

12. COVENANTS BY TRUSTEE

The Trustee covenants:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interest of the Beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (i) that are held by the Trustee personally; or
 - (ii) that are money or assets, as the case may be, of an Employer or an associate of an Employer;
- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and give effect to an Investment Strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
 - (i) the risk involved in making, holding, and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities; and
 - (v) the insurance requirements of Members;
- (g) if there are any monies in the Reserve Account of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's Investment Strategy and the Fund's capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Beneficiary access to any information or any documents which are prescribed by the Act; and
- (i) to comply with any other covenant that is prescribed by the Act.

13. COVENANTS BY DIRECTORS OF A CORPORATE TRUSTEE

- (a) If the Fund has a Corporate Trustee, this clause shall be deemed to operate as if the Directors were parties to this Deed and each of its Directors covenant to exercise a reasonable degree of care and diligence for the purpose of ensuring that the Trustee carries out the covenants described in clause 12.
- (b) The reference in this clause to a reasonable degree of care and diligence refers to the degree of care and diligence that a reasonable person in the position of a Director of the Trustee would exercise in the Trustee's circumstances.

14. RECORDS OF CHANGES OF TRUSTEE ETC. / REPORTS TO MEMBERS

14.1 Changes of Trustee and Trustee Consents and Declarations

The Trustee must keep, and retain for at least the minimum period required by the Act, up to date records of:

- (a) all changes of the Trustee, and changes of any Directors of any Corporate Trustee, of the Fund; and
- (b) all consents given by the Individual Trustees or the Directors, as the case may be;
- (c) all Declarations made by Individual Trustees or the Directors of a Corporate Trustee, under s104A of the SIS Act.

14.2 Reports to Members

The Trustee must keep, and retain for as long relevant and for at least the minimum period required by the Act, copies of reports that were given to all Members if the reports were given under the Act or under this Deed. The Trustee must, if requested, make those copies available for inspection by the Responsible Authority.

15. ADMISSION OF MEMBERS

15.1 Eligible Person may Apply

An Eligible Person may apply to the Trustee to become a Member of the Fund or the Trustee may invite an Eligible Person to become a Member of the Fund. The Trustee has discretion in deciding whether or not to accept an Eligible Person as a Member.

15.2 Application Form

The Trustee may require as a condition of accepting an Eligible Person as a Member that the Eligible Person completes a written application in the form that the Trustee determines. The application form may make provision for:

- (a) all information which is required by the Act to be provided by the Trustee to the applicant and to be provided by the applicant to the Trustee;
- (b) the applicant providing (if the applicant chooses to do so) the Tax File Number of the applicant and an acknowledgement by the Trustee and/or Employer; and

- (c) the applicant providing the nomination of a Nominated Beneficiary.

15.3 **Acceptance of Membership Application**

- (a) If the Trustee accepts an application for membership, the applicant becomes a Member of the Fund on a date determined by the Trustee or, if the Trustee does not make a determination, on the date the application for membership is accepted by the Trustee.
- (b) The Trustee may accept an application for membership notwithstanding that the Member has at that time a nil balance in the Fund if the Trustee is reasonably satisfied that the Member has or will have any beneficial interest in the Fund, including if the Trustee expects to receive Contributions made by or on behalf of the Member or a Rollover Payment on behalf of the Member from another Approved Superannuation Entity or the Member may become entitled to receive a Benefit including a Benefit payable on the death of another Member.

15.4 **Deemed Acceptance of Application**

Notwithstanding clauses 15.2 or 15.3, even if a completed written application form for membership is not requested by the Trustee or not provided by an applicant, the acceptance by the Trustee of the payment of a Contribution made by or on behalf of an applicant will be deemed to be acceptance of that applicant as a Member on the date that the Contribution is accepted by the Trustee.

15.5 **Members Bound by Deed**

Every Member is deemed to have consented to be bound by this Deed as it relates to the rights and obligations of the Member.

15.6 **Trustee to Notify Members of their Rights**

The Trustee must notify each Member in writing of that Member's rights to receive Benefits from the Fund and of any other information in the form and at the times required by the Act.

15.7 **Trustee May Impose Conditions on Members**

The Trustee may impose, remove or vary any conditions on the rights and obligations of a Member.

15.8 **Classification of Different Classes of Members**

- (a) The Trustee may classify Members into different classes of membership with rights and entitlements pertaining to each class as the Trustee may determine from time to time.
- (b) The Trustee must advise a Member of any class of membership to which that Member belongs and of the rights pertaining to that class and of any subsequent change to that class or rights.
- (c) If the Trustee does not create different classes of membership, then all Members will be classified as ordinary Members in one class of membership.

16. MEETINGS OF MEMBERS

16.1 Members may Convene Meeting

The Members may convene, meet, adjourn and regulate a meeting of Members as the Members see fit.

16.2 Trustee Convening Meeting

The Trustee may convene a meeting of Members and must convene a meeting of Members upon receiving a written notice of request for a meeting from a Member. A Member may give the Trustee a written notice of request for a meeting.

16.3 Notice of Meeting

The Trustee convenes a meeting of Members by sending a notice of meeting to each Member specifying:

- (a) the date, place and time of the meeting;
- (b) the details of all agenda items, including the proposed resolutions to be considered at the meeting; and
- (c) that a proxy may be appointed to vote on behalf of the Member at the meeting provided that the Member lodges the form of proxy with the Trustee not later than 24 hours before the scheduled starting time of the meeting.

The notice must be accompanied by a form of proxy approved by the Trustee.

16.4 Service of Notice

The Trustee must cause the notice of meeting to be served on each Member at least ten days before the date of the meeting. Service may be effected personally or by prepaid ordinary mail, and if by mail, notice will be deemed to have been given 3 days after the date of posting.

16.5 Chairperson

The Members may at the commencement of the meeting appoint a Chairperson of the meeting.

16.6 Voting Entitlement

- (a) Each Member is entitled to one vote.
- (b) The Chairperson does not have a casting vote in addition to the vote of the Chairperson as a Member.
- (c) Any Member may require, either prior to or immediately following the vote on any resolution, that the vote be cast or recast, as the case may be, with each Member having such number of votes corresponding to the amount of the Benefit in the

Fund that the Member holds at the time of the vote, where each dollar of the withdrawal benefit equates to one vote.

- (d) No resolution will be effective unless carried by a simple majority, or if the Act requires a particular majority for that resolution, by that majority.

16.7 Trustee to Oversee Meeting

The Trustee may oversee the conduct of the meeting of Members and must keep minutes of the meeting of Members.

17. CESSATION OF MEMBERSHIP

17.1 How Occurs – Triggering Event

Subject to the Act and the Trustee's discretion to determine otherwise, each of the following events is a triggering event upon which the Trustee may, or must if required by the Act, take action to cause a Member to cease to be a Member of the Fund:

- (a) when the Trustee requires that a Member cease membership of the Fund to comply with the Act including the Family Law Act or any agreement made under that Act; or because the Trustee determines that the Member's continued membership will cause the Fund to cease being a self-managed superannuation fund;
- (b) when the Member makes a request to the Trustee for a transfer or rollover of the Member's Benefit in accordance with this Deed; or
- (c) when the Trustee determines to cease the Member's membership in accordance with this Deed.

17.2 When Occurs

A person ceases to be a Member of the Fund on the first to occur of the following:

- (a) the date on which Trustee pays out of the Fund all the Member's Benefit to or on behalf of the Member, whether by rollover, transfer or payment of Benefit or commencement of payment of a Death Benefit in respect of a deceased Member; and
- (b) the date that the Trustee reasonably determines in accordance with any relevant requirement of the Act.

17.3 Member's Rights not Affected

A Member's cessation of Membership or death will not affect or exclude:

- (a) any rights or obligations of that Member which accrued prior to the date of cessation or death; and
- (b) any rights or obligations of that Member as a former or deceased Member on and from the date of cessation or death.

18. MEMBERS PROVIDING INFORMATION TO TRUSTEE

18.1 Upon Request by Trustee

A Member must provide to the Trustee any information that the Trustee requests of the Member if the Trustee considers the information necessary or desirable in connection with the administration of the Fund, including information about the Member's medical history or a request to undergo a medical examination by a medical practitioner acceptable to the Trustee.

18.2 Members' Failure to Comply

If a Member fails to comply with the request by the Trustee, the Trustee may suspend the acceptance of any Contributions in respect of that Member or withhold any Benefits payable in respect of that Member or impose any other conditions on the membership of that Member as the Trustee considers necessary or appropriate, but subject to the requirements of the Act.

18.3 Information Incorrect or Misleading

If a Member provides information to the Trustee which affects or is likely to affect the Benefit payable to or in respect of the Member and the information supplied is incorrect or misleading or any relevant information is in the opinion of the Trustee deliberately withheld by the Member, the Trustee may alter or amend the Benefit of that Member in a manner that the Trustee considers necessary or appropriate, but subject to the requirements of the Act.

18.4 Tax File Numbers of Members

The Trustee may request a Member's Tax File Number in a manner permitted by the Act or the Responsible Authority. The Member is not obliged to provide the Member's Tax File Number. If a Member quotes his or her Tax File Number to the Trustee, the Trustee must record, retain, use and later destroy the record of the Tax File Number only in accordance with the requirements of the Act and the Responsible Authority. However the Trustee must not accept any Member Contribution if the Member has not quoted the Member's Tax File Number to the Trustee.

18.5 Members Updated Information to Trustee

Members may at any time give the Trustee updated information about their details such as address, marital status, status of Gainful Employment, Dependants and/or Nominated Beneficiaries.

19. DISCLOSURE AND REPORTING TO MEMBERS

19.1 General Requirement

The Trustee must provide each Member with information in writing that the Trustee determines is required by the Act to be provided to the Members in relation to the main features, benefits, risks and conduct of the Fund, the financial condition and investment performance of the Fund, the Benefit of the Member, Contributions to the Fund, and any other matters that the Trustee determines is required to be provided.

19.2 Specific Requirements

If required by the Act, the information that the Trustee is to provide may include:

- (a) **New Members:** information to a person on becoming a Member;
- (b) **For each Financial Year:** information to each Member in respect of each Financial Year of their membership;
- (c) **Significant Events and Material Changes:** information to each Member in respect of any significant event and material changes in relation to the Fund;
- (d) **Information on Request:** information to a Beneficiary (including a Member) on request by the Beneficiary if the Beneficiary reasonably requires the information for the purposes of:
 - (i) understanding any Benefit that the Beneficiary may have, has or used to have;
 - (ii) understanding the main features of the Fund;
 - (iii) making an informed judgment about the management and financial condition of the Fund;
 - (iv) making an informed judgment about the investment performance of the Fund; or
 - (v) understanding the particular investments of the Fund;
- (e) **Cessation of Membership:** information to a Member, or if the Member has died, to each Beneficiary receiving a Benefit as a result of the death of the Member, in respect of the Member's cessation of membership; and
- (f) **Roll-over Payment Statement:** a statement in relation to any rollover superannuation benefit paid by the Fund to an Approved Superannuation Entity on behalf of the Member as required under s. 390-10 of the Tax Act;
- (g) **Superannuation Splitting under Family Law Act:** information in respect of any splitting of a Member's Benefit under the Family Law Act.

19.3 Limitation on Disclosure

Unless required by the Act, the Trustee is not required to disclose:

- (a) internal working documents of the Fund; or
- (b) information or documents that would disclose personal information of another person if, in the circumstances, the disclosure would be inappropriate or unreasonable; or
- (c) trade secrets or confidential information having commercial value that would be reduced by the disclosure; or

- (d) information or documents for which the Fund owes another person a duty of non-disclosure.

19.4 **What, When and How Information is Provided**

The Trustee must comply with the Act in relation to any information that is required to be disclosed as to:

- (a) what information is provided;
- (b) when the information is provided; and
- (c) how the information is provided.

19.5 **Product Disclosure Statements – Information Knowledge of Members**

The Trustee may assume that a Member has received, or has, and knows that the Member has, access to, all of the information known or available to the Trustee and that a product disclosure statement would be required to contain, unless the Member is able to satisfy the Trustee on reasonable grounds to the contrary.

20. **GENERAL POWERS OF THE TRUSTEE**

20.1 **Trustee has Complete Management and Control**

The Trustee has complete management and control of all matters concerning the Fund, subject to this Deed and the requirements of the Act.

20.2 **Trustee May do all Acts in Exercise of Powers/Obligations**

Subject to clause 3.2, the Trustee may do all acts and things, including without limitation, accepting Contributions and paying Benefits, which the Trustee considers necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund and in the exercise and performance of the Trustee's discretions, powers and obligations under the Deed.

20.3 **Powers Additional to Powers Given under Act**

Subject to clause 3.3, the Trustee's powers and discretions under this Deed are in addition to, and not in substitution for, the powers and discretions exercisable by the Trustee under the Act.

20.4 **Conflicts of Interest**

The Trustee may exercise or concur in exercising all the powers and discretions contained in this Deed or otherwise conferred by law notwithstanding that any person who is an Individual Trustee or a director or shareholder of a Corporate Trustee or any person being a Relative of any of such person:

- (a) has or may have a direct or personal interest (whether as trustee of any other settlement or in his personal capacity or as a shareholder or director or member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or as a custodian appointed under clause

27.3 of this Deed, or as a Relative of any of such persons, or otherwise howsoever) in the mode or result of exercising such power or discretion; or

- (b) may benefit either directly or indirectly as a result of the exercise of any such power or discretion; and
- (c) notwithstanding that the Trustee for the time being is the sole Trustee.

21. SPECIFIC MANAGEMENT POWERS OF THE TRUSTEE

Subject to clause 23, the Trustee has the following powers:

21.1 Appoint and Pay Managers and Others

To appoint remove or suspend custodians, investment managers, administrators, clerks, agents, representatives, nominees and other servants and delegates, whether they be appointed for permanent, temporary or special services, and to determine their powers and duties and fix and pay from the Fund their salaries, emoluments and charges;

21.2 Legal Proceedings

To institute, conduct, defend, compound, settle or abandon any legal proceedings or other legal action by or against the Fund or otherwise concerning the Fund, the Members or the Deed as the Trustee thinks fit;

21.3 Compound Debts

To compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund;

21.4 Arbitration

To refer any claim or demand by or against the Trustee to arbitration and observe and perform the award of the arbitrator;

21.5 Receipts and Discharges

To make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;

21.6 Bank Accounts

To open and maintain bank accounts for the Fund and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques;

21.7 Seek Advice

To obtain and act on the advice or opinion of any Qualified Advisor (whether or not that advice or opinion was obtained by the Trustee) in relation to any matter concerning the Fund as the Trustee thinks fit and without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on that advice or opinion;

21.8 **Borrow or Raise Money, Give Indemnity and Security and Negotiable Instruments**

To borrow or raise any money or other financial accommodation in any lawful manner or enter into contracts and incur obligations relating to the Fund, as the Trustee thinks fit, including by drawing, making, endorsing, accepting, discounting, executing, negotiating, issuing, or otherwise dealing in any bill of exchange, bill of lading, promissory note or other negotiable or transferable instrument and to give undertakings and indemnities, including giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee in connection with the Fund and to assign, pledge, mortgage or charge or provide any other form of encumbrance over, all or part of the Fund as security for repayment of any such borrowing, raising of money or financial accommodation or negotiable instrument, that forms part of the Fund on terms including interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit and whether as principal or agent, but provided that any of the foregoing complies with the Act.

21.9 **Receive Distributions, Dividends & Gifts**

To receive any distribution (from a family trust or otherwise), dividend or gift which is tendered to the Fund.

21.10 **Maintain Property**

To repair, paint, alter, rebuild, improve and generally maintain any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund;

21.11 **To Pay Rates and Taxes**

To pay all rates taxes costs charges insurance premiums expenses and outgoings of whatever nature payable in connection with the maintenance upkeep and management of the property comprising the Fund;

21.12 **Lease Property**

To lease or sub-lease any property (whether real or personal) forming part of the Fund for such period and at such rent and subject to such terms and conditions as the Trustee may consider desirable and to accept surrenders of or otherwise determine such leases or sub-leases;

21.13 **Sell Property**

To sell or otherwise dispose of any property forming part of the Fund at such price and upon such terms and conditions and in such manner as the Trustee thinks fit;

21.14 **Undertaking and Contracts**

To give undertakings and enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit;

21.15 **Insurance and Premiums**

To effect Policies of Insurance to provide for all or any part of the Benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies

and to surrender vary or assign or otherwise deal with any Policy of Insurance as the Trustee thinks fit;

21.16 Proxies and Powers of Attorney

To give proxies and powers of attorney (with or without powers of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any property comprising part of the Fund;

21.17 Purchase Annuity

To purchase an Annuity to provide all or a part of the Pension payable in respect of a Member;

21.18 Insurance of Property

To insure and keep insured any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund;

21.19 Insurance of Trustee and Directors

To insure and keep insured any liability of the Trustee or any Directors of a Corporate Trustee or the liability of the Fund to indemnify or reimburse the Trustee or Directors, as the case may be;

21.20 Delegate

To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred on the Trustee under this Deed and execute any powers of attorney or other instruments necessary to effectuate such purpose.

22. INVESTMENT OF THE FUND

22.1 General Investment Powers of the Trustee

Subject to clause 23, the Trustee may in the name of the Trustee or in the name of any nominee selected by the Trustee invest the whole or any part of the Fund in any investment or manner of investment (whether in Australia or elsewhere or whether involving liability or not) which the Trustee considers to be a suitable investment or manner of investment for the Fund and which complies with the Investment Strategy and the Act.

22.2 Specific Investment Powers of the Trustee

The Trustee may invest the Fund in any one or more of the following:

- (a) **Authorised Trustee investments:** any investment from time to time authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust monies;
- (b) **on deposit:** on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution or with any other person approved by the Responsible Authority or any Employer in any type of account either with or

without security at such rate of interest and on such terms as the Trustee may determine;

- (c) **acquisition of securities:** in the acquisition by subscription or by purchase or otherwise of fully or partly paid shares, stock, options, debentures, bonds, notes or other securities or obligations howsoever called in any company (including any Employer) and including any warrants;
- (d) **acquisition of units:** in the acquisition of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible), managed investment scheme or other scheme in the nature of a unit trust;
- (e) **acquisition of property:** in the acquisition of any property (whether real or personal) or any interest in property whether or not such property or interest in property is subject to any mortgage, charge or other encumbrance or is acquired or purchased for profit or is producing income at the date it is acquired or purchased;
- (f) **acquisition of mortgages:** in the acquisition of mortgages over freehold or leasehold property either by direct loan or by purchase at a discount or otherwise;
- (g) **acquisition of businesses:** in the acquisition of an interest in any business (including a business of primary production), subject to the requirements of the Act; or
- (h) **derivative transactions:** in derivative transactions but subject to clause 23.8.

22.3 Dealing with Investments as Beneficial Owner

The Trustee may deal with any investment of the Fund as authorised by this Deed as fully and effectively as a person absolutely and beneficially entitled to and dealing with his own property may do so.

22.4 The Trustee may have Interest in Investments

- (a) The Trustee may make or vary any of the investments authorised under this Deed even if the Trustee (including an Individual Trustee or Director of a Corporate Trustee) may directly or indirectly have an interest in or may benefit from the investment.
- (b) The Trustee and any Directors must disclose details of their interest in any investment in any manner that is required by the Act.

22.5 Policies of Insurance

- (a) The Trustee may obtain and maintain insurance over risks and liabilities in respect of the Fund including:
 - (i) Policies of Insurance on behalf of a Member to secure the Benefit of a Member; and

- (ii) insurance in respect of the Fund's assets and/or Trustee's liabilities.
- (b) A Member may request the Trustee to obtain a Policy of Insurance and may specify the type of Policy of Insurance to be obtained. The Trustee has no responsibility to the Member or the Dependants of the Member to obtain that Policy of Insurance.
- (c) The Trustee may debit the premiums for any Policy of Insurance to:
 - (i) the Income Account;
 - (ii) the Reserve Account; or
 - (iii) the Accumulation Account of the Member for whom the Policy of Insurance is obtained;

in such proportions and manner as the Trustee may determine from time to time.
- (d) The Trustee is at liberty to reduce or abandon insurance cover in relation to a Member with the Member's consent or if the Member's age, ill-health or other circumstances makes it too costly or impracticable to effect or continue that insurance cover.
- (e) Unless the Trustee determines otherwise, the Insured Component for funding the payment of a Member's Benefit or for any other purpose in relation to a Member shall subject to the Act be equal to the amount (if any) paid to or received by the Trustee under the Policy of Insurance in order to provide the Insured Component less any part of that amount that the Trustee determines in its discretion to credit to a Reserve Account or to any other Account in respect of the Member.
- (f) The Trustee and the Fund are not liable for any loss suffered by the Fund or any Member or Beneficiary as a result of:
 - (i) no or insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not; or
 - (ii) an insurer failing to pay out on a insurance policy in whole or in part for whatever reason.

22.6 Prudent Investment Rules

Subject to clause 23, and without limiting the matters that the Trustee may take into account when exercising a power of investment, the Trustee must, so far as they are appropriate to the circumstances of the Fund, have regard to:

- (a) the purposes of the Fund and the needs and circumstances of the Beneficiaries;
- (b) the desirability of diversifying the Fund's investments;
- (c) the nature of and risk associated with the existing investments and property of the Fund;
- (d) the need to maintain the real value of the capital or income of the Fund;

- (e) the risk of capital or income loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return and timing of income return;
- (h) the length of the term of the proposed investment;
- (i) the probable duration of the Fund;
- (j) the liquidity and marketability of the proposed investment during, and on the determination of the term of the proposed investment;
- (k) the aggregate value of the Fund;
- (l) the effect of the proposed investment in relation to the tax liability of the Fund;
- (m) the likelihood of inflation affecting the value of the proposed investment or other property of the Fund;
- (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment; and
- (o) the results of a review of existing trust investments.

23. **COMPLIANCE WITH THE ACT - INVESTMENTS**

23.1 **General Requirement**

The Fund may only be invested in a manner that will not cause the Fund or the Trustee to be in breach of any relevant requirement of the Act.

23.2 **Borrowing by the Trustee**

The Trustee may only borrow money or maintain an existing borrowing of money, including borrowing under section 67A and 67B of the SIS Act, in a manner that is not prohibited by the SIS Act.

23.3 **Lending to Members**

The Trustee may only allow any money of the Fund to be lent, or any financial assistance using the resources of the Fund to be given, to a Member or a relative of a Member in a manner that is not prohibited by the Act.

23.4 **Acquisition of Certain Assets from Members or a Related Party**

The Trustee may only intentionally acquire or allow to be acquired on behalf of the Fund an asset from a related party of the Fund in a manner that is not prohibited by the Act.

23.5 Investments to be made at Arm's Length

The Trustee must not invest or allow to be invested any money or other part of the Fund unless:

- (a) all parties to the relevant transaction are dealing at arm's length in respect of the transaction; or
- (b) if the parties are not dealing with each other at arm's length, the terms and conditions of the transaction are no more favourable than those which it would be reasonable to expect would apply if the parties were dealing with each other at arm's length.

23.6 Statement of Investment Strategy

The Trustee must if required by the Act formulate and prepare an Investment Strategy which sets out the investment objectives of the Fund and the policy to achieve those objectives and incorporates any other matters which are necessary for the Trustee to comply with the Act.

23.7 Member Investment Choice

- (a) This clause applies if the Trustee determines to offer investment choice to Members ("Member Investment Choice").
- (b) The Trustee may choose in the Trustee's absolute discretion to adopt and offer to Members (or a specific class of Members) a choice of two or more individual Investment Strategies from which a Member (or a class of Members) may choose one Investment Strategy or a combination of individual Investment Strategies.
- (c) The Trustee must give directions to the Members (or each Member of the class of Members):
 - (i) identifying the investment objectives of each of the Investment Strategies;
 - (ii) providing all information which the Trustee reasonably believes a person would reasonably need for the purpose of understanding the objectives, effect of, and any risk involved in, each of those Investment Strategies, as if each Investment Strategy offered was the Investment Strategy for the Fund as a whole;
 - (iii) providing full information of the range of directions that can be given by the Trustee and the circumstances in which they can be changed;
 - (iv) identifying the particular Investment Strategy the Trustee will adopt for a Member (or each Member of a class of Members) if no choice is made by the Member (or each Member of the class of Members), unless it is a condition of membership that the Member must choose a particular Investment Strategy or combination of Investment Strategies.
- (d) If determining two or more individual Investment Strategies to offer as a choice to Members, the Trustee must give proper consideration to:

- (i) all matters contained in the Trustee's covenant in clause 12(f); and
 - (ii) the circumstances of the Fund as a whole in making the Member Investment Choice available as part of the Fund's Investment Strategy; and
 - (iii) a continued and regular monitoring of changes in circumstances of the Fund as a whole to assess whether it remains appropriate.
- (e) If the Trustee offers Member Investment Choice, the Trustee must if required by the Act advise the Responsible Authority of the number of Investment Strategies which are offered as choices.
- (f) The Trustee may cease to offer or make any variation to the offering of Member Investment Choice. If so, the Trustee must:
- (i) give Members the opportunity to provide further directions to the Trustee; and
 - (ii) advise Members of the default Investment Strategy that will be adopted unless the Member instructs otherwise.

23.8 **Derivative Transactions**

The Trustee may invest in derivative transactions provided that:

- (a) the proposed derivative transaction complies with an Investment Strategy of the Fund;
- (b) if required by the Act, the Trustee has adopted an appropriate risk management statement; and
- (c) if the derivative transaction involves the creation of a charge over the assets of the Fund, then the Trustee must prepare a risk management statement if required by the Act.

23.9 **Investments Involving "In-house Assets" or a Related Party**

Without limitation to clause 23.1, the Trustee must ensure that the value of the Fund's in-house assets as determined under the Act does not exceed more than the allowable percentage of the Fund's total assets (calculated on market value) prescribed by the Act and does not contravene any other relevant restriction of the Act.

24. **SPECIFIC INVESTMENTS OF A MEMBER**

24.1 **Separate Investment for a Specific Member**

At the request of or with the approval of a Member, the Trustee may invest all or any part of the amount standing to the credit of the Member's Accumulation Account by acquiring or entering into any investment separately and on behalf of the Member, provided the investment satisfies the Investment Strategy of the Fund.

24.2 **Trustee to Record and Account Separately**

The Trustee must record any investments attributable to the Member and all revenue and expenses in respect of the investment must be credited or debited as the case may be directly to the relevant Member's Accumulation Account.

24.3 **Variation to the Investment**

The Trustee may accept or reject a request from a Member to vary any specific investment of that Member.

25. **VALUATION OF FUND**

Following each Balance Date and any other date that the Trustee considers appropriate or is required by the Act, the Trustee must obtain a valuation of the Fund. The valuation must be reflected in the accounts of the Fund.

26. **DELEGATION BY TRUSTEE**

26.1 **Trustee's Right to Delegate**

Subject to clause 26.3, the Trustee may delegate any power, discretion or obligation exercisable by the Trustee (including any power or obligation which the Trustee has a duty to exercise and the power of delegation) to any person ("the Delegate") in a manner and on terms that the Trustee thinks fit.

26.2 **Variation or Revocation to Delegation**

The Trustee may vary or revoke any delegation and may exercise any power in conjunction with, or to the temporary or permanent exclusion of, the Delegate.

26.3 **Delegation Subject to Act**

The Trustee must not make any delegation or allow any delegation to remain where the delegation contravenes the Act.

26.4 **Scope of Delegation**

The Delegate may only perform those duties and only has those powers that the Trustee expressly delegates to the Delegate.

27. **APPOINTMENT OF ACTUARY, AUDITOR, CUSTODIAN, INVESTMENT MANAGERS AND QUALIFIED ADVISORS**

27.1 **Actuary**

The Trustee must if necessary appoint an Actuary to provide actuarial advice from time to time.

27.2 Auditor

- (a) The Trustee must appoint an Auditor to perform an audit of the Fund under the Act.
- (b) The Trustee must agree with the Auditor on the scope of the audit to be conducted which should include:
 - (i) the Auditor's reporting obligations under the Act;
 - (ii) verification of the Fund's assets, their legal title and their valuation; and
 - (iii) verification of Members' Benefits.

27.3 Custodian

The Trustee may appoint in writing any person as a custodian to hold legal title to any asset acquired or to be acquired by the Trustee or to carry out any other custodial services on behalf of the Fund on such terms as the Trustee thinks fit, subject to compliance with the Act.

27.4 Investment Managers

- (a) The Trustee may appoint in writing an Investment Manager to carry out the management of the investments of the Fund subject to compliance with this Deed and the Act.
- (b) If the Trustee enters into an agreement with an Investment Manager under which all or any part of the Fund will be placed under the control of the Investment Manager, the Trustee must ensure that the agreement contains adequate provisions to enable the Trustee to require the Investment Manager to provide to the Trustee appropriate information on the making of, and return on, the investments and to provide any other information that is necessary to enable the Trustee to assess the performance and capability of the Investment Manager in managing the investments of the Fund.
- (c) The Trustee must use reasonable endeavours to ensure that any agreement with an Investment Manager includes, as a minimum, the following obligations on the Investment Manager:
 - (i) to manage assets in accordance with set investment restrictions;
 - (ii) to keep the investment portfolio under review and to confer with and advise the Trustee regularly;
 - (iii) to exercise all due diligence and care;
 - (iv) to have appropriately qualified staff in charge at all times;
 - (v) to ensure assets are vested in the Trustee (or a Custodian, if applicable) as soon as possible; and
 - (vi) to provide upon request information to the Auditor of the Fund.

27.5 **Qualified Advisors**

The Trustee may from time to time appoint any Qualified Advisors to give advice that the Trustee considers desirable for the proper management and administration of the Fund.

27.6 **Revocation of Appointment**

The Trustee may revoke and remove from office any person appointed to any position under this clause.

28. **REMUNERATION OF TRUSTEE AND REIMBURSEMENT FOR ADMINISTRATION EXPENSES**

28.1 **No Right to Charge Fees**

For as long as the Fund is a self managed superannuation fund under section 17A of the SIS Act:

- (a) no Individual Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person for any trustee duties or services performed by the Individual Trustee in that capacity in relation to the Fund;
- (b) no Corporate Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person for any trustee duties or services performed by the Corporate Trustee in that capacity in relation to the Fund; and
- (c) no Director of the Corporate Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person (including the Corporate Trustee) for any trustee duties or services performed by the Director in that capacity in relation to the Fund.

28.2 **Indemnity and Reimbursement**

The Trustee is entitled to be indemnified by and reimbursed from the Fund for and in respect of:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with the investments of the Fund;
- (b) all fees, wages and expenses of any Auditor, Actuary, Qualified Advisor, Investment Manager or Custodian from time to time engaged by the Trustee under this Deed;
- (c) all Taxation paid or payable by the Trustee in connection with the Fund and any Member on any account whatsoever;
- (d) all costs, charges and expenses incurred or to be incurred in relation to the preparation, maintenance and distribution of any accounting records, returns, reports or other documents in relation to the Fund; and
- (e) any other costs, charges and expenses incurred or to be incurred in relation to the management or administration of the Fund.

29. **ACCOUNTING RECORDS**

29.1 **Form of Accounting Records**

The Trustee must establish and maintain accounting records in a form that:

- (a) correctly records and explains the transactions and financial position of the Fund;
- (b) enables the annual accounting statements to be prepared in accordance with clause 30;
- (c) enables the annual returns of the Fund to be prepared and lodged in accordance with the Act;
- (d) enables those accounting records to be conveniently and properly audited in accordance with this Deed and the Act.

29.2 **Retention of Accounting Records**

The Trustee must retain the accounting records for at least the minimum period required by the Act after the end of the Financial Year to which the accounting records relate.

30. **ACCOUNTING STATEMENTS**

30.1 **Preparation**

The Trustee must in respect of each Financial Year prepare the following accounting statements in respect of the Fund:

- (a) a statement of financial position;
- (b) an operating statement;
- (c) any other accounting statements that are required by the Act.

30.2 **Signature**

The accounting statements must be signed by or on behalf of the Trustee in a manner required by the Act or as otherwise permitted by law.

30.3 **Retention**

The Trustee must retain the accounting statements for the minimum period required by the Act after the end of the Financial Year to which the accounting statements relate.

31. **AUDIT OF THE FUND**

31.1 **Audit to be Conducted each Financial Year**

If required by the Act, the accounting statements of the Fund prepared in respect of each Financial Year must be audited by an Auditor appointed by the Trustee.

31.2 **Auditor to be Given Access to Documents/Information**

The Trustee must give the Auditor access to any accounting records and accounting statements and other documents and information connected with the Fund as requested by the Auditor to enable the Auditor to complete the audit.

32. **ANNUAL RETURNS ETC TO RESPONSIBLE AUTHORITY**

The Trustee must in respect of each Financial Year (or other period determined by the Act) and within the time required by the Act give to the Responsible Authority:

32.1 **Annual Return**

an annual return in a form prescribed by the Act;

32.2 **Trustee Certificate**

a trustee certificate in a form prescribed by the Act;

32.3 **Audit Certificate**

the audit certificate given to the Trustee by the Auditor;

32.4 **Contribution Statement**

a statement in relation to the Contributions received by the Fund as required under s. 390-5 of the Tax Act; and

32.5 **Other Documents or Information**

any other documents or information which may be required by the Act, or are requested by the Responsible Authority, to be given to the Responsible Authority.

33. **COMPLAINTS PROCEDURE**

33.1 **If Required by the Act**

The Trustee must, if required by the Act, establish and maintain arrangements for complaints and enquiries by Members.

33.2 **Rights of Beneficiaries**

A Beneficiary has the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to that Beneficiary.

33.3 **Trustee to Deal within 90 Days**

The Trustee must deal with any enquiries or complaints within 90 days after they were made.

34. NOTICE TO RESPONSIBLE AUTHORITY

34.1 Trustee's Responsibility to Notify of Significant Adverse Events

If the Trustee becomes aware of an event having a significant adverse effect on the financial position of the Fund, the Trustee must if required by the Act give written notice to the Responsible Authority setting out particulars of the event. The Trustee must do this no later than the third business day after becoming aware of the event.

34.2 Meaning of Significant Adverse Event

For the purpose of this clause, an event has a significant adverse effect on the financial position of the Fund if, as a result of the event, the Trustee will not, or may not, at a time before the next annual report by the Trustee to the Members, be able to make payments to the Members as and when the obligation to make those payments arises.

34.3 Change of Fund Details

The Trustee must give notice in writing to the Responsible Authority using the approved form specified in the SIS Regulations of any change in:

- (a) the name of the Fund;
- (b) the postal address, registered address or address for service of notices of the Fund;
- (c) details of the contact person, and contact telephone number and facsimile number for the Fund;
- (d) the membership of the Fund;
- (e) the Trustee, including any change to Individual Trustees, a Corporate Trustee, or directors of the Corporate Trustee;

within 28 days of the occurrence of the change.

34.4 Material Changes and Omissions in Information Previously Given

If the Trustee becomes aware of a material change or material omission in any information given to the Responsible Authority, the Trustee must if required under s. 390-115 of the Income Tax Act give written notice to the Responsible Authority setting out particulars of the change or omission. The Trustee must do this no later than 30 days after becoming aware of the change or omission.

35. ACCOUNTS

35.1 Separate Accounts

The Trustee must establish and maintain such Accounts in respect of each Member and the Fund as the Trustee determines, subject to complying with the Act.

35.2 **Types of Accounts**

Without limitation to clause 35.1, the Trustee may establish and operate the following types of Accounts in accordance with this Deed or the Act:

- (a) Accumulation Account;
- (b) Income Account;
- (c) Reserve Account;
- (d) Pension Account; or
- (e) Transfer Balance Account.

36. **ACCUMULATION ACCOUNTS**

36.1 **Credits to Accumulation Accounts**

The following amounts may be credited to an Accumulation Account of a Member:

- (a) Contributions made by or on behalf of the Member;
- (b) the proceeds (or any part thereof) of any Policy of Insurance or Annuity in respect of the Member which are paid to the Trustee and which the Trustee determines to credit to the Member's Accumulation Account;
- (c) any amount transferred or rolled over to the Fund from another Approved Superannuation Entity in respect of the Member;
- (d) the investment return (if positive) of the Member's Benefit as determined by the Trustee and transferred from the Income Account;
- (e) any amounts transferred from a Pension Account in respect of a Member; and
- (f) any other amounts as the Trustee may from time to time determine.

36.2 **Debits to Accumulation Accounts**

The following amounts may be debited to an Accumulation Account of a Member:

- (a) any Benefit paid to the Member or a Beneficiary in respect of the Member;
- (b) any amount transferred or rolled over from the Fund in respect of the Member to another Approved Superannuation Entity;
- (c) the investment return (if negative) of the Member's Benefit as determined by the Trustee;
- (d) the costs of any Policy of Insurance or Annuity obtained in respect of the Member and which the Trustee determines to debit to the Member's Accumulation Account;
- (e) the proportion of any amount payable as Taxation in respect of Contributions to the

Fund or income of the Fund credited to the Member's Accumulation Account or arising as a result of a Rollover Payment to or from another Approved Superannuation Entity as the Trustee may determine;

- (f) the proportion of any amount representing the reimbursement to the Trustee of costs, charges, or expenses incurred by the Trustee pursuant to this Deed as the Trustee may determine;
- (g) any amount payable to the Trustee in respect of the Trustee's indemnity contained in this Deed;
- (h) any amount transferred from an Accumulation Account to a Pension Account in respect of a Member;
- (i) any amount paid by the Trustee from the Fund to or on behalf of a Member in respect of a Release Authority given to the Trustee by the Member; and
- (j) any other amounts as the Trustee may from time to time determine.

37. **INCOME ACCOUNT**

37.1 **Credits**

The Income Account may be credited with the following:

- (a) all income, investment earnings and profits of the Fund in each Financial Year;
- (b) any credits arising out of any adjustment made by the Trustee pursuant to this Deed;
- (c) the proceeds of any Policy of Insurance that the Trustee determines should be credited to the Income Account;
- (d) any distribution, dividend or gift paid to the Fund and accepted by the Trustee; and
- (e) any other amount as the Trustee may from time to time determine.

37.2 **Debits**

The Trustee may debit the Income Account with the following amounts:

- (a) any loss arising from the disposal or dealing with any investment of the Fund;
- (b) any debits arising from an adjustment made by the Trustee pursuant to this Deed;
- (c) the cost of any Policy of Insurance that the Trustee determines should be debited to the Income Account;
- (d) any amount representing the reimbursement to the Trustee of any costs or charges incurred by the Trustee which the Trustee determines should be debited to the Income Account;

- (e) any amount which is payable or may become payable by way of Taxation in respect of the Contributions or income of the Fund which the Trustee determines should be debited to the Income Account;
- (f) any income transferred to the Reserve Account; and
- (g) any other amount as the Trustee may from time to time determine.

38. **RESERVE ACCOUNT**

38.1 **Credits**

Subject to the requirements of the Act, the Trustee may credit the Reserve Account with:

- (a) an amount transferred from the Income Account;
- (b) any part of an Insured Component that the Trustee determines to credit to the Reserve Account; or
- (c) any reserves or any other amount which the Trustee so determines in the Trustee's discretion.

38.2 **Investment Return on Reserve Account**

Any amount held in the Reserve Account does not form part of any Accumulation Account or Pension Account and any investment return (positive or negative) derived by the Fund on the Reserve Account shall be credited or debited to the Reserve Account from the Income Account.

38.3 **Purpose and Use**

- (a) The Reserve Account may be used by the Trustee for the purpose of:
 - (i) giving effect to a reserving strategy established by the Trustee; or
 - (ii) stabilising investment earnings of the Fund in accordance with the Fund's Investment Strategy; or
 - (iii) the benefit of any Member or Beneficiary or former Member or Beneficiary, including augmenting an Accumulation Account on any basis that does not breach the Act; or
 - (iv) assisting the Trustee to identify the value of assets that may have been exchanged or segregated as current pension assets or non-current pension assets or that are dealt with as a sub-fund, segment or partition; or
 - (v) such other purposes and contingencies that the Trustee may determine in its discretion.
- (b) The Trustee may create and operate separate Reserve Accounts dealing with:
 - (i) investment reserves;

- (ii) contribution reserves;
- (iii) miscellaneous reserves;
- (iv) pension reserves; or
- (v) any other reserve that is permitted by the Act.

39. **PENSION ACCOUNT**

The Trustee may establish a Pension Account in respect of a Pensioner from which the Pension shall be paid. The Pension Account may be operated by the Trustee as the Trustee sees fit.

40. **TRANSFER BALANCE ACCOUNT**

- (a) The Trustee may for each relevant Member operate a Transfer Balance Account in conjunction with the ATO if and in a manner required by the Income Tax Act and otherwise as the Trustee sees fit.
- (b) Subject to the Trustee complying with the Act, at the request of a Member, the Trustee may take all necessary action that the Trustee is able to take, and may give all necessary information that the Trustee is able to give to the Member, in order that the Member:
 - (i) does not have an Excess Transfer Balance or liability for Excess Transfer Balance Tax; or
 - (ii) is able to minimise the Member's Excess Transfer Balance and any liability for Excess Transfer Balance Tax.

41. **CALCULATION OF INVESTMENT RETURN AND EARNINGS**

- (a) Following each Balance Date, the Trustee may determine the investment return and investment earnings of the Fund for that Financial Year.
- (b) Subject to the requirements of the Act, the Trustee must determine the investment return to be credited or debited to a Member's Benefit in a way that is fair and reasonable as between all the Members of the Fund and the various kinds of Benefit of each Member of the Fund.
- (c) At any point in time during a Financial Year the Trustee may calculate and determine as it sees fit in a way that is fair and reasonable as between all Members of the Fund the investment return and investment earnings of the Fund for the purpose of applying that investment return in calculating the withdrawal benefit of a Member at that time.