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Constitution of Fund

1. **Name of Fund.** This Fund is to be known by the name in **Item 1** of the Fourth Schedule or such other name as the Trustee may decide (the Trustee may change the name or promote the Fund under a different name without the necessity of amending this Deed).
2. **Purpose of Fund.** The Fund is an indefinitely continuing Australian superannuation fund and the sole or primary purpose for establishing the Fund is to provide superannuation benefits. The Fund is to be maintained solely for some or all of the following purposes:
 - (1) the provision of benefits for each member on or after their retirement from any business, trade, profession, vocation, calling, occupation or employment in which they were engaged (whether their retirement occurred before, or occurred after, they joined the Fund);
 - (2) the provision of benefits for each member on or after their attainment of an age not less than the age specified in the regulations;
 - (3) the provision of benefits for them on or after whichever is the earlier of:
 - their retirement from any business, trade, profession, vocation, calling, occupation or employment in which they were engaged; or
 - their attainment of an age not less than the age prescribed for the purposes of paragraph (2);
 - (4) the provision of benefits in respect of each member on or after their death, if:
 - their death occurred before their retirement from any business, trade, profession, vocation, calling, occupation or employment in which they were engaged; and
 - the benefits are provided to their personal representative, to any or all of their dependants, or to both;
 - (5) the provision of benefits in respect of each member on or after their death, if:
 - their death occurred before they attained the age prescribed for the purposes of paragraph (2); and
 - the benefits are provided to their personal representative, to any or all of their dependants, or to both; and

It *may* also be maintained for some or all of the following purposes:

 - (1) the provision of benefits for each member on or after the termination of their employment with an employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the member;
 - (2) the provision of benefits for each member on or after their cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which they were engaged and the cessation is on account of ill-health (whether physical or mental);
 - (3) the provision of benefits in respect of each member on or after their death, if:
 - their death occurred after their retirement from any business, trade, profession, vocation, calling, occupation or employment in which they were engaged (whether their retirement occurred before, or occurred after, they joined the Fund); and
 - the benefits are provided to their personal representative, to any or all of their dependants, or to both;
 - (4) the provision of benefits in respect of each member on or after their death, if:
 - their death occurred after they attained the age prescribed for the purposes of clause 2(2); and
 - the benefits are provided to their personal representative, to any or all of their dependants, or to both;
 - (5) the provision of such other benefits as the Regulator approves in writing.

3. However, if and while the Trustee is *not*:
 - (1) a financial or trading corporation formed within the limits of the Commonwealth; and
 - (2) the sole Trustee —
 then the sole or primary purpose of the Fund is limited to providing old-age pensions.
4. The two preceding clauses do not require the Trustee to maintain the Fund so that the same kind of benefits are provided:
 - (a) to each member; or
 - (b) in respect of each member.
5. **Appointment of Trustee.** The company (or individuals) named in **Item 2** of the Fourth Schedule:
 - (1) has consented to act as Trustee of the Fund;
 - (2) declares that it holds the Fund assets in accordance with this Deed;
 - (3) carries on the administration of the Fund within Australia as a complying self managed superannuation fund; and
 - (4) agrees to be bound by the governing rules of the Fund contained in this Deed (including its Schedules), as amended from time to time.
6. **Commencement.** The Fund commences and comes into operation on the date specified in **Item 5** of the Fourth Schedule.

Administrative provisions

DEFINITIONS AND INTERPRETATION

7. **Definitions.** In this Deed, the Schedules and in any documents referred to in this Deed, unless the context otherwise requires:

“**account**” means any one or more accounts established by the Trustee under Part 5 of this Deed, and includes an Accumulation Account or Pension Account;

“**account-based pension**” means a pension that is provided in accordance with the rules of a Fund that:

- (a) are described in paragraph 1.06(9A)(a) of the Regulations; and
- (b) meet the standards of subregulation 1.06 (9A) of the Regulations;

“**acquire an asset**” does not include accept money;

“**Act**” means the *Superannuation Industry (Supervision) Act* 1993 and includes the Regulations;

“**actuary**” has the meaning given by section 10(1) of the Act;

“**accumulation fund**” has the meaning given by regulation 1.03(1) of the Regulations;

“**accumulation interest**” has the meaning given by regulation 1.03(1) of the Regulations;

“**address**” means a physical address or electronic address (including fax number or e-mail address) or a combination of any such addresses;

“adjusted base amount”, in relation to a non-member spouse at a particular date, means the adjusted base amount applicable to the non-member spouse at that date worked out under the *Family Law (Superannuation) Regulations 2001*;

“administration costs” has the same meaning as in subregulation 5.01(1) of the Regulations;

“administration manager” means a person so appointed (if any) under clause 97;

“adopted child” has the meaning given by section 10(1) of the Act;

“allocated pension” means a pension that is provided under rules of a superannuation fund that meet the standards of subregulation 1.06 (4) of the Regulations;

“amend” includes **“delete”** and **“replace”**;

“annuity” has the meaning given by section 10(1) of the Act;

“approved benefit arrangement” means a fund or benefit arrangement other than the Fund, including without limitation:

- (a) another complying superannuation fund;
- (b) an approved deposit fund;
- (c) an annuity arrangement into which or from which assets of the Fund may be transferred without causing the Fund to be in breach of or to fail to comply with the governing legislation; and
- (d) an eligible rollover fund;

“approved body” means a body mentioned in Schedule 4 of the Regulations;

“approved deposit fund” has the meaning given by section 10(1) of the Act;

“approved fund” means a fund, including the Fund, which is able to accept rollovers or transfers of a member's benefits and entitlements, or from which a member's benefits and entitlements in the Fund are rolled-over or transferred to, and includes:

- (a) a superannuation fund;
- (a) a retirement savings account; and
- (a) an eligible roll-over fund;

“asset” means any asset that the Trustee holds for the purposes of the Fund, and includes the property, investments, rights and income of the Fund, including additions to the Fund assets by way of accumulations of income and capital accretions, as well as contributions received and the proceeds of any annuity or insurance policy and the value of any annuity or insurance policy;

“associate” has the meaning given by sections 10(1) and 12 of the Act;

“auditor” has the same meaning as “approved auditor” in section 10(1) of the Act and regulation 104(2) of the Regulations;

“base amount payment split”, in relation to a superannuation interest, means a payment split under which a base amount is allocated to the non-member spouse in relation to the interest under Part VIIIB of the *Family Law Act 1975*;

“beneficiary” means a person (whether described in this Deed as a member or otherwise) who has a beneficial interest in the Fund and includes a member and a person entitled at the relevant time to receive the payment of a benefit from the Fund, such as a dependant to who is nominated by the member in a valid binding death

benefit nomination, a reversionary beneficiary, the member's estate (ie, the executor, executrix, administrator or administratrix, as the case may be) or a dependant who has been selected by the Trustee to receive a death benefit;

"benefit" means any amount paid or payable by the Trustee out of the Fund (such as a lump sum payment or a superannuation income stream) or a superannuation income stream purchased by the Trustee from a life insurance company or a registered organisation, as well as an amount payable under a total and permanent disablement or temporary disablement policy;

"benefit arrangement" means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions;

"benefit entitlement" means an amount held in the Fund which may become payable to a member, dependant or beneficiary but to which the person has not become absolutely and indefeasibly entitled, including a contingent right to payment of the amount;

"binding death benefit nomination" means a nomination made by a member in writing which satisfies the requirements set out in this Deed under the dealing "BINDING DEATH BENEFIT NOMINATION";

"business" includes any profession, trade, employment, vocation or calling carried on for the purposes of profit, including:

- (a) the carrying on of primary production; and
 - (b) the provision of professional services —
- but does not include occupation as an employee;

"business day" means a day that is not a Saturday, a Sunday or a public holiday in the place concerned;

"business real property", in relation to an Fund, means:

- (a) any freehold or leasehold interest of the Fund in real property; or
- (b) any interest of the Fund in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or
- (c) if another class of interest in relation to real property is prescribed by the regulations for the purposes of this paragraph—any interest belonging to that class that is held by the Fund —

where the real property is used wholly and exclusively in one or more businesses (whether carried on by the Fund or not), but does not include any interest held in the capacity of beneficiary of a trust estate;

"cash" includes cheques and bank cheques;

"child" has the meaning given by section 10(1) of the Act and, depending on the context, means a minor, but where section 17A of the Act is applicable, the word has the meaning given to it by subsection (9A) of that section;

"child contributions" has the meaning given by regulation 1.03(1) of the Regulations

"chosen fund" has the meaning given to it under Part 3A of the *Superannuation Guarantee (Administration) Act 1992*;

"clause" means a clause of this Deed;

"co-contribution" means a payment made under the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003*;

“Commissioner” means the Commissioner of Taxation;

“company”, in the context of a Trustee, means a company which is a constitutional corporation as defined by section 10(1) of the Act;

“complying superannuation fund” has the meaning given to it by section 42 of the Act;

“compulsory cashing requirement” means the occurrence of an event prescribed in the Regulations which provides that on satisfying the event, the Trustee must cash the member's benefits in the Fund (ie, on the death of the member);

“condition of release” has the same meaning as in the Regulations;

“constitutional corporation” has the meaning given by section 10(1) of the Act;

“contributions” means payments to the Fund under this Deed by members, spouses of members, employers, the Federal Government and other persons for members, and includes child contributions and has the extended meaning given by the meaning given by regulation 1.03(1) of the Regulations;

“contribution splitting application” means an application, in the form determined by the Trustee from time to time, made by a member to the Trustee to roll over, transfer or allot an amount of benefits up to the amount of the splittable contributions (as defined in the Regulations) made for or on behalf of the member for the benefit of the member's spouse;

“convictions”, in a reference to a person who has been convicted of an offence includes a reference to a person in respect of whom an order has been made under section 19B of the *Crimes Act* 1914, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to the offence;

“corporate Trustee”, in the context of a Trustee, means a Trustee which is a constitutional corporation;

“corporation”, in the context of a Trustee, means a constitutional corporation as defined by section 10(1) of the Act;

“Corporations Act” means the *Corporations Act* 2001;

“costs and disbursements” includes legal costs, duty, valuation fees and registration fees;

“custodian”, in relation to a superannuation entity, means a person (other than the Trustee) who, under a contract with the Trustee or an investment manager of the entity, performs custodial functions in relation to any of the assets of the entity;

“death benefit” means a benefit payable on a member's death and includes a benefit that became payable in respect of a member before, but that is not actually paid until after, the member's death, and includes proceeds from a policy payable to the Trustee as a result of the member's death and agreed to be part of the member's death benefit at the time of acquisition of the policy;

“death benefit nomination” means a nomination given by a member or beneficiary to the Trustee in relation to the provision of benefits for the member or beneficiary specified in the notice after the death of the member or beneficiary to a person or

persons specified in the notice, being the personal representative and/or a dependant or dependants of the member or beneficiary;

“Deed” means this Deed as amended or varied from time to time;

“dependant” has the meaning given by section 10(1) of the Act;

“derivative” means a financial asset or liability the value of which depends on, or is derived from, other assets, liabilities or indices;

“derivatives contract” means an options contract or a futures contract relating to any right, liability or thing;

“director” has the meaning given by section 10(1) of the Act;

“disability” means physical or mental disablement which the Trustee considers will render the member unable to perform their duties to their employer or engage in gainful employment;

“disqualified person” has the same meaning as in the Act;

“eligible” means, in the context of a member, any person who is eligible to be a member pursuant to the governing legislation;

“eligible choice fund” has the meaning given to it under Part 3A of the *Superannuation Guarantee (Administration) Act 1992*;

“eligible person” means any person in respect of whom the Trustee may accept contributions under the Act or who may otherwise become a member under the Act;

“eligible rollover fund” has the meaning given to it in Part 24 of the Act;

“employed member” means a member for whom an employer contributes to the Fund;

“employee” has its ordinary meaning as modified by subsections (2) and (8) of section 15A of the Act, but where section 17A of the Act is applicable, the word has the meaning given to it by subsections (6) and (8) of that section and regulation 1.04AA of the Regulations;

“employer” has its ordinary meaning as modified by subsections (2) and (8) of section 15A of the Act, and includes a participating employer, but where section 17A of the Act is applicable, the word has the meaning given to it by subsections (6) and (8) of that section and regulation 1.04AA of the Regulations;

“employer contributions” has the same meaning as in subregulation 1.03(1) of the Regulations;

“employer participation terms” means the terms and conditions under which an employer agrees to participate in the Fund;

“employer-sponsored fund” has the meaning in section 16(3) of the Act;

“employer-sponsored member” means a member who is an employee of a participating employer;

“employment” means gainful employment, part-time employment and full-time employment and includes the services of an independent contractor;

“external administration” means a trustee in bankruptcy, a controlling trustee or any other external administrator, manager or receiver appointed pursuant to the provisions of the *Bankruptcy Act* 1966 or the *Corporations Act* 2001;

“Family Law Act” means the *Family Law Act* 1975 and any regulations and determinations made under that Act;

“Family Law legislation” means the *Family Law Act* 1975 and the *Family Law (Superannuation) Regulations* 2001;

“FHSA” has the meaning given by section 8 of the FHSA Act;

“financial instrument” includes a futures contract, forward contract, interest rates swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract, a right or option in respect of any such contract or any similar financial instrument;

“financial year” means the financial year ended 30 June in any year, but it also means the period between the date of this Deed until the following 30 June, and this definition applies by default unless the Trustee has resolved to adopt a different financial year;

“First Schedule” means the First Schedule to this Deed;

“flag lifting agreement” means a flag lifting agreement under Part VIIIB of the *Family Law Act* 1975;

“former member” means a former member who still has a right to receive a benefit from the Fund;

“Fourth Schedule” means the Fourth Schedule to this Deed;

“full-time”, in relation to being gainfully employed, means gainfully employed for at least 30 hours each week;

“Fund” means the Fund established by this Deed;

“fund-capped contributions” means the member contributions described in the definition of that expression in subregulation 5.01(1) of the Regulations, other than the following:

- (a) a contribution to which a valid and acknowledged notice under section 290-170 of the *Income Tax Assessment Act* 1997 relates;
- (b) a contribution that meets the requirements of paragraph 292-95(1) (d) of the *Income Tax Assessment Act* 1997;
- (c) a contribution that meets the requirements of subsection 292-100(9) of the *Income Tax Assessment Act* 1997;
- (d) a payment made by the Commissioner of Taxation under section 65 of the *Superannuation Guarantee (Administration) Act* 1992;
- (e) a payment made by the Commissioner of Taxation under section 61 or 61A of the *Small Superannuation Accounts Act* 1995;
- (f) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act* 2003;
- (g) a contribution that is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act* 1997;

“gainfully employed” means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment (a member who

undertakes unpaid work for charity is not gainfully employed);

“gainfully employed on a part-time basis” occurs during a financial year if the person was gainfully employed for at least 40 hours in a period of not more than 30 consecutive days in that financial year;

“governing legislation” means the Act, the Regulations, the *Income Tax Assessment Act 1997*, the *Family Law Act 1975*, the *Family Law (Superannuation) Regulations 2001*, the *Corporations Act 2001*, the *Corporations Regulations 2001*, the *Financial Sector (Collection of Data) Act 2001*, the *Occupational Superannuation Standards Act 1987*, the *Occupational Superannuation Standards Regulations 1987* and any other present or future legislation which the Trustee must comply with in order for the Fund to:

- (a) qualify as a complying self-managed superannuation fund;
- (b) satisfy any requirements of the Regulator;
- (c) qualify for concessional tax treatment; and
- (d) avoid any penalty, detriment or disadvantage which is or may become payable or imposed in connection with the Fund or anything done or to be done under this Deed; or
- (e) in relation to a pension payable or which may become payable from the Fund which the Trustee and the pensioner have agreed will meet the requirements of an assets test exempt pension under the *Social Security Act 1991*, the relevant provisions of that Act; and
- (f) in relation to the collection, holding, use and disclosure of personal information as defined in the *Privacy Act 1988*, the National Privacy Principles and any other provisions of that Act;

“Guarantee Act” means the *Superannuation Guarantee (Administration) Act 1992* and any regulations made under that Act;

“income stream” has the same meaning as **“pension”**;

“income tax” includes tax, penalty, interest or impost levied under the *Income Tax Assessment Act*;

“Income Tax Assessment Act” means the *Income Tax Assessment Act 1997*;

“individual Trustee” means an individual who is appointed to be a Trustee;

“insolvent under administration” has the meaning given by section 10(1) of the Act;

“interdependency relationship” has the meaning given by sections 10(1) and 10A of the Act and regulation 1.04AAAA of the Regulations;

“invest” means:

- (a) apply assets in any way; or
 - (b) make a contract;
- for the purpose of gaining interest, income, profit or gain;

“investment” means any investment of any kind which may generate a return or protect the assets from market movements or potential losses, including futures contracts;

“investment earning rate” means the earning rate for the Fund (which may be negative) after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable;

“investment manager” has the meaning given by section 10(1) of the Act;

“law” includes legislation;

“legal disability” means anyone who is incompetent or bankrupt;

“levy” includes a levy payable by the Fund to the Regulator in accordance with the *Superannuation Supervisory Levy Act 1991*, the *Superannuation (Financial Assistance Levy) Act 1993* and any other legislation or regulations which impose a levy or levies on the Fund;

“liabilities” means all liabilities whatsoever of the Fund, and includes any provision made for prospective or contingent liabilities;

“liquid” has the meaning given in section 601KA of the *Corporations Act*;

“liquidator” includes an administrator (including an administrator under a deed of company arrangement), a receiver, an official manager and a receiver and manager;

“listed security” means a security listed for quotation in the official list of any of the following:

- (a) a licensed market within the meaning of section 761A of the *Corporations Act 2001*; or
- (b) an approved stock exchange within the meaning of section 470 of the *Income Tax Assessment Act 1936*; or
- (c) a market exempted under section 791C of the *Corporations Act 2001*;

“loan” includes the provision of credit or any other form of financial accommodation, whether or not enforceable, or intended to be enforceable, by legal proceedings;

“lost member” has the meaning given by regulation 1.03A;

“mandated employer contributions” has the same meaning as in subregulation 5.01(1) of the Regulations;

“market linked annuity” means an annuity provided under a contract that meets the standards of subregulation 1.05 (10);

“market linked income stream” has the meaning given by regulation 1.03(1) of the Regulations;

“market linked pension” has the meaning given by regulation 1.03(1) of the Regulations;

“market value”, in relation to an asset, means the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;
- (b) that the sale occurred after proper marketing of the asset;
- (c) that the buyer and the seller acted knowledgeably and prudentially in relation to the sale;

“member” means a person who:

- (1) has been admitted as a member of the Fund in accordance with this Deed;
- (2) is gainfully employed; and
- (3) has not ceased to be a member —

but if the Fund ceases to have members by virtue of that definition, then it includes a person who is *not* gainfully employed, but this definition also includes anyone:

- (a) who receives a superannuation income stream from the Fund;
- (b) who has deferred their entitlement to receive a benefit from the Fund;

“member’s account” means an account maintained for a member;

“member’s account balance” means the amount standing to the credit of a member’s account;

“member’s benefit” is the net amount standing to the member’s credit in their various accounts, including the employer’s contribution account (if any), the realisable value or withdrawal value (if any) at that time of any policy of insurance or annuity purchased or effected by or assigned to the Trustee on the life of that member;

“member contributions” has the same meaning as in subregulation 5.01(1) of the Regulations;

“member financed benefits” means a member’s contributions and investment earnings on them, less any applicable or apportioned expenses (but not salary sacrifice contributions);

“member-protection standards” has the meaning given by regulation 1.03(1) of the Regulations;

“membership” means membership of this Fund and any previous fund accepted by the Trustee as membership for the purposes of this Fund;

“member spouse” has the meaning given by regulation 1.03(1) of the Regulations;

“member investment choice” means an investment strategy that may be chosen for investments in the Fund in accordance with this Deed, and, if relevant, the portfolio of assets related to that strategy;

“minimum requisite benefit”, in relation to a member, has the meaning given by regulation 1.03(1) of the Regulations;

“minor” means anyone under the age of 18 years;

“month” means calendar month;

“net asset value” at any time means the assets less the liabilities at that time;

“nominated dependant” means a person nominated by a member as a nominated dependant, but does not include any person who has been specified in a death benefit notice given by the member to the Trustee who, in its opinion, is not a dependant;

“non-commutable allocated pension” means a pension payable upon a person attaining preservation age but who has not yet attained their normal retirement age;

“non-commutable complying pension” means a pension payable upon a person attaining preservation age but who has not yet attained their normal retirement age;

“non-concessional contributions cap” means the amount mentioned in subsection 292-85 (2) of the *Income Tax Assessment Act 1997*;

“non-member spouse” has the meaning given by regulation 1.03(1) of the Regulations;

“non-preserved benefit” has the meaning given to it by the act and the Regulations;

“non-binding nomination” means a notice given to a Trustee by a member that does not meet the requirements of Regulation 6.17A;

“old-age pensions” has the same meaning as in paragraph 51(xxiii) of the Constitution;

“operative time”, for a payment split, means the operative time under Part VIIIB of the *Family Law Act 1975* for the payment split;

“participating employer” means any corporation, person or firm which has applied to participate, and which the Trustee has admitted to participate, as a contributing participating employer to the Fund;

“partner” of anyone means the person’s spouse or domestic partner;

“part-time”, in relation to being gainfully employed, means gainfully employed for at least 10 hours, and less than 30 hours, each week;

“past member” means a former member who still has a right to receive a benefit from the Fund;

“pay” includes transfer, convey or assign;

“payment flag” has the same meaning as in the *Family Law Act 1975*;

“payment split” has the meaning given by regulation 1.03(1) of the Regulations;

“payment split notice” has the meaning given by regulation 1.03(1) of the Regulations;

“pension”, except in the expression **“old-age pension”**, includes a benefit provided by the Fund, if the benefit is taken, under the Regulations, to be a pension for the purposes of the Act;

“pension age”:

- (a) in relation to a person other than a person mentioned in paragraph (b), has the meaning given by subsections 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*; and
- (b) in relation to a person who is a veteran within the meaning of the *Veterans’ Entitlement Act 1986*, has the meaning that it has in section 5QA of that Act;

“pension account” means an account established for a member or beneficiary;

“pension benefit account” means an account that provides a retirement benefit;

“percentage-only interest” has the meaning given by regulation 1.03(1) of the Regulations;

“percentage payment split” has the meaning given by regulation 1.03(1) of the Regulations;

“permanent incapacity”, in relation to a member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that they are unlikely, because of the ill-health, to engage in gainful employment for which they are reasonably qualified by education, training or experience;

“person” includes a company, corporation or other juristic person, partnership, firm, body of persons, unincorporated association, trust, settlement or superannuation fund;

“person under a disability” means a minor or a handicapped person;

“personal representative” means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person and, where permitted, means the following:

- (a) in the case of a deceased member, the person to whom the court or registrar has granted probate or letters of administration with the will annexed, or where probate or letters of administration with the will annexed have not been granted or is yet to be granted, the executors named in their will;
- (b) in the case of a deceased member who died intestate, the person to whom the court or the registrar has granted letters of administration;
- (c) in the case of a member under a legal disability without an enduring power of attorney authorising the attorney to act in place of the member, the person holding power of administration or guardianship over the member or the member's estate as granted by the relevant judicial or statutory body;
- (d) where a member grants an enduring power of attorney to a person, the attorney or attorneys authorised to act in place of the member; or
- (e) in the case of a minor, their parent or other person who holds the rights of a guardian in accordance with the *Family Law Act* or State legislation —

and where more than one person acts as a personal representative pursuant to this Deed, they together shall exercise their powers jointly;

“policy” means an insurance policy or a policy of assurance effected or purchased by the Trustee, including a policy on the life of a member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy, a policy covering any two or more of the foregoing risks and a policy which provides that benefits are payable to the Trustee on the death or disablement of a member;

“preservation age”, in relation to a member, depends on their date of birth, as set out in the following table:

	If the member was born ...	then the preservation age is ...
1	before 1 July 1960	55
2	1 July 1960 to 30 June 1961	56
3	1 July 1961 to 30 June 1962	57
4	1 July 1962 to 30 June 1963	59
5	1 July 1963 to 30 June 1964	59
6	after 30 June 1964	60

“preserved benefits” has the meaning given by the Regulations;

“primary production business” has the same meaning as in the *Income Tax Assessment Act 1997*;

“property” means any form of property, including land, chattels, intellectual property, shares, debentures and mortgages (this definition does not limit the definition of investment);

“protected member” has the meaning given by regulation 1.03(1) of the Regulations;

“provision amounts” in connection with the distribution of income or otherwise, means any amounts the Trustee decides to retain to meet any liabilities or by way of provision

or to create reserves;

“quoted (for superannuation purposes)” has the same meaning as in the *Income Tax Assessment Act 1997*;

“receiving spouse” has the meaning given by regulation 1.03(1) of the Regulations;

“Regulations” mean the *Superannuation Industry (Supervision) Regulations*;

“regulated superannuation fund” has the meaning given by section 19 of the Act;

“Regulator” means:

- (a) APRA if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by APRA; and
- (b) ASIC if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by ASIC; and
- (c) the Commissioner of Taxation if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by the Commissioner of Taxation;

“related party”, of a superannuation fund, means any of the following:

- (a) a member of the fund;
- (b) a standard employer-sponsor of the fund;
- (c) a Part 8 of the Act associate of an entity referred to in paragraph (a) or (b);

“related trust”, of a superannuation fund, means a trust that a member or a standard employer-sponsor of the fund controls (within the meaning of section 70E), other than an excluded instalment trust of the fund;

“relative” means:

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the individual or of their spouse;
- (b) a spouse of the individual or of any other individual referred to in paragraph (a); but where section 17A of the Act is applicable, the word has the meaning given to it by subsection (9) of that section;

“relevant benefit certificate” has the meaning given by regulation 1.03(1) of the Regulations;

“reporting period” is the period that begins at the end of the year of income and whose length is:

- (a) prescribed by the regulations for the purposes of this paragraph; or
- (b) if the length of the period is not prescribed, specified, by legislative instrument, by the Commissioner of Taxation;

“Reserve Account” means the account referred to in clause 253;

“reserves” has the meaning given by regulation 1.03(1) of the Regulations;

“resolution” means:

- (a) a resolution other than a special resolution, except where the Fund has only a sole member, in which case it means a written record of the decision of the member; or
- (b) in the context of a decision of the Trustee, a resolution which has been recorded in writing and includes a determination, declaration, deed or decision of the Trustee;

“retirement” of a member is taken to have occurred if either:

- (a)
 - (1) the member has attained the age of 60;
 - (2) an arrangement under which the member was gainfully employed has come to an end; and
 - (3) either of the following applies:
 - (i) the member attained that age on or before the ending of the employment; or
 - (ii) the Trustee is reasonably satisfied that the member intends never again to become gainfully employed, either on a full-time or a part-time basis; or
- (b)
 - (1) the member has reached a preservation age that is less than 60;
 - (2) an arrangement under which the member was gainfully employed has come to an end; and
 - (3) the Trustee is reasonably satisfied that the member intends never again to become gainfully employed, either on a full-time or a part-time basis;

“retirement age” means:

- (a) age 65; or
- (b) if the Act or the Regulations specify another age, that age;

“retires from employment” in relation to the payment of benefits on the retirement of a member has the meaning given to in the governing legislation;

“revenue legislation” means the *Income Tax Assessment Act* or any other revenue legislation in Australia (including a State or Territory) or anywhere else in the world in which any of the Fund assets are located;

“rolled over” means paid as a superannuation lump sum within the superannuation system;

“RSA Regulations” means the *Retirement Savings Accounts Regulations*;

“salary” means in relation to a member their salary or remuneration as advised by the employer or if the member is self employed the member from time to time;

“Schedule” means a schedule to this Deed;

“scheme” means:

- (a) any agreement, arrangement, understanding, promise or undertaking:
 - (i) whether express or implied; or
 - (ii) whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

“Second Schedule” means the Second Schedule to this Deed;

“segregated current pension assets” has the meaning given from time to time by the *Income Tax Assessment Act 1997*;

“self managed superannuation fund” has the meaning given by section 17A of the Act;

“service” means:

- (a) in relation to an employed member, the most recent continuous service of the member as an employee and includes:
 - (i) any period of absence from work attributable to injury or illness during

which the member receives workers' compensation or other regular income from the employer or under arrangements organised by the employer; and

- (ii) any other period that the employer stipulates is to be considered as service;

(If a member transfers service from one employer to another, unless the Trustee and the relevant employers otherwise agree, the member's service will be considered continuous); or

- (b) in relation to members other than employed members, a period of gainful employment by the member;

"shortfall component" has the meaning given by regulation 1.03(1) of the Regulations and section 64 of the *Guarantee Act*;

"Social Security Act" means the *Social Security Act* 1991 and any regulations made under that Act;

"special resolution" means a resolution:

- (a) of which notice has been given; and
- (b) that has been passed by at least 75% of the members entitled to vote on the resolution —

and includes a resolution in writing made under clauses 1 or 7 of the Third Schedule;

"splittable payment" has the meaning given by regulation 1.03(1) of the Regulations;

"splitting order" has the meaning given by regulation 1.03(1) of the Regulations;

"spouse" has the meaning given by section 10(1) of the Act (which has an extended meaning beyond its ordinary meaning to cover domestic partners and same sex couples);

"standard" means a standard prescribed by the Act;

"standard employer-sponsor" has the meaning in the Act;

"standard employer-sponsored fund" has the meaning in the Act;

"successor fund" has the meaning given by regulation 1.03(1) of the Regulations;

"superannuation agreement" has the meaning given by regulation 1.03(1) of the Regulations;

"superannuation benefit" has the meaning prescribed by the *Income Tax Assessment Act* 1997;

"superannuation conditions" means any provision which may be applicable to the Fund under the Act, the *Income Tax Assessment Act* 1997 or rulings of the Commissioner which must or may be met for the Fund to be treated with the most concessional taxation treatment available or to be treated in any manner which, in the opinion of the Trustee, is concessional and includes conditions which must be met for the Fund to become or remain a self managed superannuation fund;

"superannuation contributions surcharge" has the meaning given by regulation 1.03(1) of the Regulations;

"superannuation legislation" means legislation (including regulations) applying to superannuation funds;

“superannuation lump sum” has the meaning given by regulation 1.03(1) of the Regulations;

“tax” includes any tax, duty, charge, deduction or imposition imposed or levied by, or payable to, the Crown or any foreign, federal, State, Territory, local government or government instrumentality, including income tax, capital gains tax, fringe benefits tax, withholding tax, provisional tax, PAYG, GST, VAT, sales tax, consumption tax, financial institutions duty, tax on deposits or withdrawals of funds from an account, prepayments, Medicare levy, stamp duty, additional tax, fines, penalties and interest for late payment of tax or levied pursuant to revenue legislation;

“Tax Act” means the *Income Tax Assessment Act 1997* and any regulations and determinations made under it;

“taxable income” means all amounts due of any kind which are required to be included in the total assessable income of the Fund in accordance with the *Income Tax Assessment Act*;

“taxation” includes income tax, any surcharge or other amount of whatever description levied on the Fund, the Trustee, any member, former member or beneficiary under the *Superannuation Contributions Tax Imposition Act 1997*, the *Superannuation Contribution Tax (Assessment and Collection) Act 1997* and related legislation (including provisional or advance payments required under that legislation), capital gains tax, payroll tax, land tax, stamp duty and any other taxes or duties of whatever description paid or payable by the Trustee on behalf of the Fund or, where applicable, by any member, former member or beneficiary;

“temporary disablement” has the meaning as defined in any policy taken out by the Trustee for the purposes of providing a benefit to members in that event or as agreed by the Trustee and insurer for the purposes of that policy and **“temporarily disabled”** has a corresponding meaning;

“temporary incapacity”, in relation to a member who has ceased to be gainfully employed (including a member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the member to be gainfully employed), means ill-health (whether physical or mental) that caused the member to cease to be gainfully employed but does not constitute permanent incapacity;

“temporary total disablement” has the meaning as defined in any policy taken out by the Trustee for the purposes of providing a benefit to members in that event or as agreed by the Trustee and insurer for the purposes of that policy;

“terminal medical condition” exists in relation to a member at a particular time if the following circumstances exist:

- (a) two registered medical practitioners have certified, jointly or separately, that the member suffers from an illness, or has incurred an injury, that is likely to result in the death of the member within a period (the “certification period”) that ends not more than 12 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the member; and
- (c) for each of the certificates, the certification period has not ended in the meaning given by the Regulations;

“termination date” means the date for termination of the Fund (ie, the date on which the Fund comes to an end or is wound up in accordance with this Deed);

“Third Schedule” means the Third Schedule to this Deed;

“total and permanent disablement” means:

- (a) if any part or all of the benefit payable on such disablement is insured under a policy, total and permanent disablement as defined in that policy or as agreed by the company and the insurer for the purposes of that policy; or
- (b) if at the relevant time the benefit is not insured under a policy, the same as the term **“permanent incapacity”** in this clause —

and **“totally and permanently disabled”** has a corresponding meaning;

“transaction costs” means any of the following:

- (a) brokerage paid because of an investment transaction;
- (b) a cost arising from maintenance of a property investment;
- (c) stamp duty on an investment transaction;

“transfer value” in relation to a member means the amount (if any) transferred to the Fund from another fund;

“transferable benefits” has the meaning given by regulation 1.03(1) of the Regulations;

“Trustee” means the person or persons named, identified or described in **Item 2** of the Fourth Schedule as the Trustee in its capacity as trustee of the Fund or any subsequent trustee for the time being of the Fund;

“unclaimed benefits” means benefits described as unclaimed money in the Act;

“unrestricted non-preserved benefits” means such amounts of a member’s benefit which is not classified as a preserved and/or restricted non-preserved benefit;

“value” means market value, and includes amount;

“vary an investment” includes realising an investment or a change to a term or condition of an investment;

“vested portion” means the portion of an account or benefit that is vested for the benefit of a member including any such portion which is preserved for the benefit of a member and any such portion which has been transferred in respect of a member to the fund from another superannuation fund as a vested benefit;

“voluntary cashing event” means the satisfaction of a condition of release prescribed in the Act which allows a member to cash all or part of their benefits in the fund upon meeting the requirements of the condition and without limiting the events prescribed in the Act, includes the following:

- (a) attaining preservation age;
- (b) retirement;
- (c) suffering a permanent incapacity; and
- (d) suffering from a temporary incapacity;

“withdrawal benefit” has the meaning given by regulation 1.03(1) of the Regulations

“writing” means written or produced by any substitute for writing or partly written and partly so produced and includes a facsimile transmission and an e-mail and any other means of reproducing words in a tangible and permanently visible form;

unless otherwise stated, **“year”** means a financial year;

“year of income” means a period that is, for the purposes of the *Income Tax Assessment Act 1997*, a year of income for the Fund.

8. **Beneficiary.** Where a beneficiary is dead, references to a beneficiary include that beneficiary's personal representatives.
9. **Corporate body.** References to a corporate body include its successors and assigns.
10. **Custodian.** For the purposes of this Deed and the Fund, if the Trustee appoints a custodian (unless the Trustee decides otherwise):
 - (a) any requirement that a payment be made by or to the Trustee is satisfied if made by or to the custodian;
 - (b) any of all of the assets may be held by the custodian on the Trustee's behalf;
 - (c) any requirement that property or investments be transferred to, or vested in, the Trustee is satisfied if the property or investment is transferred to, or vested in, the custodian.
11. **Document.** References to a document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time.
12. **Gender and number.** In this Deed, unless the context or subject matter is inconsistent:
 - (a) words importing persons include corporations and words importing the masculine include the feminine;
 - (b) the singular means and include the plural and vice versa and any gender means and include all other genders.
13. **Grammatical forms.** Where a word or phrase is defined in this Deed, its other grammatical forms have a corresponding meaning.
14. **Headings.** Headings are for convenience of reference only and do not affect the construction or interpretation of this Deed.
15. **Meanings of certain words.** Mentioning anything after **“include”**, **“includes”**, **“including”**, **“for example”** and similar expressions or words does not limit what else might be included.
16. A reference to **“investment earnings”** or **“investment returns”** or any similar term may encompass either positive or negative investment earnings.
17. **Legislation.** In this Deed, unless the context or subject matter is inconsistent, references to legislation or a provision of any legislation is a reference to such legislation as amended from time to time and includes:
 - (a) amendments, modifications or re-enactments of the legislation, or any legislative provision substituted for the legislation;
 - (b) regulations, statutory instruments or other subordinate legislation issued under the legislation.
18. If an expression is defined in the Act or the Regulations, but is not defined in this Deed, then that expression will have the meaning given to it in the Act or the Regulations.
19. **Party.** References to a party in this Deed or any other agreement or document includes that party's successors, administrators and assigns.
20. **Person.** References to a person include:
 - (a) that person's executors, administrators and assigns; and
 - (b) a company, corporation or other juristic person, partnership, firm, body of persons, unincorporated association, trust, settlement or superannuation fund.
21. **Right, interest or obligation.** In this Deed, references to a right, interest or obligation of the Fund, or to a matter in which the Fund is concerned, include a reference to a right, interest or obligation of the Trustee, or to a matter in which the Trustee is concerned, as trustee of the trusts of the Fund.
22. **Schedules.** The Schedules are to be interpreted and construed for all intents and purposes as if they formed part of this Deed and should there be an inconsistency or difference between a provision of this Deed and the Fourth Schedule, the latter shall prevail to the extent of the inconsistency or difference.
23. **Voting by members.** References to a member voting means a member who is entitled to attend and cast a vote at a meeting of members on the resolution in question.

Operative provisions

THE FUND

24. **Fund vested in Trustee.** The Fund is vested in and must be managed by the Trustee on the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.
25. **Fund assets.** The Fund comprises all assets held by the Trustee at any time in accordance with this Deed, including any additions by way of contributions, investments, accumulations of income and capital accretions and any other property or assets which becomes subject to the rights and obligations of this Deed, such as:
 - (1) the amount (if any) standing or transferred to the credit of the Fund at or after the date on which this Deed comes into effect;
 - (2) contributions made by or on behalf of members;
 - (3) contributions (if any) by employers;
 - (4) assets transferred or rolled-over into the Fund by or on behalf of a member;
 - (5) the proceeds (including bonuses) of any insurance policies held by the Fund;
 - (6) any shortfall components received by the Fund;
 - (7) any other contributions permitted by the Act or under this Deed.
26. **Restrictions on rights of members and beneficiaries.** Each member or beneficiary has the right against the Trustee to have the Fund administered according to this Deed, the governing legislation and the law relating to trusts. No member or beneficiary has any right, title or interest in the Fund assets or any specific asset of the Fund and, consequently, they may not:
 - (a) lodge a caveat or other notice in relation to any Fund asset;
 - (b) claim any interest in any Fund asset;
 - (c) exercise any right in respect of any Fund asset;
 - (d) require any Fund asset to be transferred to them; or
 - (e) prevent the exercise by the Trustee of a power of sale or any other right or power.
27. No member or person claiming through a member or on behalf of a member or as the dependant of a member is entitled to require payment of that member's interest in the Fund except as provided in this Deed.
28. **Assignments of superannuation interests.** No member or beneficiary is entitled:
 - (1) to assign, transfer or otherwise dispose of, in whole or in part, their superannuation interests under this Deed; or
 - (2) to grant a mortgage, charge, lien or other encumbrance over or in relation to a member's benefits (including a superannuation pension).
29. Unless permitted by the Act or the Regulations, the Trustee shall not recognise any assignment of a member's or beneficiary's superannuation interest.
30. **Charges over a member's benefits.** Unless permitted by the Act or the Regulations, the Trustee shall not recognise any mortgage, charge, lien or other encumbrance over or in relation to a member's benefits (a payment split in respect of a member's interest in a superannuation Fund is not a charge over or in relation to the member's benefits).

APPOINTMENT, RETIREMENT AND REMOVAL OF TRUSTEE

31. **Trustee and administration of the Fund.** The Trustee must be either:
 - (a) a constitutional corporation formed within the limits of the Commonwealth; or
 - (b) residents of Australia.
32. **Composition of the Trustee of single member Fund.** If the Fund is a single member fund and the Trustee is a company which is a constitutional corporation, then:
 - (a) the sole member must be the sole director of the Trustee; or
 - (b) the sole member:
 - (1) must be one of only two directors of the Trustee; and
 - (2) must not be an employee of the other director unless they are related; and
 - (c) no later than 21 days after becoming a director, each director must sign a declaration in the approved form that they understand their duties as a director of the Trustee.
33. If the Fund is a single member fund and the Trustee is not a company, then:
 - (1) there must be two Trustees;
 - (2) the sole member must be one of the Trustees;
 - (3) the sole member must not be an employee of the other Trustee unless they are related; and
 - (4) no later than 21 days after becoming a Trustee, each Trustee must sign a declaration in the approved form that they understand their duties as a Trustee.
34. **Composition of the Trustee of multiple member Fund.** If:
 - (a) the Fund is *not* a single member fund;
 - (b) the Fund has four or less members; and
 - (c) the Trustee is a company which is a constitutional corporation —
 then:
 - (1) each member must be a director of the Trustee;
 - (2) each director of the Trustee must be a member;
 - (3) no member may be an employee of another member unless they are related; and
 - (4) no later than 21 days after becoming a director, each director must sign a declaration in the approved form that they understand their duties as a director of the Trustee.
35. If:
 - (a) the Fund is *not* a single member fund;
 - (b) the Fund has four or less members; and
 - (c) the Trustee is not a company —
 then:
 - (1) each member must be a Trustee;
 - (2) each Trustee must be a member;
 - (3) no member may be an employee of another member unless they are related; and
 - (4) no later than 21 days after becoming a Trustee, each Trustee must sign a declaration in the approved form that they understand their duties as a Trustee.
36. **Minor.** Despite the preceding four clauses, if a member is a minor, then the member's parent or guardian may be a Trustee or a director of the Trustee in place of the member.
37. **Cessation of office.** A Trustee ceases to hold office as Trustee if:
 - (1) the Trustee dies;
 - (2) the Trustee is unable to administer the Fund or the Fund assets because of the Trustee's mental incapacity;
 - (3) the Trustee is an insolvent under administration;
 - (4) a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the Trustee;
 - (5) a mortgagee, chargee or other encumbrancer takes possession of, or exercises any power of sale over, any part of the assets or the undertaking of the Trustee;

- (6) an administrator has been appointed in respect of the Trustee;
- (7) an official manager or similar officer is appointed to the Trustee;
- (8) a provisional liquidator has been appointed in respect of the Trustee;
- (9) the Trustee has begun to be wound up;
- (10) an order is made or a resolution passed for the dissolution without winding up of the Trustee;
- (11) the Trustee is convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct;
- (12) the Commissioner of Taxation has disqualified the Trustee under section 126A of the Act;
- (13) the Trustee knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the Trustee is:
 - (a) for a person who is a disqualified person only because they were disqualified under section 126H, disqualified from being or acting as a responsible officer of the body corporate; or
 - (b) otherwise, a disqualified person;
- (14) a civil penalty order was made in relation to the Trustee;
- (15) the Trustee otherwise becomes a disqualified person under the Act;
- (16) continuance in office by the Trustee would result in the Fund no longer satisfying the conditions of the Act applicable to self managed superannuation funds;
- (17) a sole member who is Trustee ceases to be a member unless permitted to remain a Trustee by the Act;
- (18) the Trustee is removed as Trustee under the Act;
- (19) a special resolution to remove the Trustee is passed by the members; or
- (20) the Trustee resigns by notice in writing to the members and to the other Trustee (if any) —

whichever occurs first.

- 38. **Removal of Trustee.** If the Fund has a participating employer on the date that a special resolution to remove the Trustee is passed by the members, then its consent is required for the removal of the Trustee, unless this requirement is inconsistent with the Act or the Regulations.
- 39. A Trustee may resign at any time by giving notice to the members and to the other Trustee (if any) in writing.
- 40. **Appointment of new Trustee.** A new Trustee must be appointed as soon as practicable.
- 41. If a vacancy is not filled within 90 days, a subsequent appointment is not invalid simply because of that failure.
- 42. Where the office of Trustee becomes vacant, a new Trustee may be appointed by:
 - (a) a resolution of the members; or
 - (b) the court.
- 43. If a member who is a Trustee has died, then their personal representative may be a Trustee in their place during the period:
 - (a) beginning when they died; and
 - (b) ending when death benefits commence to be payable in respect of the member.
- 44. If a member who is a Trustee:
 - (a) is under a legal disability; or
 - (b) a personal representative has an enduring power of attorney in respect of the member —
 then their personal representative may be a Trustee in their place during the period that:
 - (1) they are under a legal disability; or
 - (2) their personal representative has an enduring power of attorney.
- 45. If the Fund has a participating employer at the date of appointment of the new Trustee, then its consent is required for that appointment, unless this requirement is inconsistent with the Act or the Regulations.
- 46. **Residual power of appointment.** If at any time no person (other than the court) has the power to appoint a new Trustee or an additional Trustee, the power is vested in the

Trustee for the time being.

47. **Those who cannot be Trustee.** The following shall not be appointed as Trustee:
 - (a) a person which is disqualified to act as Trustee; or
 - (b) a person in their capacity as personal representative of a disqualified person.
48. **Appointment of one or more Trustees.** Subject to clauses 3 and 32 to 35, the place of the Trustee who retires, resigns or is removed may be filled by a sole appointment (if the Trustee is a company) or the appointment of more than one Trustee. Signpost: clause 3 provides that if and while the Trustee is not a financial or trading corporation and the sole Trustee, then the sole or primary purpose is limited to providing old-age pensions.
49. **Consent of new Trustee.** If the new Trustee is a company, then the directors of the new Trustee must:
 - (a) consent to act as directors;
 - (b) no later than 21 days after the appointment of the new Trustee, sign a declaration in the approved form that they understand their duties as a director of the Trustee.
50. If the new Trustee is an individual, then they must:
 - (a) consent to act as Trustee;
 - (b) no later than 21 days after the appointment as the new Trustee, sign a declaration in the approved form that they understand their duties as Trustee.
51. **Outgoing Trustee.** The outgoing Trustee:
 - (a) must ensure that no later than 21 days after being appointed as the new Trustee, the incoming Trustee signs a declaration in the approved form that it understands its duties as Trustee;
 - (b) must ensure that no later than 21 days after being appointed as the new Trustee, each director of the new Trustee signs a declaration in the approved form that they understand their duties as a director of the Trustee;
 - (c) is entitled to be indemnified against liabilities properly incurred by it as Trustee; and
 - (d) may, if it requests it, require any person appointed as a new Trustee to execute a deed whereby the person undertakes jointly and severally all the obligations of the outgoing Trustee.
52. **Director of Trustee.** If a member who is a director of the Trustee has died, then their personal representative may be a director of the Trustee in their place during the period:
 - (a) beginning when they died; and
 - (b) ending when death benefits commence to be payable in respect of the member.
53. If a member who is a director of the Trustee:
 - (a) is under a legal disability; or
 - (b) a personal representative has an enduring power of attorney in respect of the member —
 then their personal representative may be a director of the Trustee in their place during the period that:
 - (1) they are under a legal disability; or
 - (2) their personal representative has an enduring power of attorney.
54. The other directors must sign any documents to enable the personal representative to be appointed as a director in place of a person who is unable to act as director of the Trustee.
55. In addition, any new director of the Trustee must no later than 21 days after their appointment as director sign a declaration in the approved form that they understand their duties as a director of the Trustee.
56. **Those who cannot be director.** The following shall not be appointed as a director of the Trustee:
 - (a) a person which is disqualified to act as Trustee or as a director of the Trustee; or
 - (b) a person in their capacity as personal representative of a disqualified person.
57. **Fund vests in new Trustee.** Where a Trustee or an additional Trustee is appointed, the Fund at that time vests in the person, or jointly in the persons, who thereupon becomes the Trustee without the necessity for any vesting, declaration, transfer,

conveyance or other assurance.

58. **Powers of new Trustee.** The new Trustee may exercise all the powers and discretions and enjoy all the rights and will be subject to same duties and obligations as if it had been named as the original Trustee in this Deed
59. **Transfer of records and property.** Upon the resignation, retirement or removal of the Trustee, the Trustee (if a company, by its responsible officer) must promptly, at the expense of the Fund (where such expense is necessary and properly incurred):
- (a) deliver to the other Trustee (if any) or the new Trustee all books, records, documents and other property of or pertaining to the Fund;
 - (b) do all things necessary to transfer the legal title in the assets of the Fund to the new Trustee;
 - (c) sign such documents and give such directions which the new Trustee regards as necessary or desirable to give it possession or control of any Fund assets which may be in the hands of third parties; and
 - (d) render such assistance as the new Trustee may reasonably require to put the new Trustee into full knowledge of the affairs of the Fund.

POWERS AND RIGHTS OF TRUSTEE

60. **Trustee's powers.** Subject to the Act and this Deed, the Trustee, in addition to the powers conferred on it by law and by the other clauses of this Deed:
- (a) has and may exercise all the powers in respect of the Fund and the assets:
 - (i) that it is possible under the law to confer on a trustee;
 - (ii) as though it were the absolute owner of the assets and as if it were acting in its personal capacity; and
 - (b) may do anything which anyone who is not a trustee is authorised or empowered to do, including, for the avoidance of doubt, exercising any of the powers described in the First Schedule.

This clause is to be read as widely as possible so as to confer as much power as possible on the Trustee.

Signpost to solicitors acting for banks and other lenders: This is a modern superannuation trust deed, so the express powers which the Trustee has to grant a mortgage or charge or to indemnify the bank or other lender are set out in the First Schedule.

61. In addition, the Trustee is empowered to do all things necessary to be done by it to ensure that the Fund is a complying self managed superannuation fund.
62. In the event that the governing legislation empowers the Trustee to do anything which is not provided for expressly in this Deed, that power is automatically incorporated into its powers.
63. **Exercise of power by Trustee.** Subject to the act and the provisions of this Deed, the Trustee:
- (a) has an absolute unfettered discretion as to how and when it exercises any power or discretion under this Deed; and
 - (b) is not required to consult with members or beneficiaries or to give effect to their wishes —
- and no member or beneficiary or other person, except as expressly provided in this Deed or the Act, is entitled to call into question the exercise by the Trustee of, or the failure by the Trustee to exercise, such power or discretion.
64. In exercising its discretion, the Trustee must act honestly and in good faith and have regard to:
- (1) the provisions of the governing legislation;
 - (2) the best interests of the members and beneficiaries; and
 - (3) prudent investment practice.

65. The Trustee is not required to provide reasons for its exercise, or failure to exercise, any

power or discretion.

66. **Decisions by Trustees.** If there are two or more Trustees, then a resolution of the Trustees must be passed by a majority of the votes cast by the Trustees. A resolution passed by a majority of the Trustees is as valid as if they had so resolved unanimously.
67. **Resolutions of Trustees without meetings.** Where the Trustee is not a company, see clauses 1 to 7 of the Second Schedule.
68. **Meetings of Trustees.** Where the Trustee is not a company, see clauses 8 to 18 of the Second Schedule.
69. **Where Trustee is a company.** If the Trustee is a company, it may exercise, or concur in exercising, any discretion or power conferred by this Deed:
 - (a) by a resolution of its board of directors or governing body; or
 - (b) by delegating the right and power to exercise, or concur in exercising, the discretion or power to one or more of its directors or members of its governing body appointed unanimously by the board of directors or governing body for that purpose and may by majority resolution of its directors terminate that delegated authority.
70. **Resolutions of sole director Trustee.** If the Trustee is a company with a sole director, see clauses 8 to 11 of the Second Schedule.
71. **Trustees deadlocked.** If there are two or more Trustees and there is a deadlock between the Trustees as to how to exercise a power or discretion which the Trustees are entitled to exercise under this Deed, then:
 - (1) the Trustees may refer the dispute to an arbitrator appointed by the Trustees; or
 - (2) if the Trustees are unable to agree:
 - (a) on an arbitrator; or
 - (b) to refer the dispute to an arbitrator —then one of the Trustees may refer the dispute to an arbitrator appointed by the President of the Law Council of Australia.
72. The award of the arbitrator is binding on the Trustees and on the members and beneficiaries as though it were the exercise of a power or discretion by all of the Trustees and that they had so resolved unanimously.
73. **Trustee's rights to reimbursement, indemnity and recoupment.** The Trustee has rights of reimbursement, indemnity and recoupment out of the assets of the Fund against liabilities incurred or arising from administering the Fund other than against liability for:
 - (a) a monetary penalty under a civil penalty order; or
 - (b) breach of trust if the Trustee:
 - (i) fails to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise —and the Trustee's rights under this Deed or at law to reimbursement, indemnity and recoupment are to be reduced to the extent that the Fund, members or beneficiaries have suffered loss as a result.
74. Nothing in this Deed prevents the Trustee from seeking advice in respect of any matter relating to the performance of its duties or the exercise of its powers as trustee. A provision in this Deed that purports to preclude the Trustee from being indemnified out of assets of the Fund in respect of the cost of obtaining such advice, or to limit the amount of such an indemnity, is void.
75. **Lien.** The Trustee has a first and paramount lien over the assets of the Fund for:
 - (a) any liability for tax which the Trustee incurs in respect of a member or beneficiary; and
 - (b) its rights of reimbursement, indemnity and recoupment.A certificate signed by the Trustee stating the amount of the lien over the member's benefit claimed by the Trustee is prima facie evidence of the amount owing.
76. The Trustee may retain and pay its costs and expenses, including its rights to reimbursement, indemnity and recoupment, out of Fund assets in priority to any claim by members or beneficiaries.

77. The Trustee may at any time exempt a member or beneficiary wholly or in part from the provisions of the preceding clause.
78. **Directors' indemnity.** A director of the Trustee may be indemnified out of the Fund assets in respect of a liability incurred while acting as a director of the Trustee other than against:
- (a) a liability that arises because the director:
 - (i) fails to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the director is required to exercise; or
 - (b) liability for a monetary penalty under a civil penalty order.
79. The preceding clause has effect despite section 241 of the *Corporations Act* 2001.
80. The Trustee may, insofar as it is permitted by the *Corporations Act*, indemnify anyone who is, or has been, a director or company secretary against any liability arising directly or indirectly from the person serving or having served in that capacity:
- (a) to any person, except for:
 - (1) a liability owed to the Trustee or a related body corporate;
 - (2) a liability for a pecuniary penalty or compensation order made under the *Corporations Act*; or
 - (3) a liability that is owed to someone (other than the Trustee or a related body corporate) which did not arise out of conduct in good faith; and
 - (b) for legal costs incurred in defending a proceeding for liability incurred as a director or company secretary if the costs are not incurred:
 - (1) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under paragraph (a);
 - (2) in defending or resisting criminal proceedings in which the person is found guilty;
 - (3) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (4) in connection with proceedings for relief to the person under the *Corporations Act* in which the court denies the relief.
- Paragraph (b)(3) does not apply to costs incurred in responding to actions brought by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.
81. **Insurance.** The Trustee may, insofar as it is permitted by the *Corporations Act*, procure and obtain professional indemnity insurance or cover, or pay or agree to pay a premium for such insurance, for a person who is, or has been, a director or company secretary against any liability:
- (a) arising directly or indirectly from the person serving or having served in that capacity including, but not limited to, a liability for negligence except where the liability arises out of:
 - (1) conduct involving a wilful breach of duty in relation to the Trustee; or
 - (2) a contravention of sections 182 or 183 of the *Corporations Act* dealing with improper use of position or information; or
 - (b) for legal costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.
82. Nothing in the preceding or penultimate clauses limits the powers of the Trustee, to the extent permitted by the *Corporations Act*, to indemnify or insure other officers of the Trustee.
83. The directors of the Trustee may authorise the Trustee to, and the Trustee may, enter into any document containing an indemnity in favour of, or insurance policy for the benefit of, a person who may be indemnified or insured by the Trustee, on such terms as the directors of the Trustee approve and, in particular, that applies to acts or omissions before or after the time of entering into the indemnity or policy.
84. The benefit of a deed of indemnity or similar document containing an indemnity, continues according to the terms of the deed or document, even if the terms of the

preceding clause are amended, repealed or modified, in respect of a liability arising out of acts or omissions occurring before the amendment, repeal or modification.

85. **Trustee's remuneration and fees.** The Trustee is prohibited from receiving any remuneration from the Fund or from any person for any duties or services performed by it in relation to the Fund.
86. No director of the Trustee is to paid for their duties or services as a director of the Trustee in relation to the Fund.
87. Subject to the Act, if the Trustee or a director of the Trustee is:
 - (a) an accountant, solicitor, financial planner or other person engaged in a profession, then they are entitled to charge and be paid all usual professional charges for business transacted, or time expended by them or any of their employees or partners for services other than as Trustee or a director of the Trustee; or
 - (b) a partner of a firm or a director or shareholder of a company, that firm or company may charge professional fees and disbursements when providing professional services to the Fund —as long as:
 - (1) the terms and conditions of the retainer are in writing; and
 - (2) the remuneration is charged on an arm's length basis.
88. **Power to act as director.** A Trustee who is a natural person may become a director of any company in which any Fund assets are invested.
89. **Power to act even though personal interest.** The Trustee may exercise, or concur in exercising, any power or discretion under this Deed or by law even though:
 - (a) it; or
 - (b) any person who is a director or shareholder of the Trustee —is or may have been a member or a beneficiary, or has or may have a direct, indirect or personal interest (whether as shareholder, director, member or otherwise) in the manner or result of exercising that power or discretion, or may benefit, either directly or indirectly, as a result of the exercise of any that power or discretion, and even though the Trustee is the sole Trustee at that time.
90. **Professional advice.** The Trustee may take and may act upon:
 - (a) the opinion or advice of legal practitioners who have informed the Trustee that they have practised continuously for at least 5 years in the jurisdiction where interpretation of this Deed or any other document or legislation or any matter concerning the administration of the Fund is to be determined;
 - (b) the opinion, advice, statements or information from any agents or advisers, such as accountants, auditors, bankers, barristers, brokers, commission agents, estate agents, investment advisers, managers, solicitors, surveyors, valuers and other professionals consulted by the Trustee in the execution of these trusts and powers, whether or not they were formally retained, engaged or instructed by the Trustee, whom the Trustee believes in good faith and on reasonable grounds to be expert in relation to the matters upon which they are consulted;
 - (c) may rely upon and act on the basis of any document provided to the Trustee in connection with the Fund upon which it is reasonable for it to rely.
91. This does not, of course, preclude the Trustee from applying to a court having appropriate jurisdiction.
92. **Custodian or nominee.** The Trustee need not register Fund property, including a security, in its own name, but it may, with the consent of a custodian or nominee, register it in the name of the custodian or nominee without having to disclose (other than in the accounts and records of the Fund) that the custodian or nominee holds the property as custodian or nominee for and on behalf of the Trustee. The Trustee has the same powers in respect of the property as if it were registered in its own name.
93. **Deposit of documents of title.** The Trustee:
 - (a) may deposit documents of title to property or securities of the Fund with a solicitor, accountant, bank, trustee company, investment, stockbroker or the like in any part of the world in which any of the Fund assets are invested or located; and

- (b) is not liable or responsible for any loss to that property which was not caused by its own fault.
94. **Delegation and appointment of agents and managers.** The Trustee is not bound to act personally and may delegate the exercise of any power or discretion conferred on it by this Deed or by law, and may authorise or engage or employ any person to act as its agent or delegate to transact any business to be done or performed by the Trustee, to perform any act or exercise any power or discretion within the Trustee's power (including appointing its own agent or delegate), or to do any act required to be done in connection with the administration of the trusts, including the receipt and payment of money and to hold title to any asset.
95. The Trustee may:
- (a) execute any power of attorney or other deeds necessary for that purpose;
 - (b) include in any appointment provisions to assist those dealing with the agent or delegate as the Trustee thinks fit;
 - (c) determine the remuneration to be paid to that person.
- An appointment may be joint (in which case the authorisation may be joint and several).
96. The agent may retain any reasonable commission or profit in respect of any transaction relating to the Fund even though that commission or profit was procured by an exercise of fiduciary powers (by that person or some other person) provided that:
- (a) the person would in the normal course of business receive and retain the commission or profit on the transaction;
 - (b) the receipt of the commission or profit was disclosed to the Trustee.
97. **Administration manager.** The Trustee may appoint an administration manager in writing on such terms as it sees fit.
98. The appointment must be in writing.

DUTIES AND LIABILITIES OF TRUSTEE

99. **Duties.** The Trustee must act impartially between members and beneficiaries not engage in any conduct, dealings, transactions, exercise any powers or do (or fail to do) anything that would result in a contravention of the governing legislation, including the Fund ceasing:
- (a) to be a self managed superannuation fund;
 - (b) to qualify for concessional tax treatment;
 - (c) to be a complying superannuation fund under the Act.
100. **Contracts.** The Trustee is prohibited from entering into any contract, or doing anything else, that would prevent it from, or hinder it in, properly performing or exercising its functions and powers.
101. **Superannuation guarantee legislation.** The Trustee must administer the Fund in order to facilitate the acceptance of contributions in accordance with the Guarantee Act and must provide all certificates, reports and other information required under the Guarantee Act.
102. **Securing Fund assets.** The Trustee must ensure that Fund assets and investments are registered in the names of the Trustee or a custodian.
103. **Duty to notify Regulator of significant adverse events.** If the Trustee becomes aware that it will not, or may not, be able, at a time before the next annual report by the Trustee to the beneficiaries entitled to the report, to make payments to beneficiaries as and when the obligation to make those payments arises, then it must ensure that the Trustee immediately notifies the Regulator in writing of the event.
104. **Reasonable degree of care and diligence.** The Trustee must:
- (a) act honestly in all matters concerning the Fund;
 - (b) exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
 - (c) ensure that its duties and powers are performed and exercised in the best interests of the members and beneficiaries.

105. Each director of the Trustee must exercise a reasonable degree of care and diligence to ensure that the Trustee:
- (a) acts honestly in all matters concerning the Fund;
 - (b) exercises, 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) ensures that its duties and powers are performed and exercised in the best interests of the members and beneficiaries.
106. **Liability of Trustee.** The Trustee shall not be liable or accountable to the Fund or to any member or beneficiary, or any person claiming through them:
- (1) for any payment for tax to a fiscal authority made by the Trustee in good faith, even though the payment need not have been made;
 - (2) for any other payment made by the Trustee in good faith to any person whom the Trustee bona fide believes to be entitled;
 - (3) for any loss arising as a result of an investment made or the retention of any investment;
 - (4) for any error of law or mistake of fact in relation to which the Trustee has acted or failed to act;
 - (5) for anything done, suffered or omitted by the Trustee in good faith in reliance upon any opinion, advice, statement, information or document described in clause 90;
 - (6) for the negligence or fraud of any agent engaged by the Trustee;
 - (7) for any other loss or damage whatsoever —
- except liability for breach of trust if the Trustee:
- (a) fails to act honestly in a matter concerning the Fund; or
 - (b) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that it was required to exercise.
107. The Trustee is entitled to take any measures it wishes to ensure its liability (including any contracts entered into as Trustee) to any person in respect of the Fund other than a member or a beneficiary is limited to the Trustee's ability to be indemnified out of the assets of the Fund.
108. The Trustee:
- (a) may rely upon and act on the basis of any document provided to the Trustee in connection with the Fund upon which it is reasonable for the Trustee to rely, including any document provided to it by a member or a beneficiary (signpost: see clause 90);
 - (b) is not under any duty to enquire into the conduct of a company in which the Fund has an interest unless it has knowledge of circumstances which call for inquiry.

MINUTES

109. **Deliberations, resolutions and declarations.** The Trustee must keep minute books in which it records within one month meetings, deliberations, resolutions and declarations (if any) of the Trustee.
110. The Trustee must ensure that the minutes of a meeting, deliberations, resolutions and declarations are signed within a reasonable time after the meeting by one of the following:
- (a) the chair of the meeting;
 - (b) the chair of the next meeting.
111. A minute that is so recorded and signed is evidence of the deliberations, resolutions or declarations to which it relates unless the contrary is proved.

MEMBERSHIP OF THE FUND

112. **Who can be a member?** Any person (including as minor) may be a member of this

Fund as long as:

- (1) the total number of members does not exceed 4;
- (2) no member is an employee of another member, unless they are related;
- (3) they agree to be bound by the terms of this Deed (parents or guardian can do so on behalf of a minor);
- (4) if a company is the sole Trustee, they agree to consent to become a director of the Trustee (if they are a minor, their parent or guardian may consent to be a director of the Trustee);
- (5) if the Trustee is not a company, they consent to become a Trustee (if they are a minor, their parent or guardian may consent to be a Trustee).

The Trustee may set other eligibility conditions for membership.

113. **Application for membership.** An applicant for membership must give a completed application form to the Trustee in a form approved by or acceptable to the Trustee.
114. If the applicant is a minor, then it may be signed by their parent or guardian.
115. Subject to the governing legislation, if the applicant is employed by a participating employer, then the participating employer's consent to membership must be obtained by the Trustee before admission of a member.
116. The application must be accompanied by such other information or documents (including their tax file number) as the Trustee may require. A n applicant for membership must also, if requested by the Trustee:
 - (a) furnish such information as the Trustee requires; and
 - (b) undergo a medical examination.
117. The application shall be deemed to be an agreement by the member to be bound by this Deed upon becoming a member.
118. **Dealing with application for membership.** The Trustee may accept or refuse any application for membership without giving any reason for doing so.
119. **Admission to membership.** The Trustee may admit an eligible person as a member.
120. The Trustee may only accept an applicant as a member if:
 - (1) on acceptance, the total number of members will not exceed 4 persons;
 - (2) they are not an employee of another member, unless they are related;
 - (3) they agree to be bound by the terms of this Deed (parents or guardian can do so on behalf of a minor);
 - (4) unless the applicant is a minor, they are not disqualified under the Act from being a Trustee or the director of the Trustee;
 - (5) if a company is the sole Trustee, then, unless they are a minor, they consent to become a director of the Trustee (if they are a minor, their parent or guardian may consent to be a director of the Trustee);
 - (6) if the Trustee is not a company, then, unless the applicant is a minor, they consent to become a Trustee (if they are a minor, their parent or guardian may consent to be a Trustee).
121. **Conditions of admission to membership.** The Trustee may:
 - (a) impose conditions on membership as it considers appropriate and may vary or remove those conditions;
 - (b) make arrangements under which those satisfying certain eligibility conditions (such as employees) may become members provisionally from a certain date unless the Trustee subsequently rejects the application.
122. **Commencement of membership.** The date of commencement of membership of a member is:
 - (a) the date on which the Trustee specifies by notice in writing to the member upon acceptance of the application (which may be a date before the receipt of the application);
 - (b) the date agreed between the Trustee and the member or, if the member is an employed member, the relevant employer; or
 - (c) the date on w hich the Trustee receives the completed application for membership.
123. The Trustee must give a copy of this Deed to each new member.
124. **Members bound by Deed.** Anyone who is admitted as a member is bound by the

- terms and conditions of this Deed (including any subsequent amendment to this Deed) and all special rights, restrictions and conditions (if any) attaching to membership.
125. Any beneficiary or personal representative of a member is deemed to be bound by the terms and conditions of this Deed (including any subsequent amendment to this Deed) as if they had been a party to this Deed.
126. **Member's attorney.** Each member irrevocably appoints the Trustee as their attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Trustee reasonably considers appropriate for the purposes of administering the Fund.
127. **Further information from member.** The Trustee may require an existing member or beneficiary:
- (a) to give it their tax file number declaration;
 - (b) to give it such other information as is reasonably required by the Trustee; and
 - (c) to undergo a medical examination.
128. **Incorrect or misleading information.** If a member or beneficiary:
- (1) fails to provide information requested by the Trustee; or
 - (2) furnishes incorrect or misleading information which affects, or is likely to affect, the benefits payable to or in respect of the member or beneficiary —
- then the Trustee may:
- (a) refuse any further contributions from or on behalf of the member;
 - (b) withhold any benefits in respect of that member or beneficiary;
 - (c) alter or amend the benefits to amounts that would have applied had full and accurate information been supplied;
 - (d) impose such other conditions on the continued membership of the member or on beneficiary as it considers appropriate.
129. **Classes of membership.** There is one class of membership until the Trustee resolves otherwise. The Trustee may resolve:
- (a) to create classes or categories of members with such rights, entitlements, conditions of eligibility and benefits as it may decide;
 - (b) allocate each member to a class or category.
130. **Reclassification by Trustee.** The Trustee may reclassify a member at any time (eg, because the member was in an employer-sponsored category, has left that employer, and must be moved to another category that is not linked to any particular employer).
131. The Trustee must notify members when it decides to transfer their benefits from one classification or category to another.
132. However,
- (a) any benefit forming part of the member's account which has vested in that member when they were a member of another class will be retained as an entitlement of the member of that class;
 - (b) if a member is employed by a participating employer, the participating employer must consent to the reclassification.
133. **Anticipated change of status.** A member must inform the Trustee as soon as practicable:
- (a) after they cease part-time gainful employment or full-time gainful employment after age 65 years;
 - (b) if they enter into an employment relationship with any other member and the member is not a relative of the other member; or
 - (c) they become disqualified under the Act from being a Trustee;
 - (d) they becomes disqualified from acting as a director of the Trustee.
134. **Cessation of membership.** Subject to the Act, a member ceases membership if:
- (1) they die;
 - (2) benefits payable to or on their behalf cease to be payable;
 - (3) when they cease to be, or becomes ineligible to act as, a Trustee or a director of the Trustee (otherwise than as a minor or under person under a legal disability);
 - (4) become ineligible to be a member pursuant to the Act.
135. **Notice to former member.** As soon as practicable after a person ceases to be a member, the Trustee must give them or their personal representative a written

statement containing the information and details required by the Act relating to their benefits.

136. **Termination of beneficiary's interest.** Subject to the Act, a person ceases to be a beneficiary if:
- (1) they die;
 - (2) all benefits to which they have become entitled have been paid or cease to be payable.

PERSONAL REPRESENTATIVE

137. **Personal representative of member.** The parent or guardian of the minor is authorised to do on the member's behalf anything that a member is lawfully authorised to do under this Deed and the governing legislation.
138. Decisions in relation to the minor's membership must be made by the minor's parent or guardian:
- (a) until the minor is 18 years; or
 - (b) after the minor is 16 years if the parent or guardian notifies the Trustee that the minor will in future be making those decisions.
139. Nothing in this Deed gives the personal representative of a member or the parent or guardian of a member who is a minor the authority to make or amend a binding death benefit nomination.

LIABILITY OF MEMBERS AND BENEFICIARIES

140. **Liability of beneficiaries.** The Trustee is entitled to make a deduction from any amount distributable to a member or beneficiary for:
- (a) any liability for tax which the Trustee incurs in respect of that member or beneficiary; and
 - (b) its rights of reimbursement, indemnity and recoupment.
141. **Personal liability of beneficiaries.** The Trustee is entitled to recover from a present or former member or beneficiary any liability for tax which the Trustee incurs in respect of that member or beneficiary.
142. Apart from the circumstances described in the preceding clause, members and beneficiaries (in their capacity as members and beneficiaries) shall not be personally liable for the debts of the Fund.

CONTRIBUTIONS

143. **Who can contribute to this Fund?** Subject to the Act, the Trustee may accept contributions from:
- (1) members or prospective members (including contributions made in respect of a member and which are subject to a contributions splitting request for spouses or domestic partners);
 - (2) employers (who may contribute to the Fund in respect of a member);
 - (3) a spouse or domestic partner of a member or prospective member; or
 - (4) any other person in circumstance permitted by the Act.
144. Subject to the Act, they may contribute such amount and in such manner and at such times and for such time as they may from time to time agree with the Trustee.
145. The Trustee shall only accept contributions permitted by the Act.
146. **No obligation to contribute.** In the absence of any agreement to the contrary, nothing in this Deed obliges a member to make contributions to the Fund and a member may remain a member even though a contribution is not made by or on behalf of a member in any financial year.
147. **Other contributions.** The Trustee may, with the consent of a member, accept

contributions made to the Fund for or on behalf of a member by another person, including:

- (a) contributions for or on behalf of a member who is a minor;
- (b) contributions by the spouse or domestic partner of a member (even though the spouse or domestic partner may also be a member);
- (c) co-contributions permitted by the governing legislation;
- (d) shortfall components as defined in the *Superannuation Guarantee (Administration) Act 1992*.

148. **Eligible spouse or domestic partner contributions.** The Trustee may, with the consent of a member, only accept eligible spouse or domestic partner contributions in the following circumstances:

If the member ...		then the Trustee ...
1	is under 65	may accept eligible spouse or domestic partner contributions
2	is not under 65, but is under 70	may accept eligible spouse or domestic partner contributions only if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made
3	is 70 or over	cannot accept eligible spouse or domestic partner contributions

149. **Acceptance of contributions.** The Trustee may accept contributions only in accordance with the following table:

If the member ...		then the Trustee may accept ...
1	is under 65	contributions that are made in respect of the member
2	is not under 65, but is under 70	contributions that are made in respect of the member that are: <ul style="list-style-type: none"> (a) mandated employer contributions; (b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made: <ul style="list-style-type: none"> (i) employer contributions (except mandated employer contributions); or (ii) member contributions; or (c) payments from an FHSA of a kind mentioned in subpara 31 (1) (b) (i) or (ii) of the FHSA Act
3	is not under 70, but is under 75	contributions that are made in respect of the member that are: <ul style="list-style-type: none"> (a) mandated employer contributions; or (b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made, contributions received on or before the day that is 28 days after the end of the month in which the member turns 75 that are:

		(i) employer contributions (except mandated employer contributions); or
		(ii) member contributions made by the member
4	is not under 75	mandated employer contributions

150. The Trustee must ensure that the member is entitled to make the contribution to the Fund before accepting the payment. It may reject any contribution if in its opinion the acceptance of the contribution would not be permitted by governing legislation; and
151. The Trustee may accept contributions in respect of a member if the Trustee is reasonably satisfied that the contribution is in respect of a period during which, under an item in the table, the Trustee may accept the contribution in respect of that member, even though the contribution is actually made after that period.
152. The Trustee must not accept any member contributions if the member's tax file number has not been quoted (for superannuation purposes) to the Trustee.
153. The Trustee must not accept any fund-capped contributions in a financial year in respect of a member that exceed:
- (a) if the member is 64 or less on 1 July of the financial year, three times the amount of the non-concessional contributions cap; or
 - (b) if the member is 65 but less than 75 on 1 July of the financial year, the non-concessional contributions cap.
154. The Trustee may refuse or refund a contribution if the contribution is excessive.
155. **Designation of class entitlements.** If a member is a member of more than one class, and either:
- (a) the member makes a contribution, they may designate the class to which the contribution is to be allocated; or
 - (b) a participating employer makes a contribution in respect of a member, they may designate the class to which the contribution is to be allocated.
156. **Contributions in cash or assets.** The Trustee may:
- (a) require payment in a specified manner;
 - (c) accept contributions in cash, by cheque or EFT;
 - (d) accept contributions by transfers to the Trustee of assets in specie if:
 - (1) the asset transferred is an investment permitted by the Act and this Deed;
 - (2) the transfer of the asset is made upon terms and conditions:
 - (i) required or permitted by the governing legislation; and
 - (ii) decided by the Trustee; and
 - (3) the value attributed to the asset at the time of its transfer is its market value;
 - (d) subject to the Act and the Regulations, accept the payment of a premium or other amount to a life insurance company or registered organisation for the purchase of a non-account-based superannuation income stream, such as an annuity, pension or income stream, as a contribution paid to the Fund;
 - (e) accept rollovers or transfers from other funds.
157. **Refunds.** If the Trustee receives an amount in a manner that is inconsistent with the Regulations, it must refund the amount within 30 days of becoming aware that the amount was received in a manner that is inconsistent with the Regulations, unless:
- (a) for an amount received in a manner that is inconsistent with the Regulations, the member's tax file number is quoted (for superannuation purposes) within 30 days of the amount being received by the Trustee; or
 - (b) for an amount received in a manner that is inconsistent with the Regulations, a valid notice under section 290-170 of the *Income Tax Assessment Act 1997* is received by the Trustee within 30 days of this amount being received by the Trustee.
158. If:
- (1) the price at which the interest could have been acquired on the day on which the amount is refunded is less than the price on the day on which the interest was

- acquired, the amount that would otherwise be refunded may be reduced by the Trustee by the difference between the prices;
- (2) the price at which the interest could have been acquired on the day of refund of the amount is greater than the price on the day on which the interest was acquired, the amount that would otherwise be refunded may be increased by the Trustee by difference between the prices;
- (3) the price at which the interest could be acquired cannot be determined in accordance with the contract or legal relationship on the day on which the amount is refunded, the price is to be determined by the Trustee:
- (a) on the basis of the most recent day on which a price was calculated in accordance with the contract or legal relationship; or
 - (b) if there is no day of that kind, as soon as practicable after the Trustee decides to refund the amount.
159. If:
- (a) the interest is a risk insurance interest, or the part of an interest that is a risk insurance interest;
 - (b) the interest has been issued for a specific period, or the premium for the interest has been paid in relation to cover for a specific period;
 - (c) a proportion of the specific period has already passed when the decision is made to refund the amount to the Fund or person that paid the amount —
- the amount that would otherwise be refunded may be reduced by the Trustee by the sum of:
- (1) that part of any amount received in a manner inconsistent with the Regulations as has been paid by the Fund to any person in connection with the risk insurance product and which is not recoverable by the Fund from that person; and
 - (2) the proportion equal to the proportion of the period that has passed of the difference between the amount that would otherwise be refunded and the amount referred to in the penultimate clause.
160. In addition to the two preceding clauses, the amount that would, but for this clause, be refunded may be reduced to account for reasonable administration costs and transaction costs incurred by the Trustee that:
- (a) are reasonably related to the acquisition of the interest and refunding the amount; and
 - (b) do not exceed the true cost of an arms' length transaction —
- other than costs related to commissions or similar benefits.
161. The Trustee may refund contributions which are excess contributions (ie, contributions in excess of the member's concessional and non-concessional caps) in a financial year.

PARTICIPATING EMPLOYERS

162. **Application to be participating employer.** An employer may apply to participate in the Fund by giving a completed application form to the Trustee in a form approved by or acceptable to the Trustee.
163. The application must be accompanied by such other information or documents as the Trustee may require.
164. The application shall be deemed to be an agreement by the participating employer to be bound by this Deed.
165. **Admission as participating employer.** Subject to the Act, the Trustee may permit any company, person or firm to contribute to the Fund as an participating employer in respect of an employee who is member or to become a member.
166. **Commencement of participating employer.** The date of commencement is:
- (a) the date agreed between the Trustee and the participating employer; or
 - (b) the date on which the Trustee accepts the completed application.
167. **Participating employer bound by Deed.** Anyone who is admitted as a participating employer is bound by the terms and conditions of this Deed (including any subsequent amendment to this Deed).

168. **Employer contributions.** The Trustee may accept mandated employer contributions made by an employer under a law or an industrial agreement for the benefit of a member, including:
- (a) super guarantee contributions;
 - (b) super guarantee shortfall components;
 - (c) award-related contributions;
 - (d) some payments from the superannuation holding accounts (SHA) special account.
- The Trustee may also accept non-mandated employer contributions made by employers over and above their *Superannuation Guarantee (Administration) Act* 1992 or award obligations.
169. The participating employer may:
- (a) subject to the governing legislation, decide the amount, type, timing and regularity of its contributions on a basis agreed with the Trustee; or
 - (b) remit contributions to the Trustee in respect of its employee who is a member within 28 days after the end of the calendar month in which the contributions are deducted from the member's salary (where the employer deducts the member's personal contributions from their salary).
170. Subject to the Act and the Regulations, the Trustee may accept the payment by a participating employer of an amount to a life insurance company or a registered organisation for the purchase of a non-account-based superannuation income stream, such as an annuity, pension or income stream, as a contribution paid to the Fund;
171. **Employer contributions under choice of fund.** For the purposes of Part 3A of the *Superannuation Guarantee (Administration) Act* 1992, the Trustee may:
- (a) take any steps as are necessary to ensure that the Fund is an eligible choice fund for the member; and
 - (b) receive employer contributions to the Fund on behalf of a member on the basis that the Fund is the member's chosen fund.
172. **Employer contribution obligations.** In the absence of any agreement to the contrary, nothing in this Deed obliges a participating employer to make a contribution to the Fund in respect of its employee who is a member unless required by the governing legislation (eg, mandated employer contributions).
173. Where there is an agreement to contribute to the Fund in force between the Trustee and a participating employer, then at any time an obligation is imposed on a participating employer to make contributions to another superannuation fund providing retirement, death or disablement benefits in respect of a member, then the participating employer may, with the consent of the Trustee, reduce its contributions to the Fund by the amount of its contributions to the other fund for those members who are also members of the other fund.
174. **Further information from participating employer.** The Trustee may require a participating employer to give it such other information as is reasonably required by the Trustee. The Trustee may act on any information given to it by an employer under this Deed and is not required to verify the accuracy of that information.
175. **Employer's rights unaffected.** Nothing in this Deed:
- (a) is to be taken as imposing any fiduciary obligations on a participating employer in connection with the exercise of any powers relating to the Fund; or
 - (b) restricts the rights of a participating employer to terminate a member's employment or to remove a director from office who is a member.
176. **Cessation or termination.** Subject to the governing legislation, an employer ceases to be an participating employer if:
- (a) the participating employer gives written notice to the Trustee and to each member who is employed by that employer that it wishes to terminate its participation and that cessation takes effect from the date that notice is given;
 - (b) the Trustee gives written notice of cessation to the participating employer that the employer's participation should terminate.
 - (c) there are no members who are employed by that employer;
 - (d) the participating employer is an insolvent under administration;;

- (e) an administrator has been appointed in respect of the participating employer;
- (f) an official manager or similar officer is appointed to the participating employer;
- (g) a provisional liquidator has been appointed in respect of the participating employer;
- (h) the participating employer has begun to be wound up;
- (i) an order is made or a resolution passed for the dissolution without winding up of the participating employer.

177. **Effect of termination.** If an employer's participation terminates, then, unless the Trustee otherwise agrees:

- (a) no further contributions may be accepted by the Trustee from that employer or the relevant members;
- (b) any arrears must be paid;
- (c) the member's account balance may be retained in the Fund or transferred to another benefit arrangement selected by the Trustee; and
- (d) subject to the Act, any portion of the Reserve Account attributable to the employer may be dealt with in accordance with arrangements nominated by the employer.

A member who is an employee of an employer that has ceased to be a participating employer does not by reason of that event cease to be a member.

178. Another person, firm or corporation may become the employer by written agreement of the Trustee and the member with the consent of their current employer.

179. If a participating employer (former employer) is amalgamated with or disposes of its undertaking to another participating employer and members who were employees of the former employer become employees with the new employer, then:

- (a) contributions are deemed not to have been terminated;
- (b) the new employer may make contributions in respect of those members.

INVESTMENT

180. **Power to invest.** Subject to the Act and the provisions of this Deed, the Trustee:

- (a) has all the powers over and in respect of the Fund and the investments thereof which it could exercise if it were the absolute and beneficial owner; and
- (b) may at any time invest the Fund in any form of investment of whatsoever kind or nature as the Trustee in its discretion thinks fit —

but in doing so it must exercise 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.

181. The Trustee may:

- (a) invest different parts of the Fund differently; and
- (b) may apportion any income, gains, losses or outgoings as it thinks fit.

182. **Investment strategy.** The Trustee is required to adopt an investment strategy which has regard to the purpose and circumstances of the Fund, including:

- (1) the retirement goals of the members (for example, age, income level, employment pattern and retirement needs);
- (2) the maximisation of member returns taking into consideration the risk associated with the investment;
- (3) 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;
- (4) 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;
- (5) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
- (6) the ability to pay benefits as members retire;
- (7) the ability of the Fund to discharge or meet its actual, prospective and contingent

- liabilities.
183. The Trustee should:
 - (a) set out in its investment objectives in its investment strategy; and
 - (b) detail the investment methods which it intends to adopt in order to achieve these objectives.
 184. The Trustee must ensure that:
 - (a) its investment strategy is recorded in a resolution;
 - (b) its investment decisions are made according to its investment strategy;
 - (c) the level of its investments in business real property meets its investment strategy (including diversification of assets, liquidity and maximisation of member returns);
 - (d) any changes in its investment strategy are recorded in a resolution.
 185. **Review (monitor) of investment performance.** The Trustee must regularly monitor and review:
 - (a) the performance (individually or as a whole) of Fund investments;
 - (b) its investment strategy and the assets held in accordance with each investment strategy —

in order to ensure that they are appropriate.
 186. **Power to vary.** The Trustee may change or vary an investment at any time.
 187. **Investment advice.** In exercising the power of investment, the Trustee may, but is not required to, having regard to the size and nature of the Fund:
 - (a) obtain and consider independent and impartial advice for the investment of the Fund, varying an investment or the management of the investment from someone whom the Trustee reasonably believes to be competent to give the advice; and
 - (b) pay out of the Fund the reasonable costs of obtaining the advice.
 188. Where the Trustee acts in reliance upon such advice, it will not be liable to any person beneficially interested in respect of any act done or omitted to be done by the Trustee.
 189. Nothing in the preceding two clauses prohibits or impedes the Trustee from applying to a court having appropriate jurisdiction.
 190. **Investment manager.** The Trustee may appoint an appropriately qualified person as an investment manager:
 - (a) to invest contributions and Fund assets;
 - (b) to monitor and review its investments;
 - (c) to implement its investment strategy;
 - (d) to ensure that the objectives or benchmarks set out in its investment strategy are met.
 191. The appointment must be in writing.
 192. The Trustee must set the terms and conditions of their appointment, which must include a condition that enables it to require the investment manager from time to time to give it:
 - (a) appropriate information as to the making of, and return on, Fund investments; and
 - (b) any information necessary to enable it to assess the capability of the investment manager to manage Fund investments.

MEMBER INVESTMENT CHOICES

193. **Member investment choice.** The Trustee may at any time offer member investment choices to:
 - (a) all members; or
 - (b) just some of them. The Trustee is *not* obliged to do so.
194. **Investment strategy.** The Trustee may also:
 - (a) offer investment strategies to members;
 - (b) select or identify assets which can be used in particular investment strategies;
 - (c) offer members the opportunity of having amounts in their accounts invested in particular investment strategies.

195. Any member choice investment strategy must be in accordance with the Trustee's own overriding investment strategy.
196. If the Trustee gives a member:
 - (1) a choice of two or more investment particular strategies from which they may choose a strategy or combination of strategies;
 - (2) the investment objectives of each of those strategies;
 - (3) all information which it reasonably believes the member would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of those strategies; and
 - (4) information as to the range of directions that can be given and the circumstances in which they can be changed —
 the member may:
 - (a) select one or more of the available investments; and
 - (b) direct the Trustee to invest all or some of the amounts in their accounts in accordance with their selected investment strategy.
197. A member may select another of the available investment strategies if the Trustee gives them the information described in the previous clause, including any information which it reasonably believes they would reasonably need for the purpose of understanding the effect of the available investment strategies and any risk involved.
198. If the Trustee has offered member investment choice to a member or beneficiary, but they do not select a particular investment strategy, then the Trustee must invest the proceeds of the member's account in accordance with its own investment strategy.
199. Subject to the Act, the Trustee may discontinue member investment choice at any time.

REVENUE AND CAPITAL INVESTMENT ACCOUNTS

200. If the Trustee has an investment strategy which involves trading on a revenue account, then it may establish and maintain separate accounts for investment assets which it purchases or acquires as:
 - (1) revenue investments; or
 - (2) capital investments.
201. The Trustee must clearly record in a resolution that part of its investment activities which involve trading on a revenue account.
202. The Trustee must establish and maintain financial records which show which shares or other Fund assets it has purchased or acquired on either:
 - (a) revenue account; or
 - (b) capital account.
203. The Trustee may establish and maintain separate brokerage accounts with sharebrokers that record investments acquired on revenue or capital accounts.

TRUST ACCOUNTS AND RECORDS

204. **Separate Fund accounts.** The Trustee is:
 - (1) to maintain separate accounts of the assets of the Fund entirely separate and distinct from any other trust or fund of which the Trustee is trustee; and
 - (2) to keep the money and other assets of the Fund separate:
 - (a) from any money and assets held by the Trustee personally; or
 - (b) from any money and assets (if any) of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the Fund.
205. **Trustee's obligation to keep financial records.** The Trustee must keep written financial records which:
 - (a) correctly record and explain its transactions in relation to the Fund and the financial position and performance of the Fund;
 - (b) accurately record all receipts and outgoings in relation to the Fund.
 - (c) would enable the returns to the Commissioner to be prepared;

- (d) would enable true and fair financial accounts and statements to be prepared and conveniently and properly audited.
206. **Preparation of financial statements.** Every financial year the Trustee must cause financial statements, including or comprising a statement of financial position and operating statement as at the end of each financial year to be prepared setting out:
- the Fund's assets and investments;
 - the amounts contributed by employers and members in respect of the financial year;
 - the amounts distributed by the Trustee to each member;
 - the amounts held in separate accounts for members;
 - the amount held in the Reserve Account or any Investment Earnings Equalisation Account and details of movements of reserves during the financial year.
207. The accounts and statements must be signed:
- (1) if the Trustee is a company with a sole director, by the director;
 - (2) if the Trustee is a company with more than one director, by at least two directors;
 - (3) if the Trustee is not a company, by at least two Trustees.
208. **Benefits from life assurance policy.** If at the end of the financial year the Fund is a fund from which the benefits paid to each individual member:
- (a) are wholly determined by reference to policies of life assurance; or
 - (b) if paragraph (a) does not apply only because shares in the life insurance company issuing the policies were acquired because the company was demutualised:
 - (i) would otherwise be wholly determined by reference to policies of life assurance; and
 - (ii) the shares have been held for no longer than 18 months from the date of acquisition —
- then the accounts and statements are:
- (a) a statement that policies of the kinds mentioned in regulation 8.01(3) of the Regulations are in place at the end of the financial year;
 - (b) a statement as to whether those policies have been fully maintained as directed by the relevant life insurance companies or registered organisations;
 - (c) a statement of the identities of those life insurance companies or registered organisations;
 - (d) the amounts contributed by employers and members in respect of the financial year;
 - (e) where not all of those amounts have been paid as premiums on the policies, the amount of premiums paid on the policies in respect of the financial year; and
 - (f) the expenses incurred by the Fund in respect of the financial year, other than amounts covered by premiums.
209. **Audit of accounts.** The Trustee must appoint an approved auditor:
- (1) to give it a report, in the approved form, of the operations of the Fund for that year; and
 - (2) to audit the financial accounts of the Fund.
- This must be done:
- (a) each financial year;
 - (b) when the Fund is wound up.
210. The Trustee must appoint the auditor as soon as practicable, but no later than 30 days before the date by which the auditor must give the report to the Trustee.
211. If an auditor requests, in writing, the Trustee to give the auditor a document, the Trustee must ensure that the document is given to the auditor within 14 days of the request being made. The Trustee need only give the auditor those documents which are relevant to the preparation of the report.
212. The auditor's fees are to be paid out of Fund.

TAXATION

213. **Taxation provision account.** The Trustee may establish and maintain a taxation provision account to which it may credited amounts set aside to meet liabilities to pay income tax payable in respect of contributions and investment earnings.
214. **Trustee to give notice to become a regulated fund.** The Trustee must give to the Commissioner within the period provided by the governing legislation a written notice in the approved form and signed in the manner required by the Act electing that the Act is to apply in relation to the Fund.
215. The Trustee is to comply with the provisions of the *Income Tax Assessment Act 1997*.
216. **Trustee to lodge annual returns.** The Trustee must, within the reporting period, or within such longer period as the Commissioner of Taxation allows, lodge the SMSF Annual Return with the Commissioner of Taxation.
217. The return must:
- (a) be in the approved form; and
 - (b) contain the information required by the form in relation to the Fund in respect of that financial year or in relation to another financial year, or both.
218. The Trustee is not required to make any other enquiry as to the tax deductibility or otherwise of contributions.
219. **Duty to notify Commissioner of Taxation of change in status of Fund.** If the Trustee has knowledge that the Fund has ceased to be a self-managed superannuation fund, it must ensure that a written notice is given to the Commissioner of Taxation as soon as practicable, but not later than 21 days, after the Trustee first has knowledge that the Fund has ceased to be, or has become, a self managed superannuation fund.

EXPENSES AND APPORTIONMENT OF EXPENSES

220. **Deductions for taxes.** The Trustee may deduct from any benefit payable to any member or beneficiary any tax required to be deducted (or such tax as the Trustee considers is required to be deducted) from it and any surcharge or other amount of whatever description levied on the Fund pursuant to the superannuation contributions *Tax (Assessment and Collection) Act 1997*.
221. **Determination of costs.** The Trustee must determine the costs to be charged from time to time against a member's benefits in the Fund.
222. In determining the costs to be charged against a member's benefits, the Trustee may include:
- (1) the direct costs of establishing and operating the Fund;
 - (2) any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund;
 - (3) if the member's benefits are subject to a payment split, the costs incurred in administering the payment split (not including the costs offset by any fees payable under regulation 59 of the *Family Law (Superannuation) Regulations 2001* in respect of the payment split); and
 - (4) the direct costs of terminating the Fund.
223. Subject to the member-protection standards and regulation 5.01B, in determining the costs to be charged against a member's benefits, the Trustee must ensure that the costs of the Fund (including the costs (if any) incurred by the Fund as a result of the operation of Division 5.4) are distributed in a fair and reasonable manner as between:
- (a) all the members; and
 - (b) the various kinds of benefits of each member.
224. **Meaning of fair and reasonable.** An apportionment of costs is not fair and reasonable if, in respect of a period that is a good investment period, the Trustee applies administration costs (being administration costs that would, but for the member-protection standards, be applied to erode the minimum benefits of members to

whom the member-protection standards apply) in a way that erodes the benefits (other than the minimum benefits) of those members.

225. A period is a good investment period if the total administration costs that would be charged to members but for regulation 5.17 of the Regulations is not greater than the Fund's total investment return that would be credited to members of the Fund in respect of the period but for that regulation.
226. **Effect of deductions on benefits.** A member or beneficiary is entitled to receive only the benefits or payments due after the deductions have been made.
227. **Refund of costs.** The Trustee may refund costs charged against the member's account to the member's account.
228. In determining the amount of refund to be credited, the Trustee must ensure that the total amount to be refunded is distributed in a fair and reasonable manner to all the members against whom the costs were charged.

INVESTMENT EARNINGS

229. **Investment earnings.** At the end of each financial year, the Trustee must work out:
 - (a) the amount of the Fund's investment earnings of the Fund, whether positive or negative; and
 - (b) calculate the income and capital gains which form part of the earnings, whether they have been received, accrued or are realised or unrealised.
230. The Trustee must determine the investment earnings to be credited or debited from time to time to a member's benefit (or benefits of a particular kind) having regard to:
 - (a) the Fund's investment earnings;
 - (b) the extent to which the costs exceed (or fall below) the aggregate of the costs charged to member's benefits under regulation 5.02 of the Regulations; and
 - (c) the level of the reserves.
231. Subject to the member-protection standards, regulation 5.01B and Division 6.1 of the Regulations, the Trustee must determine the investment earnings to be credited or debited to a member's benefits (or benefits of a particular kind) in a way that is fair and reasonable as between:
 - (a) all the members; and
 - (b) the various kinds of benefits of each member.
232. The Trustee may decide the basis for calculating the amount of investment earnings to be allocated to members.
233. In calculating investment earnings, the Trustee may deduct or make provision for any actual, anticipated, prospective or contingent liabilities expenses or losses, and may decide how those liabilities are to be allocated or split between various members' or beneficiaries' accounts.
234. The Trustee may:
 - (a) allocate any part of those investment earnings amongst members' or beneficiaries' accounts;
 - (b) retain any part of those investment earnings in its Reserve Account or Investment Earnings Equalisation Account (if any).
235. Unless the Trustee otherwise decides, it must allocate the Fund's investment earnings (or losses) in proportion to the amounts standing to the credit of members' and beneficiaries' accounts at the beginning of the financial year in respect of which the allocation is being made, making appropriate adjustment for amounts (if any) credited or debited to those accounts during that financial year.
236. The Trustee may from time to time resolve to select another method for the allocation of investment earnings between members, eg, in accordance with the investment strategy adopted under any member investment choices.
237. If the Trustee offers member investment choice, it must:
 - (a) work out the investment earnings rate in respect of each member's investment strategy; and
 - (b) allocate the Fund's investment earnings in accordance with each member's

investment strategy in proportion to the amount standing to the credit of their account at the beginning of the financial year in respect of which allocation is made, making appropriate adjustment for amounts (if any) credited or debited to those accounts during that financial year.

238. If the Trustee selects another allocation method, it must first tell any members who are affected by the change and obtain their consent.
239. Any investment earning which are not allocated amongst members' or beneficiaries' accounts must be retained in its Reserve Account or Investment Earnings Equalisation Account (if any).

INCOME ACCOUNT

240. **Income Account.** The Trustee may establish and maintain an Income Account.
241. Subject to the Act, and unless the Trustee decides otherwise, it may credit the following to the Income Account:
- (1) positive investment earnings for the financial year;
 - (2) any surplus arising from a valuation undertaken at any time during the year;
 - (3) credits arising out of adjustments;
 - (4) the proceeds of any policy effected by the Trustee where the Trustee decides that it should not be credited to any other account.
242. Subject to the Act, and unless the Trustee decides otherwise, it may debit the following to the Income Account:
- (1) losses sustained on the disposal of any Fund investments;
 - (2) deficiencies arising from a valuation undertaken;
 - (3) debits arising out of adjustments;
 - (4) premiums payable by the Trustee in respect of insurance policies or group insurance policies;
 - (5) amounts in respect of tax deducted which are not debited to any other account;
 - (6) any costs or charges incurred which are not debited to any other account.
243. In addition to the amounts specifically referred to in the two preceding clauses, the Trustee may add or deduct from a member's account such other amounts as it considers appropriate.

MEMBER ACCOUNTS

244. **Member accounts and accumulation accounts.** The Trustee must establish and maintain at least one account for each member for the purpose of recording benefit entitlements under this Deed. It may also establish and maintain an accumulation account in respect of each member and beneficiary. More than one member's account may be maintained in respect of a member if they participate in the Fund in more than one capacity (for example, as an employed member and otherwise).
245. **Contributions to be allocated to members.** The Trustee must allocate contributions to a member's account or accumulation account:
- (a) within 28 days after the end of the month in which it receives them; or
 - (b) if it is not reasonably practicable to allocate the contribution to the member within that time, within such longer period as is reasonable in the circumstances.
246. The Trustee may deduct any tax payable in respect of those contributions before crediting it to the member's account or accumulation account.
247. **Details of accounts.** Subject to the Act, and unless the Trustee and the member agree otherwise, the Trustee must credit the following to a member's account or accumulation account:
- (1) contributions;
 - (2) superannuation guarantee shortfall received for the member's benefit;
 - (3) transfers or rollovers of a member's benefit from an approved fund;
 - (4) amounts deducted from an account of another member pursuant to a

- contributions split request which has been accepted by the Trustee;
 - (5) the proceeds of any policy paid to the Trustee in respect of the member;
 - (6) allocations of investment earnings;
 - (7) amounts transferred from the Income Stream Account (if any) of the member or beneficiary and amounts in relation to the commutation of a pension;
 - (8) any other amount that the Trustee considers should properly be credited to the member's account or accumulation account.
248. Subject to the Act, and unless the Trustee and the member agree otherwise, the Trustee must debit the following to a member's account or accumulation account:
- (1) benefits cashed or paid from the member's account;
 - (2) transfers or rollovers out of the Fund;
 - (3) an amount added to the member account of another member pursuant to a contribution split request which has been accepted by the Trustee;
 - (4) premiums payable by the Trustee in respect of an insurance policy held in respect of the member, or, in respect of a group insurance policy, the proportion of the premium that the Trustee apportions to the member;
 - (5) investment losses;
 - (6) amounts credited to the Income Stream Account (if any) of the member or beneficiary;
 - (7) amounts in respect of tax deducted from the member's account;
 - (8) fees, costs and other expenses incurred by the Fund and allocated by the Trustee to the member's account or deducted from the member's account or any other liabilities attributed to it;
 - (9) any other amount that the Trustee considers should properly be deducted from the member's account or accumulation account.
249. In addition to the amounts specifically referred to in the two preceding clauses, the Trustee may add or deduct from a member's account or accumulation account such other amounts as it considers appropriate.
250. **Special arrangements.** Subject to the Act, the Trustee and a member may agree at any time that special arrangements will apply to the member instead of those that would otherwise apply under this Deed. Those special arrangements:
- (a) must be recorded in writing; and
 - (b) may be varied at any time by further agreement in writing between the Trustee and member.
251. **Determination of value of member's account balance.** The value of the member's account balance is ascertained at market value for the purposes of the minimum provisions for superannuation income streams and the minimum and maximum provisions for transition to retirement income streams, unless the Trustee resolves in writing to value it on a different basis.

RESERVE STRATEGY AND RESERVE ACCOUNT

252. **Reserve investment strategy.** The Trustee must formulate and give effect to a strategy for the prudential management of its reserves which is consistent with its investment strategy and the capacity of the Fund to discharge or meet its actual, prospective and contingent liabilities as and when they fall due.
253. **Reserve Account/Investment Earnings Equalisation Account.** The Trustee may establish and maintain a Reserve Account or an Investment Earnings Equalisation Account (or both) to be used by it in accordance with its investment strategy, including:
- (1) to augment the Fund's investment earnings rate;
 - (2) to smooth investment earnings to members by minimising fluctuations in the allocation of investment earnings to members by retaining some investment earnings in reserve in good years and by transferring amounts from the reserve to members' accounts in years when investment earnings are lower;
 - (3) to stabilise the investment earnings of the Fund;
 - (4) to make provision for future tax liabilities or any other expenses or charges

- payable by the Fund;
- (5) to make provision for such contingencies as the Trustee considers appropriate.
254. If the Trustee intends to allocate reserves other than in proportion to the account balances of members, it must first tell the members and obtain their consent.
255. Subject to the Act, and unless the Trustee decides otherwise, it may credit the following to the Reserve Account or Investment Earnings Equalisation Account:
- (1) positive investment earnings;
 - (2) amounts transferred from the Income Account;
 - (3) forfeited benefits or amounts transferred from the Forfeiture Account (if any);
 - (4) any other amount that the Trustee considers should properly be credited to the Reserve Account or Investment Earnings Equalisation Account.
256. The Trustee shall not credit contributions to the Reserve Account or Investment Earnings Equalisation Account.
257. Subject to the Act, and unless the Trustee decides otherwise, it may debit the following to the Reserve Account or Investment Earnings Equalisation Account:
- (1) investment losses;
 - (2) benefit adjustments;
 - (3) taxes and other expenses not otherwise deducted from the Income Account or member's accounts or accumulation accounts;
 - (4) amounts allocated to a member or a member's account;
 - (5) any other amount that the Trustee considers should properly be deducted from the Reserve Account or Investment Earnings Equalisation Account.
258. In addition to the amounts specifically referred to in the two preceding clauses, the Trustee may add or deduct from the Reserve Account or Investment Earnings Equalisation Account such other amounts as it considers appropriate.
259. Any income earned by the Fund on funds held in the Reserve Account or Investment Earnings Equalisation Account are to be credited to the Reserve Account or Investment Earnings Equalisation Account.
260. The Trustee may subsequently allocate funds in the Reserve Account or Investment Earnings Equalisation Account to a member's account or for the benefit of members and their dependants as the Trustee thinks fit.
261. If a Reserve Account relates to an employer, the employer's consent must be obtained to any application of assets under the preceding clause.
262. Until funds in the Reserve Account or Investment Earnings Equalisation Account are credited to a member's account, they do not form part of the member's benefits.

SUPERANNUATION INCOME STREAM OR PENSION ACCOUNT

263. **Income stream accounts.** If the Trustee decides to pay a superannuation income stream, it must establish and maintain income stream accounts in the name of those members or beneficiaries.
264. Subject to the Act, and unless the Trustee decides otherwise, it may credit the following to an income stream account:
- (1) contributions;
 - (2) government co-contributions;
 - (3) superannuation guarantee shortfall received in respect of the superannuation income stream;
 - (4) allocations of investment earnings which the Trustee thinks it appropriate to credit to the account;
 - (5) credits arising out of any adjustments made;
 - (6) amounts paid into the Fund in respect of the member or beneficiary as a transfer or roll over payment which the Trustee thinks it appropriate to credit to the account;
 - (7) the proceeds of any policy paid to the Trustee in respect of the member or beneficiary which the Trustee considers it appropriate to credit to the account;
 - (8) amounts the Trustee believes necessary or appropriate to credit to the account

- in order to fund the superannuation income stream;
- (9) any other amount that the Trustee considers should properly be credited to the account.
265. Subject to the Act, and unless the Trustee decides otherwise, it may debit the following to a superannuation income stream account:
- (1) payments made to or in respect of the member, beneficiary or a reversionary beneficiary;
 - (2) amounts transferred to the member account or accumulation account;
 - (3) transfers or rollovers out of the Fund that the Trustee decides is appropriate to debit to the account;
 - (4) premiums payable by the Trustee in respect of an insurance policy held in respect of the member or beneficiary which have not been debited to the member account or accumulation account;
 - (5) the proportion of the loss on the disposal of investments that the Trustee decides is appropriate;
 - (6) the proportion of any other investment losses or negative earnings that the Trustee decides is debit to the account;
 - (7) amounts in respect of tax which have not been debited to the member account or accumulation account;
 - (8) fees, costs and other expenses incurred by the Fund which have been apportioned to the member or beneficiary which have not been debited to their member account or accumulation account;
 - (9) any other amount that the Trustee considers should properly be deducted from the account.
266. In addition to the amounts specifically referred to in the two preceding clauses, the Trustee may add or deduct from a superannuation income stream account such other amounts as it considers appropriate.
267. **Segregated current pension assets.** The Trustee may:
- (a) identify, appropriate, set aside and segregate specific or particular Fund assets from other Fund assets in order to fund a superannuation income stream for the member or beneficiary;
 - (b) obtain actuary's certificates in relation to the adequacy of the assets segregated.
268. Each year, the Trustee must review the value of the segregated assets for the purposes of ensuring their value is sufficient to discharge or meet the Fund's current pension liabilities.
269. Where the value of the segregated assets is not sufficient or is more than sufficient to discharge or meet the Fund's current pension liabilities, the Trustee may take such measures as are permitted or required by the governing legislation.

INCOME STREAM RESERVES

270. Subject to the Act, the Trustee may establish and maintain superannuation income stream reserves in relation to the funding of income streams or superannuation income streams for members or beneficiaries.
271. The Trustee may arrange for amounts to be notionally credited or debited to superannuation income stream reserves.
272. If a liability to which a superannuation reserve relates no longer exists or exceeds the expected liability, the Trustee may arrange for any assets or excess assets in the superannuation income stream reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the member or beneficiary to whom the superannuation income stream benefit related and that member's or beneficiary's dependants.

OTHER ACCOUNTS

273. **Other accounts.** The Trustee may from time to time establish and maintain other accounts as it considers necessary or convenient for the proper administration of the Fund.

ACTUARIAL INVESTIGATIONS

274. **Appointment of actuary.** The Trustee may appoint an appropriately qualified actuary:
- (a) to advise it on the design and administration of the Fund;
 - (b) may request the actuary to carry out an actuarial investigation of the Fund and to report in writing to the Trustee as to value of the Fund's assets, the adequacy of those assets to meet the Fund's liabilities to pay benefits, recommended rates of contributions in the future, the adequacy of contributions, investment earnings and assets to meet the Fund's future liabilities;
 - (c) must, if a member or a beneficiary is being paid an income stream (other than an allocated pension or a pension supported by a life insurance policy), obtain the advice of the actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves or any other relevant matter.
275. The actuary, their firm or company must be a Fellow of the Institute of Actuaries of Australia.
276. The Trustee must give the actuary any information which the actuary reasonably requests.
277. The payment of any superannuation income stream is subject to the actuary's report.
278. If the actuary's report discloses that the assets of the Fund are less than adequate to provide benefits payable to members and beneficiaries, the members and participating employer (if any) may increase their contributions.
279. **Actuary's certificate.** If the Trustee is paying a superannuation income stream, it must obtain a certificate of adequacy from the actuary if required in order to comply with any provision of the *Income Tax Assessment Act 1997*.

VALUATION OF FUND

280. The Trustee must:
- (a) at the end of each financial year;
 - (b) before it starts paying a superannuation income stream (pension);
 - (b) when the Fund is being wound up —
- make or obtain a valuation of Fund assets as to their current market value on such basis as it considers appropriate.
281. The value determined for each asset must be reflected in subsequent Fund accounts.

BORROWING

282. **Borrowing.** Subject to section 67 of the Act, the Trustee must not:
- (a) borrow money;
 - (b) maintain an existing borrowing of money; or
 - (c) allow its bank account to go into overdraft.
283. **Temporary borrowing to pay beneficiary.** The Trustee may borrow money if:
- (a) the purpose of the borrowing is to enable the Trustee to make a payment to a beneficiary which the Trustee is required to make by law or by this Deed and which, apart from the borrowing, the Trustee would not be able to make; and
 - (b) the period of the borrowing does not exceed 90 days; and
 - (c) if the borrowing were to take place, the total amount borrowed by the Trustee would not exceed 10% of the value of Fund assets.

284. The Trustee may borrow money if:
- (a) the purpose of the borrowing is to enable the Trustee to make a payment of surcharge or advance instalment which the Trustee is required to make under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and which, apart from the borrowing, the Trustee would not be able to make; and
 - (b) the period of the borrowing does not exceed 90 days; and
 - (c) if the borrowing were to take place, the total amount borrowed by the Trustee would not exceed 10% of the value of Fund assets.
285. **Temporary borrowing to cover settlement of securities transactions.** The Trustee may borrow money if:
- (a) the purpose of the borrowing is to enable the Trustee to cover settlement of a transaction for the acquisition of any of the following:
 - bonds, debentures, stock, bills of exchange or other securities;
 - shares in a company;
 - units in a unit trust;
 - futures contracts;
 - forward contracts;
 - interest rates swap contracts;
 - currency swap contracts;
 - forward exchange rate contracts;
 - forward interest rate contracts;
 - a right or option in respect of such a security, share, unit, contract or policy;
 - any similar financial instrument;
 - foreign currency; and
 - (b) both:
 - at the time the relevant investment decision was made, it was likely that the borrowing would not be needed; and
 - the borrowing is not taken, under a determination made, by legislative instrument, by the Regulator, to be exempt from this paragraph; and
 - (c) the period of the borrowing does not exceed 7 days; and
 - (d) if the borrowing were to take place, the total amount borrowed by the Trustee would not exceed 10% of the value of Fund assets.
286. **Instalment warrants.** The Trustee may borrow money, or maintain a borrowing of money, under an instalment warrant arrangement.
- Signpost to solicitors acting for banks and other lenders:** This is a modern superannuation trust deed, so the express powers which the Trustee has to grant a mortgage or charge or to indemnify the bank or other lender are set out in the First Schedule.

MORTGAGES AND CHARGES

287. **Charges over assets of Fund.** Subject to the Regulations, the Trustee must not grant a mortgage, charge, lien or other encumbrance over, or in relation to, a Fund asset.
288. The Trustee must not invest in jointly owned real or personal property with another person which is subject to a mortgage, charge, lien or other encumbrance over, or in relation to, part of the property.
289. **Charges in relation to certain derivatives contracts.** However, the Trustee may give a charge over, or in relation to, a Fund asset if:
- (a) the charge is given in relation to a derivatives contract entered into:
 - (i) by, or on behalf of, the Trustee;
 - (ii) by a broker on the instructions, or on account, of the Trustee; or
 - (iii) by a broker for the benefit of the Trustee; and
 - (b) the charge is given in order to comply with the rules of an approved body that requires the performance of obligations in relation to the derivatives contract to be secured;

- (c) the Fund has in place a derivatives risk statement that sets out:
 - (i) policies for the use of derivatives that include an analysis of the risks associated with the use of derivatives within the investment strategy of the Fund;
 - (ii) restrictions and controls on the use of derivatives that take into consideration the expertise of staff; and
 - (iii) compliance processes to ensure that the controls are effective (for example, reporting procedures, internal and external audits and staff management procedures); and
- (d) the investment to which the charge relates is made in accordance with the derivatives risk statement.

LOANS AND FINANCIAL ASSISTANCE

290. **Loans or financial assistance to members or their relatives.** The Trustee must not:
- (a) lend money of the Fund to a member or to a relative of a member;
 - (b) give any other financial assistance using the resources of the Fund to a member or to a relative of a member;
 - (c) guarantee the liabilities of a member or a relative of a member.

UNAUTHORISED INVESTMENTS

291. **Arm's length investment.** The Trustee must not invest in that capacity unless:
- (a) the Trustee and the other party to the relevant transaction are dealing with each other at arm's length in respect of the transaction; or
 - (b) both:
 - (1) the Trustee or investment manager (if any) and the other party to the transaction are not dealing with each other at arm's length in respect of the transaction; and
 - (2) the terms and conditions of the transaction are no more favourable to the other party than those which it is reasonable to expect would apply if the Trustee or investment manager (if any) were dealing with the other party at arm's length in the same circumstances.
292. If:
- (a) the Trustee invests in that capacity; and
 - (b) at any time during the term of the investment the Trustee is required to deal in respect of the investment with another party that is not at arm's length with the Trustee or investment manager —
- then the Trustee must deal with the other party in the same manner as if the other party were at arm's length with the Trustee.
293. **Acquisitions of certain assets from members prohibited.** The Trustee must not acquire an asset from a related party.

EXCEPTIONS

294. **Acquisitions of business real property and listed securities.** The Trustee may acquire an asset from a related party if:
- (a) the asset is a listed security acquired at market value;
 - (b) the asset is business real property of the related party acquired at market value;
 - (c) the Trustee acquired the asset under a merger with another fund; or
 - (d) the asset is an asset of a kind which the Regulator, by legislative instrument, determines may be acquired by:

- (i) any fund; or
 - (ii) a class of funds in which the Fund is included.
- 295. **Real property used in primary production business.** Real property used in one or more primary production businesses does not cease to be used wholly and exclusively in that business or those businesses only because:
 - (1) an area of the real property, not exceeding 2 hectares, contains a dwelling used primarily for domestic or private purposes; and
 - (2) the area is also used primarily for domestic or private purposes — as long as the use for those domestic or private purposes are not the predominant use of the real property.

IN-HOUSE ASSETS

- 296. **In-house assets.** The provisions of Part 8 of the Act and Division 13.3A of the Regulations apply to dealing with the acquisition of in-house assets.

RECORDS

- 297. The Trustee must ensure that accounting and other financial records are retained for at least 5 years after the end of the year of income to which the transactions relate, and all other records of the Fund are retained for at least 10 years.

CONFIDENTIALITY

- 298. **Non-disclosure.** The Trustee must not disclose any confidential information about members, beneficiaries or employers acquired in the course of acting as Trustee to other parties, except:
 - (a) in connection with the member's interests in the Fund; or
 - (b) to employers or agents or delegates of the Trustee in the administration of the Fund.
- 299. **Exceptions.** The preceding clause does not apply if required to do so by law, an order of a court of competent jurisdiction or by the Regulator, or where non-disclosure may result in adverse tax consequences.

INSPECTION OF RECORDS AND ACCOUNTS

- 300. **Trustee's right to refuse disclosure.** The Trustee (without prejudice to any legal right of the Trustee to refuse disclosure of any document) is not bound to disclose to anyone any of the following documents:
 - (1) information or documents in relation to which the Trustee owes to another member or beneficiary a duty of non-disclosure;
 - (2) information or documents that would disclose, or tend to disclose personal information of another member or beneficiary if, in the circumstances, the disclosure would be unreasonable;
 - (3) internal working documents of the Trustee:
 - (a) disclosing any resolution or deliberations of the Trustee as to the manner in which the Trustee should exercise any power or any discretion conferred upon the Trustee by this Deed or disclosing the reasons for any particular exercise or non-exercise of any such power or any such discretion or the material upon which such reasons were or might have been based;

- (b) relating to the exercise or proposed exercise of any power or any discretion conferred on the Trustee by this Deed;
- (c) the non-disclosure of which is necessary to preserve the Trustee's right not to disclose its reasons for exercising discretionary powers and its reasoning processes.

301. **Inspection of documents.** Each of the following:

- (a) a member;
 - (b) a beneficiary;
 - (c) a person who was a member within the preceding 12 months;
 - (d) a person who receives a superannuation income stream from the Fund; or
 - (e) a person has deferred their entitlement to receive a benefit from the Fund —
- are entitled to inspect the following documents (other than the documents described in the preceding clause):
- (1) the financial statements, books of account and financial records of the Fund;
 - (2) minutes of a meeting of the members or an extract of the minutes;
 - (3) minutes of a resolution passed by members without a meeting;
 - (4) other documents which they reasonably require for the purposes of:
 - understanding benefit entitlements which they may have or had;
 - understanding the main features of the Fund;
 - making an informed judgment about the administration, management and financial position of the Fund;
 - making an informed judgment about the investment performance of the Fund; or
 - understanding particular Fund investments.

302. **Information which may mislead (if incomplete, outdated, etc.** If the Trustee has reason to think that information which it is required to give will, or may, be materially misleading, then it must give with the information a statement containing further information to rectify any misleading, or potentially misleading, effect.

303. **Access.** The Trustee may make the document, or a copy of the document, available for inspection:

- (c) at a suitable place (having adequate facilities for the person to inspect and photocopy the document); and
 - (d) during normal business hours —
- or as otherwise agreed with the Trustee.

304. If the financial statements and financial information are kept on a computer, they are entitled to a hard copy of them. If they ask for the data on a floppy disk or CD-ROM, the Trustee may (but is not obliged) give the data to them on floppy disk or CD-ROM (whichever the Trustee prefers to provide). The data must be readable but the floppy disk or CD-ROM need not be formatted for their preferred operating system.

305. **Time.** The Trustee must comply with a request to give access to a document, or a copy of a document, as soon as practicable, but must make reasonable efforts to comply with the request within one month of receiving the request.

306. **Charges.** The Trustee may charge for its reasonable costs in searching for, obtaining, collating and giving the document. The amount of the charge must not exceed the reasonable cost to the Trustee of giving the document.

307. **Family Law legislation.** The Trustee must also comply with any requirements of the *Family Law Act 1975* or the *Family Law (Superannuation) Regulations 2001* in relation to the provision of information to a member, member spouse or domestic partner or non-member spouse or non-member domestic partner affected by a payment split.

RESOLUTIONS AND MEETINGS OF MEMBERS

308. **Resolutions of members without meetings.** See clauses 1 to 11 of the Third Schedule.

309. **Meetings of members.** See clauses 12 to 108 of the Third Schedule.

PAYMENT OF BENEFITS

310. **Benefits.** The Trustee shall not pay benefits to members until they have satisfied a condition of release and then subject to any restrictions imposed on the form and amount of the benefit. Notwithstanding any other provision of this Deed, the Trustee must not pay out any benefits to members, dependants or beneficiaries where the payment would cause the Trustee to breach the governing legislation.
311. **Quantum.** Except where the benefit is paid from a non-account superannuation income stream (such as a policy or annuity purchased by the Trustee from a life insurance company or a registered organisation), the amount of a benefit payable to a member in accordance with the preceding clause:
- (a) is the balance of the member's benefit accounts (eg, the member's account, accumulation account balance, pension account or income stream account, or the combined balances in those accounts); and
 - (b) must not exceed the balance of the member's benefit accounts that has accrued at the time when they satisfy the condition of release.
312. **Calculation of benefit.** The benefit payable is calculated:
- (a) in the case of a lump sum payment, at the date of payment of the benefit to the member;
 - (b) in the case of an income stream, at the date of commencement of the income stream; and
 - (c) in the case of a death benefit, at the date of payment of the benefit.
313. **Release.** Subject to the Act and the following provisions of this Deed, the Trustee may pay a benefit to a member if the member:
- (1) has died;
 - (2) has reached retirement age;
 - (3) suffers from a terminal medical condition;
 - (4) suffers from a permanent incapacity;
 - (5) suffers from a temporary incapacity;
 - (6) is experiencing severe financial hardship;
 - (7) is seeking the payment of a benefit on compassionate grounds;
 - (8) has attained 65;
 - (9) has attained their preservation age for payment of a non-commutable transition to retirement income stream;
 - (10) has terminated gainful employment with a standard employer-sponsor of the Fund and their benefits are less than \$200;
 - (11) has terminated gainful employment with an employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the member;
 - (12) is a "lost member" who is "found" and the value of their benefit is less than \$200.
314. **Resolutions.** The Trustee cannot pay a benefit unless it formally resolves in writing to do so.
315. **Other grounds.** The Trustee may allow a member to withdraw an amount:
- (a) to satisfy an excess concessional tax assessment amount where it receives a release authority from the member or the Commissioner of Taxation;
 - (b) to satisfy an excess concessional tax assessment amount where it receives a transitional release authority from the member;
 - (c) under any other condition, if expressed to be a condition of release, in an approval under subparagraph 62(1)(b)(v) of the Act.
316. **Payments prevented under *Family Law Act 1975*.** The Trustee is not required to pay a benefit if it is prevented from doing so:
- (a) under subsection 90ML(4) of the *Family Law Act 1975*; or
 - (b) by an order made under subsection 90MU (1) of the *Family Law Act 1975*.
317. **Form of payment.** If:
- (1) a member satisfies a condition of release; and

- (2) is no restriction on the form or amount of the benefit — the Trustee may pay the benefit to the member in the form of:
- one or more lump sum payments;
 - one or more account-based superannuation income streams;
 - one or more superannuation income streams purchased by the Trustee from a life insurance company or a registered organisation;
 - one or more annuities purchased by the Trustee from a life insurance company or a registered organisation;
 - a combination of the above.
318. **Choice of benefit.** If:
- a member satisfies a condition of release; and
 - is no restriction on the form or amount of the benefit —
- then subject to the Regulations and the *Income Tax Assessment Act 1997*, the member may request the Trustee to pay in any of the following ways:
- one or more lump sum payments;
 - one or more account-based superannuation income streams;
 - one or more non-account-based superannuation income streams or pensions purchased by the Trustee from a life insurance company or a registered organisation;
 - one or more annuities purchased by the Trustee from a life insurance company or a registered organisation;
 - a combination of the above.
319. The request must:
- be in writing;
 - identify the form and manner of payment of the benefit;
 - identify the amount and, if relevant, the commencement date of the benefit and frequency of payment;
 - if permitted by the Regulations, may identify the source or component of the benefit; and
 - give the Trustee such other information that may be necessary in order for it to decide the type of benefit to be paid or enable the benefit to be paid or commenced to be paid.
320. The Trustee may or may not comply with the member's request.
321. If a member does not give a written request to the Trustee, the Trustee may pay the benefit to the member in any of the following forms which the Trustee selects:
- one or more lump sum payments;
 - one or more account-based superannuation income streams;
 - one or more non-account-based superannuation income streams or pensions purchased by the Trustee from a life insurance company or a registered organisation;
 - one or more annuities purchased by the Trustee from a life insurance company or a registered organisation;
 - a combination of the above —
- on such terms and conditions as the Trustee decides.

LUMP SUM PAYMENTS

322. **Scope of this part.** This part applies where:
- the member has satisfied a condition of release; and
 - the Trustee is permitted by the Regulations to pay a benefit to the member in the form of a lump sum payment.
323. In this part, "member's account" refers to the member's account or accumulation account from which the lump sum payment is paid.
324. In this part, "lump sum payment" includes the withdrawal value under a policy with a life insurance company or a registered organisation.
325. **Requirements.** The Trustee may provide a benefit to the member in the form of a lump

sum payment if:

- (1) the member has satisfied a condition of release; and
 - (2) the Trustee is permitted by the Regulations to pay a benefit to the member in the form of a lump sum payment; and
 - (3) the Trustee resolves in writing to pay the lump sum payment.
326. **Power to pay lump sum.** Subject to the Act, the Regulations and the *Income Tax Assessment Act 1997*, the Trustee may by resolution in writing resolve to pay a benefit in the form of a lump sum payment.
327. **Resolutions.** If the Trustee pays a benefit in the form of one or more lump sum payments, the Trustee must record in its minutes by way of resolution:
- (a) that the member has satisfied a condition of release;
 - (b) if applicable, that the member has requested it to pay a lump sum payment.
328. The Trustee may pay a benefit to the member in the form of a lump sum payment:
- (a) equal to the amount standing to the credit of the member's accounts as at the date on which payment is made; and
 - (b) in more than one instalment.
329. **Calculation of benefit.** The benefit payable is calculated in the case of a lump sum payment, at the date of payment of the benefit to the member.
330. The Trustee shall not pay a lump sum payment which exceeds the balance of the member's accounts.
331. **Conversion of lump sum payment into income stream.** Subject to the Regulations and the other provisions of this Deed, the Trustee may convert a benefit payable to a member in the form of a lump sum payment to an income stream, other than a transition to retirement income stream.

TYPES OF SUPERANNUATION INCOME STREAMS

332. **Scope of this part.** This part applies where:
- (1) the member has satisfied a condition of release; and
 - (2) the Trustee is permitted to pay a benefit to the member in the form of a superannuation income stream.
333. The Trustee may provide:
- (a) account-based superannuation income streams (or superannuation pensions); or
 - (b) non-account-based superannuation income streams purchased by the Trustee from a life insurance company or a registered organisation.
334. In this part, "superannuation income stream" includes an annuity and a superannuation pension.
335. **Power to pay income streams.** Subject to the Act, the Regulations and the *Income Tax Assessment Act 1997*, the Trustee may by resolution in writing resolve to pay a benefit in the form of an account-based superannuation income stream or superannuation pension or purchase a non-account-based superannuation income stream, annuity or pension from a life insurance company or a registered organisation.
336. **Resolutions.** If the Trustee pays a benefit in the form of one or more superannuation income streams, the Trustee must record in its minutes by way of resolution:
- (a) that the member has satisfied a condition of release;
 - (b) if applicable, that the member has requested it to commence a superannuation income stream;
 - (c) the terms and conditions of the superannuation income stream.
337. The Trustee shall not pay a superannuation income stream which exceeds the balance of the member's accounts.
338. **Subsequent changes to the Act and the Regulations.** If:
- (a) a provision or part of a provision of the Act or the Regulations dealing with superannuation income streams is amended, the Trustee has power to offer superannuation income streams on conditions which are consistent with those amendments; or
 - (b) the Act or the Regulations is amended to repeal or revoke any provision or part

of a provision dealing with superannuation income streams, the Trustee may change the conditions under which it pays any superannuation income streams so that they conform to the Act and the Regulations as amended.

339. Subject to the Act and the Regulations, if:
- (a) a change of the type described in the preceding clause occurs; or
 - (b) the Trustee otherwise considers it appropriate to do so —
- the Trustee has power to change the conditions under which a superannuation income stream is at that time being paid, or which in the future will be paid, without having to amend this Deed.

ACCOUNT-BASED SUPERANNUATION INCOME STREAMS FROM THE FUND

340. **Scope of this part.** This part applies where:
- (1) the member has satisfied a condition of release;
 - (2) the member is entitled to receive a benefit in the form of a superannuation income stream.
341. In this part, “account” refers to the member's account, accumulation account or income stream or pension account from which the income stream is paid.
342. In this part, “superannuation income stream” includes a superannuation pension.
343. **Requirements.** The Trustee may provide a benefit to the member in the form of an account-based superannuation income stream if:
- (1) the member has satisfied a condition of release;
 - (2) the member is entitled to receive a benefit in the form of a superannuation income stream;
 - (3) the Trustee has ensured that the account-based superannuation income stream complies with the standards set by the Regulations; and
 - (4) the Trustee resolves in writing to provide the superannuation income stream.
344. **Calculation of benefit.** The benefit payable is calculated in the case of a superannuation income stream, at the date of commencement of the superannuation income stream.
345. **Commencement.** An superannuation income stream shall commence on the day following the day when the member becomes entitled to the superannuation income stream.
346. An superannuation income stream shall accrue from day to day.
347. **Frequency.** The Trustee may pay the superannuation income stream (including a transition to retirement income stream) annually, quarterly, monthly, fortnightly or weekly as the member requests, but it must be paid at least annually.
348. **Minimum.** Once a superannuation income stream (including a transition to retirement income stream) commences, the amount which the Trustee pays each year must not be smaller than the minimum.
349. The minimum must be the following percentage of the member's account balance in the Fund for the member's relevant age (or, if the rate in any financial year permitted by the Regulations is different from this, that rate):

Age ...		Minimum withdrawal as a % of the account balance
1	Under 65	4%
2	65–74	5%
3	75–79	6%
4	80–84	7%
5	85–89	9%
6	90–94	11%
7	95 or more	14%

350. The minimum is calculated in accordance with Schedule 7 of the Regulations.
351. **Maximum annual withdrawals.** A member may at any time draw down any additional

amounts each year, including cashing out the whole amount as a lump sum payment, other than:

- (a) an amount in excess of the balance of the member's accounts; or
- (b) if a superannuation income stream has commenced under the transition to retirement income stream rules, allow total payments (excluding payments by way of commutation but including payments under a payment split) made in a financial year to amount to no more than 10% of the balances in the member's accounts as they stand:
 - (1) on 1 July in the financial year in which the payment is made; or
 - (2) if that year is the year in which the transition to retirement income stream commences, on the commencement day —
 unless the member has satisfied a condition of release with no payment restriction (eg, age 65 or permanently retired after they have attained their preservation age).

352. **Member's right to request variation of superannuation income stream.** Subject to the preceding clause, a member may request the Trustee to vary:
- (a) a transition to retirement income stream between the minimum and the maximum annual withdrawals described in the preceding clause;
 - (b) the amount of any other superannuation income stream (ie, other than a transition to retirement income stream) between the minimum and total account balance.
353. **Limit.** The superannuation income stream ceases when the account balance is nil, ie, when the amount in the member's account is exhausted.
354. **Prohibition on further contributions or rollover.** Once a superannuation income stream has commenced to be paid to the member, the Trustee must not accept nor add further amounts to the capital from which the superannuation income stream is being paid, ie, the capital supporting the member's superannuation income stream cannot be increased or added to by:
- (a) contributions; or
 - (b) rollover amounts.
355. **Prohibition against giving security for borrowing.** The capital value of the superannuation income stream or superannuation pension (including a transition to retirement income stream) and the income from it cannot be used as security for borrowing.
356. **Residual capital value.** The superannuation income stream or superannuation pension and the income stream from it must not have a residual capital value.
357. **Transfer on death.** The Trustee may only transfer the superannuation income stream on the death of the member and in the manner described under 'Death Benefits' in this Deed.

SUPERANNUATION INCOME STREAMS FROM LIFE INSURANCE COMPANIES

358. **Scope of this part.** This part applies where:
- (1) the member has satisfied a condition of release;
 - (2) the member is entitled to receive a benefit in the form of a superannuation income stream or under total and permanent disablement or temporary disablement policies.
359. In this part, "superannuation income stream" includes an annuity, a pension, a lifetime pension or income stream, a fixed-term pension, a growth pension, a market linked income stream, a term-allocated pension or annuity or a variable income annuity provided by a life insurance company or a registered organisation.
360. **Requirements.** The Trustee may provide a benefit to the member in the form of a superannuation income stream or under total and permanent disablement or temporary disablement policies from a life insurance company or registered organisation if:
- (1) the member has satisfied a condition of release;
 - (2) the member is entitled to receive a benefit in the form of a superannuation

income stream or under total and permanent disablement or temporary disablement policies;

- (3) the Trustee is satisfied that the Act, the Regulations and the *Income Tax Assessment Act 1997* permit it to provide the benefit to the member in the form of a superannuation income stream or under total and permanent disablement and temporary disablement policies by effecting:
 - (a) one or more annuities with a life insurance company or a registered organisation and arranging for them to be issued in the name of the member;
 - (b) one or more policies with a life insurance company or a registered organisation providing a superannuation income stream or pension for the member;
- (4) the Trustee has ensured that the superannuation income stream or total and permanent disablement and temporary disablement policies comply with the standards set by the Regulations;
- (5) the Trustee resolves in writing to provide the benefit; and
- (6) the superannuation income stream, total and permanent disablement and temporary disablement policies are purchased or obtained by the Trustee solely for the purpose of providing benefits to the member.

361. The Trustee may rely on the advice or opinion of the life insurance company or registered organisation that the superannuation income stream or annuity complies with the standards set by the Regulations without obligation to make further enquiry.

362. **Trustee may effect policy.** Subject to the Act, the Trustee may purchase from a life insurance company or registered organisation with funds from the member's account and effect:

- (a) policies of insurance upon the life of any member to secure payment upon death of a member or the happening of any other contingency in respect of that member and to renew them for such period as it decides;
- (b) total and permanent disablement and temporary disablement policies upon the life of any member and to renew them for such period as it decides;
- (c) annuity or deferred annuity policies upon the life of a member — such as a life expectancy income stream or pension, a lifetime pension or income stream, a fixed-term pension, a growth pension, a market linked income stream, a term-allocated pension or annuity or a variable income annuity.

363. The Trustee may effect separate policies or group life insurance policies.

364. The Trustee is not liable to a member, a member's personal representative or the member's dependants if it decides not to effect any policy.

365. The Trustee may require a member to give it such information required by the life insurance company or registered organisation before effecting the policy or purchasing the annuity.

366. Policies of insurance may be issued in the name of the Trustee and they must be held by the Trustee upon and subject to the provisions of this Deed.

367. The Trustee may arrange for an annuity or deferred annuity policy to be issued in the name of a member and it must be held by the Trustee upon and subject to the provisions of this Deed.

368. The Trustee must ensure that:

- (1) the beneficiary under the annuity and policies of insurance is a member;
- (2) the reversionary beneficiary (if any) is either the spouse, domestic partner, minor child or a person who is encompassed within the description of dependant in this Deed; and
- (3) it 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.

369. The Trustee may accept an assignment of any policies of insurance or annuity or deferred annuity policies effected in respect of a member and they must be held by the Trustee upon and subject to the provisions of this Deed.

370. In the event that assets or life insurance policies are assigned to the Trustee for the benefit of a member, then, except in the event of the member's death or permanent

disability or in accordance with the Act and the Regulations, those benefits shall not be paid to the member or any other person before the member satisfies a condition for release.

- 371. The Trustee may enforce, surrender, sell or otherwise deal with any policies.
- 372. The Trustee may debit the premiums for any policy effected to the account of the member for whose benefit the policy was effected.
- 373. If a life insurance company or registered organisation imposes limitations or special conditions in respect of a member, the Trustee may impose those limitations or special conditions in respect of the benefits otherwise payable in the event of the death or disablement of the member.
- 374. If a benefit would ordinarily include an insured component under a policy (for example a benefit payable on the member's death or disablement) but:
 - (a) no amount is paid under that policy; or
 - (b) the amount paid under the policy is less than the amount that would ordinarily be payable —
 the amount payable to the member may be adjusted accordingly.
- 375. The preceding clause:
 - (a) is for the protection of the Trustee and the Fund; and
 - (b) does not confer any rights on members or beneficiaries in respect of benefits additional to those conferred under other provisions of this Deed.
- 376. If any of the member's contributions have been applied towards an endowment or whole of life policy, then the member's withdrawal benefit means, in relation to those contributions and any net earnings which would be applicable to them, the withdrawal value or surrender value of the endowment or whole of life policy.
- 377. **Duration.** The non-account-based superannuation income stream may be paid for life or for a fixed term or years.
- 378. **Frequency.** The superannuation income stream may be paid by the life insurance company or registered organisation annually, quarterly, monthly, fortnightly or weekly as the member requests, but it must be paid to the member at least annually.
- 379. **Prohibition on further contributions or rollover.** Once the superannuation income stream has commenced to be paid to the member, the Trustee must not accept nor add further amounts to the superannuation income stream by:
 - (a) contributions; or
 - (b) rollover amounts.
- 380. **Prohibition against giving security for borrowing.** The capital value of the superannuation income stream (including a transition to retirement income stream), and the income from them, cannot be used as security for borrowing.
- 381. **Transfer on death.** The Trustee may only transfer the superannuation income stream on the death of the member and in the manner described under 'Death Benefits' in this Deed.

DEATH BENEFITS

- 382. **Scope of this part.** This part applies where the member has died.
- 383. **Payments to dependants or personal representatives.** On the death of a member who had dependants, the Trustee must, if required by a binding death benefit nomination given by the member to the Trustee, pay or apply the benefit in accordance with the binding death benefit nomination.
- 384. If there is no valid binding death benefit nomination, then the Trustee must pay or apply the benefit to or for the benefit of one or more of the member's surviving dependants and/or their estate (ie, to the executor, executrix, administrator or administratrix, as the case may be) in such proportions as the Trustee, in its discretion, decides, except that the Trustee cannot pay it in the form of an income stream to the estate (only in the form of a lump sum payment).
- 385. **Meaning of "dependants".** In this part, the member's "dependants" mean those who were dependants at the time of the member's death. They include the member's

spouse, domestic partner, child and any person with whom the member had an interdependency relationship.

386. **Meaning of “spouse”.** In this part, the member’s “spouse” includes:

- (a) another person (whether of the same sex or a different sex) with whom the member was in a relationship that is or was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act* 1901 as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the member, lived with the member on a genuine domestic basis in a relationship as a couple.

387. **Meaning of “child”.** In this part, the member’s “child” includes:

- (a) an adopted child, stepchild or ex-nuptial child;
- (b) a child of the member’s spouse or domestic partner; and
- (c) someone who is the member’s child within the meaning of the *Family Law Act* 1975.

388. **Meaning of “interdependency relationship”.** The member had an “interdependency relationship” with another person if:

- (1) they had a close personal relationship;
- (2) they lived together;
- (3) one or each of them provided the other with financial support; and
- (4) one or each of them provided the other with domestic support and personal care.

389. The member had a close personal relationship with another person if the reason they did not satisfy the requirements of paragraphs (2) to (4) of the preceding clause was that either or both of them suffered from a physical, intellectual or psychiatric disability.

390. The member and the other person:

- (a) had an interdependency relationship if:
 - (1) they satisfied the requirements of paragraphs (1) to (3) of the penultimate clause; and
 - (2) one or each of them provided the other with support and care of a type and quality normally provided in a close personal relationship, rather than by a mere friend or flatmate (eg, significant care provided for the other person when he or she is unwell, or significant care provided for the other person when they were suffering emotionally).
- (b) had an interdependency relationship if:
 - (1) they had a close personal relationship; and
 - (2) they did not satisfy the other requirements set out in paragraphs (1) to (4) of the penultimate clause; and
 - (3) the reason they did not satisfy the other requirements was that either or both of them suffered from a disability.
- (c) were in an interdependency relationship if:
 - (1) they had a close personal relationship;
 - (2) they did not satisfy the other requirements set out in paragraphs (1) to (4) of the penultimate clause; and
 - (3) the reason they did not satisfy the other requirements was that they were temporarily living apart (eg, one of them was temporarily working overseas or was in jail).

391. The Trustee must take the following matters into account in deciding whether the member and another person had an interdependency relationship, or that they had an interdependency relationship immediately before the member’s death:

- (a) all of the circumstances of their relationship, including (where relevant):
 - (1) the duration of their relationship;
 - (2) whether or not a sexual relationship existed;
 - (3) their ownership, use and acquisition of property;
 - (4) the degree of their mutual commitment to a shared life;
 - (5) their care and support of children;
 - (6) the reputation and public aspects of their relationship;
 - (7) their degree of emotional support;
 - (8) the extent to which their relationship was one of mere convenience; and

- (9) any evidence suggesting that they intended their relationship to be permanent;
 - (b) the existence of a statutory declaration signed by either the member or the other person to the effect that they are, or (in the case of a statutory declaration made after the end of the relationship) were, in an interdependency relationship with each other.
- 392. The member and the other person did *not* have an interdependency relationship if one of them provided domestic support and personal care to the other:
 - (a) under an employment contract or a contract for services; or
 - (b) on behalf of another person or organisation (eg, a government agency, a body corporate or a benevolent or charitable organisation).
- 393. **Trustee's discretion: relevant factors.** If the member is survived by a spouse, domestic partner, minor child or an adult child who has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*, the Trustee may pay the benefit to them in such proportions as the Trustee, in its discretion, decides. It is *not* obliged to exercise its discretion in this way.
- 394. In exercising its discretion, the Trustee has to must consider the following factors in the exercise of its discretion:
 - (a) the nature and length of their relationship;
 - (b) the dependant's age;
 - (c) the dependant's health and their physical, mental or intellectual disability (if any);
 - (d) the dependant's financial circumstances;
 - (e) whether the dependant resided with the member;
 - (f) the extent of their dependency on the member;
 - (g) any benefits previously given by the member to the dependant;
 - (h) the extent to which the member was maintaining the dependant;
 - (i) whether the member made provision for the dependant in their will;
 - (j) the liability of anyone else to maintain the dependant;
 - (k) any contribution which the dependant made to building up the member's assets;
 - (l) any contribution which the dependant made to the member's welfare (other than under an employment contract or a contract for services or on behalf of another person or organisation)
 - (m) the priority of the dependant's needs compared with the needs of other dependants;
 - (n) the dependant's character and conduct;
 - (o) any other relevant consideration.
- 395. The overriding principle to be applied by the Trustee in exercising its discretion is to determine who would be likely to have received financial support from the member had they not prematurely died. In exercising its discretion, the Trustee may be guided by:
 - (a) the member's wishes (where known or ascertainable, such as a non-binding death benefit nomination or a statement of wishes by the member tabled at a Trustee meeting and recorded in the minutes);
 - (b) the size or amount of the benefit;
 - (c) the number and the financial needs of the member's dependants.
- 396. The Trustee:
 - (a) may make a payment without first having ascertained all those who might be the member's dependants; and
 - (b) is not liable to those who were the member's dependants unless it has notice of their claim two business days before the payment date.
- 397. If a person commences a proceeding against the member's estate under:
 - (a) the *Family Provision Act 1969* (ACT);
 - (b) the *Succession Act 2006* (NSW);
 - (c) the *Family Provision Act 1970* (NT);
 - (d) the *Succession Act 1981* (Qld);
 - (e) the *Inheritance (Family Provision) Act 1972* (SA);
 - (f) the *Testator's Family Maintenance Act 1912* (Tas);
 - (g) Part IV of the *Administration and Probate Act 1958* (Vic); or

(h) the *Inheritance (Family and Dependants Provision) Act 1972 (WA)* — for provision out of the member's estate, the Trustee may pay the member's benefits to the executor, executrix, administrator or administratrix, as the case may be, upon production of a copy of the grant probate or letters of administration. It is *not* obliged to exercise its discretion in this way.

398. **Payment to member's estate.** If:

- (a) the member had no surviving dependants; or
- (b) the Trustee is unable to establish within 6 months after the member's death that the member had any surviving dependants —

it must pay the member's benefits to their estate (ie, to the executor, executrix, administrator or administratrix, as the case may be) upon production of a copy of the grant probate or letters of administration.

399. **Payment other than to dependant or personal representative.** If the Trustee has not, after making reasonable enquiries, found either a dependant of the member or an executor, executrix, administrator or administratrix of the member's estate, it may pay the member's benefits to anyone mentioned by the member in a non-binding death benefit nomination (although they are not a dependant) and if more than one, in such proportions as the Trustee, in its discretion, decides.

400. If there is no such person surviving the member, then the Trustee may pay the member's benefits to:

- (a) those who would be entitled to the member's estate if the member had died instate in the State, Territory or foreign jurisdiction in which the member was domiciled at the time of their death;
 - (b) the other surviving members and beneficiaries of the Fund —
- in such proportions as the Trustee, in its discretion, decides.

401. If:

- (a) the Trustee has not, after making reasonable enquiries, found anyone who would have been entitled to share in the member's estate in those circumstances; and
 - (b) the Fund has no other members or beneficiaries —
- it may pay the member's benefits to the member's next-of-kin in such proportions as the Trustee, in its discretion, decides.

402. If the Trustee has not, after making reasonable enquiries, found any next-of-kin, it may pay the member's benefits to any individuals who were associated with the member while the member was still alive in such proportions as the Trustee, in its discretion, decides.

403. The Trustee:

- (a) may make a payment without first having ascertained all those who might be entitled to the member's estate if the member had died instate; and
- (b) is not liable to those who would be entitled to the member's estate if the member had died instate unless it has notice of their status.

404. **Calculation of benefit.** The benefit payable is calculated in the case of a death benefit, at the date of payment of the benefit.

405. **Time for payment.** If the member has died, the Trustee must pay the member's benefits as soon as practicable after the Trustee has been given written notice that the member has died (or, instead of being paid, the benefits are rolled over as soon as practicable for immediate cashing). This requirement applies regardless of whether a superannuation income stream was previously being paid from those benefits to the member.

406. Alternatively to the preceding clause, the Trustee may roll over the benefits as soon as practicable for immediate cashing. This allows the Trustee to purchase a superannuation income stream from a life insurance company or register organisation with funds from the member's accounts (eg, because the beneficiary wishes to be paid a superannuation income stream and the Fund does not pay a superannuation income stream).

407. **Form of and duration payments to dependants.** Subject to the next clause, the Trustee must pay the benefits to the dependant of a member in the form of:

- (a) a single lump sum payment; or

- (b) an interim lump sum payment (not exceeding the amount of the benefits ascertained at the date of the member's death) and a final lump sum payment (not exceeding the balance of the member's benefits as finally ascertained in relation to the member's death);
- (c) one or more superannuation income streams;
- (d) the purchase of one or more annuities.

The dependant will need to advise the Trustee in writing of their preferred option.

408. If the dependant is a child of the member who:

- (1) is less than 18 years of age; or
- (2) although 18 years or more:
 - (i) is financially dependent on the member and less than 25 years of age; or
 - (ii) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* —

the benefits must be paid as a lump sum payment on the earlier of:

- (a) the day on which the annuity or pension is commuted, or the term of the annuity or pension expires (unless the benefit is rolled over to commence a new annuity or pension); and
- (b) the day on which the child attains age 25 —

unless the child has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* on the day that would otherwise be applicable under paragraphs (a) or (b) of this clause.

409. **Form of payment to estate.** The Trustee may only pay the member's benefits to the member's estate (ie, to the executor, executrix, administrator or administratrix, as the case may be) in the form of:

- (a) a single lump sum payment; or
- (b) an interim lump sum payment (not exceeding the amount of the benefits ascertained at the date of the member's death) and a final lump sum payment (not exceeding the balance of the member's benefits as finally ascertained in relation to the member's death).

410. **Form of payment to non-dependants.** The Trustee may only pay the member's benefits to any non-dependant in the form of:

- (a) a single lump sum payment; or
- (b) an interim lump sum payment (not exceeding the amount of the benefits ascertained at the date of the member's death) and a final lump sum payment (not exceeding the balance of the member's benefits as finally ascertained in relation to the member's death).

411. **Death of member before or after commencement of benefit.** If:

- (a) the member has become entitled to receive a benefit as a lump sum payment or superannuation income stream (including a transition to retirement income stream) and before payment has been made by the Trustee, the member dies; or
- (b) the member dies after commencement of an income stream (including a transition to retirement income stream), and the income stream is not reversionary —

the Trustee must:

- (a) if required by a binding death benefit nomination given by the member to the Trustee, pay or apply the benefit in accordance with the binding death benefit nomination; or
- (b) if there is no valid binding death benefit nomination, pay or apply the benefit to or for the benefit of one or more of the member's surviving dependants or, if permitted the Regulations, and/or the member's estate (ie, to the executor, executrix, administrator or administratrix, as the case may be) in such proportions as the Trustee, in its discretion, decides, except that the Trustee cannot pay it in the form of an income stream to the estate (only in the form of a lump sum payment).

412. If the dependant is a child of the member who:

- (1) is less than 18 years of age; or
- (2) although 18 years or more:

- (i) is financially dependent on the member and less than 25 years of age; or
- (ii) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* —

the benefits must be paid as a lump sum payment on the earlier of:

- (a) the day on which the annuity or pension is commuted, or the term of the annuity or pension expires (unless the benefit is rolled over to commence a new annuity or pension); and
- (b) the day on which the child attains age 25 —

unless the child has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* on the day that would otherwise be applicable under paragraphs (a) or (b) of this clause.

413. **Death of primary beneficiary after commencement of benefit.** If:

- (1) the superannuation income stream (including an annuity or a transition to retirement income stream) was being paid by the Trustee or provided by a life insurance company or registered organisation purchased by the Trustee with funds from the primary beneficiary's account;
- (2) the income stream is reversionary;
- (3) the primary beneficiary dies after commencement of the income stream;
- (4) the member was survived by a reversionary beneficiary;
- (5) the reversionary beneficiary was, at the date of the primary beneficiary's death, a dependant of the primary beneficiary —

then, subject to the terms of the policy or the superannuation income stream, the reversionary benefit or the withdrawal value may be paid to the reversionary beneficiary.

414. Subject to the terms of the policy or the superannuation income stream, if the reversionary beneficiary is:

- (a) a child of the primary beneficiary or of a former reversionary beneficiary under the income stream, the reversionary benefit may be paid to them as an income stream at least until their 16th birthday; or
- (b) if they are still a full-time student at 16, the reversionary benefit may be paid to them as an income stream at least until the end of their full-time studies or until their 25th birthday (whichever occurs sooner) —

when they receive the withdrawal value.

415. If:

- (1) the superannuation income stream (including an annuity or a transition to retirement income stream) was being paid by the Trustee or provided by a life insurance company or registered organisation purchased by the Trustee with funds from the primary beneficiary's account;
- (2) the income stream is reversionary;
- (3) the primary beneficiary dies after commencement of the income stream;
- (4) the reversionary beneficiary dies —

then, subject to the terms of the policy or the superannuation income stream, the reversionary benefit or the withdrawal value may be paid to another reversionary beneficiary.

416. Subject to the terms of the policy or the superannuation income stream, if that other reversionary beneficiary is:

- (a) a child of the primary beneficiary or of a former reversionary beneficiary under the income stream, the reversionary benefit may be paid to them as an income stream at least until their 16th birthday; or
- (b) if they are still a full-time student at 16, the reversionary benefit may be paid to them as an income stream at least until the end of their full-time studies or until their 25th birthday (whichever occurs sooner) —

when they receive the withdrawal value.

417. If:

- (1) the superannuation income stream (including an annuity or a transition to retirement income stream) was being paid by the Trustee or provided by a life insurance company or registered organisation purchased by the Trustee with funds from the primary beneficiary's account;

- (2) the income stream is reversionary;
- (3) the primary beneficiary dies after commencement of the income stream;
- (4) there is no reversionary beneficiary —

then, subject to the terms of the policy or the superannuation income stream, the reversionary benefit or the withdrawal value must be paid as if there was never a reversionary beneficiary, and then, subject to the terms of the income stream or the policy, the Trustee must pay that benefit to one or more of the primary beneficiary's surviving dependants or, if permitted the Regulations, and/or the primary beneficiary's estate (ie, to the executor, executrix, administrator or administratrix, as the case may be), in such proportions as the Trustee, in its discretion, decides, except that the Trustee cannot pay the withdrawal value in the form of an income stream to the estate (only in the form of a lump sum payment).

BINDING DEATH BENEFIT NOMINATIONS

418. **Binding death benefit nomination.** A member may give a binding death benefit nomination to the Trustee.
419. **Information to member.** Before the Trustee can accept a binding death benefit nomination, it must give to such information to the member as it reasonably believes they reasonably need for the purpose of understanding their right to require it to provide the benefits.
420. **Form of nomination.** The binding death benefit nomination must:
- (1) be in writing;
 - (2) require the Trustee to provide benefits on or after the death of the member's death to a person or persons (each of whom must be either their dependant or their estate, ie, to the executor, executrix, administrator or administratrix, as the case may be), and set out the proportion of the benefit that they want to be paid to that person, or to each of those persons;
 - (3) be dated and signed by the member in the presence of two witnesses:
 - (a) both of whom are 18 or over; and
 - (b) neither of whom is a person mentioned in the nomination; and
 - (4) contain a declaration dated and signed by the witnesses stating that it was signed by the member in their presence.
- The binding death benefit nomination may be in any form approved by or acceptable to the Trustee.
421. **Duty to seek information.** If any information in the binding death benefit nomination is not sufficiently clear to the Trustee to allow it to pay the benefit (eg, if the proportion of the benefit that is to be paid to someone, or to each person, is not certain, or not readily ascertainable from the binding death benefit nomination), it must, as soon as practicable after it receives the nomination, seek a written statement from the member clarifying the information.
422. **Confirming, amending or revoking binding death benefit nomination.** A member who gives binding death benefit nomination may:
- (a) confirm a current binding death benefit nomination by giving the Trustee a written notice dated and signed by the member to that effect; or
 - (b) amend or revoke a binding death benefit nomination by giving the Trustee notice, in accordance with clause 420, of the amendment or revocation.
423. **Duration of binding death benefit nomination.** The binding death benefit nomination continues to have effect until the member revokes it. For clarity, the 3 year period prescribed by subregulation 6.17A(7)(a) of the Regulations does not apply.
424. **Further information.** If a binding death benefit nomination is in force, the Trustee must give any additional information relating to the nomination and its implications if it gives the member a periodic statement.
425. **Effect of binding death benefit nomination.** Where all the formal requirements are satisfied for a valid binding death benefit nomination, the Trustee must pay a death benefit on or after the member's death to the person or persons mentioned in a

nomination if:

- (a) the person, or each of the persons, mentioned in the nomination is their estate (ie, to the executor, executrix, administrator or administratrix, as the case may be) or a dependant of the member; and
 - (b) the proportion of the benefit that is to be paid to that person, or to each of those persons, is certain or readily ascertainable from the nomination.
426. The Trustee is not required to comply with a binding death benefit nomination if the Trustee:
- (a) is subject to a court order that has the effect of restraining or prohibiting it from paying a benefit in respect of the member in accordance with the binding death benefit nomination; or
 - (b) is aware that the member is subject to a court order that:
 - (i) requires the member to amend or revoke their binding death benefit nomination; or
 - (ii) has the effect of restraining or prohibiting the member from giving a binding death benefit nomination.
427. The Trustee is not required to comply with a binding death benefit nomination if it does not comply with the formal requirements set out in clause 420.
428. If there is no valid binding death benefit nomination at the time of the member's death, the Trustee is only permitted to pay benefits as if no death benefit nomination existed.

NON-BINDING DEATH BENEFIT NOMINATIONS

429. **Non-binding death benefit nomination.** A member may give a non-binding death benefit nomination to the Trustee.
430. **Information to member.** Before the Trustee can accept a non-binding death benefit nomination, it must give to such information to the member as it reasonably believes they reasonably need for the purpose of understanding their right to require it to provide the benefits.
431. **Form of nomination.** The non-binding death benefit nomination must:
- (1) be in writing;
 - (2) request the Trustee to provide benefits on or after the death of the member's death to a person or persons, and set out the proportion of the benefit that they want to be paid to that person, or to each of those persons;
 - (3) be dated and signed by the member in the presence of two witnesses:
 - (a) both of whom are 18 or over; and
 - (b) neither of whom is a person mentioned in the nomination; and
 - (4) contain a declaration dated and signed by the witnesses stating that it was signed by the member in their presence.
- The non-binding death benefit nomination may be in any form approved by or acceptable to the Trustee.
432. **Duty to seek information.** If any information in the non-binding death benefit nomination is not sufficiently clear to the Trustee to allow it to pay the benefit (eg, if the proportion of the benefit that is to be paid to someone, or to each person, is not certain, or not readily ascertainable from the non-binding death benefit nomination), it must, as practicable after it receives the nomination, seek a written statement from the member clarifying the information.
433. **Confirming, amending or revoking non-binding death benefit nomination.** A member who gives non-binding death benefit nomination may:
- (a) confirm a current non-binding death benefit nomination by giving the Trustee a written notice dated and signed by the member to that effect; or
 - (b) amend or revoke a non-binding death benefit nomination by giving the Trustee notice, in accordance with clause 431, of the amendment or revocation.
434. **Effect of non-binding death benefit nomination.** In exercising its discretion, the Trustee may be guided by the member's non-binding death benefit nomination. A non-

binding death benefit nomination is not invalid if it nominates a person who is not a dependant at the time of their death (but the Trustee cannot make a payment to them if the member was survived by a dependant or had an executor, executrix, administrator or administratrix).

RETIREMENT BENEFITS

435. **Scope of this part.** This part applies where the member has retired.
436. **Requirements.** If:
- (1) the member has retired; and
 - (2) the member requests the Trustee to pay them a benefit; and
 - (3) the Trustee resolves in writing to pay the benefit —
- the Trustee must pay the member's benefits to the member in the form described in this part.
437. For the purposes of this part, the retirement of a member is taken to have occurred in the circumstances described in following two clauses.
438. The retirement of a member is taken to have occurred if:
- (1) the member has attained the age of 60;
 - (2) an arrangement under which the member was gainfully employed has come to an end; and
 - (3) either of the following applies:
 - (a) the member attained that age on or before the ending of the employment; or
 - (b) the Trustee is reasonably satisfied that the member intends never again to become gainfully employed, either on a full-time or a part-time basis.
439. The retirement of a member is also taken to have occurred if:
- (1) the member has reached a preservation age that is less than 60;
 - (2) an arrangement under which the member was gainfully employed has come to an end; and
 - (3) the Trustee is reasonably satisfied that the member intends never again to become gainfully employed, either on a full-time or a part-time basis.
440. The expressions "gainfully employed", "full-time", "part-time" and "preservation age" are defined in clause 7.
441. **Member employed by two or more employers.** If a member:
- (1) is aged 60 or more;
 - (2) is in two or more employment arrangements at the same time; and
 - (3) gives up one employment arrangement but continues in the other employment arrangement —
- the Trustee may:
- (a) cash all benefits which the member has accumulated up until that time;
 - (b) not cash any benefits accumulated after that condition of release occurs (the member cannot cash those benefits they satisfy a fresh condition of release).
442. **Member resuming employment.** If a member:
- (1) is aged 60 or more;
 - (2) an arrangement under which the member was gainfully employed has come to an end; and
 - (3) commences a new arrangement under which the member is gainfully employed —
- the Trustee must preserve benefits related to the new employment until a further condition of release is satisfied (the member cannot cash those benefits they satisfy a fresh condition of release).
443. **Member never worked.** A member has never been gainfully employed can only satisfy a condition of release by:
- (1) attaining the age of 65;
 - (2) attaining preservation age (where the benefit can only be paid as a non-

commutable income stream rules: see below).

The expression “preservation age” is defined in clause 7.

444. **Form and duration of payment.** There is no restriction on the form or amount of the benefit that the Trustee can pay the member. The Trustee may pay a benefit in any of the following forms:
- (a) one or more lump sum payments;
 - (b) one or more account-based income streams (or superannuation pensions);
 - (c) one or more non-account-based income streams or superannuation pensions purchased by the Trustee from a life insurance company or a registered organisation;
 - (d) one or more annuities purchased by the Trustee from a life insurance company or a registered organisation;
 - (e) a combination of the above.
- The member will need to advise the Trustee in writing of their preferred option.
445. The Trustee may pay the income stream annually, quarterly, monthly, fortnightly or weekly as the member requests, but it must be paid at least annually.
446. If there is no agreement, then the Trustee may pay the benefit in the form of an income stream decided by the Trustee.
447. **Retirement.** For clarity, a member cannot access their benefits before they reach their preservation age.

TERMINAL MEDICAL CONDITION BENEFITS

448. **Scope of this part.** This part applies where the member suffers from a terminal medical condition.
449. **Meaning of “terminal medical condition”.** In this part, a “terminal medical condition” exists in relation to a member at a particular time if the following circumstances exist:
- (a) two registered medical practitioners have certified, jointly or separately, that the member suffers from an illness, or has incurred an injury, that is likely to result in the death of the member within a period (the “certification period”) that ends not more than 12 months after the date of the certification;
 - (b) at least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the member; and
 - (c) for each of the certificates, the certification period has not ended.
450. **Requirements.** If:
- (1) the member suffers from a terminal medical condition; and
 - (2) the member requests the Trustee to pay them a benefit;
 - (3) the Trustee is reasonably satisfied that the member suffers from a terminal medical condition; and
 - (4) the Trustee resolves in writing to pay the benefit —
- the Trustee must pay the member’s benefits to the member in the form described in this part.
451. **Form and duration of payment.** There is no restriction on the form or amount of the benefit that the Trustee can pay the member.

PERMANENT INCAPACITY BENEFITS

452. **Scope of this part.** This part applies where the member suffers from a permanent incapacity.
453. **Meaning of “permanent incapacity”.** In this part, “permanent incapacity”, in relation to a member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that they are unlikely, because of the ill-health, to engage in gainful employment for which they are reasonably qualified by education, training or experience.
454. **Requirements.** If:

- (1) the member suffers from a permanent incapacity;
 - (2) the member ceases gainful employment;
 - (3) the member requests the Trustee to pay them a benefit; and
 - (4) the Trustee is reasonably satisfied that the member is unlikely, because of the ill-health, to engage in gainful employment for which they are reasonably qualified by education, training or experience; and
 - (5) the Trustee resolves in writing to pay the benefit —
- the Trustee must pay the member's benefits to the member in the form described in this part.
455. For clarity, it:
- (a) is not necessary for the member to be unable to return to their previous employment, but they must be unlikely to return to any position for which they were reasonably qualified at the onset of their ill-health; and
 - (b) does not preclude the member from later taking up some other form of gainful employment that is at that time within their reduced capacity.
- This part also applies to members who:
- (a) have never worked; or
 - (b) were not working at the time they suffer from a permanent incapacity.
456. **Medical certificate.** The Trustee may be reasonably satisfied of the member's permanent incapacity if two registered medical practitioners (at least one of whom must be a specialist) certify that the member is unlikely, because of the ill-health, to engage in gainful employment for which the member is reasonably qualified by education, training or experience.
457. **Insurance policy.** If the member satisfies the term of an insurance policy but does not satisfy the cashing condition definition of permanent incapacity, the Trustee must preserve the member's insurance benefit payment in the Fund until the member can satisfy another condition of release.
458. **Form and duration of payment.** There is no restriction on the form or amount of the benefit that the Trustee can pay the member.

TEMPORARY INCAPACITY BENEFITS

459. **Scope of this part.** This part applies where the member suffers from a temporary incapacity.
460. **Meaning of "temporary incapacity".** In this part, "temporary incapacity", in relation to a member who has ceased to be gainfully employed (including a member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the member to be gainfully employed), means ill-health (whether physical or mental) that caused the member to cease to be gainfully employed but does not constitute permanent incapacity.
461. **Requirements.** If:
- (1) the member suffers from a temporary incapacity;
 - (2) the member ceases gainful employment;
 - (3) the member requests the Trustee to pay them a benefit;
 - (4) the Trustee is reasonably satisfied that the member suffers from a temporary incapacity; and
 - (5) the Trustee resolves in writing to pay the benefit —
- the Trustee may pay a benefit to the member in the form described in this part.
462. Both employees and self-employed members qualify for this benefit.
463. For clarity, it is not necessary for the member's employment to fully cease.
464. **Continuation of membership.** The member will continue to be a member during the period in which they suffer from a temporary incapacity and for the eligibility period specified in any policy in respect of the temporary incapacity, and the aggregate of those periods will, for the purpose of this Deed, be deemed to be included in their period of

membership.

465. **Contributions.** The member may suspend their contributions during the period that they are receiving an income stream.
466. **Form and duration of payment.** If the Trustee has resolved to pay a benefit, it can only pay the benefit to the member in the form of a non-commutable income stream for:
- (a) the purpose of continuing (in whole or part) the gain or reward which the member was receiving before their temporary incapacity; and
 - (b) a period not exceeding their period of incapacity from employment of the kind they had engaged in immediately before their temporary incapacity.
467. **Frequency.** The Trustee must may pay the benefit at least monthly.
468. The Trustee may pay the member a partial disability benefit that replaces part of their income.
469. If the member receives sick leave benefits, then the Trustee may top up the amount so that the member receives the gain or reward which they were receiving before their temporary incapacity.
470. The Trustee must cease to pay the benefit if the member:
- (a) ceases to suffer from a temporary incapacity;
 - (b) attains the age of 65; or
 - (c) satisfies another condition of release.
471. **Proceeds of temporary disablement policy.** If the proceeds of a temporary disablement insurance policy on the life of the member become payable, the proceeds of the policy are to be paid to the member or, if the member is unable to manage their own affairs, to the member's personal representative.
472. The Trustee must pay a non-commutable income stream equal to, in the case of a member in respect of whom the Trustee receives an income benefit under a policy effected in relation to temporary total disablement, the amount payable to the Trustee as a result of the temporary total disablement of the member under the policy.
473. The income stream must, in the case of a benefit payable under a policy, be paid in accordance with, and ceases in the circumstances set out in, the policy.
474. The temporary incapacity benefit payable in those circumstances will be calculated having regard to:
- (a) the amount or amounts payable under the policy in respect of the member's temporary disablement;
 - (b) the timing of those payments;
 - (c) the liabilities incurred by the Trustee in connection with the policy (including receipt and payment of proceeds); and
 - (d) any relevant policy terms.
475. If the member's sick leave benefits and/or the benefits they receive under the policy equal the gain or reward which they were receiving before their temporary incapacity, then the member shall not be entitled to receive any other temporary incapacity benefit under this Deed.
476. If the member's sick leave benefits and/or the benefits they receive under the policy is less than the gain or reward which they were receiving before their temporary incapacity, the Trustee may pay a temporary incapacity benefit to the member so that they receive the gain or reward which they were receiving before their temporary incapacity.

SEVERE FINANCIAL HARDSHIP BENEFITS

477. **Scope of this part.** This part applies where the member is experiencing severe financial hardship.
478. **Meaning of "severe financial hardship".** For the purposes of this part, the retirement of a member is taken to have occurred in the circumstances described in following two clauses.
479. **First ground.** A member is taken to be experiencing severe financial hardship if the Trustee is satisfied:

- (1) based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments, that:
 - (a) the member has received Commonwealth income support payments for a continuous period of 26 weeks; and
 - (b) the member was in receipt of payments of that kind on the date of the written evidence; and
- (2) that the member is unable to meet reasonable and immediate family living expenses.

The written evidence referred to in this clause is of no effect if it is dated more than 21 days before the date of the member's application to the Trustee for cashing of their benefits

480. **Second ground.** A member is also taken to be experiencing severe financial hardship if:

- (1) the member has reached their preservation age plus 39 weeks;
- (2) the Trustee is satisfied, based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments, that the member received Commonwealth income support payments for a cumulative period of 39 weeks after they reached their preservation age; and
- (3) the Trustee is also satisfied that the member was not gainfully employed on a full-time, or part-time, basis on the date of the application for cashing of their benefits.

The expressions "gainfully employed", "full-time" and "part-time" and "preservation age" are defined in clause 7.

481. **Meaning of "Commonwealth income support payment".** In this part, "Commonwealth income support payment" means:

- (a) an income support supplement, service pension or social security pension as defined in subsection 23 (1) of the Social Security Act 1991; or
- (b) a social security benefit as defined in that subsection, other than:
 - (i) an austudy payment; or
 - (ii) a youth allowance paid to a member who is undertaking full-time study; or
- (c) a drought relief payment under the *Farm Household Support Act 1992* as in force immediately before the commencement of the *Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997*; or
- (d) an exceptional circumstances relief payment under the *Farm Household Support Act 1992*; or
- (e) a payment of salary or wages made under the employment scheme of the Commonwealth that is known as the Community Development Employment Projects Scheme.

482. **Requirements.** If:

- (1) the member is experiencing severe financial hardship;
- (2) the member requests the Trustee to pay them a benefit;
- (3) the Trustee is satisfied that the member is unable to meet reasonable and immediate family living expenses; and
- (4) the Trustee resolves in writing to pay the benefit —

the Trustee may pay a benefit to the member in the form described in this part.

483. **Form and duration of payment.** If the Trustee has resolved to pay a benefit under the first ground, it can only pay the benefit in the form of a single lump sum payment which is:

- (a) not less than \$1,000 (or a lesser amount if the member's benefits are less than \$1,000);
 - (b) not more than \$10,000 —
- in any 12 month period (beginning on the date of first payment).

484. If the Trustee has resolved to pay a benefit under the second ground, there are no payment restriction.

485. The Trustee cannot pay a benefit to the member in the form of a lump sum payment by

way of the transfer to the member of an asset in specie.

COMPASSIONATE GROUNDS

486. **Scope of this part.** This part applies where the member does not have the financial capacity to meet an expense and is seeking the payment of a benefit on compassionate grounds.
487. **Requirements.** If:
- (1) the member does not have the financial capacity to meet an expense and is seeking the payment of a benefit on compassionate grounds;
 - (2) the member has applied to the Regulator;
 - (3) the Regulator has determined in writing that the member has satisfied a condition of release on a compassionate ground; and
 - (4) the Trustee resolves in writing to pay the benefit —
- the Trustee may pay a benefit to the member in the form described in this part.
488. **Meaning of “compassionate ground”.** A “compassionate ground”, in relation to the release of a member’s benefits in the Fund, means a ground listed in subregulation 6.19A(1) of the Regulations.
489. **Form and duration of payment.** A single lump sum payment, not exceeding an amount determined, in writing, by the Regulator, being an amount that:
- (a) taking account of the ground and of the member’s financial capacity, is reasonably required; and
 - (b) in the case of the ground to enable the member to make a payment on a loan to prevent foreclosure of a mortgage, in each 12-month period (beginning on the date of first payment), does not exceed an amount equal to the sum of:
 - (1) 3 months repayments; and
 - (2) 2 months interest on the outstanding balance of the loan.
490. The Trustee cannot pay a benefit to the member in the form of a lump sum payment by way of the transfer to the member of an asset in specie.

ATTAINING AGE 65 OR MORE

491. **Scope of this part.** This part applies where the member has attained 65.
492. **Requirements.** If:
- (1) the member has attained the age of 65 years; and
 - (2) the member requests the Trustee to pay them a benefit —
- the Trustee may pay a benefit to the member in the form described in this part.
493. **Form and duration of payment.** There is no restriction on the form or amount of the benefit that the Trustee can pay the member. The member will need to advise the Trustee in writing of their preferred option.

TERMINATING GAINFUL EMPLOYMENT: BENEFITS LESS THAN \$200

494. **Scope of this part.** This part applies where the member has terminated gainful employment with a standard employer-sponsor of the Fund and their benefits in the Fund at the time of termination are less than \$200.
495. **Requirements.** If:
- (1) the member has terminated employment with a standard employer-sponsor of the Fund;
 - (2) the member’s benefits in the Fund at the time of termination are less than \$200; and
 - (3) the member requests the Trustee to pay them the benefit; and
 - (4) the Trustee resolves in writing to pay the benefit —
- the Trustee must pay the member’s benefits to the member.

496. **Form of payment.** The Trustee must pay the member's benefits to the member in the form of a single lump sum payment

TERMINATING GAINFUL EMPLOYMENT: BENEFITS OF \$200 OR MORE

497. **Scope of this part.** This part applies where the member has terminated gainful employment with an employer who had, or any of whose associates had, at any time contributed to the Fund in relation to the member.
498. **Requirements.** If:
- (1) member has terminated gainful employment with an employer who had, or any of whose associates had, at any time contributed to the Fund in relation to the member; and
 - (2) the member requests the Trustee to pay them a benefit —
- the Trustee must pay the member's benefits to the member in the form described in this part.
499. **Form and duration of payment.** The Trustee must pay the member's preserved benefits in the form of a non-commutable life pension or non-commutable life annuity. There is no restriction on the form or amount of the member's unrestricted non-preserved benefits.

ATTAINING PRESERVATION AGE: TRANSITION TO RETIREMENT INCOME STREAMS

500. **Scope of this part.** The Trustee may offer transition to retirement income streams to members who:
- (1) are under the age of 65;
 - (2) have reached preservation age; and
 - (3) remain gainfully employed on a full-time or part-time basis.
- It is not obliged to do so. If it does, then the following provisions apply.
501. **Definitions.** The expression "preservation age" is defined in clause 7.
502. In this part, a "transition to retirement income stream" includes any kind of superannuation income stream permitted by the Regulations under the transition to retirement provisions.
503. **Requirements.** If the member:
- (1) is under the age of 65;
 - (2) has reached their preservation age;
 - (3) remains gainfully employed on a full-time or part-time basis;
 - (4) requests the Trustee to pay them a transition to retirement income stream; and
 - (5) the Trustee resolves in writing to pay the benefit —
- the Trustee may pay them a non-commutable income stream.
504. **Accounts.** If:
- (1) the member is receiving a benefit from the Fund;
 - (2) the member continues to work part time; and
 - (3) the Trustee is still accepting contributions —
- the Trustee must establish and maintain two separate accounts for this purpose (usually a member's account (or accumulation account) and an income stream (or pension) account.
505. **Form and duration of payment.** The Trustee must pay the member's benefits to the member in the form of a non-commutable income stream as:
- (a) a transition to retirement income stream;
 - (b) a non-commutable pension;
 - (c) a non-commutable allocated pension —
- or purchase from a life insurance company or registered organisation with funds from the member's account in order to provide:
- (a) a transition to retirement income stream;

- (b) a non-commutable annuity;
- (c) a non-commutable pension;
- (d) a non-commutable allocated annuity;
- (e) a non-commutable allocated pension.

The member will need to advise the Trustee in writing of their preferred option.

506. The Trustee may:

- (a) pay a non-commutable income stream as a non-commutable allocated pension; or
- (b) provide a non-commutable income stream as a non-commutable allocated pension or a non-commutable market linked pension by purchasing them from a life insurance company or registered organisation with funds from the member's account.

507. The Trustee may provide a non-commutable pension or annuity in the form of:

- (a) a lifetime pension or annuity;
- (b) a life expectancy pension or annuity; or
- (c) a market linked pension or annuity (sometimes marketed as a term allocated pension or annuity) —

by purchasing them from a life insurance company or registered organisation with funds from the member's account.

LOST MEMBER

508. **Scope of this part.** This part applies where the member is a "lost member" who is "found" and the value of their benefits is less than \$200.

509. **Requirements.** If:

- (1) the member is a "lost member" who is "found";
- (2) the value of the member's benefit, when released, is less than \$200; and
- (3) the member requests the Trustee to pay them the benefit; and
- (4) the Trustee resolves in writing to pay the benefit —

the Trustee must pay the member's benefits to the member.

510. **Form of payment.** The Trustee must pay the member's benefits to the member in the form of a single lump sum payment

OTHER

511. If the Trustee is required to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* for a member's interest in the Fund, the Trustee may pay the amount as a lump sum payment to the Commissioner of Taxation by the time required under that Act.

512. The Trustee may pay any benefit under any other condition, if expressed to be a condition of release, in an approval under subparagraph 62(1)(b)(v) of the Act, or pay an amount where it has received a release authority or a transitional release authority.

COMMUTATION

513. **Commutation of superannuation income stream.** If a member is entitled to receive a benefit, the member may, by written notice to the Trustee, request the Trustee to commute part or all of the superannuation income stream to a lump sum payment benefit.

514. **Commutation of superannuation income stream.** The superannuation income stream may be commuted in the circumstances described in, and in accordance with, Schedule 7 of the Regulations.

515. If the Trustee obtains a request from a member to commute a superannuation income stream, it must not do so without first obtaining professional advice.

516. **Prohibition on payment and commutation in breach of the standards.** If:
- (a) the Trustee is paying an account-based superannuation income stream or superannuation pension;
 - (b) a life insurance company or a registered organisation is providing a lifetime, life expectancy or market-linked pension or any other non-account-based superannuation income stream is purchased by the Trustee —
- the Trustee must not allow the benefit to be commuted except in the circumstances described in the relevant subregulation of the Regulations.
517. **Commutations of transition to retirement income stream.** Subject to the Regulations, a member receiving a transition to retirement income stream may request the Trustee:
- (1) to commute it and roll it back into the superannuation system;
 - (2) to commute it to purchase another non-commutable income stream.
518. Subject to the Regulations, a member receiving a transition to retirement income stream may request the Trustee to commute it or part of it in order to cash any unrestricted non-preserved benefits.
519. Subject to the Regulations, a member receiving a transition to retirement income stream may request the Trustee to commute it or part of it if the sole purpose of the commutation is:
- (1) to pay a superannuation contributions surcharge;
 - (2) to give effect to an entitlement of a non-member spouse under a payment split;
 - (3) to ensure that a payment may be made for the purpose of giving effect to a release authority under section 292-415 of the *Income Tax Assessment Act 1997* or section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or
 - (4) to satisfy an obligation to pay an amount to the Commissioner of Taxation under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
520. Subject to the Regulations, a member may also request the Trustee to commute their transition to retirement income stream in order to exercise their right to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001* (which deals with the cooling-off period for superannuation products), but the Trustee can only commute it to purchase another non-commutable income stream.
521. If a member receiving a transition to retirement income stream qualifies for a condition of release with no cashing restriction, they may:
- (1) continue to receive it (although it is not tax effective to do so after attaining the age of 65);
 - (2) request the Trustee to commute it and roll it back into the superannuation system;
 - (3) request the Trustee to commute it to purchase another income stream;
 - (4) request the Trustee to commute it and take the resulting lump sum benefit in cash.
522. **Retirement after commencing transition to retirement income stream.** Subject to the Regulations, if a member receiving a transition to retirement income stream retires after the commencement of a transition to retirement income stream, they may:
- (1) continue to receive it (although it is not tax effective to do so after attaining the age of 65);
 - (2) request the Trustee to commute it and roll it back into the superannuation system;
 - (3) request the Trustee to commute it to purchase another income stream;
 - (4) request the Trustee to commute it and take the resulting lump sum benefit in cash.

PRE-JULY 1999 BENEFITS

523. **Scope of this part.** This part applies if:
- (a) benefits which pre-dated 1 July 1999 were transferred or rolled over into the

- Fund; or
- (b) the Fund was created or established prior to 1 July 1999 and its trust deed was subsequently amended by adopting this Deed.
524. **Preserved benefits.** The Trustee shall not pay a preserved benefit to a member unless the member has satisfied a condition of release and then subject to any restriction on payment of the benefit imposed by the Regulations.
525. The amount of preserved benefits that may be cashed in accordance with the preceding clause must not exceed the sum of the amount of the member's preserved benefits that had accrued at the time when the member satisfied the condition of release.
526. **Restricted non-preserved benefits.** A member may request the Trustee in writing to pay them their restricted non-preserved benefits.
527. The Trustee shall not pay a restricted non-preserved benefit to a member unless the member has satisfied a condition of release and then subject to any restriction on payment of the benefit imposed by the Regulations.
528. **Unrestricted non-preserved benefits.** A member may request the Trustee in writing to pay them the whole or part of their unrestricted non-preserved benefits.
529. The Trustee may pay them their unrestricted non-preserved benefits in any of the following forms:
- (a) one or more lump sum payments;
 - (b) one or more account-based income streams (or superannuation pensions);
 - (c) one or more non-account-based income streams or superannuation pensions purchased by the Trustee from a life insurance company or a registered organisation;
 - (d) one or more annuities purchased by the Trustee from a life insurance company or a registered organisation;
 - (e) a combination of the above —
- unless the member has died, then the restrictions imposed by this Deed on the form of the payments apply.
530. **Priority in deducting surcharge or instalment.** In reducing the member's benefits, the Trustee must:
- (a) if possible, deduct an amount equal to the whole of the amount of the reduction from the preserved benefits;
 - (b) if the required deduction cannot be met under paragraph (a), deduct the balance from the restricted non-preserved benefits; and
 - (c) if the required deduction cannot be met under paragraphs (a) and (b), deduct the balance from the unrestricted non-preserved benefits.
531. **Allocation of negative investment returns.** In allocating losses or negative investment returns, the Trustee must debit the losses or negative investment returns in the following order:
- (1) third, to preserved benefits;
 - (2) second, to restricted non-preserved benefits;
 - (3) first, to unrestricted non-preserved benefits.
532. **Priority in cashing benefits.** If:
- (a) the member has satisfied a condition of release; and
 - (b) there is a restriction on payment of the benefit (other than one with no restriction on payment of the benefit) in respect of that condition —
- the Trustee, in paying benefits in accordance with the restriction, must give priority to benefits in the following order:
- (1) first, to unrestricted non-preserved benefits;
 - (2) second, to restricted non-preserved benefits;
 - (3) third, to preserved benefits.

PRE-JULY 2007 BENEFITS

533. This part applies if:
- (a) benefits which pre-dated 1 July 2007 were transferred or rolled over into the

- Fund;
 - (b) an income stream which commenced before 20 September 2007 was transferred or rolled over into the Fund; or
 - (c) the Fund was created or established prior to 1 July 2007 and its trust deed was subsequently amended by adopting this Deed.
534. If:
- (1) the member is receiving an allocated pension;
 - (2) the allocated pension commenced before 1 July 2007; and
 - (3) the member requests the Trustee to trigger the operation of the proportional rule;
 - (4) the Trustee has sought and obtained professional advice —
- the Trustee may resolve in writing to trigger the operation of the proportional rule.

FORFEITURE OF BENEFIT ENTITLEMENTS

535. **Forfeiture Account.** The Trustee has power at any time to establish and maintain a Forfeiture Account and must transfer to the credit of a Forfeiture Account any amounts forfeited.
536. The Trustee must keep an account for the receipt of amounts forfeited from member's accounts or accumulation accounts and any other credit balances that cannot be otherwise allocated under the provisions of this Deed.
537. Any funds held in the Forfeiture Account do not form part of any member's account or accumulation account, and any income derived by the Trustee on the money held in the Forfeiture Account must be credited to the Forfeiture Account.
538. **Conditions of forfeiture.** Subject to the Act and the *Bankruptcy Act* 1966, any member or beneficiary or, after the death of a member, any dependant of that member:
- (a) who assigns, alienates or charges, or attempts to assign, alienate or charge, any benefit;
 - (b) whose interest in any benefit entitlement, whether by the member's or beneficiary's own act, operation of law, an order of any court or otherwise becomes payable to or vested in any other person, company, government or other public authority —
- forfeits entitlement to any benefit entitlement held in the Fund at that time by that person, and their interest in the Fund shall cease.
539. **Application of forfeited benefit entitlements.** Subject to the Act, the Trustee must pay or apply any amounts which have been forfeited and are held in a Forfeiture Account in the year of income or within 6 months of the end of the year of financial year for:
- (a) the provision of the benefits that other members or their dependants have rights to receive from the Fund;
 - (b) 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 Regulator is satisfied is reasonable having regard to all the circumstances;
 - (c) any other purpose approved in writing by the Regulator.
540. **Readjustment of member interest.** Where a forfeiture of a benefit entitlement occurs in respect of a member, and the Trustee is of the opinion that the event giving rise to the forfeiture has ceased to affect that member, then the Trustee may:
- (a) readjust any rights, entitlements or interests of the member in the Fund; and
 - (b) provide the member with such rights or entitlements as it considers appropriate —
- provided that the rights or entitlements must not exceed the rights or entitlements held by the member before the occurrence of the forfeiture.

INFORMATION TO MEMBERS AND BENEFICIARIES

541. **Trustee to notify member and dependants.** If a benefit is payable to or in respect of a member, the Trustee must notify:

- (a) in the case of a benefit payable to the member, the member or, if the member is a minor, the member's parents or guardian or, if the member is an adult under a disability, their personal representative;
- (b) in the case of a benefit payable on the death of a member, their estate (ie, the executor, executrix, administrator or administratrix, as the case may be), the reversionary beneficiary (if any), the nominated beneficiary under a binding death benefit nomination (if any) and, if there is no binding death benefit nomination, any known dependants; and
- (c) in any other case, anyone whom the Trustee reasonably believes may have an entitlement to, or interest in, the benefit.

542. **Members and beneficiaries to provide information.** The Trustee may:

- (a) before paying a benefit (whether in the form of a lump sum payment or an income stream) require the member, beneficiary, their estate (ie, the executor, executrix, administrator or administratrix, as the case may be) or dependant or anyone else claiming to be entitled to receive the benefit to provide information as to their entitlement or other information, and execute such documents, as it may reasonably request;
- (b) during the period that it is paying an income stream, require the member or beneficiary to provide information, and execute such documents, as it may reasonably request.

543. The Trustee may postpone paying the benefit until they give that information to the Trustee.

544. **Address for benefits: notification of address.** Every member, beneficiary, or anyone to whom the benefit is payable on behalf of or for the benefit of a member or beneficiary (eg, a parent, guardian, personal representative) must notify the Trustee in writing at the time the benefit becomes payable:

- (1) the member's or beneficiary's place of residence and their full postal address; and
- (2) the member's or beneficiary's bank account (if any) to which they request that the benefit be paid.

The Trustee may forward the benefits to the postal address or bank account of the member or beneficiary last notified to the Trustee or to such other place as the Trustee may decide.

545. If a member, beneficiary or anyone to whom the benefit is payable on behalf of or for the benefit of a member or beneficiary (eg, a parent, guardian, personal representative) is receiving an income stream, they must notify the Trustee in writing of any change of address.

METHOD OF PAYMENT

546. **How does Trustee make a payment?** After the Trustee makes a resolution to make a benefit payment, it gives effect to the resolution either by:

- (1) paying the benefit to the member;
- (2) paying the benefit into a bank account (by cheque, EFT, internet banking or otherwise) nominated by the member as the member may authorise or direct (but not one operated and controlled by the Trustee in its capacity as Trustee of the Fund);
- (3) with the consent of the member, placing the benefit to the credit of the member in a 24 hour call account (but not one operated and controlled by the Trustee in its capacity as Trustee of the Fund);
- (4) paying the benefit to an account with a bank or other financial institution in the name of the member or in the name of anyone operating such account on behalf of or in trust for the member (but not one operated and controlled by the Trustee in its capacity as Trustee of the Fund);

- (5) if the member or beneficiary is a minor, paying the benefit to their parent or guardian to be applied for their benefit;
 - (6) if the member or beneficiary is an adult under a disability, paying the benefit to their personal representative to be applied for their benefit;
 - (7) paying the benefit to any person who by law is entitled to receive money on behalf of, or to administer the property of, the minor or the person under a disability.
547. **Payment by cheque.** An amount payable by the Trustee to a member by cheque may be sent through the post to the registered address of the member.
548. **Payment of lump sum by transfer of assets in specie.** The Trustee cannot pay a benefit to the member under the following grounds:
- (a) severe financial hardship benefits;
 - (b) on compassionate grounds —
- by way of the transfer to the member of an asset in specie.
549. The Trustee cannot make a payment to the Commissioner of Taxation by way of the transfer to the Commissioner of an asset in specie.
550. Subject to the two preceding clauses, the Act and the Regulations, if a member or beneficiary is entitled to receive a benefit in the form of a lump sum payment, the Trustee, at the request of the member or beneficiary, or with the consent or agreement of the member or beneficiary, may provide the benefit wholly or partly by transferring one or more Fund investments or other Fund assets in specie of equivalent value to the member or beneficiary without converting them into cash in lieu of paying the whole or part of the benefit otherwise payable under the provisions of this Deed. For clarity, this does *not* apply to payment of a superannuation income stream.
551. The Trustee:
- (a) has the power to select the particular Fund investments or other Fund assets for transfer;
 - (b) may take into account the duty (if any) payable, costs and other expenses of the transfer as it thinks fit and make adjustments accordingly.
552. The value attributable to such assets shall be:
- (a) decided by the Trustee; or
 - (b) by a valuer appointed by the Trustee for that purpose.
553. **Assignment of policy.** Where:
- (a) a member or a beneficiary is entitled to be paid a benefit; or
 - (b) the Trustee in its discretion decides to pay a benefit to a member, a beneficiary or the dependants of the member including any interest in a policy of any kind on the life of the member or beneficiary —
- the Trustee may, in its absolute discretion and in lieu of surrendering the policy, assign the policy to the member or beneficiary or to their dependants or to one or more of them to the exclusion of the other or others as the Trustee in its discretion decides.
554. The value of the policy as at the date of assignment must be debited as a payment to the member or beneficiary in the assessment of any entitlement as reflected by the member's or beneficiary's accumulation account or pension account.
555. Neither the Trustee nor any employer are liable to pay any further premiums which may become due and payable under the policy as from the date of the assignment.
556. The Trustee may effect a payment to a member by one, or partly by one and partly by any other, of the methods described in the preceding clauses of this part.
557. **Deductions.** Subject to the Act, the Trustee may deduct fees and amounts in respect of liabilities and tax from any benefit payment.
558. **Receipt for benefits.** Any person to whom a benefit is payable must, if requested by the Trustee, furnish it with a receipt and release in a form from time to time required by the Trustee.
559. Where the Trustee pays a member or beneficiary, a member or beneficiary who is a minor or under a legal disability, whether made with or without the obtaining of a receipt:
- (a) the payment or transfer constitutes a full discharge to the Trustee in relation to that payment; and
 - (b) the Trustee is not bound to see to the application of that payment.

NON-MEMBER SPOUSE OR DOMESTIC PARTNER

560. **Definitions.** In this part, the “relevant legislation” means the Act, the Regulations, the *Family Law Act 1975* and the *Family Law (Superannuation) Regulations 2001*.
561. In this part, “member spouse” and “non-member spouse” have the same meanings as in section 90MD of the *Family Law Act 1975*.
562. In this part, “minimum investment amount” means the minimum one-off initial contribution (if any) that a person must make in order to become a member and participate in the Fund, as set out in the relevant disclosure document or such lesser amount as the Trustee may from time to time decide.
563. **Contributions splitting.** A member may request the Trustee in writing to transfer, rollover or allot an amount of their benefits for the benefit of their spouse or domestic partner that is equal to an amount of their splittable contributions made to the Fund by, for, or on their behalf:
- (a) in the last financial year that ended before the application; or
 - (b) in the financial year in which the application is made, where the member’s entire benefit is to be rolled over, transferred or cashed in that year.
564. This arrangement applies at the member’s request, and is not an arrangement by which the member’s interest is subject to a payment split under Part VIIIB of the *Family Law Act 1975*. Part 7A of the Regulations deals with those payment splitting arrangements.
550. The member must specify in the application the amount of the benefit from the following:
- (a) their taxed splittable contributions;
 - (b) their untaxed splittable contributions;
 - (c) their untaxed splittable employer contributions —
- that they seek to split for the benefit of their spouse.
565. The application may specify either the dollar amount of taxed and/or untaxed contributions to be split, or the amount of taxed and/or untaxed contributions to be split as a percentage of the total eligible contributions made during the year.
566. The specified amount must not exceed the maximum splittable amount.
567. Where the member’s entire benefit is to be transferred or rolled over (eg, where the employment of a member of an employer-sponsored fund ceases), the member may make the request in the year the contributions are made.
568. The request made by a member must comply with the Division 6.7 of Part 6 of the Regulations.
569. A member’s application is invalid if:
- (1) in the financial year in which it is made, the member has already made an application that has been given effect to or is still being processed;
 - (2) it relates to benefits exceeding the maximum splittable amount; or
 - (3) the member’s spouse is:
 - (a) aged 65 years or more; or
 - (b) aged between their preservation age and 65 years and has satisfied the retirement condition of release.
570. Despite paragraph (3) of the preceding clause, an application may be valid if it includes a statement from the receiving spouse that, at the time of the contributions, they are either:
- (a) between their relevant preservation age and 65 and not permanently retired; or
 - (b) under their preservation age.
571. For the purposes of the preceding clause, but subject to the Act and the Regulations, the spouse is not permanently retired if they:
- (a) are currently employed more than 10 hours per week;
 - (b) are not currently employed but have not yet decided that they will never again work more than 10 hours per week; or
 - (c) have never been employed more than 10 hours per week.
572. The Trustee may only accept a member’s contributions splitting application if:
- (a) the application complies with regulation 6.44 of the Regulations;

- (b) the Trustee has no reason to believe that the statement from the receiving spouse is untrue; and
 - (c) the application relates to an amount that is not more than the maximum splittable amount for the relevant financial year.
573. If the application requests a split of untaxed splittable contributions, the Trustee may give effect to the application only if the amount specified in the application is no more than the crystallised segment that would form part of the superannuation interest that would be payable if the member withdrew the member's entire benefits at the time of the Trustee giving effect to the application.
574. If the application requests a split of taxed splittable contributions, the Trustee may give effect to the application only if the amount specified in the application is no more than the element taxed in the Fund of the taxable component that would form part of the superannuation benefit that would be payable if the member withdrew the member's entire benefits at the time of the Trustee giving effect to the application.
575. If the application requests a split of untaxed splittable employer contributions, the Trustee may give effect to the application only if the amount specified in the application is no more than the element untaxed in the Fund of the taxable component that would form part of the superannuation benefit that would be payable if the member withdrew the member's entire benefits at the time of the Trustee giving effect to the application.
576. If the Trustee accepts the member's application, it must as soon as practicable, and in any case within 90 days after receiving the application, transfer, rollover or allot the amount of benefits for the benefit of the receiving spouse
577. If the Trustee resolves to split the member's splittable contributions, it may in its absolute discretion either:
- (a) if the spouse already has an interest in the Fund, credit the amount set out in the contribution splitting application to the spouse's existing interest;
 - (b) if the spouse is a non-member spouse, create a new interest in the Fund for the spouse and credit the amount set out in the contribution splitting application to that interest; or
 - (c) transfer or rollover the amount set out in the contribution splitting application to a benefit arrangement for the spouse.
578. The Trustee may adjust the benefit of the member spouse in such manner as it considers appropriate to reflect the splitting of the member's splittable contributions.
579. Subject to the relevant legislation, the Trustee may decide the terms and conditions that will apply to the new interest.
580. Subject to the relevant legislation, the Trustee may vary those terms and conditions from time to time in its absolute discretion.
581. **Non-member spouses.** Subject to the relevant legislation, the Trustee may create a new interest in the Fund at its discretion for a non-member spouse at the request of the non-member spouse (or such other circumstances permitted by the relevant legislation).
582. The Trustee may do so if:
- (a) the receiving spouse or domestic partner:
 - (1) is aged between 55 and 64 years; and
 - (2) is currently gainfully employed for 10 or more hours a week;
 - (b) the receiving spouse or domestic partner:
 - (1) is aged between 55 and 64 years;
 - (2) is not currently employed for 10 or more hours a week;
 - (3) does not have the intention never to resume gainful employment of 10 or more hours per week; or
 - (c) the receiving spouse or domestic partner:
 - (1) is aged between 55 and 64 years; and
 - (2) has never been gainfully employed for 10 or more hours a week.
- This clause is not intended to impose a limit on the Trustee's power.
583. The Trustee is not obliged to create a new interest in the Fund for a non-member spouse.
584. The Trustee may:
- (a) reduce or adjust the amount of a member's benefits by the value of the benefits

that the non-member spouse has in the newly created interest or to reflect the creation of the new interest for the non-member spouse;

- (c) apportion the "minimum benefits", "preserved benefits", "restricted non-preserved benefits" and "unrestricted non-preserved benefits" (within the meaning of those expressions in the Act) as between the member's benefits and the interest created, or the transferable benefits (within the meaning of the Act) rolled over or transferred, for the non-member spouse.

585. If the non-member spouse is already a member, the amount that would otherwise be applied to create the non-member spouse's interest may instead be applied to increase their existing interest in the Fund.

586. The Trustee may, when creating a new interest in the Fund for a non-member spouse, decide the terms and conditions that will apply to the new interest.

587. A non-member spouse is not permitted to become a member if the value of the new interest that would otherwise be created for the non-member spouse, as at the date of creating the new interest, would be less than the minimum investment amount (if any) at that date.

588. The Trustee must treat the non-member spouse as a member if required to do by the Act.

589. **Payment flag.** The Trustee may give effect to a payment flag or flag lifting agreement.

590. **Trustee to give payment split notice.** If an interest in the Fund becomes subject to a payment split, the Trustee must notify the member spouse and the non-member spouse in relation to the interest that the interest is subject to a payment split.

591. **Splitting agreements and court orders.** The Trustee:

- (a) shall comply with and give effect to any order of the Family Court relating to the splitting of a superannuation interest of a member spouse on the breakdown of a marriage or a domestic relationship under the Family Law Act, and it shall take all appropriate steps to give effect to a court order relating to the splitting of superannuation as is required, and within any time specified in the order;
- (b) subject to the relevant legislation, may comply with and give effect to a payment split or superannuation agreement or any other agreements (whether formal or informal) relating to the splitting of a superannuation interest of a member spouse or a domestic relationship on the breakdown of a marriage under the *Family Law Act*, and it may take all appropriate steps to give effect to a superannuation agreement relating to the splitting of benefits;
- (b) may pay to a non-member spouse the amount to which the non-member spouse is entitled under the payment split.

592. The Trustee may do anything else whatsoever that it considers necessary to comply with the Act and Part VIIIB of the *Family Law Act 1975*.

593. **Request to Trustee for information.** In the following clauses, an "eligible person" means:

- (a) the member;
- (b) if the member has died, their executor, executrix, administrator or administratrix, as the case may be;
- (c) a member's spouse;
- (d) if a member's spouse has died, the spouse's executor, executrix, administrator or administratrix, as the case may be; or
- (e) a person who intends to enter into a superannuation agreement with the member.

594. An eligible person can apply to the Trustee under section 90MZB of the *Family Law Act 1975* for information about the member's superannuation interest.

595. They must make and give the Trustee a declaration that the information is required for either or both of the following purposes:

- (a) to assist the applicant to properly negotiate a superannuation agreement;
- (b) to assist the applicant in the operation of Pt VIIIB of the *Family Law Act 1975*.

596. The declaration must be in the prescribed form (Form 6 declaration in Schedule 1 of the *Family Law (Superannuation) Regulations 2001*) and accompanied by any reasonable fee imposed by the Trustee under regulation 59 of the *Family Law (Superannuation)*

Regulations 2001.

- 597. If the application is in the correct form, the Trustee must provide the information unless the information sought is not encompassed by Division 7.2 of Part 7 of the *Family Law (Superannuation) Regulations 2001* or those regulations provide that the Trustee does not have to provide the information.
- 598. Notwithstanding the preceding clause, the Trustee is prohibited from providing to the eligible person the address of the member (including their postal address).
- 599. The Trustee must not inform the member that the non-member spouse has requested information about the superannuation interest.
- 600. **Charges.** The Trustee may charge reasonable fees for administering a payment split or a flagging order, the splitting of contributions, a superannuation interest subject to a split, transferring or rolling over a transferable benefit or payment to a non-member spouse or any ancillary matter relating to a superannuation split, and deduct them from a member's benefits or the entitlements of a non-member spouse.
- 601. If a fee remains unpaid after the time it is due for payment, the Trustee can recover any unpaid amount by deduction from amounts that would otherwise become payable by the Trustee, in respect of the superannuation interest, to the person liable to pay the fee.
- 602. The spouses are each liable to pay one-half of the fee unless the non-member spouse is entitled to be paid the whole of the amount of each splittable payment, in which case the non-member spouse is liable to pay all of the fee.

TRANSFERS AND ROLLOVERS IN

- 603. **Transfers in.** Subject to the Act, the Trustee may accept into the Fund an amount or asset in respect of a member or prospective member that is transferred or rolled over from another benefit arrangement.
- 604. The Trustee must not accept a roll-over or transfer of benefits from another fund if:
 - (a) it reasonably believes that the benefits being rolled over or transferred are made on the basis of a belief held by the trustee of the transferor fund that the Trustee has received the person's consent to the roll-over or transfer; and
 - (b) the Trustee has not in fact received that consent.
- 605. **Reliance on advice.** The Trustee may rely on the advice or opinion of the trustee or proper officer of that transferring fund or scheme or corporation as to the nature and amount of the benefits transferred or rolled over into the Fund without obligation to make further enquiry.
- 606. **Assignment of policy.** The Trustee may, if it thinks fit, accept an assignment of any life insurance policy effected on the life of a member.
- 607. **Retain prior categories of membership and rights and entitlements.** The Trustee must hold:
 - (a) any funds or assets paid or transferred to it from another superannuation fund according to the terms and conditions of this Deed; and
 - (b) any benefits transferred or rolled into the Fund on the same or equivalent rights, entitlements and interests.
- 608. If the member's benefits in the prior fund includes restricted non-preserved benefits or unrestricted non-preserved benefits, then, subject to the Act and the Regulations, their transfer or rollover into the Fund does not affect their status.

TRANSFERS AND ROLLOVERS OUT

- 609. **Definitions.** In this part, "successor fund" has the meaning given to it by regulation 1.03(1) of the Regulations.
- 610. **Request.** A member may request the Trustee in writing to transfer or rollover all or part of their benefits to another fund.
- 611. The request must be in writing signed by the member.

612. The request to transfer may be made using the form prescribed in Sch 2A of the Regulations.
613. The member must complete and execute any documentation required by the *Income Tax Assessment Act 1997* to enable the Trustee to complete the transfer or a rollover payment to the approved benefit arrangement in accordance with the Act.
614. **Information to member.** Before the Trustee transfers or rolls over an amount, it must be satisfied that the member is aware that they can ask it for information that the member reasonably requires for the purpose of understanding their benefit entitlements (eg, information about any fees or charges that may apply to the proposed transfer or rollover and the effect on any benefit entitlements, such as death and disability benefits), though this may not be necessary if the member is a Trustee or director of the Trustee.
615. **Information to Trustee.** If the Trustee requires further information to give effect to a transfer request, the Trustee must ask the member for the information within 10 working days after receiving the request.
616. **Enquiries.** The Trustee may make such enquiries as it considers appropriate to satisfy itself that the benefit arrangement complies with the requirements of the Act and that any preserved benefits will continue to be preserved in accordance with the Act.
617. The Trustee may transfer or rollover benefits even if the Trustee does not have all the mandatory information.
618. The Trustee may refuse to transfer or roll over an amount:
- (a) if the fund or RSA to which the member has requested the transfer or rollover will not accept the transfer or rollover;
 - (b) if the amount is only part of the member's benefits in the fund, and the transfer or rollover would result in the member's residual interest in the Fund being less than \$5,000 (although a member would still be able to request a transfer all their benefits, ie, a full transfer);
 - (c) if the Trustee has transferred or rolled over an amount of the member's benefits in the past 12 months (although the Trustee may allow more transfers or rollovers if it so decides).
619. **Decision on application.** If the Trustee is satisfied that the transfer or rollover is permitted by the Act and the Regulations, it must transfer or rollover the whole or part of any amount held in the Fund in respect of a member to another benefit arrangement.
620. **Amount of transfer.** The Trustee must calculate the amount of the member's benefit entitlements to be transferred or rolled over, which must not exceed the amount standing to the credit of the member's accounts.
621. **Time limit.** The Trustee is to transfer or roll over a benefit within 30 days after:
- (a) receiving the request; or
 - (b) if the Trustee required further information, the time when the Trustee received the information.
622. The Trustee must provide a rollover benefit statement.
623. **Discharge.** The receipt by the Trustee or proper officer of that other fund or scheme receiving the funds or benefits transferred or rolled over constitutes a full and complete discharge to the Trustee of any liability to the member, or any person claiming through the member, with respect to the funds or benefits transferred or rolled over, and the Trustee is not bound to see to the application of the funds or benefits transferred or rolled over.
624. **Member ceases to have rights against Fund.** On the transfer or rollover, the member's or beneficiary's rights and interests in the Fund or under this Deed in respect of those funds or benefits are extinguished.
625. **Successor fund transfers.** Where permitted by the Act and the Regulations, the Trustee may transfer or rollover the whole or part of the benefit entitlement held on behalf of a member to an eligible rollover fund, an approved benefit arrangement or a successor fund without the member's request or consent.
626. **Transfer or rollover of benefits to eligible rollover funds.** If the Trustee resolves not to implement member protection rules on behalf of its members with small accounts, or its lost members, it must arrange to transfer their benefits either:
- (a) to another fund which will protect them; or

- (b) to an eligible rollover fund.
- 627. If the member or beneficiary is not contactable, then the Trustee may transfer the member's benefits either:
 - (a) to an eligible rollover fund; or
 - (b) to a successor fund (a fund which will grant the person rights equivalent to those the person had in the prior fund).
- 628. If the Trustee possesses the member's tax file number whose benefits are to be transferred, it must pass the tax file number on to the eligible rollover fund or successor fund, unless the member has specifically asked that it not be disclosed.
- 629. **Information to members.** The Trustee must notify members when it decides:
 - (a) to transfer or rollover their benefits to a successor fund;
 - (b) if the Trustee has an eligible rollover fund policy, to transfer or rollover the benefits of a particular class of fund members covered by the Fund's an eligible rollover fund policy to an eligible rollover fund;
 - (c) if the Trustee has an eligible rollover fund policy, to change the class of members affected by the Fund's an eligible rollover fund policy;
 - (d) to seek approval from the Regulator to transfer benefits under Part 18 of the Act.

NOTICES

- 630. **How notice is given.** The Trustee may give notice to a member, a prospective members, a beneficiary or a participating employer:
 - (a) personally;
 - (b) by sending it by post to the address (if any) nominated by the member or beneficiary;
 - (c) by sending it by post to the member's or beneficiary's last known address;
 - (d) by sending it to the fax number or e-mail address (if any) nominated by the member or beneficiary.
- 631. **When notice by post, fax or e-mail is given.** A notice sent by post is taken to be given 3 days after it is posted. A notice sent by fax or by e-mail is taken to be given on the business day after it is sent to the correct address.

INCONSISTENCY AND SEVERANCE

- 632. This Deed must be read and construed on the basis that the provisions of the Act and the Regulations are incorporated into this Deed to the extent that they impose covenants, obligations or requirements on the Trustee or are required by the Act and the Regulations to be incorporated, in order for the Fund to operate as a complying self managed superannuation fund, to qualify for concessional tax treatment and to satisfy any other requirements of the Regulator, but this Deed must not be construed, and no provision or regulation is to be so incorporated, if to do so would constitute a breach of a power conferred on the Trustee by this Deed to vary, add to or rescind its provisions;
- 633. If the governing legislation requires certain provisions to be included in this Deed, those provisions are, to the extent they are relevant to the Fund, automatically incorporated in this Deed and override any inconsistent provisions.
- 634. If a provision of this Deed:
 - (a) is inconsistent with the governing legislation, then the governing legislation prevails, and that provision of this Deed, to the extent of the inconsistency, does not include it;
 - (b) permits the Trustee to engage in any conduct, dealings or transactions, exercise any powers or do anything which is inconsistent with or is not permissible under or by the governing legislation at the relevant time, the governing legislation prevails to the extent of the inconsistency.

635. If a provision of this Deed is wholly or partly invalid, then:
- (a) where a reading down or limitation of the operation of the invalid provision would remove the invalidity, this Deed must be so constructed;
 - (b) where it is not possible to apply paragraph (a), that provision or the relevant part of is severed from this Deed.
636. However, where the Regulator, if authorised by the governing legislation, determines that a requirement that would otherwise be a requirement of the governing legislation does not have to be complied with, then it is not a requirement of the governing legislation for the purposes of this Deed unless the Trustee so resolves.
637. In the event of any doubt arising as to the effect of the Act and the Regulations or whether there is any inconsistency between the Act and the Regulations and a provision of this Deed, the resolution of the Trustee is final.
638. To the extent not prohibited by the Act and the Regulations, the Trustee may by resolution in writing resolve that a provision of the Act or the Regulations does not apply, either generally to the Fund or in respect of any particular application and this Deed must be construed accordingly.

BRINGING THE FUND TO AN END

639. **When does the Fund come to an end?** The Fund terminates if:
- (1) the Trustee considers it to be in the interests of the members and resolves that the Fund be wound up;
 - (2) the Trustee considers that the Fund has no assets and resolves that the Fund be wound up;
 - (3) the Trustee considers that the liabilities of the Fund exceed its assets (other than for a temporary short term) and resolves that the Fund be wound up;
 - (4) the members resolve by a special resolution that the Fund be wound up;
 - (5) there is no Trustee and a new Trustee has not been appointed within 90 days;
 - (6) the Fund ceases to have at least one member;
 - (7) there is no person to whom a benefit is or may be payable;
 - (8) the Regulator requires that the Fund be wound up;
 - (9) the governing legislation requires that it be wound up —
- whichever occurs first (“**the termination date**”).
640. Any obligation of a member, employer or anyone else to make contributions to the Fund ceases (unless liability to pay the contribution has already accrued or arisen).
641. **No further receipts.** As and from the termination date, the Trustee must not accept any:
- (1) new members;
 - (2) further contributions (unless liability to pay the contribution has already accrued or arisen);
 - (3) roll-overs or transfers.
642. **What happens when the Fund comes to an end?** Subject to the Act, the Trustee must at the termination date:
- (1) give written notice to each member, beneficiary and participating employer that the Fund is to terminate on the termination date;
 - (2) inform the Commissioner within 28 days of the Fund being wound up;
 - (3) as soon as practicable sell, call in and convert into money the investments and property constituting the Fund assets;
 - (4) make or obtain a valuation of Fund assets;
 - (5) appoint an approved auditor to give it a report, in the approved form, of the operations of the Fund;
 - (6) prepare and lodge a final annual return with the Commissioner.
 - (7) pay liabilities in respect of the administration and other costs associated with the winding-up proceedings;
 - (8) pay out or otherwise discharge and satisfy all other debts and liabilities of the Fund;

- (9) retain sufficient funds, or make such provision as in its discretion it considers necessary, to satisfy any outgoings or liabilities (actual, prospective or contingent) incurred, apprehended or expected by the Trustee in connection with the Fund, including to cover liabilities for tax and any right to reimbursement, indemnity or recoupment;
 - (10) if a member or beneficiary has not met a condition of release, roll-over or transfer their entitlements subject to preservation to an approved fund;
 - (11) deal with the entitlements of lost members or unclaimed benefits.
643. If the Fund is solvent at the termination date, the amount allocated to each individual member at the termination date must not be less than the minimum guaranteed benefit of the member.
644. If the Fund is technically insolvent at the termination date, an amount equal to the net realisable value of the assets at the termination date must be apportioned among all the members at that date so that the proportion of that amount that is apportioned to an individual member bears the same relation to the whole amount as the minimum guaranteed benefit of that member bears to the total of minimum guaranteed benefits in respect of all the members at the termination date.
645. Subject to the two preceding clauses, the Trustee must:
- (1) hold the remainder of the Fund assets, including income from it, in trust for the members and beneficiaries and their dependants;
 - (2) decide or ascertain each member's or beneficiary's entitlement;
 - (3) provide for benefits that became payable on or before the termination date, including benefits that have begun to be paid in the form of an income stream or superannuation pension;
 - (4) subsequently, distribute the balance amongst the members or beneficiaries who at midnight on the termination date were members or beneficiaries in accordance with their entitlements under this Deed until the Fund assets have been fully distributed;
 - (5) if the Fund assets have not been fully distributed under the preceding sub-clause, distribute the balance amongst the members or beneficiaries or their dependants who at midnight on the termination date were members or beneficiaries or their dependants in such proportions as the Trustee considers reasonable and equitable;
 - (6) if the Fund assets have not been fully distributed under the preceding sub-clause (for example, there are no surviving members or beneficiaries of the Fund or their dependants), distribute the balance amongst the personal representatives of the members or beneficiaries in such proportions as the Trustee considers reasonable and equitable;
 - (7) if the Fund assets have not been fully distributed under the preceding sub-clause, distribute the balance amongst the participating employers and the next of kin of members or beneficiaries and former members or beneficiaries in the proportions as the Trustee considers reasonable and equitable;
 - (8) if the Fund assets have not been fully distributed under the preceding sub-clause, distribute the balance amongst such persons and in such proportions as the Trustee considers reasonable and equitable.
646. **Manner of distribution.** On the termination of the Fund, the Trustee may distribute property comprised in the Fund assets in the manner described in clauses 546 to 556 (as appropriate) and, in the case of:
- (a) a minor, the payment or transfer to their parents or guardian;
 - (b) anyone under a legal disability, the payment or transfer to their personal representative —
- constitutes a full discharge to the Trustee in relation to that payment and the Trustee is not bound to see to the application of that payment or transfer.
647. **Power to postpone sale, etc.** The Trustee may postpone the sale, calling in and conversion of any part of the investments and property of the Fund assets for such time as it thinks desirable in the interests of the members and is not liable for any loss attributable for doing so.

648. **Final accounts.** On the termination of the Fund, the Trustee must:
- (1) cause to be prepared financial statements as at the termination date which comply with the provisions of clause 206; and
 - (2) supply a copy of all such statements and particulars to each member and beneficiary.

CAN THIS DEED BE AMENDED?

649. **Amendment of this Deed.** This Deed can be amended by:
- (1) a resolution of the Trustee;
 - (2) a special resolution passed by the members.
- Signpost: the Trustee may change the name of the Fund without the necessity of amending this Deed: clause 1.
650. **Restriction on amendment.** Neither the Trustee nor the members have power to amend clause 3 of this Deed.
651. Subject to the next clause, an amendment, alteration, variation, revocation to this Deed is not permitted if:
- (1) it is inconsistent with the Act; or
 - (2) it has the effect of cancelling, divesting, varying, modifying, reducing or adversely affecting the existing rights or claims of any member or beneficiary to accrued benefits or entitlements, or the amount of those accrued benefits or entitlements.
652. Sub-clause (2) of the preceding clause does not apply to an amendment if:
- (1) the amendment is expressly permitted by the Act or the Regulations;
 - (2) the amendment is necessary for compliance with:
 - (a) the Act, the *Income Tax Act* 1986, the *Superannuation (Unclaimed Money and Lost Members) Act* 1999, the *Income Tax Assessment Act* 1997;
 - (b) regulations made under any of those Acts;
 - (3) the amendment:
 - (a) affects only the benefits of members in respect of whom assessments under section 15 of the *Superannuation Contributions Tax (Assessment and Collection) Act* 1997 have been made; and
 - (b) serves to enable the Trustee:
 - (i) to be reimbursed for an amount paid, or to be paid, under that Act and the *Superannuation Contributions Tax (Imposition) Act* 1997; or
 - (ii) in relation to an amount paid before reimbursement occurs, to charge interest on the amount paid;
 - (4) the amendment is made to give effect to a payment split;
 - (5) the amendment is made as a consequence of the Trustee taking action that, because of Division 2.2 of the *Family Law (Superannuation) Regulations* 2001, has the effect that a future payment in respect of the superannuation interest of the member spouse or domestic partner would not be a splittable payment; or
 - (6) the amendment is made as a consequence of the operation of this Deed that, because of Division 2.2 of the *Family Law (Superannuation) Regulations* 2001, has the effect that a future payment in respect of the superannuation interest of the member spouse or domestic partner would not be a splittable payment; or
 - (7) the amendment enables the Trustee to be reimbursed for an amount paid, or to be paid, under section 24 of the Co-contribution Act.
 - (8) the amendment:
 - (a) is solely for the purpose of rectifying a mistake which has resulted in a member or beneficiary's right or claim to accrued benefits, or the amount of the member or beneficiary's accrued benefits, being advantageously altered; and
 - (b) the Regulator has approved the amendment; or
 - (9) in the case of an amendment that does not relate to minimum benefits within the

meaning of Part 5 of the Act:

- (a) if after the Trustee has provided the information described the next clause, written consent to the amendment has been given by:
 - (i) the member or beneficiary; and
 - (ii) if the benefits are subject to a payment split, the non-member spouse or domestic partner; or
 - (b) the amendment:
 - (i) has been approved by a special resolution of all the members and beneficiaries who are affected by it, in accordance with the procedures specified in the clause following the next clause; and
 - (ii) the Regulator has consented in writing to the amendment;
653. A consent referred to in subclause (8) of the preceding clause is not effective for the purposes of this regulation unless, before the consent is given:
- (1) the Trustee has given to the member or beneficiary a notice that:
 - (a) informs them that it is proposed that their right or claim to accrued benefits, or the amount of those benefits, be affected adversely;
 - (b) explains the effect of the amendment on their rights or claims to accrued benefits and the amount of those benefits; and
 - (c) provides any other information that the Trustee reasonably believes a they would expect to be told about the proposed amendment; and
 - (2) if the benefits are subject to a payment split, the Trustee has given a copy of the notice to the non-member spouse or domestic partner; and
 - (3) the member or beneficiary, and the non-member spouse (if any), have been allowed adequate time to consider the proposed amendment and its effect on the their rights or claims to accrued benefits and the amount of those benefits.
654. For the purposes of subclause (9) of the penultimate clause, the procedures to be followed in obtaining the approval of the members and beneficiaries are as follows:
- (1) the Trustee must send to each member or beneficiary who would be adversely affected by the amendment a notice that:
 - (a) informs them that it is proposed that the their right or claim to accrued benefits, or the amount of those benefits, be affected adversely;
 - (b) explains the effect of the amendment on their rights or claims to accrued benefits and the amount of those benefits;
 - (c) explains that the amendment requires:
 - (i) the approval of by a special resolution of all the members and beneficiaries who are affected by it, obtained by ballot; and
 - (ii) the consent of the Regulator;
 - (d) explains the manner in which they can cast their vote in relation to the ballot; and
 - (e) provides any other information which the Trustee reasonably believes a member or beneficiary would expect to be told about the proposed amendment;
 - (2) each member or beneficiary is given not less than 21 days to consider the notice and the proposed amendment before voting; and
 - (3) the ballot is conducted in accordance with the Third Schedule.
655. **Date of effect of amendment.** A special resolution amending, modifying, varying or revoking any provision of this Deed takes effect:
- (a) if no later date is specified in the resolution, then on the date on which the resolution is passed; or
 - (b) on a later date specified in the resolution.
656. An amendment will take effect from the date specified by the Trustee (whether before or after the date of the deed or resolution), or if none is specified, from the date of the deed or resolution.
657. **Effect of amendment.** After the provisions of that deed of variation or resolution have come into effect, this Deed and its provisions are to be construed and take effect as thereby altered, modified, varied, amended, revoked or added to.
658. **Trustee must send copy of Deed to members.** The Trustee must send a copy of this

Deed to a member within 7 days if the member:

- (a) asks the Trustee, in writing, for a copy; and
- (b) pays any fee required by the Trustee.

659. The Trustee must also send:

- (a) a copy of any deed of variation;
- (b) a short summary of the effect of the deed of variation —
free of charge to the members within 30 days of the date of the amendment or variation regardless of whether the member requests it.

GOVERNING LAW

660. **Governing law.** This Deed is to be governed by, and this Deed is to be construed in accordance with:

- (1) the law of the State or Territory in which duty or stamp duty on or in respect of this Deed has been or will be paid;
- (2) if no duty or stamp duty has been paid or is payable on or in respect of this Deed, then the law of the State or Territory (if any) specified in **Item 4** of the Fourth Schedule;
- (3) if no State or Territory is specified in **Item 4** of the Fourth Schedule, then the law of the place of incorporation of the Trustee named in **Item 2** of the Fourth Schedule or, if there is more than one, the place of residence of the Trustee whose name appears first in **Item 2** of the Fourth Schedule.

661. Section 35B of the *Trustee Act* 1936 (SA) does not apply to this Deed.

662. **Change of governing law.** The Trustee may at any time before the termination date resolve that from a specified date:

- (a) the Fund is governed by, and this Deed is to be construed in accordance with, the laws of another Australian jurisdiction; and
- (b) the courts of that jurisdiction have exclusive jurisdiction in any proceedings involving the construction, rights or obligations under this Deed.

First Schedule

Trustee's powers: for the information of banks and other lenders

In the administration of the Fund and in the exercise of the powers, authorities and discretions conferred by the Act, this Deed or by law, the Trustee has the following powers which are in addition to the powers, authorities and discretions vested in it by any other provision of this Deed or by law:

- (1) *Bank accounts*: to open in the name of the Trustee or in the name of a person or corporation as nominee of the Trustee any cheque, savings, deposit or other account with any bank or financial institution wherever situated with full power to operate on any such account including, without limitation, power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account;
- (2) *Investments*: to invest contributions to the Fund;
- (3) *Policies*: to effect or acquire (including by way of assignment) policies of life assurance of any kind on the life of any member or in respect of sickness, disability or accident to any member in connection with benefits to be paid from the Fund, and to pay premiums, transfer, discontinue or surrender, change the situs of and deal with such policies in any manner, whether or not such policies are individual policies on the life of one member or a group policy on the lives of two or more members, and to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any member;
- (4) *Annuities*: to purchase and effect annuities from life insurance companies or registered organisations in order to provide all or a part of any income stream or superannuation pension;
- (5) *Generally deal with Fund*: to sell, call in, convert into money, grant options or rights to purchase, or otherwise deal with, dispose of or transfer any item or asset comprising the whole or part of the Fund assets as if it were the absolute and beneficial owner of the Fund;
- (6) *Corporate securities*: with respect to any company in which the Trustee holds shares, debentures, options, convertible notes or other security ("securities"), to exercise the following powers in addition to powers conferred by law:
 - (a) to pay calls on securities or permit securities to be forfeited and sold;
 - (b) to purchase securities and take up securities of a new issue;
 - (c) to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
 - (d) to sell securities at a price and upon terms as the Trustee may decide;
 - (e) to assent to or join in any arrangement relating to the sale, transfer or exchange of any securities or modifying any rights, privileges or interests in relation to securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any securities or of the capital of any company in which any securities form part of the Fund or by which any securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, and for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and to pay out of capital or income any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
 - (f) to agree in respect of a winding up with the liquidator of the company or any member or creditor of the company, or in a voluntary administration, as the Trustee thinks fit;
- (7) *Unit trust interests*: to acquire units or sub-units of any fixed or flexible unit trust either by way of application, purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust as income or capital and as unit holder the Trustee may in its absolute discretion consent to a breach of trust by the trustee of the unit trust or give its consent to, or waive its rights with respect to, any action taken or to be taken by the trustee of the unit trust and the Trustee may so act even if the Trustee's actions may not be in the interests of the Fund or the unit trust;
- (8) *Futures contracts, derivatives and options*: to enter into any option agreement relating to any lending or financing facility, agreement or transaction and to buy, sell, open, close-out or otherwise deal in futures contracts of all kinds and to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including

buying, selling, staddle switch and stop-loss orders to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, or to enter into any derivatives contract or purchase or sell or deal in any derivatives product, and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world;

- (9) *Real property*: insofar as it is permitted by the Act, to acquire, dispose of, exchange, lease, sub-lease, let, grant, release or vary any right or easement or otherwise deal with real property or any estate or interest in real property;
- (10) *Personal property*: insofar as it is permitted by the Act, to acquire, dispose of, exchange, hire, lease, let or otherwise deal with personal property of any kind;
- (11) *Lease*: to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature in and to any realty or estate or interest in land or in and to motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and personalty of any other description or to lease and let property forming part of the Fund for such period, at a rental and to persons and upon such terms as the Trustee may decide and to accept surrenders from, make allowances to and arrangements with, a tenant;
- (12) *Maintain property*: to maintain and preserve in good and substantial order and condition real or personal property of the Fund or otherwise held by the Trustee under the terms of this Deed and to pay or defray those costs;
- (13) *Development of property*: to enter into any agreement with any person with respect to the development and turning to account of any real or personal property or any interest in property and any other right, privilege or interest for the time being subject to these trusts or with respect to the construction of any buildings, laying out or preparing land for building purposes or in developing or turning to account real or personal property or any rights, privileges or interests;
- (14) *Subdivision of property*: to partition or subdivide property of any kind which, or any interest in which, may for the time being be subject to the Fund and to pay moneys by way of equality or partition;
- (15) *Choses in action*: to acquire choses in action, including debts and obligations of all kinds, for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with such choses in action in any way on such terms and conditions as the Trustee may see fit;
- (16) *Borrowings*: insofar as permitted by the Act and the Regulations, to borrow or raise any financial accommodation, but only in the circumstances allowed by the Act or the Regulations;
- (17) *Commercial bills*: insofar as permitted by the Act and the Regulations, to draw, endorse, accept or be a party in any way to a commercial bill or other bill of exchange, promissory note, letter of credit, fixed bill option, hypothecation or other facility involving the raising, borrowing or lending of, by or to the Trustee if:
 - (a) it is limited to the asset which is the subject of the instalment warrant; and
 - (b) the terms and conditions of the instalment warrant expressly exclude any recourse by the bank, financial institution or other lender to any other assets of the Fund;
- (18) *Mortgages and other securities over real and personal property and undertakings*: insofar as permitted by the Act and the Regulations, to grant mortgages, charges or other security (including fixed and floating charges, liens and hypothecations) over any part of the Trust assets, including real and personal property and business undertakings if:
 - (a) it is limited to the asset which is the subject of the instalment warrant; and
 - (b) the terms and conditions of the instalment warrant expressly exclude any recourse by the bank, financial institution or other lender to any other assets of the Fund;
- (19) *Lease facility*: insofar as permitted by the Act and the Regulations, to enter into any lease facility or hire purchase agreement in respect of personal property if:
 - (a) it is limited to the asset which is the subject of the instalment warrant; and
 - (b) the terms and conditions of the instalment warrant expressly exclude any recourse by the bank, financial institution or other lender to any other assets of the Fund;
- (20) *Indemnities*: insofar as permitted by the Act and the Regulations, to give indemnities to a bank, financial institution or other lender in respect of instalment warrants if:
 - (a) the indemnity is limited to the asset which is the subject of the instalment warrant; and
 - (b) the terms and conditions of the indemnity expressly exclude any recourse by the bank, financial institution or other lender under that indemnity to any other assets of the Fund;
- (21) *Intellectual property rights*: to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licences, concessions, know-how and the like conferring any exclusive or non-exclusive or limited right to use or any other intellectual property rights and to use, exercise, develop or grant licences in respect of or otherwise turn to account

- property rights or information so acquired;
- (22) *Licences*: to apply for, purchase or hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business or venture which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- (23) *Power to lend*: to lend money only in the circumstances allowed by the Act;
- (24) *Receive gifts*: to receive property by inter vivos gift or by will or under the provisions of any other trust or otherwise from any person as an addition to the Fund and whether subject to liabilities or not and to hold the same upon these trusts and to administer such additions as part of the Fund;
- (25) *Employment*: to engage or employ persons, including a person having an interest in or who is the holder of an office in the Trustee, or obtain such other assistance as the Trustee may deem requisite, to provide staff, amenities and to vary and terminate any contract of employment;
- (26) *Attorney*: to appoint any person as the representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke any such appointment;
- (27) *Engage professionals and other agents*: to employ or engage agents or professionals, such as brokers, commission agents, managers, agents, advisers, solicitors, barristers, auditors, accountants, surveyors, valuers, etc, in the execution of these trusts and powers and instead of acting personally and pay them out of the Fund to transact any business or to do any act required to be done in connection with the administration of the trusts;
- (28) *Professional indemnity insurance*: to the extent permitted by the Act and the *Corporations Act*, to obtain indemnity insurance in respect of liabilities incurred by the Trustee and, where the Trustee is a corporation, its directors, officers or associates, arising out of, or in connection with, performance of duties and exercise of powers relating to the Fund
- (29) *Legal proceedings*: to commence, defend or become a party to any proceeding or arbitration through to hearing and determination, and to compromise and settle the proceeding or arbitration for such consideration and upon such terms and conditions as the Trustee may decide;
- (30) *Power to appropriate Fund assets in specie*: insofar as it is permitted by the Regulations, to appropriate in specie any portion of the Fund, or any investment to or towards the share or entitlement of a member or beneficiary and to charge any such share or entitlement with such sum of money by way of equality as the Trustee may think fit and for these purposes the Trustee may fix the value of any real or personal property forming part of the Fund and every such appropriation, charge and valuation is binding on all persons who may at any time be entitled to any interest in the Fund;
- (31) *Interests*: subject to the Act, the Regulations and the *Income Tax Assessment Act 1997*, to adjust the interests of members to compensate for any differential tax benefits (for example, to allow an income stream recipient to benefit from dividend imputation credits);
- (32) *Superannuation splitting*: to do such acts matters and things as are necessary to achieve compliance with the *Family Law Act 1975* and the *Family Law (Superannuation) Regulations 2001*;
- (33) to acquire an asset from a related superannuation fund to give effect to a family law splitting arrangement;
- (34) *Management expenses*: to pay out of income or capital all costs, charges and expenses incidental to the management of the Fund or to the exercise of any permitted power, authority of discretion or in carrying out or performing the trusts of this Deed;
- (35) *Pay general expenses*: to pay insurance premiums, rates, taxes, rents and outgoings in connection with real or personal property of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable and if the Trustee is unable to charge such expenditure against income of the Fund, it is at liberty to resort to capital;
- (36) *Incidental powers*: to do all other things as may be incidental to the exercise of the powers, rights, discretions and priorities conferred on the Trustee by the Act, the Regulations and this Deed.

Second Schedule

Resolutions and Meetings of Trustees

Resolutions and Declarations without Meetings

1. **Resolutions and declarations of a sole Trustee.** If there is a sole Trustee, that Trustee may pass a resolution by recording it and signing the record.
2. If there is a sole Trustee, that Trustee may make a declaration by recording it and signing the record.
3. Passage of such a resolution or declaration must be recorded in the minutes.
4. **Circulating resolutions of Trustees where there is more than one Trustee.** The Trustees may pass a resolution without a meeting being held if all the Trustees entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
5. Separate copies of a document may be used for signing by the Trustees if the wording of the resolution and statement is identical in each copy.
6. The resolution is passed when the last Trustee signs.
7. Passage of such a resolution must be recorded in the minutes.

Trustees' Meetings

8. **Calling Trustees' meetings.** A meeting may be called by a Trustee giving reasonable notice individually to the other Trustee or Trustees.
9. **Use of technology.** A Trustees' meeting may be called or held using any technology consented to by all the Trustees. The consent may be a standing one. A Trustee may only withdraw their consent within a reasonable period before the meeting.
10. **Chairing Trustees' meetings.** The Trustees may elect a Trustee to chair their meetings. The Trustees may determine the period for which the Trustee is to be the chair.
11. The Trustees must elect a Trustee present to chair a meeting, or part of it, if:
 - (a) a Trustee has not already been elected to chair the meeting; or
 - (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.
12. **Quorum at Trustees' meetings.** Unless the Trustees determine otherwise, the quorum for a Trustees' meeting is such number as is determined by the Trustees and, unless so determined, is 2, and the quorum must be present at all times during the meeting.
13. **Passing of Trustees' resolutions.** If there are two or more Trustees, then a resolution of the Trustees must be passed unanimously.
14. If there are more than two Trustees, then a resolution of the Trustees must be passed by a majority of the votes cast by Trustees. A resolution passed by a majority of the Trustees is as valid as if they had so resolved unanimously.
15. The chair does not have a casting vote.

Third Schedule

Resolutions and Meetings of Members

RESOLUTIONS WITHOUT MEETINGS

1. **Circulating resolutions of members.** The members may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. This clause only applies to resolutions of the members that this Deed requires or permits to be passed at a general meeting.
2. Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
3. A body corporate representative may sign a circulating resolution.
4. The resolution is passed when the last member signs.
5. Passage of the resolution must be recorded in the minutes.
6. The members that pass a resolution without holding a meeting satisfies any requirement to give members information or a document relating to the resolution — by giving members that information or document with the document to be signed.
7. The passage of the resolution satisfies any requirement in this Deed that the resolution be passed at a general meeting.
8. **Resolutions of sole member.** If the Fund has a sole member, the member may pass a resolution by recording it and signing the record.
9. A body corporate representative may sign such a resolution.
10. Passage of the resolution must be recorded in the minutes.
11. The passage of the resolution satisfies any requirement in this Deed that the resolution be passed at a general meeting.

WHO MAY CALL MEETINGS OF MEMBERS?

12. **Calling of meetings of members by Trustee.** The Trustee may call a meeting of the members.
13. **Calling of general meeting by Trustee when requested by members.** The Trustee must call and arrange to hold a general meeting on the request of at least one member.
14. The request must:
 - (a) be in writing;
 - (b) state any resolution to be proposed at the meeting;
 - (c) be signed by the members making the request; and
 - (d) be given to the Trustee.
15. Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
16. The percentage of votes that members have is to be worked out as at the midnight before the request is given to the Trustee.
17. The Trustee must call the meeting within 21 days after the request is given to the Trustee. The meeting is to be held not later than 2 months after the request is given to the Trustee.
18. **Failure of Trustee to call general meeting.** A member who makes a request under clause 13 of this Schedule may call and arrange to hold a general meeting if the Trustee does not do so within 21 days after the request is given to the Trustee.
19. The meeting must be called in the same way, so far as is possible, in which general meetings of the members may be called. The meeting must be held not later than 3 months after the request is given to the Trustee.
20. To call the meeting the members requesting the meeting may ask the Trustee for a copy of the register of members. The Trustee must give the members the copy of the register without charge.
21. The Trustee must pay the reasonable expenses the members incurred because the Trustee failed to call and arrange to hold the meeting.
22. **Calling of general meetings by members.** A member may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the

meeting.

23. The meeting must be called in the same way, so far as is possible, in which general meetings of the members may be called.
24. The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

HOW TO CALL MEETINGS OF MEMBERS

25. **Amount of notice of meetings.** Subject to the next clause, at least 21 days notice must be given of a meeting of the members.
26. **Calling meetings on shorter notice.** The Trustee may call on shorter notice if members with at least 75% of the members entitled to vote at the meeting agree beforehand.
27. **Notice of meetings of members to Trustee and members.** Written notice of a meeting of the members must be given individually to each member entitled to vote at the meeting and to each Trustee.
28. **How notice is given.** The Trustee may give the notice of meeting to a member:
 - (a) personally;
 - (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
 - (c) by sending it to the fax number or e-mail address (if any) nominated by the member.
29. A defect in the notice given does not invalidate a meeting.
30. The accidental omission to give notice to (or the non-receipt of a notice of meeting by) a member does not invalidate the meeting.
31. **Contents of notice of meetings of members.** A notice of a meeting of the members must:
 - (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (b) state the general nature of the meeting's business;
 - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
 - (d) if a member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (1) that the member has a right to appoint a proxy;
 - (2) whether or not the proxy needs to be a member;
 - (3) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
32. **Notice of adjourned meetings.** When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

MEMBERS' RIGHTS TO PUT RESOLUTIONS ETC AT GENERAL MEETINGS

33. **Members' resolutions.** A member may give Trustee notice of a resolution that they propose to move at a general meeting.
34. The notice must:
 - (a) be in writing;
 - (b) set out the wording of the proposed resolution; and
 - (c) be signed by the members proposing to move the resolution.
35. Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
36. The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.
37. **Trustee giving notice of members' resolutions.** If the Trustee has been given notice of a resolution under clause 34 of this Schedule, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.
38. The Trustee must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
39. The Trustee is responsible for the cost of giving members notice of the resolution if the Trustee receives the notice in time to send it out to members with the notice of meeting.
40. The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Trustee in giving members notice of the resolution if the Trustee does

- not receive the members' notice in time to send it out with the notice of meeting. At a general meeting, the Trustee may resolve to meet the expenses itself.
41. The Trustee need not give notice of the resolution:
 - (a) if it is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are to bear the expenses of sending the notice out, unless the members give the Trustee a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.
 42. **Members' statements to be distributed.** Members may request the Trustee to give to all its members a statement provided by the members making the request about:
 - (a) a resolution that is proposed to be moved at a general meeting; or
 - (b) any other matter that may be properly considered at a general meeting.
 43. The request must be made by a member.
 44. The request must be:
 - (a) in writing;
 - (b) signed by the members making the request; and
 - (c) given to the Trustee.
 45. Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
 46. The percentage of votes that members have is to be worked out as at the midnight before the request is given to the Trustee.
 47. After receiving the request, the Trustee must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.
 48. The Trustee is responsible for the cost of making the distribution if the Trustee receives the statement in time to send it out to members with the notice of meeting.
 49. The members making the request are jointly and individually liable for the expenses reasonably incurred by the Trustee in making the distribution if the Trustee does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the members may resolve to meet the expenses itself.
 50. The Trustee need not comply with the request:
 - (a) if the statement is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are responsible for the expenses of the distribution, unless the members give the Trustee a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

HOLDING MEETINGS OF MEMBERS

51. **Time and place for meetings of members.** A meeting of the members must be held at a reasonable time and place.
52. **Technology.** The Trustee may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.
53. **Quorum.** The quorum for a meeting of the members is:
 - (a) if there is only one member, that member;
 - (b) 2, unless another number is specified in **Item 8** of the Fourth Schedule — and the quorum must be present at all times during the meeting.
54. In deciding whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than one proxy or representative, count only one of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.
55. A meeting of the members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the Trustee specify. If the Trustee does not specify one or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified, the same day in the next week;
 - (b) if the time is not specified, the same time; and
 - (c) if the place is not specified, the same place.
56. If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the members present in person or by proxy will form a quorum.
57. **Attendance of Trustee.** The Trustee is entitled to attend and speak at meetings of members even though it is not a member.
58. **Chairing meetings of members.** The Trustee may appoint an individual (whether a member or

not) to chair meetings of the members.

59. The members at a meeting of the members must elect an individual present to chair the meeting (or part of it) if:
- (a) a chair has not previously been appointed by the Trustee to chair the meeting; or
 - (b) a previously appointed or elected chair is not available, or declines to act, for the meeting (or part of the meeting).
60. The chair must adjourn a meeting of the members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.
61. **Adjourned meetings.** A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
62. **Business at adjourned meetings.** Only unfinished business is to be transacted at a meeting resumed after an adjournment.

PROXIES AND BODY CORPORATE REPRESENTATIVES

63. **Who can appoint a proxy?** A member who is entitled to attend and cast a vote at a meeting of the members may appoint anyone as the member's proxy to attend and vote for the member (if the member is entitled to vote) at the meeting.
64. The person appointed as the member's proxy may be an individual or a body corporate. The proxy does not have to be another member.
65. The appointment may specify the proportion or number of votes that the proxy may exercise.
66. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
67. Disregard any fractions of votes resulting from the application of clauses 65 or 67 of this Schedule.
68. **Rights of proxies.** A proxy appointed to attend and vote for a member has the same rights as the member:
- (a) to speak at the meeting;
 - (b) to vote (but only to the extent allowed by the appointment); and
 - (c) to join in a demand for a poll.
69. **Effect of member's presence on proxy's authority.** However, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
70. **Trustee sending appointment forms or lists of proxies must send to all members.** If the Trustee sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
- (a) if the member requested the form or list, the Trustee must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
 - (b) otherwise, the Trustee must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.
71. **Appointing a proxy.** An appointment of a proxy is valid if it is signed by the member making the appointment and contains the following information:
- (a) the member's name and address;
 - (b) the name of the Fund;
 - (c) the proxy's name or the name of the office held by the proxy;
 - (d) the meetings at which the appointment may be used.
72. A document appointing a proxy should be in the following form or in a form that is as similar to the following form as the circumstances allow:

PROXY FORM

(Name of Fund)

I/we [names(s)] of [address], being a member/members of the Fund, hereby appoint [name] of [address] or, in his/her absence, [name] of [address], if no person is named, the chairman of the meeting, as my/our proxy to vote for me/us on my/our behalf at the *Extraordinary General Meeting *Special General Meeting of the Fund to be held on [date] and at any adjournment of that meeting.
If *I/we have appointed 2 persons as proxies, each is entitled to vote in respect

of the following proportions of *my/our voting rights.

1. Proportion of voting rights (%) .

2. Proportion of voting rights (%) .

[If desired, specify here the manner in which the proxy is to vote in respect of one or more particular resolutions]

If there is only one resolution, this form is to be used *in favour of *against the resolution *[strike out whichever is not desired]*.

If there is more than one resolution, identify the resolution:

1. *[insert resolution]*

For []

Against []

[Place a mark in the appropriate box]

2. *[insert resolution]*

For []

Against []

[Place a mark in the appropriate box]

[Should the member not wish to direct the proxy how to vote, the proxy may vote or abstain from voting as the proxy thinks fit]

Dated: *[date]*

Signed: *[signature]*

*Strike out whichever is not desired. To be inserted if desired.

73. An appointment may be a standing one.
74. An appointment is valid even if it contains only some of the information required by clause 71 of this Schedule.
75. An undated appointment is taken to have been dated on the day it is given to the Trustee.
76. An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - (c) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
 - (d) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
77. If a proxy is also a member, the preceding clause of this Schedule does not affect the way that the person can cast any votes they hold as a member.
78. An appointment does not have to be witnessed.
79. A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.
80. **Documents to be received by Trustee before meeting.** For an appointment of a proxy for a meeting of the members to be effective, the following documents must be received by the Trustee at least 48 hours before the meeting:
- (a) the proxy's appointment;
 - (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
81. **Documents received following adjournment of meeting.** If a meeting of the members has been adjourned, an appointment and any authority received by the Trustee at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
82. **Receipt of documents.** The Trustee receives an appointment authority when it is received at any of the following:
- (a) the Trustee's office;
 - (b) a fax number at the Trustee's office;
 - (c) a place, fax number or e-mail address specified for the purpose in the notice of meeting.

83. **Validity of proxy vote.** A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.
84. **Proxy vote valid even if member dies, revokes appointment etc.** Unless the Trustee has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- (a) the appointing member dies;
 - (b) the member is mentally incapacitated;
 - (c) the member revokes the proxy's appointment;
 - (d) the member revokes the authority under which the proxy was appointed by a third party.
85. **Body corporate representative.** A body corporate, for example, a Public Trustee or trustee company which is the personal representative of a member under a disability, may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
- (a) at meetings of the members;
 - (b) relating to resolutions to be passed without meetings.
86. The appointment may be a standing one.
87. The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
88. A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.
89. Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

VOTING AT MEETINGS OF MEMBERS

90. **How many votes a member has.** At a meeting of members:
- (a) on a show of hands, each member has one vote; and
 - (b) on a poll, each member has one vote —
- and a reference to a member voting means a member who is entitled to attend and cast a vote at a meeting of the members on the resolution in question.
91. Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).
92. **Chair's casting vote.** The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.
93. **Members who are minors or under a disability.** A member who is:
- (a) a minor may only vote by a parent or guardian or by such other person as been properly appointed by a court to manage the minor's affairs;
 - (b) under a disability may only vote:
 - (1) by anyone (such as a guardian or administrator) appointed by a court or tribunal for the management of the member's estate or affairs; or
 - (2) by an attorney under an enduring power of attorney —
- upon documentary evidence being produced of the relationship, appointment or power as the Trustee may require.
94. **Objections to right to vote.** A challenge to a right to vote at a meeting of the members:
- (a) may only be made at the meeting; and
 - (b) must be decided by the chair, whose decision is final.
95. **Votes need not all be cast in the same way.** On a poll anyone voting who is entitled to 2 or more votes:
- (a) need not cast all their votes; and
 - (b) may cast their votes in different ways.
96. **How voting is carried out.** A resolution put to the vote at a meeting of the members must be decided on a show of hands unless:
- (a) it is a question which under this Deed must be decided by the holders of a prescribed percentage of votes; or
 - (b) a poll is demanded by members.
97. Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
98. On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

99. The members present may demand a poll.
100. **Matters on which a poll may be demanded.** Subject to the other provisions of this Deed, a poll may be demanded on any resolution.
101. A poll cannot be demanded on any resolution concerning:
- (a) the election of the chair of a meeting; or
 - (b) the adjournment of a meeting.
102. A demand for a poll may be withdrawn.
103. **When a poll is effectively demanded.** At a meeting of the member, a poll may be demanded by:
- (a) at least one member entitled to vote on the resolution; or
 - (b) the chair.
- A proxy may join in the demand for a poll.
104. The poll may be demanded:
- (a) before a vote is taken;
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
105. The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.
106. **When and how polls must be taken.** A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
107. A poll on the election of a chair or on the question of an adjournment must be taken immediately.
108. A resolution passed at a meeting of members is binding upon all members whether or not present at the meeting.

Fourth Schedule

ITEM	DESCRIPTION	DETAILS
Item 1	Name of the Fund	K.C. SUPER FUND
Item 2	Name(s) of Trustee(s)	KIERAN COYLE TRACY MAREE COYLE
Item 3	Names of original members	KIERAN COYLE
Item 4	Governing law: State or Territory	Victoria
Item 5	Date of this Deed	26/3/2012

Signing page

Dated: 12/4/2012

SIGNED SEALED and DELIVERED by
KIERAN COYLE
in the presence of:

Witness *Wilson Leung*
.....
WILSON LEUNG

Level 1, 186 Barkly St, Footscray, Vic 3011

SIGNED SEALED and DELIVERED by
TRACY MAREE COYLE
in the presence of:

Witness *N K Reynolds*
.....
N K Reynolds

17 Peel Rd
Inverleig


