

Jenny Sharpe Super Fund

SMSF Trust Deed

Prepared by:

PGGLegal
PG Gell Legal Services Pty Ltd

Trust Deed

THIS DEED is made on the date specified in the Schedule by the Trustee or Trustees named in the Schedule to this Deed.

Recitals

The Trustees wish to establish a self-managed superannuation fund for the benefit of those people who become Members of the Fund on the terms and conditions set out in this Deed.

Agreed Terms

A. Establishment

The Trustee by this Deed establishes the Fund as a Self Managed Superannuation Fund. The Fund will be vested in the Trustees and will at all times be held, controlled and managed by the Trustees subject to the trusts, powers and provisions of this Deed and the Rules.

The Fund was established on the date specified in the Schedule.

B. Trustee

The Trustees consent to act as trustees of the Fund with effect from the date specified in the Schedule and acknowledge by execution of this Deed that they have read and agree to be bound by this Deed and the Rules.

C. Fund Details

The Fund will be in existence from the date specified in the Schedule and will be known by the name in the Schedule or such other name as the Trustees might in writing determine.

D. Fund Deed and Rules

This Deed includes the Rules. The Rules are those attached to this Deed as amended from time to time.

E. Purpose of the Fund

The Fund is to be maintained for the sole purpose of providing superannuation benefits for its Members and their Dependants.

F. Compliance

The Trustee must ensure that the Fund, from the date of creation, continues its status as a Complying Self Managed Superannuation Fund as defined by and for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

Schedule

Creation Date: 29.11.2018
Fund Name: Jenny Sharpe Super Fund
Meeting Address: Suite 2 20 Chandos St St Leonards NSW 2065
Trustee: Biojen Pty Ltd ACN 624 073 347
Members: Jennifer Kathleen Sharpe

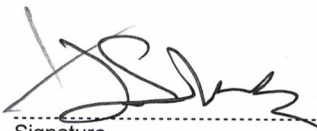
Execution

EXECUTED as a DEED

EXECUTED by
Biojen Pty Ltd ACN 624 073 347
in accordance with section 127 of the
Corporations Act 2001 by the Sole Director:

Please print name of Sole Director

Jennifer Sharpe



Signature

Rules of the Fund

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1. Definitions

In this Deed the following words or expressions have the meaning thereafter ascribed to them:

Act	The <i>SIS Act 1993</i> , the <i>Tax Act</i> , the <i>Corporations Act 2001 (Cth)</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
Ancillary Purposes	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.
Application Form	An application form provided by the Trustees for prospective members to complete and submit to the Trustees.
Associate	Has the meaning given by the <i>Act</i> .
Auditor	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor <i>Act</i> or otherwise determined by the Regulator.
Asset	Means any asset that the Trustees hold for the purposes of the Fund.
Benefit	An entitlement payable or distributable by the Fund which may include a Pension or lump sum payment or transfer of an Asset.
Benefit Arrangement	Means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Special Account established under the <i>Small Superannuation Accounts Act 1995 (Cth)</i> .
Beneficiary	Includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the <i>Act</i> .
Binding Death Benefit Nomination	A direction given to the Trustees by a Member in accordance with and subject to Rule 19 in such form and manner as the Trustees may from time to time specify which is a binding direction for the purposes of the <i>Act</i> as to payment of the Member's Death Benefit in the event of the Member's death.
Child	Includes an adopted child, a step child, an ex-nuptial child, a child of the Spouse of the Member and a child of the Member within the meaning of the <i>Family Law Act 1975 (Cth)</i> .
Commutation Authority	has the meaning given by Subdivision 136-B of Schedule 1 of the <i>Taxation Administration Act 1953 (Cth)</i> .
Complying Superannuation Fund	A Self Managed Superannuation Fund which is compliant with Section 42A of the <i>SIS Act</i> .
Constitutional Corporation	A body corporate which is a trading or non-trading entity or financial corporation which is formed within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i> and to include a company incorporated under the provisions of the <i>Corporations Act 2001</i> .
Contributions	Amounts paid or property transferred to the Trustees for the benefit of a Member or Members.
Core Purposes	Those purposes as defined in section 62 of the <i>SIS Act</i> .

Lump sum	Includes an Asset, in the context of payment of benefits but not in circumstances of severe financial hardship or on compassionate grounds or to a former temporary resident under <i>SIS Regulations 6.20A</i> or <i>6.20B</i> .
Manager	The person or entity appointed by the Trustees to manage the Fund.
Market Value	The amount a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made: <ul style="list-style-type: none"> (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale; (b) the sale occurred after proper marketing of the asset; and the buyer and seller acted knowledgeably and prudently in relation to the sale.
Member	Any person accepted by the Trustees as a member of the Fund and who has not ceased to be a Member and includes a person in receipt of a pension from the Fund.
Member's Account	An account established and maintained by the Trustees on behalf of a Member in accordance with Rule 17.
Member's Accumulation Account	A Member's Account established by the Trustees to accumulate the investments and earnings from contributions to the Fund by or on behalf of the Member.
Member's Pension Account	A Member's Account established by the Trustees from which the payment of a Pension will be debited.
Non-Binding Death Benefit Nomination	A nomination given to the Trustees by a Member in such form and manner as the Trustees may from time to time specify the direction of which the Trustees can but are not bound to follow in the event of the Member's death.
Non-Concessional Contributions	Has the meaning given by section 292-90 of the <i>Income Tax Assessment Act 1997</i> .
Non-Concessional Contributions Cap	Has the meaning given by section 292-85 of the <i>Income Tax Assessment Act 1997</i> .
Old age pensions	Has the meaning given by the Act.
Payment Split	Has the meaning given to that term in Part VIIIB of the <i>Family Law Act 1975 (Cth)</i> .
Pension	Means a benefit taken to be a pension payable by the Fund in accordance with the <i>SIS Act</i> .
Pension Dependants	Those entitled recipients specified in reg 6.21 (2A) and (2B) of the <i>SIS Regulations</i> .
Permanent Incapacity	In relation to a Member means ill health (whether physical or mental) where the Trustees are reasonably satisfied 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.
Policy	Means an insurance policy arranged by the Trustees in accordance with Rule 24.
Product Disclosure Statement (PDS)	A statement which provides a description of the features and benefits of the Fund.

- (d) the *Corporations Act 2001* (Cth);
- (e) the *Bankruptcy Act 1966* (Cth);
- (f) the *Anti-Money Laundering and Counter-Terrorist Financing Act 2006* (Cth);
- (g) any replacement or additional Commonwealth or State law; and
- (h) any other present, future or proposed legal requirements with which the Trustees:
 - (1) are legally obliged to comply; or
 - (2) must comply to obtain the maximum Tax concessions available to the Fund.

Tax Includes all actual or anticipated tax, Surcharge, levy or impost on income, capital gains and superannuation contributions, stamp, financial institutions, registration and other duties, bank accounts debits tax, goods and services tax and other taxes, levies, imposts, deductions and charges together with interest, fines and penalties (if any) and charges, fees or other amounts made or payable in respect of them

Tax Act Either or both of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (as the case may be including any replacement, modification or supplement to those Acts).

Taxable Component Has the meaning given by section 995-1(1) of the *Tax Act*.

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)

Termination Date The date on which the Fund terminates.

Transfer Balance A person's Transfer Balance in his/her Transfer Balance Account at a particular time equals the sum of the Transfer Balance Credits less the sum of the Transfer Balance Debits in the account at that time as set out in Subdivisions 294B and 294C of the *Tax Act*.

Transfer Balance Account A person's Transfer Balance Account tracks the net value of a person's superannuation interests supporting superannuation income streams in retirement phase, according to Transfer Balance Credits and Transfer Balance Debits to that account. A person starts to have a Transfer Balance Account on the later of:

- (a) 1 July 2017; and
- (b) the day the person first starts to be a retirement phase recipient (as defined in s.294-20 of the *Tax Act*) of a superannuation income stream (as defined in section 307-70 of the *Income Tax Assessment Regulations 1997* (CTH)).

Transfer Balance Cap A person's Transfer Balance Cap for the financial year in which a person first starts to have a transfer balance account is equal to the General Transfer Balance cap for that financial year.

Note: The amount of the transfer balance cap is modified for child recipients: see Subdivision 294-E.

- (b) a company may be the Trustee the sole director of which is the Member or a LPR of the Member or the company may have two directors one of which is the Member or the LPR of the Member and another person who is a Relative of the Member or is a person who is not an Employer of the Member.
- 3.6. A member cannot be appointed as Trustee:
- (a) if they have a legal disability but a LPR of that Member can be appointed as a Trustee on their behalf;
 - (b) if they are under a legal disability because of age but a parent or guardian of that Member can be appointed as a Trustee on their behalf provided the Member does not have a LPR.
- 3.7. A Regulator may appoint a person or company as Trustee.
- 3.8. A Trustee will comply with all requirements under the *Act* in relation to their appointment.

Who may not be a Trustee?

- 3.9. A person cannot be a Trustee if that person is a disqualified person under the *SIS Act*.
- 3.10. A body corporate cannot be a Trustee if that body corporate is a disqualified person under the *SIS Act*:
- (a) the company knows, or has reasonable grounds to suspect, that a director is a disqualified person under the *SIS Act* and the disqualification has not been waived or revoked;
 - (b) an administrator or provisional liquidator has been appointed;
 - (c) a receiver, or a receiver and manager has been appointed over the property beneficially owned by the company; and
 - (d) the company has begun to be wound up.
- 3.11. If a Member of the Fund is a person who is under a legal disability because of age and does not have a LPR and a parent or guardian of that Member is a Trustee in place of the Member, then the Trustee of the Fund cannot be a body corporate.

4. Compliance with Superannuation Law

4.1. The provisions of this clause 4 override any other provisions of this Deed

The Trustees must comply with the requirements of the Superannuation Law and are fully empowered (without being obliged) to comply with any provision or standard of the Superannuation Law which is not a requirement.

4.2. Power to comply with the Superannuation Law

- (a) The Trustees may:
 - (1) do anything that the Trustees are required to do or that the Trustees consider necessary, expedient or desirable to comply with any requirement of the Superannuation Law (including expending monies of the Fund); and
 - (2) refrain from doing anything (including, without limitation, delaying or refusing any request or transaction in connection with a Beneficiary's interest in the Fund) that would result in a breach of, or the Trustees breaching, a requirement of the Superannuation Law.
- (b) The Trustees may rely on anything (including any statutory presumptions available to it) in the Superannuation Law, to the extent that the Trustees are entitled to do so in their capacity as trustee of the Fund.
- (c) The Trustees are entitled to be indemnified out of the assets of the Fund for any Liabilities that the Trustees properly incur pursuant to this clause.

- (d) the company and its directors have read and understood the PDS and agree to be bound by the Rules of the Fund; and
 - (e) the company or its directors are not a disqualified company or person under the *SIS Act*.
- 5.3. Subject to the provisions of these Rules and in particular Rule 3.11, where the Trustees accept a person as a Member that person or a parent or guardian of that person who is under a legal disability because of age and does not have a LPR or a LPR of that person is appointed as a Trustee unless that person or a LPR of that person becomes a director of a company which is the Trustee.
- 5.4. On retirement of a Trustee one of the following is appointed Trustee in place of the Trustee who has retired (provided the person or company is not already a Trustee):
- (a) if the retiring Trustee is a person, another person who is a Member or a LPR of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a LPR or a company of which that Member or LPR of that member is a director; and
 - (b) if the retiring Trustee is a company, a company all the directors of which are Members or are the LPR's of Members, or all the persons who are Members or in place of a Member the LPR of that Member or a parent or guardian of that Member who is under a legal disability because of age and does not have a LPR.

6. Trustee Removal

- 6.1. A Trustee will hold office until:
- (a) the Trustee retires in accordance with this Rule
 - (b) being a Constitutional Corporation, it goes into liquidation or has a receiver appointed or enters into administration;
 - (c) the Trustee is removed, or ceases to be eligible to act as Trustee under the *Act*; or
 - (d) being a natural person, the Trustee dies
- 6.2. A Trustee may retire at any time.
- 6.3. If the Fund has only one Member, a person who is not a Member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an employer of the Member is appointed as a Trustee.
- 6.4. A company may retire as a Trustee provided:
- (a) all the directors of that company are appointed as Trustees; or
 - (b) another company is appointed as a Trustee where all directors of the resigning company are also directors of the company being appointed as Trustee.
- 6.5. A Trustee may retire as Trustee of the Fund so long as a new Trustee has first been appointed as a Trustee of the Fund.

Trustee retirement

- 6.6.
- (a) If all Trustees, who are natural persons retire, a company may be appointed the sole Trustee of the Fund in their place, provided the directors of that company are the Members or a LPR in place of a Member;
 - (b) Where 2 or more Trustees were originally appointed it is not obligatory (unless required to satisfy the conditions in s17A of the *SIS Act*) to fill up the original number of Trustees on the retirement of a Trustee. In these circumstances a retiring Trustee, provided that, if in order to vest any part of the Fund Assets in the continuing Trustees alone, it is necessary that it should be duly transferred, the retiring Trustee shall not be discharged in respect of that part until it is duly transferred.

- 8.3. If a Trustee is able to attend the meeting through a communication link established by telephone, audio or audio-visual communication or other approved device, all proceedings will be valid and effective as if that person were physically present.
- 8.4. At any meeting of Trustees a quorum will be formed with the presence of those Trustees who represent Members, the balance of whose Member's Accounts in aggregation exceeds one half of the aggregated amount of all Member's Account balances.
- 8.5.
- (a) The Trustees will determine by majority approval at the first meeting of Trustees one of the following as the method by which Trustees will be entitled to cast votes at all meetings of Trustees:
 - (1) each Trustee being entitled to cast the number of votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each; or
 - (2) each Trustee being entitled to cast one vote each.
 - (b) If the Trustees fail to make a determination in accordance with clause 8.5(a), clause 8.5(a)(2) will apply.
 - (c) If clause 8.5(a)(2) applies and there is a deadlock in making any Trustee decision, the deadlock shall be resolved by weighting each Trustee's votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each
- 8.6. A resolution will be passed by a majority of votes of those who are present at the meeting and who are entitled to vote.
- 8.7. A person may appoint, in writing, another person to act as that person's proxy at any Trustee meeting.
- 8.8. If a written resolution has been signed by all persons entitled to attend a Trustee meeting, the resolution in the terms stated will be deemed as passed at the time and date which the document was last signed by any such person. More than one identical written resolution, each of which has been signed by one or more persons, will constitute one document.

9. Trustee Records and Registers

The Trustee must create and keep such records and registers of the Fund and decisions made as are required by this Deed and the *Act*.

10. Trustee Powers

- 10.1. In addition to those powers, authorities and discretions conferred on the Trustees by this Deed, the Rules, the Superannuation Law or the *Act*, the Trustee will have the following additional powers:

Act notwithstanding personal interest: generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee or any person being a relative of a Trustee or any person being a relative of a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his/her personal capacity or a shareholder or director or as a relative of the Trustee or relative of a director or shareholder of a Trustee or member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee, but provided that this power may only be exercised in the circumstances permitted by the *SIS Act* and the *SIS Regulations*.

Delegation: the Trustees may delegate to any one or more persons, firms or companies on such terms as the Trustees may think fit any of the authorities, powers and discretions conferred upon the Trustees. Without limiting this general power the Trustees may:

- (a) appoint from time to time any one or more persons, firms or companies as the Trustees may think fit to act as Manager, custodian or investment manager subject to such conditions as the Trustees may from time to time determine;
- (b) delegate to and confer upon the Manager, custodian or investment manager such authorities, power or discretions, including the Trustees' power of delegation, as the Trustees may think fit;
- (c) pay out of the Fund to any Manager, custodian, investment manager or other delegate such remuneration for its services as the Trustees consider proper; and
- (d) remove from time to time any Manager, custodian or investment manager.

Expenses: to pay expenses from the assets, Reserves or income of the Fund, including:

- (a) Management expenses: including all costs, charges and expenses relating to management of the Fund, which may include acquiring the services of specialists or administrators;
- (b) General expenses: including all costs, charges and expenses in connection with any real or personal property, which may include insurance premiums, rates, taxes, rent, repairs and any other expense the Trustees may consider necessary;

Excess Non-Concessional Contributions: Provided it is permitted by the *Act*, to allow a Member to withdraw Non-Concessional Contributions in excess of the Non-Concessional Contributions Cap and any associated earnings;

Franchises: to acquire, sell or otherwise deal with franchises, franchise agreements, licences and related dealings;

Futures contracts and options: provided the Trustees maintain a risk management strategy, to engage brokers or commission agents, vary and determine terms of any such engagement directly or through a broker or agent in any market in any part of the world to:

- (a) buy, sell, open, close-out or otherwise deal in futures contracts of all kinds;
- (b) enter into, vary, exercise, abandon or sell any put or call option or rights;
- (c) place bids, make offers, hedge and effect orders including buy, sell, straddle, switch and stop-loss order;
- (d) tender and take delivery of commodities and currencies which are the subject of any futures contract or option; and
- (e) otherwise do and perform all things to operate on, utilise or deal with facilities of any stock or futures exchange.

Gifts: to receive property by gift or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the Fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;

Incidental Powers: to do all such other things as may be incidental to the exercise of the powers, rights, discretions otherwise provided by the Deed, the Rules or by law;

Indemnities: to give indemnities to or on behalf of any person that the Trustees think fit.

Intellectual property: to apply for, purchase or otherwise acquire and to sell intellectual property (including patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like), conferring any exclusive or non-exclusive or limited right to use intellectual property rights as well as develop or grant licenses in respect of intellectual property rights or information so acquired;

- (c) to lease to the Fund any real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee; and
- (d) to lease any property of the Fund to itself;

Unit trust interests: to acquire units or sub-units of any fixed or flexible unit trust whether by way of application or purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights and perform all obligations and receive all distributions as a holder of any units in such a trust.

- 10.2. These powers will be in addition to any other powers, authorities and discretions vested in the Trustee by another provision of the Deed, the Rules, or by Superannuation Law.
- 10.3. These powers will not be limited by, or be construed so as to be limited by any other powers, authorities and discretions otherwise provided by the Deed, the Rules, or by Superannuation Law.
- 10.4. In exercising these powers the Trustees must ensure at all times that the Fund remains a Complying Superannuation Fund.
- 10.5. A Trustee who is a natural person may be a director of any company in which any moneys forming part of the Fund are from time to time invested and may receive remuneration attached to such office without being liable to account for it unless that appointment would compromise or affect the Fund's status as a Complying Superannuation Fund.
- 10.6. Subject to the terms of these Rules the Trustees may exercise or concur in exercising all powers and discretions given under this Deed or by law, notwithstanding that it or any person who is a director or shareholder of the Trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee at the time is the sole Trustee.

11. The Trustees May Borrow as Permitted by the Act

- 11.1. In general circumstances and unless permitted by the *Act* and the Rules, the Trustees must not:
 - (a) borrow money;
 - (b) maintain an existing borrowing of money;
 - (c) recognise, or in anyway encourage or sanction, a charge over, or in relation to a Member's Benefits; and
 - (d) give a charge over, or in relation to, an asset of the Fund.
- 11.2. The Trustees may borrow funds if permitted by the *Act* provided:
 - (a) the asset is held in trust and the Fund will hold a beneficial interest in the asset;
 - (b) the Fund may acquire legal and beneficial ownership of the asset; and
 - (c) the rights of the lender against the Fund for default on the borrowing are limited to the rights relating only to the asset acquired with the borrowed funds.

12. Assets

- 12.1. The Trustees must not acquire an asset from a Member or an Associate of a Member unless that asset is an allowable acquisition under the *Act* and acquired at Market Value.
- 12.2. Except if required for the purposes of limited recourse borrowing arrangements permitted under these Rules and the *SIS Act*, the money or assets of the Fund must be held in the Trustees' names and must be held separately from any money or assets held by the Trustees personally, or that are money or assets, as the case may be, of a standard employer, standard employer sponsor, or an associate of a standard employer sponsor, of the Fund or any other person unless otherwise allowed by the *SIS Act*.

- 15.4. As soon as practicable after the admission of a person as a Member of the Fund the Trustees will give to that Member any information required by the *Act*.

16. Termination of Membership

- 16.1. The Trustees have absolute discretion to expel any Member of the Fund. That if a Member ceases to be a Member of the Fund, he or she must retire as a Trustee of the Fund or a director of a corporate trustee of the Fund.
- 16.2. The Trustees must give notice to the Member of the member's expulsion from the Fund. Where a Member is expelled from or ceases to be a Member of the Fund the balance of the Member's account must be transferred to a Benefit Arrangement in accordance with Rule 29 or as nominated by the Member within 60 days of the date of the Trustee's Member expulsion notice and if a nomination is not made within that period, to an Eligible Rollover Fund at the discretion of the Trustee.
- 16.3. Unless prohibited by the *Act*, a Member will be deemed to have ceased to be a Member on the first to occur of the following:
- (a) when the Member is no longer entitled to receive Benefits from the Fund;
 - (b) when the Trustees determine that the Member should no longer be a Member;
 - (c) on the death of the Member, or if the Trustees decide otherwise, no later than the time any LPR of the Member ceases to act as Trustee or director the Trustee company;
 - (d) no later than the earliest of either:
 - (1) four months from the date a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee unless a LPR of that Member is appointed a Trustee; or
 - (2) the date just before a Member became ineligible to be a Trustee or to be a director of a company which is a Trustee unless a LPR of that Member is appointed as a Trustee.

17. Member's Account

- 17.1. A record of all Contributions, Earnings, amounts allocated to or from any Fund reserves, Benefits paid and all other amounts credited or debited to a Member's Account must be kept by the Trustees on behalf of the Members.
- 17.2. The Trustees may keep more than one account for a Member, which may include more than one Member's Accumulation Account and more than one Pension account.
- 17.3. A record of the tax free and Taxable Components of a Member's Account must be kept by the Trustees.
- 17.4. The Trustees will, subject to any restrictions imposed by the *Act*, add to a Member's Account the following received on behalf of the Member or attributable to the Member's Account:
- (a) Contributions received; and
 - (b) Earnings; and
 - (c) Splittable Contributions; and
 - (d) Payment Split; and
 - (e) Reserves; and
 - (f) the proceeds of any Policy; and
 - (g) any other amount which the Trustees with the consent of the Member determine will be credited to the Member's Account.

- 18.6. The Trustees have absolute discretion and may accept transfers or rollovers from another Superannuation Entity, whether conditionally or not, provided it does not breach the *Act* or compromise or affect the Fund's status as a Complying Superannuation Fund.

19. Estate Planning

19.1. Non-binding Death Benefit Nominations

- (a) A Member may provide a written Non-Binding Death Benefit Nomination to the Trustees, by which the Trustees may, in their discretion, provide benefits to the beneficiaries listed in that nomination. Subject to the *Act*, the Trustees must accept a Non-Binding Death Benefit Nomination, but it is not binding on the Trustees.
- (b) A Member or the LPR of the Member may confirm, amend or revoke the nomination previously given to the Trustees.
- (c) A Member or the LPR of the Member may give direction to the Trustees to act in a particular way upon the Member's death or incapacity, but the Trustees are not obligated to follow such instructions.
- (d) The Trustees must not comply with any nomination or direction that would compromise or affect the Fund's status as a Complying Superannuation Fund.

19.2. Binding Death Benefit Nominations

- (a) Trustees should provide a Member with information that it believes the Member needs for the purposes of submitting a Binding Death Benefit Nomination.
- (b) A Member may provide a written Binding Death Benefit Nomination, by which the Trustees are bound to provide Benefits to the beneficiaries listed in and in accordance with that nomination, provided the nomination is valid and binding at the date of death of the Member.
- (c) Subject to the *Act*, the Trustees must accept a Binding Death Benefit Nomination and will be bound by it, subject to Pension terms and conditions incorporated as a Rule under Rule 20.7.
- (d) A Member may confirm, amend or revoke the nomination by written notice given to the Trustees.
- (e) The Trustees must not comply with any nomination or direction that would compromise or affect the Fund's status as a Complying Superannuation Fund.
- (f) A Binding Death Benefit Nomination and any revocation or amendment to it must:
 - (1) be in writing;
 - (2) require that all Benefits would be payable to one or more of a LPR or a Dependant of the Member; and
 - (3) be signed by the Member in the presence of more than one person:
 - (A) each of whom has turned 18 years of age; and
 - (B) neither of whom is a person mentioned in the Binding Death Benefit Nomination.
- (g) If proceedings, for dissolution of a Member's marriage to a spouse, under the *Family Law Act 1975* or some similar foreign legislation have commenced, then any nomination which states that the Benefit is to be paid to that spouse of the Member will be deemed to be revoked.
- (h) A Binding Death Benefit Nomination will have an indefinite term unless the Member has stipulated otherwise or the nomination is revoked by written notice to the Trustees.

- 20.7. A Trustee must notify a Member in writing of any Pension it will pay to the Member and the notification will outline the terms or conditions of the Pension which will be deemed to be a Rule unless payment of the Pension would affect or compromise the Fund's status as a Complying Superannuation Fund.
- 20.8. Subject to the Rules and the *Act*, the Trustees in their sole discretion may utilise any amount standing in the Member's Account, a Member's Pension Account or a reserve to provide a Pension to a Member, or if permitted by the *Act*, their Dependants, a LPR of a Member, or any other person.

Incapacity

- 20.9. The Member is to advise the Trustees of incapacity:
- (a) if a Member becomes incapacitated that Member or their LPR will advise the Trustees as soon as practicable. The Trustees may request the Member submit to any reasonable medical examinations, as it sees fit;
 - (b) upon receipt of any documentation required by the Trustees regarding a Member's incapacity, the Trustees at their sole discretion will determine whether or not the Member suffers Temporarily Incapacity or Permanent Incapacity.

Temporary Incapacity

- 20.10. If the Trustees are reasonably satisfied that a Member suffers Temporary Incapacity, it may choose to pay a Benefit in the manner and for no more than the amount permitted by the *Act* to the Member from the time of that Temporary Incapacity to the earlier of:
- (a) the date the Member is re-instated in similar employment the Member was previously engaged in prior to suffering the Temporary Incapacity;
 - (b) the date on which the Trustees believe the Member commenced to suffer Permanent Incapacity;
 - (c) the date of death of the Member; or
 - (d) such other time permitted under the *Act*.
- 20.11. The Trustees, in their sole discretion, may deduct an amount from a Reserve Account or any of the Member's accounts to pay the Temporary Incapacity Benefit.

Permanent Incapacity

- 20.12. If the Trustees are reasonably satisfied that a Member suffers Permanent Incapacity the Trustees may pay all or part of any of a Member's Accounts to the Member, or if permitted by the *Act*, to a Dependant or Pension Dependant or LPR of the Member whether as a lump sum or a Pension or a combination of both, in its absolute discretion.
- 20.13. The Trustees in their sole discretion may allocate any amount from any Reserve Account held in the Fund to pay the Benefit on the Member's Permanent Incapacity.

Death of a Member

- 20.14. On the death of a Member:
- (a) if the member was a Trustee or a director of the corporate Trustee, the Member's LPR will be appointed as a replacement Trustee or a director of the corporate Trustee until the date Benefits payable on the death of the Member commence to be payable provided that the LPR is eligible to act as Trustee and has consented to act as Trustee; and
 - (b) the Trustees may transfer or continue to pay any Pension previously payable to a Member to such Pension Dependants of the Member as are permitted by the *Act* to receive the Pension.

- 20.24. Any amount resulting from the commutation may be applied by the Trustees:
- (a) by paying a lump sum Benefit to a Member, or in the event of the death of the Member, to any one or more of the Member's Pension Dependents; or
 - (b) by allocating or transferring value to the Member's Accumulation Account.

20.25. The Trustees will determine any possible Tax consequences or commutation limits prior to commuting a Pension. The Trustees must also notify the Member, Dependents or LPR of the Member of this information.

21. Investments

Investment strategy

21.1. The Trustees must formulate, review regularly and give effect to an investment strategy that has regard to the whole of the Fund, including but not limited to the following:

- (a) the risk and liquidity involved in making, holding and realising and likely return from the Fund's investments having regard to the Funds objectives and expected cash flow requirements;
- (b) the composition of the Fund's investments as a whole including the extent to which they are diverse or involve exposure of the Fund to risk from inadequate diversification;
- (c) the liquidity of the Fund's investments in view of its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liabilities;
- (e) the needs of Members considering their age, income level and retirement needs; and
- (f) whether the Trustees of the Fund should hold a contract of insurance that provides insurance cover for one or more Members of the Fund.

21.2. The investment strategy could consist of one or more strategy for the whole of the Fund or separate strategies for various parts of the Fund.

21.3. The investment strategy should identify the investment objectives and provide detail of the investment methods the Fund may adopt to implement the strategy.

21.4. The Trustees will review this strategy annually and can amend the strategy at any time deemed appropriate. The Trustees must advise all Members affected by written notice of all details outlined in any amendment.

21.5. Should a Member request to view the Fund's investment strategy the Trustees will comply with this request by the Member.

21.6. The Trustees must also set an investment strategy for one or more reserves of the Fund. Any such investment strategy must be based upon the prudential management of assets of the reserve or such other requirements as laid down in the *Act*.

21.7. The Trustees in their sole discretion may act on the advice of an adviser or a specialist in documenting the Fund's investment strategy so long as the Trustee believes the adviser has adequate credentials to provide such advice.

The Trustee must invest the assets of the Fund

21.8. The Trustees must invest the assets of the Fund in accordance with the Fund's investment strategy.

A Member can request the Trustee to invest their account separately or jointly

21.9. A Member or the LPR of the Member may request the Trustees to invest all or part of the amount standing to the credit in the Member's Account separately from other investments held in the Fund however it is in the Trustees sole discretion to accept, subject to conditions, or reject the request from the Member.

- (b) will have power, as an expense of the Fund, to pay out of the Fund assets to that investment manager such remuneration for its services as the Trustees considers proper; and
 - (c) will have power to remove that investment manager.
- 21.15. No investment manager appointed by the Trustees will be entitled to take any part in the proceedings or deliberations of the Trustees.
- 21.16. No delegation of powers and discretions and authorities under this clause, however, will be made in the breach of any of the provisions of the *Act* and in particular must be in accordance with s102 of the *S/S Act*.

Trustee not bound to act personally

- 21.17. The Trustees are not bound in any case to act personally but are at liberty to employ any person to act as manager, lawyer, accountant, clerk, contractor, workman, or employee or any agent to transact any business. The Trustees may determine the remuneration to be paid and allowed for those services.

Trustee to appoint Auditor

- 21.18. On establishment of the Fund and in every year of income of the Fund, the Trustees must appoint an Auditor to audit the Fund who must give the Trustees a report in the form required by the *Act*.

22. Operation and Administration

Fund Compliance

- 22.1. If Trustees are aware or notified by the Auditor, an adviser to the Fund or the Regulator of the Fund that it may lose its status as a Complying Superannuation Fund the Trustees must:
- (a) liaise with the Auditor, adviser or Regulator to implement a compliance plan to ensure the Fund's status as a Complying Superannuation Fund will be maintained;
 - (b) notify all Members of any action required under the compliance plan; and
 - (c) take any such action as required under the compliance plan within a reasonable time frame and before the lodgement of the Fund's next regulatory return.

Fund Insolvency

- 22.2. If the Trustees are notified by the Auditor or the Fund's actuary or become aware the Fund is or may become insolvent, the Trustees must:
- (a) liaise with the actuary or Auditor to determine a solvency plan to ensure the Fund's solvency, including but not limited to reducing any Members' Accounts or Members' Benefits;
 - (b) notify Members of any action required under the solvency plan; and
 - (c) take such action as is required under the solvency plan prior to the lodgement of the Fund's next regulatory return.

Earnings

- 22.3. The Trustees will determine the amount of the Fund's Earnings for all or part of a Financial Year.
- 22.4. Subject to the *Act*, the Trustees have sole discretion as to where to allocate Earnings including allocating Earnings to a Member's Accumulation Account, a Member's Pension Account, or a reserve and using Earnings to pay a Benefit or expense of the Fund or any tax imposed upon the Fund.

Taxation

- 22.5. The Trustees must pay all Tax properly assessed to the Trustees.

Self Insurance

- 24.2. Provided it is permitted by the Act the Trustees can elect to self insure so long as the insured benefit is fully supported by an insurance policy provided by an external insurer. If a Fund has provided self insurance before 1 July 2013, it must comply with the this provision from 1 July 2016.
- 24.3. The Trustee is prohibited from providing insured benefits other than those that are consistent with the conditions of release in the SIS Regulations for death, terminal medical condition, permanent incapacity and temporary incapacity.

The Trustees have discretion as to the application of any insurance proceeds

- 24.4. The Trustees have absolute discretion as to the application of any insurance proceeds received by the Fund and may allocate the insurance proceeds to any Member's Account or to Reserves held in the Fund.
- 24.5. No Member nor their LPR nor any other person has any interest in any insurance proceeds that might be received by the Fund.
- 24.6. 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.

- 24.7. This clause is:

- (a) for the protection of the Trustees and the Fund; and
- (b) not to be taken as conferring any rights on Beneficiaries in respect of benefits additional to those conferred under other provisions of this Deed.

25. Changes

Amendment of the Deed or the Rules

- 25.1. The Trustees may in their absolute discretion amend vary or alter any provision of this Deed or the Rules (in whole or in part) by way of written resolution provided:
- (a) any change to the Deed will not affect or compromise the Fund's status as a Complying Superannuation Fund and is not in breach of the Act;
 - (b) the amendment does not reduce the amount of any Benefit accrued or accruing to a Member as at the date of amendment unless the Member or the LPR of the Member has in writing consented to any such amendment;
 - (c) the amendment does not amend the term of a Pension unless the Member or the LPR of the Member who accepted the term of the Pension has in writing consented to any such amendment;
 - (d) the amendment does not allow a person other than a Constitutional Corporation to be eligible for appointment as a Trustee unless the Rules provide and will continue to provide after the amendment is made that the Fund has as its sole or primary purpose the provision of old age pensions, and
 - (e) the amendment does not allow the sole or primary purpose of the Fund to be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide after the amendment is made that the Trustee must be a Constitutional Corporation.

- (c) The Trustees may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the *Act* (or in the case of a retirement savings account, the *Retirement Savings Account Act 1997* (Cth)) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the *Act*.

A transfer of an amount under this clause 29 is a complete discharge to the Trustees in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred

30. Interpretation

In the Deed and the Rules unless the contrary intention appears or can be reasonably implied from the context:

- (a) The singular includes the plural and vice versa.
- (b) A reference to one gender includes a reference to all other genders.
- (c) Headings of clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate.
- (d) References to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute.
- (e) The words "including", "includes", "such as" and "for example" should be read as if followed by the words "without limitation".
- (f) The word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not.
- (g) A reference to 'interest', 'earnings' or 'investment returns' or such other similar term can refer to either positive or negative 'interest', 'earnings' or 'investment returns'.
- (h) If an expression is defined in the *Act*, but is not defined in this Deed, then that expression will have the meaning given to it in the *Act*.
- (i) The Deed will bind each party's legal personal representatives, successors and assigns.
- (j) When a party comprises two or more person the rights and obligations of such persons pursuant to this Deed will ensure for the benefit of and bind all of them jointly and each of them severally.

