such an account.
- (a) Such other accounts, including Allocated Pension Accounts, reserves and Reserve Accounts, as the Trustee considers appropriate from time to time;
- (b) A Revenue Account to which shall be credited all Net Fund Income/Loss or income, (except monies accounted for pursuant to clause 11.4(b)) from investments, profits earned and capital gains realised during each financial year and to which shall be debited all expenses (other than premiums on policies of insurance), outgoings and losses incurred during each financial year.
- (c) A Taxation Reserve Account to which shall be credited amounts set aside by the Trustee to pay Taxes and to which shall be debited Taxes paid and amounts which the Trustee determines from time to time to transfer to the Members' Accounts in proportion to the amounts standing to the credit of those accounts at that time or on such other basis as the Trustee considers to be equitable. The balance in the Taxation Reserve Account shall be transferred to the Members' Accounts in accordance with this paragraph prior to the winding-up or on crystallisation of the Fund.
- (d) A Forfeited Benefits Reserve Account which may be credited with amounts in accordance with clause 15 and to which may be debited any amounts which are applied in accordance with clause 15 hereof;
- (e) A Fund Reserve Account in accordance with any reserving strategy established by the Trustee for stabilising or smoothing the investment earnings of the Fund or to provide for any future contingencies which the Trustee in its discretion may determine;
- (f) A Pension Reserve Account to receive contributions, allocated profits, excess contributions or a members insured benefits or such other amounts as the Trustee may determine at the Trustee's

discretion from time to time including amounts based upon the advice of an Actuary, and without limiting the generality of the foregoing the Trustee may credit the Pension Reserve Account with:

- (i) contributions (if any) for by or on behalf of a Member to the Fund including any contribution which exceeds the relevant Member's Member's Maximum Tax Deductible Contribution;
- (ii) sums received on trust and held in accordance with clauses 30;
- (iii) Net Fund Income/Loss;
- (iv) Insured benefits received by the Trustee in respect of a Pension Funding Member
- (v) transfers, contributions or postings which may be made from time to time at the Trustee's absolute discretion from the Accumulation Reserve Account;

And the Trustee may debit the Pension Reserve Account with:-

- (fi) Disbursements or a proportion thereof as determined by the Trustee
- (fii) Amounts paid in the form of Benefits;
- (fiii) Adjustments to Benefits as determined by the Trustee;
- (fiv) Net Fund Losses or a proportion thereof as determined by the Trustee
- (fv) Debit postings as determined by the Trustee to enable amounts to be transferred to other reserve Accounts or Accounts;
- (fvi) Debit postings to conform with actuarial advice received by the Trustee;

Provided such debited amounts are permitted by the Relevant Legislation.

- (g) A Segregated Current Pension Asset Account for each Member or Members as determined by the Trustee in which assets will be segregated from other assets of the Fund for the purposes of paying a Pension Benefit.

11.3 Where pursuant to the provisions of Clause 11.2(g) the Trustee segregates the assets of the Fund into a Segregated Current Pension Asset Account for a Member:

- (a) the Trustee shall record the identity of the Member for whom such segregated assets relates, for the purposes of maintaining the relevant accounts relating to that Member and that Member's Member Benefits;
- (b) the following amounts shall not be allocated to the Revenue Account but shall be allocated to relevant accounts relating to that Member and that Member's Members Benefit as the Trustee shall determine:
 - (i) the Net Fund Income/Loss or profits or losses arising from such segregated assets,
 - (ii) the cost of and the costs and charges incurred with, the acquisition or maintenance of such segregated assets;
 - (iii) any Taxation which is payable or may become payable in respect of such segregated assets;
 - (iv) any other costs expenses liabilities and amounts that the Trustee in its discretion determines appropriate to allocate to the accounts relating to a Segregated Current Pension Asset Account for a Member or Members.

11.4 Where pursuant to the provisions of Clause 9 the Trustee acquires a specific investment for a Member:

- (a) the Trustee shall record the identity of the Member for whom such specific investment was obtained, for the purposes of maintaining the relevant accounts relating to that Member and that Member's Member Benefits;
- (b) the following amounts shall not be allocated to the Revenue Account but shall be allocated to relevant accounts relating to that Member and that Member's Members Benefit as the Trustee shall determine:
 - (i) the Net Fund Income/Loss or profits or losses arising from such specific investments,

- (ii) the cost of and the costs and charges incurred with, the acquisition of such specific investments;
 - (iii) any Taxation which is payable or may become payable in respect of such specific investments;
 - (iv) any other costs expenses liabilities and amounts that the Trustee in its discretion determines appropriate to allocate to the accounts relating to the Member and the Members Benefit.
- 11.5 The Trustee shall appoint an Approved Auditor (as required by the Relevant Legislation) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the Fund complies with the Relevant Legislation.
- 11.6 The Trustee subject to the requirements of the Relevant Legislation has a total and full discretion in respect to the keeping and maintenance of the Accounts and the adjustment of the Accounts including the Members Accounts and Reserves and may make such postings, debits, credits, transfers, provisions, categorizations and payments in respect to the Accounts including the Members Accounts and Reserves as the Trustee considers appropriate and the Trustee has total and full power to deal with and administer the Fund in accordance with such determinations or exercise of discretion by the Trustee and without limiting the generality of the foregoing the Trustee may:-
- (a) make determinations, postings, adjustments and transfers in respect to unrealised gains to the Accounts including the Members Accounts and Reserves;
 - (b) make determinations, adjustments and provisions in respect to Taxes (including taxes on unrealised gains) advance tax instalments and notional surcharge amounts).
 - (c) make determinations, adjustments and exercise discretions for the application of depreciation and amortisation of assets;
 - (d) make determinations and adjustments in respect to the valuation or revaluation of assets;
 - (e) alter or segregate current pension assets from non-current pension assets;
 - (f) categorize or identify assets, liabilities, income, losses and various components thereof;
 - (g) categorize components of income, losses and Disbursements forming or relating to the Net Fund Income/Loss for the Fund and apply such components to the Accounts or Members Accounts and Reserves as the trustee considers appropriate;
 - (h) the Trustee may after categorization of income or losses referred to in the preceding sub-clause determine to apply or post the identified income or loss components to any one or more of the Accounts including the Members Accounts and may exclude any of the Accounts or any of the Members Accounts from distribution, allocation, posting or application of the identified income or loss components;
 - (i) make determinations concerning timing issues on transactions and events which effect the Accounts;
 - (j) deal with the fund as different sub-funds, segments, sub-trusts or partitions and account for same in accordance with this Deed; and
 - (k) make determinations on accruals and provisions for contingencies and make corresponding allowances in the Accounts.
- 11.7 Net Fund Income/Loss may be credited or debited to the Members' Accounts, the Pension Reserve Account, the Accumulation Reserve Account or other Accounts under this clause provided that the total credits shall not exceed a sum greater than the Net Fund Income in a period as ascertained in the Accounts and further provided that the debits shall not exceed an amount greater than the Net Fund Loss.
- 11.8 For the purposes of the preceding sub-clause the Trustee when determining the Net Fund Income/Loss to be allocated to Accounts shall have regard to:-
- (i) the accumulated benefit account balances for Members;
 - (ii) the account balances for specific investments held for a Member;
 - (iii) any property held on behalf of a Member;
 - (iv) any income earned from property held on behalf of a Member;
 - (v) pension reserve Account balances, if any;
 - (vi) other reserve Account balances administered or maintained by the Trustee, if any;
 - (vii) length of membership of the relevant Member;
 - (viii) investment strategies of the Fund;
 - (ix) actuarial advice, if any; obtained by the Trustee;

- (x) any segregation, substitution, setting aside or exchange of assets of the Fund by the Trustee for the purposes of satisfying current pension liabilities of the Fund;
- (xi) any segregation, substitution, setting aside or exchange of assets of the Fund by the Trustee for any purposes determined by the Trustee not being contrary to the Relevant Legislation up to and including an amount representing the Net Fund Income/Loss attributable to those assets.

11.8 Net Fund Income/Loss may be debited or credited, as the case may require, periodically or annually at the Trustee's absolute discretion.

11.9 The Trustee may debit or credit any Net Fund Income/Loss based on a reasonable estimate determined by the Trustee before final Accounts or financial statements are available to the Trustee after the end of a Financial Year.

11.10 The Trustee has full and complete discretion in respect to any categorisation, attribution, timing determination, valuation determination or identification of amounts relating to the Accounts providing the actions of the Trustee are not contrary to the requirements of the Relevant Legislation.

11.11 The Trustee in exercising discretions in respect to the Accounts is not required or bound to provide any reason for the Trustee's actions unless contrary to the requirements of the Relevant Legislation.

12. VALUATIONS AND ALLOCATION OF PROFITS & LOSSES

12.1 Subject to any requirements of the Relevant Legislation:

- (a) After the relevant Financial Year, the Net Fund Income/Loss or the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities during the preceding financial year); or
- (b) on the winding up of the Fund or whenever the Trustee thinks it necessary, the Net Fund Income/Loss or the profits or losses arising from the investment of the assets of the Fund (other than life insurance policies or annuities);

during the relevant Financial Year, less such provision for depreciation, Disbursements, liabilities, losses and Taxation as the Trustee in its absolute discretion deems prudent shall be credited or debited by the Trustee to the relevant accounts in accordance with clauses 11.3 (if applicable), 11.4 (if applicable), 11.7, 11.9, 11.10 or on such other basis as the Trustee considers to be equitable.

12.2 The Trustee whenever it thinks it necessary may cause the assets of the Fund to be valued or may value the assets of the Fund in such manner as the Trustee may determine and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investments and such provision for Taxation and Disbursements as the Trustee in its absolute discretion deems prudent and if the net value of the assets of the Fund determined in accordance with this clause exceeds or is less than the aggregate of the net amounts standing to the credit of all of the Members' Accounts at that date, the Trustee shall credit the surplus or debit the deficit or otherwise allocate the Net Fund Income/Loss to the Members' Accounts in accordance with applicable sub-clauses in clause 11 or on such other basis as the Trustee considers to be equitable.

12.3 Subject to any requirements of the Relevant Legislation the Trustee may allocate to the Member's accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under clause 12.1 or 12.2 to the date on which the benefit is being paid.

12.4 The Trustee may attribute and fix the value of any property of the Fund and the liabilities to which the Fund is committed in accordance with the Relevant Legislation.

12.5 A valuation made or applied by the Trustee shall subject to the Relevant Legislation bind all persons who are or may become interested in the Fund including persons who do not have legal capacity and persons who are not yet ascertained.

13. EXCESSIVE BENEFITS

If at any time, in the opinion of the Trustee, contributions are made contrary to the Relevant Legislation or a Member's Benefit exceeds or would be likely to exceed the Member's RBL, the Trustee may take such of the following actions which it, in its absolute discretion, determines subject to the requirements of the Relevant Legislation:-

- (a) decline to accept any further contributions for the benefit of that Member;
- (b) establish a separate excessive benefits fund of which the Trustee shall be the trustee and which is subject to the same trusts and powers contained in this Trust Deed;

- (c) transfer to the separate fund established under paragraph (b) of this clause, the amount which the Trustee determines represents the excess over the Member's RBL for the purposes of the Relevant Legislation;
- (d) subject to consent from that Member and compliance with the Relevant Legislation, the Trustee may reduce that Member's benefits to the relevant RBL and the remainder upon that Member attaining a "Condition of Release" shall be forfeited and thereafter applied in accordance with clause 15;
- (e) the trustee may reduce the member's benefits to the relevant RBL for the member and transfer the forfeited amount to a fund reserve established for future liabilities or contingencies which may include future pension obligations;

The Trustee may accept a transfer from the separate fund referred to in paragraph (b) of this clause.

14. FORFEITURE OF BENEFITS

- 14.1 Subject to the requirements and provisions of the Relevant Legislation, a Member or former Member shall cease to be presently or presumptively entitled to the Member's Benefit at the discretion of the Trustee if in its opinion:-
- (a) he has become insolvent or has attempted to assign, alienate, charge or encumber all or a part of his Member's Benefit;
 - (b) he is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
 - (c) his whereabouts cannot be traced by the Trustee for a period of five years, after making reasonable enquiries.
- 14.2 Subject to the requirements of the Relevant Legislation, a Member may by written notice to the Trustee forgo and forfeit benefits in excess of the RBL applicable to that Member at Retirement or at the time the Member is entitled to payment of the Member's benefits.
- 14.3 Notwithstanding the provisions of sub-clause 14.1(a), a Member or former Member shall not cease to be presently entitled or presumptively entitled to the Member's Benefit at the Discretion of the Trustee by reason of the Member or former Member becoming bankrupt or committing an act of bankruptcy.

15. ALLOCATION OF FORFEITED BENEFITS

The amount of any forfeited benefit in the Fund by reason of the operation of clause 13 (d) or 14 hereof and the Rules annexed hereto shall be credited to the Forfeited Benefits Reserve Account established in accordance with the provisions of clause 11.2 and shall be applied within six months of the end of each financial year (or such other period provided for in the Relevant Legislation):-

- (i) to the provision of the benefits that other Members or their dependants have rights to receive from the Fund; or
- (ii) to the provision for other Members or their dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Commissioner regards as reasonable having regard to all of the circumstances; or
- (iii) for any purpose approved in writing by the Commissioner; or
- (iv) in such other manner that is permitted or required under the Relevant Legislation.

16. COMMON LAW RIGHTS OF MEMBERS

The provisions of this Deed and the Rules annexed hereto shall not in any way affect the right of a Member or his personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law, in the event of the Member being injured or dying as a result of an event arising out of and in the course of his employment.

17. LOANS TO MEMBERS

The Trustee shall not make any loans or advances to a Member.

18. MEMBERS' RIGHTS TO BENEFITS AND STATEMENTS

- 18.1 A Member shall have no right to or interest in his Member's Benefit except as provided herein and in the Rules annexed hereto and in the Relevant Legislation.

- 18.2 The rights of the Members and their dependants to receive benefits from the Fund shall be those set out in this Trust Deed.
- 18.3 The rights of the Members and their dependants to receive the benefits payable under the Rules shall be fully secured within the meaning of the Relevant Legislation.
- 18.4 The Members shall be provided with statements and information in relation to the administration of the Fund in accordance with the requirements of the Relevant Legislation.
- 18.5 Subject to any contrary provisions contained in this Trust Deed and the requirements of the Relevant Legislation the Trustee may, at the Trustee's absolute discretion, provide Pension Benefits payable under this Trust Deed by applying a Member's Benefit to the purchase, in the ownership of either the Trustee or the Member, a pension or an Annuity that meets the requirements of the Relevant Legislation.

19. **EMPLOYER'S RIGHT TO DETERMINE EMPLOYMENT**

- 19.1 Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise determine the employment of a Member or remove a director of the Employer from office and being a Member shall not be taken as guaranteeing continuation of employment or as a Director.
- 19.2 The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

20. **OFFICE OF TRUSTEE - APPOINTMENT AND REMOVAL & DECISION MAKING**

- 20.1 Subject to the requirements of the Relevant Legislation being satisfied the Trustee shall have the power by deed or by an oral or written resolution to appoint a new or additional Trustee or Trustees **PROVIDED THAT** where the Trustee of the Fund is required by or pursuant to the terms of this Deed to be a Constitutional Corporation then such new trustee must be a Constitutional Corporation unless under or pursuant to this Deed the sole or primary purpose of the Fund is the provision of Old-Aged Pensions **AND PROVIDED FURTHER THAT** the Trustee is an Eligible Person.
- 20.2 The office of a Trustee shall become vacant if:-
- (a) the Trustee resigns its office;
 - (b) a resolution is passed or a petition is represented for its winding up or liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose) or a receiver of its assets is appointed;
 - (d) the Trustee is disqualified by law from holding office including pursuant to the Relevant Legislation;
 - (e) the Fund is at the relevant time a Self Managed Superannuation Fund and a trustee not being a corporate trustee ceases being a member of the Fund and as a result of such cessation of membership the Fund (either at the time of cessation of membership or such other future time as prescribed in the Relevant Legislation) would breach the requirements of the Relevant Legislation for a fund to be a Self Managed Superannuation Fund.
- 20.3 Subject to the requirements of the Relevant Legislation, a majority of the Members may by resolution or in writing remove any Trustee from office and may, by resolution or in writing, appoint any replacement Trustee or Trustees **PROVIDED THAT** where the Trustee of the Fund is a Constitutional Corporation then such new trustee must be a Constitutional Corporation unless the sole or primary purpose of the Fund under or pursuant to the provisions of this Deed is the provision of Old-Aged Pensions.
- 20.4 Any provisions of the Trust Law requiring at least two trustees after the retirement of a trustee which may be expressly negated or excluded from having effect shall not apply to the Fund constituted by this Deed and it shall be permissible for one only trustee of Fund irrespective of the number of trustees appointed whether or not originally appointed at the time of creation of the Fund constituted by this Deed.
- 20.5 In the case of natural person trustees majority approval shall be required for any decision by the trustees where there is more than one trustee and where a deadlock arises in trying to achieve a decision the deadlock shall subject to the requirements of the Relevant Legislation be resolved by placing a weight on each trustee's vote and such weighting shall be determined by applying the member Account balance of each Trustee as a proportion of the total member Account balances of the Fund.
- 20.6 In the case of natural persons as trustees the Trustees may communicate with each other and meet together for the dispatch of business and adjourn and otherwise regulate their business as they think fit and, unless the Relevant Legislation prescribes otherwise and the Trustees may without limitations conduct or hold meetings of trustees by:-

- (a) conference telephone or conference video phone; or
 - (b) by using any other form of technology consented to by all the trustees.
- 20.7 Any resolution passed at a meeting conducted in accordance with the preceding sub-clause shall be deemed to be a valid resolution passed on the day where the meeting was held by the Trustees despite the Trustees not being physically present in the same place at the same time.
- 20.8 Minutes shall be kept and maintained for a Trustee's meeting and the minutes of any Trustees' meeting may be confirmed by facsimile, e-mail or by such other means as the Trustees by resolution approve unless the Relevant Legislation prescribes otherwise.
- 20.9 A resolution shall be deemed to be passed at a meeting of trustees in the case of natural person trustees upon the signing of a document by all the trustees containing a statement in favour of the resolution or the signing of documents each of which contains a statement in favour of the resolution which together bear the signatures of all the trustees and such resolution shall be deemed to be passed at the time of the last signature being provided by the last trustee and for the purposes of this clause a facsimile version of a transmitted document bearing a signature of a trustee shall be deemed to be a document bearing the signature of a trustee.
- 20.10 Where the trustee is a Constitutional Corporation, the Articles of Association, Constitution, Applicable Replaceable Rules as stated in the Corporations Law or governing rules of the corporate Trustee unless the Relevant Legislation prescribes otherwise shall apply in respect to the conduct and proceedings of a board meeting of the Trustee.

21. **POWERS OF TRUSTEE**

- 21.1 The Trustee shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted herein and conferred upon trustees by statute and general law, exercise any of the following powers:-
- (a) to pay out of the Trust Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;
 - (b) to pay out of the Trust Fund expenses incurred in:-
 - (i) providing for the secretarial work required for proper record keeping and administration to be performed;
 - (ii) having the accounts of the Fund audited;
 - (iii) having taxation returns and returns to Government authorities prepared; and
 - (iv) engaging such persons as the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
 - (c) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
 - (d) subject to the provisions of the Relevant Legislation, to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee (except for the power to vary or amend this Trust Deed) on such terms and conditions as the Trustee in its absolute discretion thinks fit and the Trustee shall not be responsible for any loss incurred as a result of such delegation;
 - (e) to take and act upon the advice of a barrister, solicitor, accountant, Actuary or superannuation consultant in relation to the administration of the Fund and pay out of the Trust Fund the fees payable to such advisers;
 - (f) to commence, carry on and defend any legal proceedings that the Trustee in its absolute discretion thinks necessary for the proper administration of the Fund or to protect the rights of Members;
 - (g) to open and maintain such bank accounts as the Trustee thinks fit;
 - (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee sees fit;
 - (i) subject to the provisions of the Relevant Legislation to borrow any sum of money for the purposes of obtaining temporary finance (as defined in the Relevant Legislation) and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee thinks fit and in particular by charging or mortgaging all or any of the assets of the Fund and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;

- (j) to irrevocably elect that the Fund become a Regulated Superannuation Fund under the Relevant Legislation;
- (k) to lease or license assets of the Fund in a manner consistent with the requirements of the Relevant Legislation and otherwise in such manner and on such terms as the Trustee sees fit;
- (l) insuring any risks;
- (m) to acquire such real or personal property as the Trustee sees fit provided that the acquisition is in accord with the requirements of the Relevant Legislation;
- (n) to purchase a pension or an Annuity entitlement from an Eligible Fund in respect to a Member in the name of the Trustee or, if the Trustee shall so determine, in the name of the Member in accordance with the Relevant Legislation;
- (o) to pay all costs, expenses and Disbursements;
- (p) to establish any sub-fund, segment, sub-trust or partition within the Fund which shall be separately accounted for under this Deed;
- (q) to establish as settlor or as trustee any trust which shall be separate and distinct from the trust created under this Deed for the purpose holding rejected contributions, applying or paying Benefits for minor Members or minor Beneficiaries or applying or paying Benefits for Members or Beneficiaries suffering from a lack of legal contractual capacity or such other purposes as the Trustee determines which is permitted or not in breach of the Relevant Legislation;
- (r) to acquire and maintain specific investments for Members in accordance with the Member investment choice provisions of this Deed;
- (s) to hold use purchase construct demolish maintain repair renovate reconstruct develop improve sell transfer convey surrender let lease exchange take on lease hire or otherwise acquire take and grant options or rights in alienate mortgage charge pledge reconvey release or discharge or otherwise deal with any real or personal property or any right or estate or interest therein and in particular with shares debentures or securities of any company and with or without deferred restricted qualified or special rights relating thereto;
- (t) to exercise all rights and privileges and perform all duties and to do all such acts matters and things appertaining to any shares stock or debentures in any corporation for the time being subject to the provisions of the Relevant Legislation the Trustee could do if the Trustee was the beneficial owner of the shares stock or debentures and without diminishing the generality of the foregoing with liberty to:
 - (i) pay calls on any shares or to permit any shares of the company to be forfeited and sold;
 - (ii) purchase any further shares, stock, debentures or investments and to take up any shares, stock, debentures or investments of a new issue of the company;
 - (iii) lend money to a company whether secured by debentures or in any other way or not secured and at such rate of interest and upon such terms as the Trustee thinks fit;
 - (iv) assent to or join in any arrangement relating to the sale or transfer or exchange of the shares, stock, debentures or investments or modifying any rights or privileges or interests in relation thereto and to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of a company or by which the shares, stock, debentures or investments are substituted or given in exchange either wholly or partly for other shares, stocks, debentures or investments whether in the same company or not AND for that purpose to deposit, surrender or exchange any certificate or document of title relating thereto AND to pay out of the capital of the Fund or its income any contribution or incur any necessary expense in connection with the scheme or arrangement and generally to manage and deal with the share, stock, debentures or investments as if the Trustee owned them beneficially; and
 - (v) to agree in respect of a winding up of a company with the liquidator of the company or any member of the company or any other person in all things as the Trustee thinks fit for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;
- (u) subject to the requirements of the Relevant Legislation to acquire or carry on either alone or in partnership or joint venture with any person or persons at the discretion of the Trustee any trade, joint venture or business of any nature anywhere in the world with power for that purpose generally to act in all matters relating to trade and business and to discontinue the same from time to time;

- (v) to settle or compromise disputes claims actions made in respect to the Fund and to indemnify or undertake to indemnify anyone in respect of any claims, matters or things relating to the Fund;
- (w) to the extent not prohibited by the Relevant Legislation carry on any business including primary production;
- (x) to the extent permitted under the Relevant Legislation, employ persons or engage contractors to carry on the business on behalf of the Trustee;
- (y) to engage or retain professional advisers, consultants or representatives;
- (z) development and/or subdivision or consolidation of real property;
- (aa) take or apply in specie at the Trustee's absolute discretion, without obtaining any consents from any Members, any part of the Fund in its actual condition or state of investment in or toward the satisfaction of any entitlement in the Fund or towards the benefits of a Member or Members.
- (bb) take out and maintain insurance over risks to the Fund including insurance life insurance, disability insurance, sickness insurance, trauma insurance and other insurances for the provision of Benefits to Members;
- (cc) take out and maintain insurance over in respect to risk liabilities of the Trustee or directors of the Trustee where the Trustee is a corporation;
- (dd) subject to the provisions of the Relevant Legislation to partition or agree to the partition of or to sub-divide or agree to the subdivision of any land or other property which or any interest in which may for the time being be subject to the trusts hereof and to pay any moneys by way of equality of partition;
- (ee) may transfer any insurance policy, Annuity contract or other similar entitlement in the Fund to a Member in satisfaction or towards the satisfaction of any Members benefit entitlement under the provisions of this Deed;
- (ff) to attribute a value to any asset, benefit, liability or any other matter associated with the administration of the Fund;
- (gg) may withhold tax from any income, contributions, gains, property or other payment received, receivable or paid or payable by the Fund;
- (hh) attend to all matters relating to tax administration for the Fund including the provision of information to relevant authorities and the payment of tax;
- (ii) to set aside out or make provision from the Fund for debts or contingencies associated with the Fund;
- (jj) generally to do all such things and perform such acts as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed and the Rules annexed hereto.

21.2 The Trustee may exercise any of its powers or rights even where there is a conflict of interest by reason of the Trustee :-

- (a) being an Employer;
- (b) being a Member;
- (c) being an associate of an Employer;
- (d) being a Guardian, spouse or relative of a Member;
- (e) having a direct personal interest in the benefit or exercise of the power or right;

so long as the power or right is exercised in a bona fide manner and otherwise not in breach of the Relevant Legislation.

22. TRUSTEE - EXERCISING DISCRETIONS AND DISCRIMINATION

In administering the Fund and in exercising the trusts, powers and authorities vested in the Trustee herein and pursuant to the Rules annexed hereto, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities **PROVIDED THAT** the Trustee shall not discriminate against any person on the grounds of that person's race, sex or marital status in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination

23. LIABILITY OF TRUSTEE

Except as otherwise provided in the Relevant Legislation, a Trustee shall not be liable for any loss that is:-

- (a) not attributable to his own dishonesty;
- (b) attributable to actions or defaults of a co-trustee;
- (c) attributable to any action taken in conformity with the decisions of the Trustee hereunder;

- (d) attributable to the neglect or default of an agent employed in good faith by the Trustee;
- (f) attributable to the Trustee effecting or taking out insufficient or inadequate insurance (whether foreseeable or not) or where an insurer refuses to pay out and settle an insurance claim made under a policy of insurance effected by the Trustee;
- (g) attributable to the Trustee not providing notice to a Member of the inadequacies associated with a Binding Beneficiary Nomination Form provided to the Trustee or the lapse of a Binding Beneficiary Nomination.

24. **TRUSTEE'S AND DIRECTORS' INDEMNITY**

The Trustee and the directors of the Trustee in the case of a corporate trustee shall be indemnified against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund and shall have a lien on the Fund for such indemnity **PROVIDED THAT** the right of indemnity shall not extend (in relation to the Trustee or any particular director) to:-

- (a) any liability arising out of the Trustee or any particular director failing to act honestly in a matter concerning the Trust Fund or intentionally or recklessly failing to exercise, in relation to a matter affecting the Trust Fund, the degree of care and diligence required to be exercised; or
- (b) liability for a monetary penalty under a Civil Penalty Order within the meaning of the Relevant Legislation.

25. **REMUNERATION OF TRUSTEE**

Subject to the requirements of the Relevant Legislation, the Trustee shall be entitled to be indemnified and reimbursed for expenses or costs incurred by the Trustee in carrying out the duties and functions as trustee of the Fund. Excepting for such expenses and costs the Trustee shall not be entitled to be paid remuneration for performance of the Trustee's duties, or the provision of any other services to the Fund

26. **REMUNERATION OF PROFESSIONAL PERSONS**

Subject to the requirements of the Relevant Legislation and clause 25 if applicable, any person who is an accountant, Actuary, solicitor, barrister or other professional person and is a director of a company acting as Trustee, who is called upon or whose firm is called upon to perform any service in relation to the Fund shall be entitled to make the same professional charges for such service that he or she would make had he not been a director of a company acting as Trustee hereof.

27. **TRUSTEE AS MEMBER'S ATTORNEY**

Each Member hereby irrevocably appoints the Trustee his attorney to execute and sign all such deeds and instruments and do all such things the Trustee considers necessary or desirable in administering the Fund.

28. **TRUST DEED AVAILABLE FOR INSPECTION**

A copy of this Trust Deed and the Rules annexed hereto shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.

29. **VARIATION OF TRUST DEED**

29.1 The Trustee may at any time and from time to time either by deed executed by the Trustee or by oral resolution vary, add to or rescind all or any of the provisions from time to time of this Trust Deed and the Rules annexed hereto and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner **PROVIDED THAT** no such variation, addition or rescission shall have the effect of-

- (a) reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable, before the variation, addition or rescission; or
- (b) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this clause, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

and the benefits that have accrued, or become payable, to or in respect of a Member shall not otherwise be reduced, unless:

- (i) the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
- (ii) the reduction is required to enable the Fund to comply with the Relevant Legislation; or
- (iii) the Member so affected approves in writing of the reduction; or
- (iv) the Commissioner approves in writing of the reduction if such approval is required under the Relevant Legislation.

29.2 Where under or pursuant this Deed the trustee is required to be Constitutional Corporation no variation, addition or rescission of this Deed shall have the effect of changing the requirement that the trustee must be a Constitutional Corporation unless the provisions of this Deed as varied provide that the sole or primary purpose of this Fund is the provision of Old-Aged Pensions as required by the Relevant Legislation for Regulated Superannuation Funds in the case of trustees not being Constitutional Corporations.

29.3 Where under or pursuant this Deed the sole or primary purpose of the Fund is the provision of Old-Aged Pensions no variation, addition or rescission of this Deed shall have the effect of changing the sole or primary purpose of the Fund for the provision of Old-Aged Pensions unless this Deed as varied provides that the trustee must be a Constitutional Corporation.

29.4 The requirements, if any, specified in the Relevant Legislation and relevant for amendment of the governing rules of the Fund must in addition be complied with for the purposes of amending or varying the provisions of this deed.

29.5 The Trustee shall as soon as practicable advise the Members in writing of the nature, purpose and effect of any such variation, addition or rescission.

30. **TRANSFER OF BENEFIT FROM ANOTHER ELIGIBLE FUND**

30.1 Where a Member requests that an amount standing to his credit or a policy of insurance in another Eligible Fund be transferred to the Fund, the Trustee may accept the transfer of such amount or policy to the credit of the Member's Account **PROVIDED THAT** the requirements of the Relevant Legislation are satisfied

30.2 The Trustee may accept in specie transfers from the Trustees of another Eligible Fund if not prohibited by the Relevant Legislation.

31. **TRANSFER OF BENEFIT TO ANOTHER ELIGIBLE FUND**

31.1 The Trustee may, on receiving the written request of a Member, transfer the whole or a part of the Member's Benefit to an Eligible Fund which the Trustee is satisfied complies with the Relevant Legislation or provided termination of employment has occurred transfer the benefit to the Eligible Fund which the Trustee is satisfied complies with the Relevant Legislation. The receipt by the trustees of such fund of the benefits shall be a complete discharge to the Trustees of the Fund in respect of any liability to that Member and persons claiming through him in relation to the amount so transferred except where otherwise not permitted by the Relevant Legislation.

31.2 The Trustee may transfer benefits of a Member to another fund by way of an in specie transfer of assets if not prohibited by the Relevant Legislation.

32. **BENEFITS PAYABLE IN AUSTRALIAN CURRENCY**

The benefits payable in cash hereunder shall be calculated in and be payable in Australian currency. This clause shall not apply to benefits paid to members in the form of an in specie transfer of assets from the Fund.

33. **ADMISSION OF EMPLOYERS TO FUND**

33.1 The Trustee may admit an Employer as a contributor to and a participant in the Fund on completion of a form of application in a style manner and format which the Trustee determines.

33.2 An Employer admitted as an Employer to the Fund shall supply such information which the Trustee requests so as to enable the Trustee to properly administer the Fund and comply with the requirements of the Relevant Legislation.

34. **DISSOLUTION OF THE FUND**

34.1 When the last remaining Member ceases to be a Member the Fund shall be wound up and the Trustee shall, subject to the Rules annexed hereto, pay or transfer to the Members, Member's Benefits in accordance with the provisions of the Rules annexed hereto, after deducting from the assets of the Fund the cost of

administering and winding up the Fund. Such payment or transfer shall be accepted by the Members in full discharge of all claims in respect of the Fund.

- 34.2 Notwithstanding anything contained in clause 34.1, the Trustee shall not pay or transfer a Member's Benefit to a Member except in accordance with the provisions of the Trust Deed and the Rules annexed hereto.
- 34.3 If any amount remains in the Fund, after all the Members' Benefits have been paid, the amount so remaining shall be paid to the Members or former Members or their dependants in such proportions as the Trustee considers to be equitable but otherwise in accord with the Relevant Legislation.
- 34.4 The trusts constituted by this Trust Deed shall, unless previously terminated in accordance with clause 34.1 hereof, endure during the life of the survivor of all the lineal descendants of His Late Majesty King George V living at the date of this Trust Deed and for twenty-one years after the death of such survivor and for such further period (if any) as may be allowed by law for the duration of the trusts hereby established provided that this provision shall not apply where the laws of the State or Territory of Australia applicable to the Deed provides that the Rule against Perpetuities shall not apply.

35. **COMPLIANCE WITH RELEVANT LEGISLATION**

- 35.1 If there is a conflict or inconsistency between the provisions of this Deed and the Relevant Legislation, the Relevant Legislation is to prevail and any provision in this Deed is to be read down, construed and interpreted by the Trustees in such a manner so as to give effect to the Relevant Legislation and to enable the Fund to be operated in a manner that is consistent with the Relevant Legislation.
- 35.2 The Trustees have the power to do all acts and things or to omit to do such acts or things as they consider necessary, desirable or expedient for the Fund to be operated or administered in accordance with the Relevant Legislation and/or for the Fund to be a Complying Superannuation Fund and for the Trustees, Employers, Members and beneficiaries not to be in contravention or in the opinion of the Trustees any possible or potential contravention of the Relevant Legislation.
- 35.3 The powers conferred upon the Trustees by Clause 35.2, without limiting the generality of such powers, include the right to administer and operate the Fund so that:-
- (a) the Fund is operated solely for one or more of the core and ancillary purposes specified in the Relevant Legislation;
 - (b) the Fund is operated so as to comply with any standards prescribed under the Relevant Legislation which are applicable to the Fund;
 - (c) the Trustees are entitled to provide to the Commissioner with such returns and information as required by the Commissioner or as required by the Relevant Legislation;
 - (d) the Trustees may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Commissioner;
 - (e) the Trustees may inform or disclose to, the Commissioner such event, omission or thing that the Relevant Legislation may require to be disclosed to the Commissioner and/or seek the advice or ruling or direction of the Commissioner as they consider necessary;
 - (f) the Trustees may pay from the Fund any levy or charge imposed upon the Fund under the Relevant Legislation; and
 - (g) the Trustees may seek from the Commissioner any exemption or modification of the provisions of the Relevant Legislation in respect of their application of the Fund;
 - (h) the Trustees may pay a Member's or a Beneficiary's benefits or interest in the Fund, in the circumstances prescribed by the Relevant Legislation, to the Commissioner or an Eligible Roll-Over Fund even if no claim for such benefit has been made by or in respect of the Member or Beneficiary.
- 35.4 The Trustees are not to be taken to be in contravention of the Deed or in breach of trust if in giving effect to clauses 35.1 and 35.2, they:
- (a) construe or interpret this Deed;
 - (b) do such acts or things;
 - (c) omit to do such acts or things;
- which might otherwise be in contravention of this Deed or in breach of trust but which the Trustees consider necessary, desirable or expedient to avoid a contravention of the Relevant Legislation.

- 35.5 The Trustees are not to be taken in contravention of this Deed or in breach of trust if they do anything or make any omission which is contravention of the Relevant Legislation if:
- (a) the Trustees rectify the contravention within such period as may be allowed under the Relevant Legislation or within such further period as the Commissioner allows; or
 - (b) the Commissioner notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.
- 35.6
- (a) Notwithstanding any provision of this Deed any other covenant or other requirement required by the Relevant Legislation to be included in this Deed is deemed to be included as if every such covenant or requirement was set out in this Deed on and from the date that covenant or requirement is required to be so included.
 - (b) If the Relevant Legislation or the Commissioner no longer requires any such covenant or requirement to be included then that covenant or requirement ceases to be included.
 - (c) If any such covenant or requirement or its operation is pursuant to the provisions of the Relevant Legislation modified then the Trustees are only required to comply with the covenant or requirement as it may be so modified.
 - (d) The Trustees are not to be taken to be in contravention of this Deed or in breach of trust if the Trustees do or omit to do anything which is in contravention of such covenant or requirement if the contravention is waived by the Commissioner.

36. **ACTUARIAL REQUIREMENTS**

The Trustee shall engage an Actuary where required under the Relevant Legislation and shall cause the Fund to otherwise comply with the actuarial requirements of the Relevant Legislation, if applicable.

SCHEDULE

Date of Making this Deed: The 16th day of NOV 2001.

The Trustee: RW & MB Howard Pty Ltd
A.C.N. 098 712 522
23 Osmond Street
KINGSCOTE SA 5223

The Name of the Fund: **RW & MB HOWARD SUPERANNUATION FUND**

Law of this Fund: South Australia

EXECUTED AS A DEED

for and on behalf of
RW & MB Howard Pty Ltd
A.C.N. 098 712 522
By authority of the Board of
Directors and in the
presence of:

) R Howard
) Director
)
) R Howard
) Director/Secretary
)

CONTENTS OF SCHEDULE OF RULES

Rule Number:-	Description:-
1.	Entitlement to benefits After Retirement or Attaining Unconditional Preservation Age
2.	Benefits Payable on Death Where Dependants
3.	Benefits Payable on Death Where No Dependants
4.	Death of a Member Before Payment of Benefit
5.	Death of an Allocated Pensioner: Reversionary Beneficiary Nominated
6.	Death of an Allocated Pensioner: No Reversionary Beneficiaries Named
7.	Death of a Person Entitled to a Complying Pension
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10.	Benefit Payable on Disablement
11.	Benefit Payable in Other Circumstances <ul style="list-style-type: none"> - <i>Severe Financial Hardship</i> - <i>Compassionate Grounds</i> - <i>Satisfaction of Conditions of Release & Nil Cashing Restrictions</i> - <i>Termination of Employment – Restricted Non- Preserved Benefits</i> - <i>Unrestricted Non-Preserved Benefits</i>
12.	Payment of Benefits to Minors
13.	Deduction of Tax
14.	Allocated Pension Provisions
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17.	Payment of Benefits in Specie
18.	Election for Benefits
19.	Retention of Benefits
20.	Preservation of Benefits
21.	Member's Debt
22.	Discharge
23.	Benefits – Allowances For Tax Deductions

Important Note:-

This document has been prepared based wholly on written instructions faxed, mailed or e-mailed for the establishment of a self managed superannuation fund. The Trustee(s), Employers, Contributors to the Fund, Members of the Fund should rely on the advice of their own professional advisers concerning the suitability of the attached deed for their own individual circumstances, their structuring of their superannuation affairs; the persons or party who should be appointed as a trustee or trustees; investments which may be undertaken under the superannuation fund and the general administration of a superannuation fund.

SCHEDULE OF RULES

1. ENTITLEMENT TO BENEFITS AFTER RETIREMENT OR ATTAINING UNCONDITIONAL PRESERVATION AGE

1.1 A Member shall subject to the provisions of the Trust Deed and the requirements of the Relevant Legislation be entitled to be paid the Member's Benefit after his or her Retirement from the workforce after attaining a Retirement Pre-Requisite Preservation Age or alternatively after attaining an Unconditional Preservation Age. The benefit payable under this Rule 1.1 shall:-

(a) in the case where the Trustee of the Fund is a Constitutional Corporation pursuant to a requirement to be a Constitutional Corporation contained in or pursuant to this Deed, be paid in one or more of the following forms:-

- i. Lump Sum
- ii. Allocated Pension
- iii. Complying Pension based on the advice of an Actuary
- iv. By acquiring an Annuity from an Eligible Fund.

(b) where the Fund has the sole or primary purpose for the provision of Old-Aged Pensions under the provisions of or pursuant to this Deed and subject to the Relevant Legislation a Member's Benefit shall be paid as an old-aged pension and may be taken as any one or more of the following benefits:-

- i. Lump Sum, if commuted by the Member
- ii. Allocated Pension
- iii. Complying Pension based on the advice of an Actuary
- iii. By acquiring an Annuity from an Eligible Fund.

1.2 A Benefit payable under Rule 1.1 other than the Member's Post-65 Employer-Financed Benefits shall commence to be paid as a Benefit or transferred to an Approved Deposit Fund as a paid Benefit as soon as practicable after the occurrence of any of the following events in accordance with the Relevant Legislation:-

(a) the Member:

- (i) has attained age 65 but not age 70; and
- (ii) is not Gainfully Employed on either a Full-time or a Part-time Basis;

(b) the member:

- (i) has attained age 70; and
- (ii) is not Gainfully Employed on a Full-time Basis;

(c) the member dies.

1.3 A Member's Post-65 Employer Financed Benefits shall commence to be paid and shall be paid in accordance with the Relevant Legislation.

2. BENEFITS PAYABLE ON DEATH WHERE DEPENDANTS

2.1 Subject to the requirements of the Relevant Legislation being satisfied a Member or Beneficiary may provide the Trustee with a binding written direction in a form and style as permitted by the Trustee which may or may not be included on a Member Application Form but otherwise in accordance with the Relevant Legislation as to the payment of a Benefit which would be payable upon their death to one or more of that person's Dependants or the Legal Personal Representative of the deceased Member or Beneficiary, as the case may be (Binding Beneficiary Nomination Form). If the Trustee consents, such Binding Beneficiary Nomination Form may subject to the requirements of the Relevant Legislation relate to the type, amount, and proportions of different components or Benefit to be paid upon a Member's or Beneficiary's death and also specify whether a Pension Benefit, reversionary or not, is to be provided on the death of the Member. A Member or Beneficiary may vary any such direction contained in a Binding Beneficiary Nomination Form at any time by providing a fresh Binding Beneficiary Nomination Form to the Trustee prior to the Member's or Beneficiary's death (as the case may be) provided that such variation is in accordance with the

SCHEDULE OF RULES

requirements, if any, of the Relevant Legislation and the requirements relating to the Binding Beneficiary Nomination Form as aforesaid and otherwise provided in these Rules.

- 2.2 The Trustee shall subject to the Relevant Legislation and Rules 5, 6 & 7 pay the Benefits to the Dependants or Legal Personal Representatives or such other persons permitted by the Relevant Legislation nominated on the Binding Beneficiary Nomination Form. In the absence of any such duly executed Binding Beneficiary Nomination Form or in the case where the Trustee is not bound by a Binding Beneficiary Nomination Form by reason of the Relevant Legislation, Rule 2.3 shall apply.
- 2.3 On the death of a Member or Beneficiary who has not provided the Trustee with a valid notice binding the Trustee in accordance with Rule 2.1 above or the Trustee is not under the Relevant Legislation bound by a Binding Beneficiary Nomination Form, the Trustee may pay or apply the Member's Benefit that is payable on the death of the Member or Beneficiary subject to Rules 5, 6 & 7 as follows:-
- (i) Where the Member or Beneficiary has left a Nominated Dependant or Nominated Dependants, to such one or more of the Nominated Dependants of the deceased Member or deceased Beneficiary in the manner, at the times and in such proportions between them, if more than one, as the Trustee may in its absolute discretion determine **PROVIDED THAT** should the deceased Member or deceased Beneficiary, as the case may be, not have Nominated Dependants, or should the Trustee in its absolute discretion determine that it would be inequitable or inappropriate to pay the Benefit or any part thereof to the Nominated Dependants, the Trustee shall pay or apply the Benefit subject to Rules 5, 6 & 7 to such one or more of the deceased Member's or deceased Beneficiary's Dependants in the manner, at the times and in such proportions between them, if more than one, as the Trustee may in its absolute discretion determine.
 - (ii) Where the Member or Beneficiary has no Dependants then Rule 3 shall apply.
- 2.4 In exercising the discretions conferred in Rule 2.3 the Trustee shall have regard to any Nominated Dependants but otherwise shall not be bound to apply the benefits towards the Nominated Dependants and otherwise has a complete discretion as to the allocation of the benefits as stated in Rule 2.3.
- 2.5 Subject to the requirements of the Relevant Legislation or a Binding Beneficiary Nomination contained in a Binding Beneficiary Nomination Form to the contrary the Trustee may at the Trustee's discretion upon the death of a Member pay a deceased Member's benefits to the Legal Personal Representative(s) of a deceased Member if satisfied that a superannuation proceeds trust has been established and the deceased Member's benefits under the terms of the said trust would only be distributed to a beneficiary who is a spouse of the deceased Member and/or beneficiaries who are dependents of the deceased Member for the purposes of SIS and the regulations made thereunder and for the purposes of section 27A of the Income Tax Assessment Act 1936 as amended from time to time or any corresponding replacement legislative provision or provisions.
- 2.6 A Member who gives the Trustee a Binding Beneficiary Nomination Form may:-
- (i) confirm the Binding Beneficiary Nomination Form by giving to the Trustee a written notice, signed and dated by the Member to that effect; or
 - (ii) amend, or revoke the Binding Beneficiary Nomination Form by giving to the Trustee a new Binding Beneficiary Nomination Form in accordance with the requirements of the Relevant Legislation of the amendment or revocation.
- 2.7 Unless sooner revoked by the Member, a Binding Beneficiary Nomination ceases to have effect:-
- (i) at the end of the period of three (3) years after the day it was first signed, or last confirmed or amended by a Member; or
 - (ii) upon a decree nisi being made in respect to the dissolution of the marriage of the Member if a nominated beneficiary in the Binding Beneficiary Nomination Form is the spouse of the Member;
- which shall ever first occur.
- 2.8 A Binding Beneficiary Nomination Form and any variation of a Binding Beneficiary Nomination Form subject to the requirements of the Relevant Legislation:-
- (i) must be in writing;
 - (ii) must be signed, and dated, by the member in the presence of two adult witnesses neither of which are nominated as beneficiaries in the Binding Nomination Form; and
 - (iii) must contain a declaration signed, and dated, by the witnesses stating that the notice was signed by the Member in their presence.

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- 2.9 If an item of information given by a member in a Binding Beneficiary Nomination Form is not sufficiently clear to allow the trustee to pay the benefit, the Trustee must seek from the member a written statement to clarify the item as soon as practicable after the trustee receives the notice.

3. BENEFITS PAYABLE ON DEATH WHERE NO DEPENDANTS

On the death of a Member or Beneficiary leaving no Dependants, the Trustee shall pay the Member's Benefit that is payable on the death of the Member or Beneficiary to the Legal Personal Representative of the deceased Member or Beneficiary **PROVIDED THAT**:

- (a) if there is no Legal Personal Representative, the Trustee shall pay the Benefit to those of the Member's or Beneficiary's relatives as the Trustee determines to be entitled to a share in the estate of the Member or Beneficiary and if more than one in such proportions between them as the Trustee in its absolute discretion may determine and the receipt of the said Legal Personal Representative or relative or relatives as the case may be, shall be a full discharge and the Trustee shall not be liable to see to the application thereof;
- (b) if the Trustee determines that no relatives are entitled to a share in the estate of a deceased Member or deceased Beneficiary, then the Member's Benefit shall be absolutely forfeited and be dealt with in accordance with clauses 14 & 15 of the Trust Deed.

4. DEATH OF A MEMBER BEFORE PAYMENT OF BENEFIT

In the event of the death of a Member before payment of an entitlement to a Lump-Sum Benefit or a Pension Benefit the Trustee may pay the Member's Benefit in accordance with whichever of Rules 2 and 3 above shall be applicable.

5. DEATH OF AN ALLOCATED PENSIONER: REVERSIONARY BENEFICIARY NOMINATED

- 5.1 Upon the death of a Pensioner who was at the date of death in receipt of an Allocated Pension payable pursuant to the Trust Deed, where the Pensioner had nominated a Reversionary Beneficiary in a Binding Beneficiary Nomination Form to the Trustee, the Trustee shall pay such Lump-Sum Benefit or Pension Benefit to such Reversionary Beneficiary **PROVIDED THAT** such payment shall not exceed the amount permitted by the Relevant Legislation and permitted by the Trust Deed.
- 5.2 Upon the death of a Pensioner who was at the date of death in receipt of an Allocated Pension payable pursuant to the Trust Deed, where the Pensioner had nominated a Reversionary Beneficiary not otherwise contained in a Binding Beneficiary Nomination Form to the Trustee, the Trustee may pay such Lump-Sum Benefit or Pension Benefit to such Reversionary Beneficiary **PROVIDED THAT** such payment shall not exceed the amount permitted by the Relevant Legislation and permitted by the Trust Deed.

6. DEATH OF AN ALLOCATED PENSIONER: NO REVERSIONARY BENEFICIARIES NAMED

Upon the death of a Pensioner who was at the date of death in receipt of an Allocated Pension payable pursuant to the Deed, where the Pensioner had not nominated a Reversionary Beneficiary the balance of the Member's Benefit relating to the Pensioner shall be paid in accordance with Rules 2 & 3 (whichever shall be applicable) **PROVIDED THAT** if such a payment is not permitted by the Relevant Legislation the balance shall be absolutely forfeited and shall remain in the Fund to be dealt with in accordance with Clauses 14 and 15 of the Trust Deed or otherwise as permitted by the Relevant Legislation.

7. DEATH OF PERSON ENTITLED TO A COMPLYING PENSION

- 7.1 After the death of a Pension Funding Member where provision has been made for the payment of a Complying Pension to the Pension Funding Member the Pension Funding Member Beneficiary is entitled to a Complying Pension which is to be debited to or applied against the Pension Reserve Account.
- 7.2 For the purposes of Rule 7.1 a Pension Funding Member Beneficiary shall mean (subject to the requirements of the Relevant Legislation for payment of a Complying Pension) a Dependant, a trustee for a Dependant, a Member's Legal Personal Representative, a Reversionary Beneficiary, or a beneficiary nominated in a Binding Beneficiary Nomination Form who is entitled in accordance with the Relevant

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Legislation to Benefits accruing due to a Member's participation in the Fund or the payment of the benefits to such person is not in breach of the Relevant Legislation.

8. PAYMENT OF SMALL DEATH BENEFITS

Notwithstanding any other provision of these Rules to the contrary, excepting the provisions of Rule 16 hereof, where upon the death of a Member:

- (a) the benefits to be paid to that Member do not exceed the sum of \$5,000 or such other amount prescribed under the Relevant Legislation;
- (b) the Trustee after reasonable enquiry has not found any Dependant or Legal Personal Representative of the deceased Member; and
- (c) having regard to the quantum of the relevant benefits and the potential expense for the trust fund and dependant associated with legitimate claimants or claimants subsequently coming forward to be paid the relevant benefits it would be unreasonable for the Trustee to insist that the Dependant incur the costs of seeking Letters of Administration;

the Trustee may pay the relevant benefits to the next of kin of the deceased Member or in the event that the Trustee cannot find such next of kin then the Trustee may pay the relevant benefits to such friend of the deceased Member as the Trustee in its absolute discretion decides.

9. PAYMENT OF UNCLAIMED BENEFITS

The Trustee shall give a Statement of Unclaimed Benefits, and pay the same to the relevant commissioner administering Unclaimed Monies as and when required by the Relevant Legislation or the law.

10. BENEFIT PAYABLE ON DISABLEMENT

10.1 In the event of a Member becoming in the opinion of the Trustee, Permanently and Totally Disabled, the amount of the Member's Benefit shall, subject to the provisions of the Trust Deed and the Relevant Legislation, be paid to the Member or, if he/she is unable to manage his/her own affairs, to the Guardian or Trustee of the Member or such of the Member's Dependents or the Trustees and Guardians of the Member's Dependants (when such Dependants lack full legal capacity) in such proportions as the Trustee, in its absolute discretion, determines. If, prior to the Trustee determining that a Member is Permanently and Totally Disabled, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, such proceeds shall be paid to the Member or his Dependents as aforesaid **PROVIDED THAT** the amount of such benefit shall be paid in accordance with the requirements of the Relevant Legislation.

10.2 The Benefit payable under Rule 10.1 on the occurrence of Permanent and Total Disablement shall, in the discretion of the Trustee, be paid as a Lump-Sum benefit or by way of a Pension Benefit but otherwise in accordance with the Relevant Legislation.

10.3 Where a Benefit is payable under Rule 10.2 by way of a Pension Benefit, the Trustee shall, in its absolute discretion, determine the amount of the Pension Benefit and the manner in which and the period for which it is paid **PROVIDED THAT** such Benefit shall be paid in accordance with the requirements of the Relevant Legislation.

11. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES

11.1 Severe Financial Hardship

Upon an application or claim in writing to the Trustee by a Member claiming severe financial hardship, the Trustee shall, upon being satisfied that the conditions for release of benefits as prescribed by the Relevant Legislation are satisfied in respect to severe financial hardship and the Relevant Legislation is otherwise being complied with in respect to such payment, pay part or all of the benefit payable to a Member prior to the Member attaining age 55 (or such other minimum age prescribed by the Relevant Legislation).

11.2 Compassionate Grounds

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Upon an application or claim in writing to the Trustee by a Member claiming compassionate grounds, the Trustee shall, at the Trustee's absolute discretion upon being satisfied that the conditions for release of benefits as prescribed by the Relevant Legislation are satisfied in respect to compassionate grounds including the relevant consents being obtained from the Commissioner and the Relevant Legislation is otherwise being complied with in respect to such payment, pay part or all of the benefit payable to a Member prior to the Member attaining age 55 (or such other minimum age prescribed by the Relevant Legislation) in accordance with the Relevant Legislation.

11.3 Satisfaction of Conditions of Release & Nil Cashing Restrictions

The Trustee may pay to a Member such benefits which have nil cashing restrictions under the Relevant Legislation or upon satisfying any other Condition of Release provided in the Relevant Legislation and otherwise in accordance with the payment standards of the Relevant Legislation.

11.4 Termination of Employment – Restricted Non-Preserved Benefits

The Trustee may pay to a Member on termination of Gainful Employment with an Employer before the Unconditional Preservation Age where the Member's Benefit is Restricted Non-Preserved Benefits under the Relevant Legislation and such payment is in accordance with the Relevant Legislation.

11.5 Unrestricted Non-Preserved Benefits

The Trustee may pay to a Member an Unrestricted Non-Preserved Benefit under the Relevant Legislation in accordance with the Relevant Legislation.

12. PAYMENT OF BENEFITS TO MINORS

Where a person, to whom benefits are payable hereunder, is a minor, the Trustee may pay the benefit to the parent or guardian of the minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.

13. DEDUCTION OF TAX

The Trustee may deduct from any benefit payable, the amount of any Tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.

14. ALLOCATED PENSION PROVISIONS

14.1 For the purposes of this Rule 14, a pension shall mean an Allocated Pension as defined hereunder.

14.2 An Allocated Pension, for the purposes of this Rule, shall mean a Pension or a part thereof which otherwise satisfies the requirements of Regulations 1.06 (4) & (5) of SIS Reg's or any corresponding provisions in the Relevant Legislation and subject to fulfilling such requirements shall be a pension payable out of the capital value of a member's account and where:-

- (a) The pension cannot be transferred to any other person except to a reversionary beneficiary upon the death of the member in receipt of the pension or upon the death of another reversionary beneficiary;
- (b) the pension is paid at least annually;
- (c) the capital value of an pension, and the income from it cannot be used as a security for a borrowing;
- (d) the pension need not be fixed in amount but must be paid at an amount which is between the minimum amount and maximum amount prescribed in Schedule 1A of SIS Reg's or any corresponding provisions of the Relevant Legislation.
- (e) otherwise complies with the Relevant Legislation so as to be construed to be a pension that is not a Complying Pension.

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- 14.3 When the Member's Benefit is reduced to nil, the pension payable under these Rules shall cease to be payable and the person who was receiving the pension shall cease to be entitled to any further benefits and shall cease to be a Member.
- 14.4 Where a Member becomes entitled to be paid an Allocated Pension, the Member may elect to commute part or all of that pension to a Lump-Sum Benefit, and may nominate:
- (a) that the Member's Benefit be paid as a Lump-Sum Benefit, or
 - (b) that the Member's Benefit be paid as an Allocated Pension in accordance with the pension requirements of this Deed;

Upon receipt from any Pensioner or Reversionary Beneficiary of a Commutation Request in such form as the Trustee shall determine, the Trustee may commute to a Lump-Sum part or all of a Allocated Pension payable from the Fund to such Pensioner or Reversionary Beneficiary and upon any such commutation the Trustee shall, subject to the Deed, pay such Lump-Sum to the Pensioner or Reversionary Beneficiary who applied for the same **PROVIDED THAT:**

- (a) the payment of the commuted Benefit and the value of any Allocated Pension remaining payable shall not cause the Fund to breach the Relevant Legislation;
 - (b) the Trustee in its discretion has determined that the commutation would not disadvantage the Fund, the Employers, the remaining Members, or Pensioners or Reversionary Beneficiaries;
 - (c) the commutation is in accordance with the Relevant Legislation;
 - (d) the Trustee shall determine the amount of the Lump-Sum benefit or the amount to be transferred to the Member's Pension Account established pursuant to this Deed and such Lump-Sum or amount to be transferred as aforesaid shall not exceed the amount then standing to the credit of the Member's Accumulation Accounts at the date such Lump-Sum is paid or the amount is transferred;
 - (e) the Trustee shall in its absolute discretion reduce the amount of any pension payable from the Fund in respect of the Pensioner or Reversionary Beneficiary to such amount as it determines appropriate in the circumstances of the commutation.
- 14.5 A Member shall comply with the provisions of Rules 14.2(c) at all times.
- 14.6 The Trustee may establish a Segregated Current Pension Asset Account for payment of a Pension Benefit and segregate assets of the Fund for the purposes of paying the Pension Benefit to such account or alternatively segregate assets of the Fund for the purposes of paying the Pension Benefit and allocate same to the Member's Account so that the assets of the Fund for the purposes of paying the Pension Benefit are segregated current pension assets segregated from the balance of the assets of the Fund.

15. COMPLYING PENSION PROVISIONS

- 15.1 For the purposes of this Rule 15, a pension shall mean a Complying Pension that meets the requirements of any one of Rules 15.2 , 15.3 & 15.4. and subject to a determination of the Trustee may include a pension referred to in Rule 15.5.
- 15.2 A Complying Pension shall include a pension that complies with regulation 1.06(2) & (3) of the SIS Reg's or such other corresponding Relevant Legislation and subject to complying sith such legislation shall have the following characteristics:-
- (a) the pension is paid at least annually throughout the life of the primary beneficiary in accordance with the undermentioned sub-paragraphs (b) & (c), if there is a reversionary beneficiary:
 - (i) throughout the reversionary beneficiary's life; or
 - (ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the pension—at least until his or her 16th birthday; or
 - (iii) if the person referred to in the preceding subparagraph 2) is a full-time student at age 16—at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner); and
 - (b) the size of payments of the benefit in a year is fixed, allowing for variation only:
 - (i) as specified in the Trust Deed; or

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- (ii) to allow commutation to pay a superannuation contributions surcharge; and
- (c) unless APRA otherwise approves, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, is:
 - (i) if CPI_c is not less than CPI_p — not less than SP_p ; or
 - (ii) if CPI_c is less than CPI_p — not less than:

$$\frac{CPI_c}{CPI_p} \times SP_p$$

where:

CPI_c means the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which payment is to be made.

CPI_p means the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year.

SP_p means the sum payable in the immediately preceding year.

and

- (d) the pension does not have a residual capital value; and
- (e) the pension cannot be commuted except:
 - 1) if the commutation is made within 6 months after the commencement day of the pension; or
 - 2) if the commutation is made within 10 years after the commencement day of the pension to the benefit of a reversionary beneficiary on the death of the primary beneficiary; or
 - 3) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under:
 - (A) rules that meet the standards of this sub-rule or sub-regulations 1.06 (3) or (7) of SIS Reg's; or
 - (B) a contract that meets the standards of sub-regulations 1.05 (2), (3) or (9) of the SIS Reg's; or
 - 4) to pay a superannuation contributions surcharge; and
- (f) if the pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation; and
- (g) the pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary; and
- (h) the capital value of the pension and the income from it, cannot be used as security for a borrowing.

For the purpose of determining whether the aforesaid requirements for a Complying Pension meet the SIS Reg's, it is immaterial that:

- (i) if the primary beneficiary dies within 10 years after the commencement day of the pension, a surviving reversionary beneficiary may obtain a payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period of 10 years; and
- (ii) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been so payable in the period of 10 years, is payable to the primary beneficiary's estate; and
- (iii) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is a surviving reversionary beneficiary who also dies within that period, there is payable to the reversionary beneficiary's estate an amount determined as

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described in the preceding sub-rule (ii) as if that paragraph applied to the reversionary beneficiary.

15.3 A Complying Pension shall include a pension that complies with regulation 1.06(6) of the Superannuation Industry Supervision Regulations or such other corresponding Relevant Legislation and subject to complying with such legislation shall have the following characteristics:

- (i) that does not meet the standards in Rule 15.2; and
- (ii) provides that the size of the payments of benefit in a year is fixed, allowing for variation only as specified in the Trust Deed; and
- (iii) the commencement day is on or after 1 July 1994;
- (iv) the requirements in the preceding sub-rules 15.2(f) (g), and (h) are met; and
- (v) except in relation to payments, by way of commutation, for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the CPI in the preceding 3 years; and
- (vi) payments in accordance with the contracted size are made at least annually; and
- (vii) the pension can be commuted—except if conversion is in relation to a commutation to pay a superannuation contributions surcharge, the conversion to a lump sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under SIS Reg's Schedule 1B to the pension as if the commencement day were the day on which the commutation occurs.

15.4 A Complying Pension shall include a pension that complies with sub-regulation 1.06(7) of the Superannuation Industry Supervision Regulations or such other Relevant Legislation where the primary beneficiary became entitled to the benefit on or after 20 September 1998 and subject to complying with such legislation shall have the following characteristics:

- (a) the primary beneficiary became entitled to be paid the pension on or after the day when the primary beneficiary became of Pension Age; and
- (b) the following applies:
 - (i) the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary:
 - (A) if the Life Expectancy of the primary beneficiary on the commencement day is less than 15 years — throughout a period equal to the primary beneficiary's Life Expectancy (rounded up, at the primary beneficiary's option, not later than the day when the primary beneficiary becomes entitled to the pension, to the next whole number if the primary beneficiary's Life Expectancy does not consist of a whole number of years); or
 - (B) if the Life Expectancy of the primary beneficiary on the commencement day is 15 years or more — throughout a period that is not less than 15 years but not more than the primary beneficiary's Life Expectancy (rounded up, at the primary beneficiary's option, not later than the day when the primary beneficiary becomes entitled to the pension, to the next whole number if the primary beneficiary's Life Expectancy does not consist of a whole number of years); and
 - (ii) the total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day when the primary beneficiary became entitled to the pension; and

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- (iii) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the *previous total*), and does not exceed the previous total:
- (A) if CPI_c is less than or equal to 4% — by more than 5% of the previous total; or
 - (B) if CPI_c is more than 4% — by more than $CPI_c + 1\%$;
- where:
- CPI_c is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year.
- and
- (iv) the total amount of the payments to be made in a year in accordance with subparagraph (ii) or (iii) may be varied only to allow commutation to pay a superannuation contributions surcharge; and
 - (v) the pension does not have a residual capital value; and
 - (vi) the pension cannot be commuted except:
 - (A) within 6 months after the commencement day of the pension; or
 - (B) by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (C) by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
 - (D) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under rules that meet the standards of subregulation (2), (3) or this subregulation or under a contract that meets the standards of subregulation 1.05 (2), (3) or (9); or
 - (E) to pay a superannuation contributions surcharge; and
 - (vii) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
 - (viii) if the pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and
 - (ix) the pension cannot be transferred to a person except:
 - (A) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (B) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and
 - (x) the capital value of the pension, and the income from it, cannot be used as security for a borrowing.
 - (xi) the commencement day for the benefit is the day when the primary beneficiary became entitled to the pension.

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- 15.5 Subject to the provisions of the Relevant Legislation and subject to the requirements of a Complying Pension as outlined in the preceding sub-rules of this Clause 15, the Trustee may vary a Complying Pension on the advice of an Actuary.
- 15.6 The Trustee may also provide a Pension benefit that satisfies the requirements of Section 9 and 9A of the Social Security Act 1991 (Cth) and corresponding provisions of the Veterans Entitlements Act 1986 (C'th) or any corresponding amending or replacement legislation and excepting where there is any form of any inconsistency to the paramount terms and requirements of the said Social Security Act 1991 (Cth) and corresponding provisions of the Veterans Entitlements Act 1986 (C'th) or the corresponding amending or replacement legislation shall be upon the terms of a Complying Pension.
- 15.7 The Trustee may establish a Segregated Current Pension Asset Account for payment of a Pension Benefit and segregate assets of the Fund for the purposes of paying the Pension Benefit to such account or alternatively segregate assets of the Fund for the purposes of paying the Pension Benefit and allocate same to the Member's Pension Account so that the assets of the Fund for the purposes of paying the Pension Benefit are segregated current pension assets segregated from the balance of the assets of the Fund.
- 16. COMPLIANCE WITH RELEVANT LEGISLATION AND EMPOWERMENT IF PERMITTED BY RELEVANT LEGISLATION**
- 16.1 Notwithstanding anything to the contrary contained in these Rules:-
- (a) no Member shall be entitled to payment of his or her Benefits contrary to the provisions, conditions and standards imposed by the Relevant Legislation and the Trustee shall act in accordance with the provisions of the Relevant Legislation so that the Benefits payable under these Rules shall be taken as Benefits from a Complying Superannuation Fund;
 - (b) these Rules shall not restrict the payment of Benefits in any way which are not prohibited by the Relevant Legislation, breach the Relevant Legislation or result in the Fund losing the status of a Complying Superannuation Fund and the Trustee has full discretion to administer and pay Benefits which are not prohibited by the Relevant Legislation, breach the Relevant Legislation or result in the Fund losing the status of a Complying Superannuation Fund.

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17. PAYMENT OF BENEFITS IN SPECIE

Where the Trustee may pursuant to these Rules pay a Benefit, the Trustee may at the request of the Member and in accordance with the requirements of the Relevant Legislation pay such Benefits by transferring in specie assets of equivalent value to the benefit payable.

18. ELECTION FOR BENEFITS

18.1 A Member or Beneficiary upon becoming entitled to a Benefit from the Fund, may subject to the Relevant Legislation, elect to receive his or her Benefit:

- (a) In the manner provided for in Rule 1.1 or a mixture of them which may include more than one of each;
- (b) As an Ancillary Benefit to the extent the Benefit is not included in (a) above.

18.2 An election made under Rule 18.1 must be in writing and shall sufficiently indicate to the Trustee the desired manner in which the Member or Beneficiary wish to receive payment of their Benefits.

18.3 An election must be provided to the Trustee before the Benefit commences to be paid or within such a additional period of time as the Trustee allows.

18.4 In the case of a Pension Benefit a Member or Beneficiary may specify in their election particulars which includes:-

- (a) whether the Pension is a Reversionary Pension;
- (b) the type of Pension sought including an Allocated Pension, a lifetime Complying Pension, a life expectancy Complying Pension or such other form of Pension as may be provided as a Benefit under the Deed and Rules.
- (c) in the case of a Reversionary Pension particulars relating to the Reversionary Beneficiary and the terms for which the proposed Pension is to be paid.

18.5 The Trustee may request from a Member or Beneficiary such further particulars or information as it may in the Trustee's discretion determine and the Member or Beneficiary upon such a request shall provide such information or particulars to the Trustee.

18.6 Upon receiving an election from a Member or a Beneficiary the Trustee shall be at liberty to provide a Benefit payable to a Member or Beneficiary:-

- (a) In the manner provided for in Rule 1.1 or a mixture of them which may include more than one of each;
- (b) As an Ancillary Benefit to the extent the Benefit is not included in (a) above.

18.7 The Trustee while having regard to a Member's election is not thereby bound by it unless otherwise provided for in the Relevant Legislation or the Trustee is bound by a Binding Beneficiary Nomination.

19. RETENTION OF BENEFITS

19.1 Subject to the requirements of the Relevant Legislation where a Member or a Beneficiary has provided consent to the Trustee the Trustee may retain benefits of a Member or Beneficiary in the Fund for such period as the Trustee may determine notwithstanding nil cashing restrictions apply in respect to such benefits.

19.2 In exercising discretion under Rule 19.1 the Trustee shall take into account the timing requirements of the Relevant Legislation for the payment of a Pension Benefit.

20. PRESERVATION OF BENEFITS

The Trustee shall preserve benefits required to be preserved under the Relevant Legislation either in the Fund or will transfer such benefits to an Eligible Fund or an Approved Deposit Fund in accordance with the requirements of the Relevant Legislation.

21. MEMBER'S DEBT

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Subject to the requirements of the Relevant Legislation the Trustee may set-off against any Benefit of a Member any indebtedness of the Member to the Fund or may reduce the Member's Benefits accordingly.

22. DISCHARGE

- 22.1 The payment of all Benefits or the satisfaction of all Benefits (subject to the requirements of the Relevant Legislation) through payment and transfers of assets in specie (or any combination thereof) in accordance with the Deed and Rules to or for a Member or a Beneficiary shall constitute a full and final discharge of the Trustee of its obligations to the Member or the Beneficiary in respect to Benefits payable to the Member or the Beneficiary.
- 22.2 The transfer of Benefits of a Member or a Beneficiary to an Eligible Fund or an Approved Deposit fund upon payment or transfer of all of such Benefits including (subject to the requirements of the Relevant Legislation) the transfer of assets in specie in accordance with the Deed and Rules shall operate as a full and final discharge of the Trustee in respect to the payment of the Benefits for the Member or the Beneficiary.
- 22.3 The payment of Benefits or the satisfaction of all Benefits (subject to the requirements of the Relevant Legislation) through payment and transfers of assets in specie (or any combination thereof) in accordance with the Deed and Rules to a legal guardian or parent of a minor or a Legal Personal Representative of a Member or Beneficiary shall operate as a full and final discharge of the Trustee in respect to the payment of the Benefits for the Member or the Beneficiary.
- 22.4 The payment of Benefits or the satisfaction of all Benefits (subject to the requirements of the Relevant Legislation) through payment and transfers of assets in specie (or any combination thereof) in accordance with the Deed and Rules to the trustee of a trust established for the welfare and benefit of a minor or a person lacking legal contractual capacity shall operate as a full and final discharge of the Trustee in respect to the payment of the Benefits for the Member or the Beneficiary notwithstanding the Trustee or a director of the Trustee may also be the settlor or Trustee of the separate trust established for the aforesaid purposes or a spouse or relative of the settlor or Trustee.
- 22.5 A Member or a Beneficiary shall have no further rights, entitlements or interests in the Fund upon the payment or satisfaction of all the Benefits to a Member or a Beneficiary in accordance with the preceding sub-rules of this Rule 22.

23. BENEFITS - ALLOWANCES FOR TAX DEDUCTIONS

The Trustee when paying a Benefit may subject to the Relevant Legislation pay or pass on to the Member, the Legal Personal Representatives of the Member or the Beneficiary entitled to the Benefits the whole of a benefit which may otherwise accrue to the Trustee if a deduction were allowed in respect to the payment of the Benefit or under Section 279D of the Income Tax Assessment Act 1936 or any amending or replacement legislation to such provision.