

DEED OF VARIATION

THE NP & JM BURGES SUPERANNUATION FUND

Reference: Tralee 05-1133 (sl)

## Wheatleys Legal

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Western Australia

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This DEED OF VARIATION is made the 16 day of DECEMBER 2005

BY **TRALEE PASTORAL CO PTY LTD (ACN 008 708 601)** of "Tralee",  
Goomalling Road, Meckering, Western Australia ("the Trustee").

RECITALS

A. By a Deed ("the Superannuation Deed") dated 20 June 1997 and made by the Trustee as the trustee, the superannuation fund known as THE NP & JM BURGESS SUPERANNUATION FUND ("the Fund") was established to provide superannuation benefits for its members.

B. By Deed of Variation dated 9 September 2004 the provisions of the Superannuation Deed were updated.

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DWP \$ \*\*\*\*\* 5.00  
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C. The power to vary the Superannuation Deed is contained in clause 10 which provides as follows –

**"10. AMENDMENT**

10.1 Power

The Trustee may by Deed or written resolution amend, delete or replace the Deed or Rules including rule 10. An amendment may be retrospective.

10.2 Restrictions

An amendment may not alter a beneficiary's right or claim to an accrued benefit adversely to the beneficiary or reduce the amount of that benefit unless Government Requirements permit.

10.3 An amendment may not permit an individual to be appointed Trustee unless Government Requirements permit.

10.4 Notice

If Government Requirements so require, the Trustee must notify Members of an amendment. However, the amendment is effective even if the Trustee fails to notify Members."

D. The Trustee desires to amend the Superannuation Deed in the following manner.

PROVISIONS

1. With effect from the date of this Deed, the current provisions of the Superannuation Deed and rules regulating the Fund except any setting the term or rate of a pension benefit being paid are replaced with:
  - “1. The Fund is to be known as THE NP BURGESS SUPERANNUATION FUND.
  2. This deed includes the rules attached to it (“the Rules”).
  3. The Trustee must hold the assets of the Fund on trust to apply them in the manner set out in the Rules.
  4. This deed may be amended in the manner set out in the Rules.”
2. The Rules regulating the Fund are those attached to this Deed of Variation.
3. Despite anything in the Fund’s governing rules, nothing in this deed amends any provision of those governing rules that provides for the payment of a defined benefit pension.
4. If the Fund commenced before 12 May 2004 clause 3 does not apply in respect of a person who on 11 May 2004 was a member of the Fund; and who
  - (a) before 31 December 2005 retires (within the meaning of the Government Requirements) on or after reaching age 55 or attains age 65; and
  - (b) after 11 May 2004 and before 31 December 2005 becomes entitled to be paid a defined benefit pension,
 if the first pension payment is made within 12 months after the date when the person became entitled to the pension.
5. For clauses 3 and 4 the terms “governing rules” and “defined benefit pension” have the same meaning as in the Superannuation Industry (Supervision) Regulations.

EXECUTED as a Deed.

THE COMMON SEAL of TRALEE )  
 PASTORAL CO PTY LTD (ACN 008 )  
 708 601) was hereunto affixed by )  
 authority of the Directors in the presence )  
 of :



*NP Burgess*  
 .....  
 Director

*[Signature]*  
 .....  
 Director/Secretary

CONSENT OF MEMBERS

WE, being all the members of THE NP & JM BURGESS SUPERANNUATION FUND, HEREBY  
CONSENT to this variation of the Superannuation Deed.

*NP Burgess*  
.....

*[Signature]*  
.....

.....

.....

## 1 INTERPRETATION

Unless the contrary intention appears:

- A reference to the Deed or the Rules or any other document includes any variation or replacement.
- A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- The singular includes the plural and vice versa.
- A power to appoint includes a power to vary or cancel the appointment.
- When the word including introduces a list of items, it does not exclude a reference to other items of the same class.
- A reference to a person includes a firm, a body corporate, an unincorporated association or any authority.

**Account Balance** means the aggregate balance of all Member Accounts of a Member other than the Non-Vested Member Account, plus any proportion of that account that the Trustee determines (or if the individual Trustees or the corporate Trustee's directors do not agree on a proportion, the whole of that account).

**Benefit Direction** means a written notice that:

- directs the Trustee to pay the whole or part of a benefit payable under rule 5.4 to one or more Dependants or the legal personal representative in specific proportions; and
- may include instructions as to the manner of payment (eg lump sum or pension).

**Benefit Nomination** means a written notice that:

- nominates one or more Dependants or the legal personal representative to receive a benefit payable under rule 5.4; and
- may, in respect of each, nominate a specific proportion of the benefit.

**Child** includes an adopted child, a step-child or an ex-nuptial child.

**Co-contribution Act** means the Superannuation (Government Co-contribution for Low Income Earners) Act.

**Constitutional Corporation** has the same meaning as in Government Requirements.

**Crediting Rate** means a rate declared under rule 8.13 or 8.14.

**Deed** means the deed establishing the Fund.

**Dependant** of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person the Trustee believes is, or was at the date of death, dependent on the Member or otherwise meets the definition of dependant under Government Requirements.

**Fund** means the superannuation fund constituted by the Deed and the Rules.

**Government Requirements** means any requirements under laws relating to superannuation funds:

- (a) imposed on the Trustee; or
- (b) that the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds.

**Member** means anyone whom the Trustee has admitted to membership and who is still entitled to benefits from the Fund.

**Member Account** means an account kept for a Member under rule 8.7.

**Non-Member Spouse** has the same meaning as in Government Requirements.

**Non-Vested Member Account** means a Member Account kept to record amounts mentioned in rule 8.7(a) and (b) that are not the Member's "minimum benefits" as defined in Government Requirements.

**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 given by section 5QA of that Act.

**Permanent Incapacity** means ill-health (whether physical or mental), where the Trustee is reasonably satisfied (and 2 legally qualified medical practitioners have certified) that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**Rules** means these rules.

**Shortfall Component** has the same meaning as in the Superannuation Guarantee (Administration) Act.

**Spouse** includes a person who, although not legally married to a Member, lives (or lived at the time of the Member's death) with the Member on a bona fide domestic basis as the Member's husband or wife.

**Tax** includes any duty or government impost.

**Temporary Incapacity** means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity.

**Trustee** means the Trustee for the time being under rule 7.

## 2 MEMBERSHIP

### Admission

- 2.1 Anyone may apply to the Trustee for admission as a Member or for the admission of a person for whom the applicant intends to contribute.

- 2.2 The Trustee may reject an application.
- 2.3 Before admitting a person as a Member the Trustee must ensure that the Trustee structure of the Fund meets Government Requirements and may require the person:
- to be examined by a registered medical practitioner approved by the Trustee; or
  - to give the Trustee any document or information it considers relevant to the administration of the Fund; or
  - to enter into a written agreement with the Trustee, imposing special conditions in respect of the applicant's membership; or
  - any combination of (a), (b) and (c).
- 2.4 If the Trustee admits a person as a Member, membership commences only when the Trustee has approved the application and either:
- the person has become a Trustee or (if the Trustee is a Constitutional Corporation) a director of the Trustee; or
  - the Trustee has satisfied itself that when the membership commences, the Fund will meet the definition of self managed superannuation fund in Government Requirements.

### Terms

- 2.5 Each Member is bound by the Deed and Rules.
- 2.6 The Trustee is the Member's attorney to do anything the Trustee considers appropriate to administer the Fund.

### Child accounts

- 2.7 Despite anything else in the Rules:
- the Trustee may admit as a Member a person under age 18 only if the application for membership is made by the person's parent, guardian or legal personal representative or otherwise complies with Government Requirements; and

- (b) the Trustee may recognise a decision made in relation to the person's account only if Government Requirements permit.

#### **Non-Member Spouse**

- 2.8 Subject to rule 2.4 the Trustee may admit a Non-Member Spouse as a Member if:
- (a) Government Requirements require the Trustee to create an interest in the Fund for the Non-Member Spouse; or
- (b) Government Requirements permit the Trustee to do so and the Trustee elects to do so.
- 2.9 The Trustee must do so in a manner that is consistent with Government Requirements.

#### **Membership ends**

- 2.10 A Member's membership of the Fund ends when the Member is no longer entitled to benefits from the Fund and either:
- (a) the Member has resigned as a Trustee or a director of the Trustee; or
- (b) the Trustee has satisfied itself that when the membership ends, the Fund will meet the definition of self managed superannuation fund in Government Requirements.

### **3 TRANSFERS**

#### **Transfer in**

- 3.1 The Trustee may:
- (a) accept a transfer of assets to the Fund in respect of a Member; and
- (b) provide benefits in respect of the Member
- on terms that the Trustee agrees with the Member and in a manner that complies with Government Requirements.

#### **Transfer out**

- 3.2 The Trustee may transfer assets out of the Fund in respect of a Member up to the Member's Account Balance and with or without the Member's consent. However, the transfer must comply with Government Requirements.
- 3.3 The Trustee is not responsible for the manner in which the transferee deals with the amount transferred.
- 3.4 If the Member's total Account Balance is transferred, the Member is no longer entitled to benefits from the Fund.

### **4 CONTRIBUTIONS**

#### **Members**

- 4.1 A Member may make contributions if the Trustee agrees.

#### **SGC shortfalls and Co-contributions**

- 4.2 The Trustee may accept a Shortfall Component or a payment under the Co-contribution Act transferred to the Fund for a Member and must treat it as a contribution for the Member.

#### **Acceptance of contributions**

- 4.3 The Trustee may:
- (a) accept contributions for a Member from any other person;
- (b) at its discretion, refuse to accept all or part of a contribution.
- 4.4 The Trustee must not accept contributions contrary to Government Requirements. However, if it does and if Government Requirements permit, the Trustee:
- (a) must repay the contributions to the contributor; but
- (b) may first make deductions for any liabilities or expenses incurred (and provisions for liabilities and expenses) in relation to the contributions.

## 5 BENEFITS - ENTITLEMENT

Rule 5 sets out the circumstances in which a benefit becomes payable from the Fund. Rule 6 deals with when and how the benefit is actually paid.

### Request - age 65

- 5.1 If a Member (who has not otherwise become entitled to a benefit under the Rules) requests a benefit at or after age 65, the Member becomes entitled to a benefit equal to the Member's Account Balance.

### Death

- 5.2 A Member may give the Trustee a Benefit Nomination or a Benefit Direction. When the Trustee accepts a Benefit Nomination or a Benefit Direction from a Member, any previous Benefit Nomination or Benefit Direction from the Member is taken to have been revoked.

- 5.3 The Trustee may refuse to accept Benefit Directions (or a particular Benefit Direction) without giving any reason.

- 5.4 If a Member dies the Trustee must pay a benefit equal to the Member's Account Balance.

- 5.5 If, in relation to any part of the benefit, the Trustee holds a Benefit Direction in relation to any part of the benefit, the Trustee must follow the Benefit Direction in relation to that part of the benefit if:
- the Trustee has accepted the Benefit Direction;
  - it has not been revoked; and
  - it can be followed under Government Requirements.

- 5.6 If the Trustee does not hold a current Benefit Direction in relation to any part of the benefit or if the relevant Benefit Direction cannot be followed for any reason, the Trustee must pay that part of the benefit to any or all of the Member's Dependents and legal personal representative in the proportions that the Trustee decides.

- 5.7 If there is no Dependant or legal personal representative then, if Government Requirements permit, the Trustee may pay that part of the benefit to any other people in proportions the Trustee decides.

- 5.8 A Benefit Nomination is given for information only and does not affect the Trustee's discretion in distributing the benefit.

- 5.9 Subject to the instructions in a Benefit Direction as to the manner of payment, the Trustee may pay any part of the benefit as a lump sum or as a pension or in any other form as it considers appropriate including the settlement of a trust for the benefit of any Dependant.

- 5.10 No pension is payable to a person under rule 5 until the person is a Member. However, the Trustee (and not the payee) may determine which provisions of rule 6 apply.

### Required payment age

- 5.11 If a Member (who has not otherwise become entitled to a benefit under the Rules) reaches the age when Government Requirements require the Trustee to pay or start paying a benefit, the Member becomes entitled to a benefit equal to the Member's Account Balance.

### Retirement or leaving employment

- 5.12 If a Member (who has not otherwise become entitled to a benefit under the Rules):
- (a) leaves any business, trade, profession, vocation, calling, occupation or employment because of Permanent or Temporary Incapacity; or
  - (b) retires or retired (before or after joining the Fund) from any business, trade, profession, vocation, calling, occupation or employment; or
  - (c) ceases any employment (at any time and for any reason except death) and the employer has contributed to the Fund for the Member; or



- (d) having reached age 60, ceases any arrangement under which the Member was employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment; or
- (e) leaves Australia in circumstances where Government Requirements permit the Trustee to pay a benefit

the Member becomes entitled to a benefit equal to the Member's Account Balance.

#### **Request - rollovers and Spouse benefits**

- 5.13 If a Member requests payment of a benefit, the Trustee must pay the benefit to the extent that the payment complies with Government Requirements.

#### **Financial incapacity**

- 5.14 If the Trustee believes a person entitled to a benefit cannot manage the person's financial affairs, the Trustee may pay the benefit to another person to be used for the first person's advantage. The Trustee is not responsible for the application of the benefit by the payee. However, the payment must comply with Government Requirements.

#### **Hardship and compassionate grounds**

- 5.15 The Trustee may at any time pay to a Member a benefit up to the Member's Account Balance if the payment complies with Government Requirements in relation to financial hardship or compassionate grounds.

#### **Excessive benefits**

- 5.16 If the Trustee believes that:
- (a) a Member's benefit will be excessive for the purposes of the Income Tax Assessment Act; or
  - (b) payment of a benefit will result in the Trustee or an employer contravening a law relating to corporations
- the Trustee may, if Government Requirements permit:
- (i) reduce the contributions payable for the Member; or

- (ii) reduce the benefit to the extent necessary to avoid (a) or (b) and transfer the amount of the reduction to the Fund's reserves; or
- (iii) apply a combination of (i) and (ii) as it considers appropriate. However, the Trustee need not investigate whether (a) or (b) applies to a benefit.

#### **No assignments**

- 5.17 The Trustee must not recognise any assignment or charge of a benefit (or any other interest in the Fund) that is contrary to Government Requirements.

#### **Interest on benefits**

- 5.18 The Trustee must credit or debit interest at the Crediting Rate to a benefit paid after the date it becomes payable.

#### **Deductions for Tax**

- 5.19 The Trustee must comply with Government Requirements regarding deductions of Tax from benefits and other payments from the Fund.

#### **Trustee's discharge**

- 5.20 The Trustee's only obligation in respect of a benefit is to pay it in good faith to or on behalf of a person the Trustee believes is entitled to the benefit. Otherwise, the Trustee is completely discharged by that payment.

#### **Forfeited benefits**

- 5.21 A Member forfeits the part of a benefit not attributable to Member contributions if:
- (a) the Member purports to assign, alienate or charge; or
  - (b) any other event occurs that results in another person becoming entitled to
- all or part of the benefit. However, this rule has no effect to the extent that it is inconsistent with Government Requirements or the Bankruptcy Act.

- 6.18 The Trustee must fix the rate of the pension after consultation with an actuary having regard to the balance of the relevant Member Accounts. The Trustee and the Member must confirm that rate by written agreement. The agreement forms part of these rules. The pension commences on the date of the agreement and the first payment relates to the year commencing on that date. Once the pension commences, the rate may not be varied unless the variation is specified in these rules.
- 6.19 The rate of the pension may be increased or decreased from year to year by the amount (if any) agreed between the Trustee and the Member. However, a decrease may occur only if the Commissioner of Taxation approves or if the CPI Change is negative and the decrease is limited to the rate of CPI Change.
- For this purpose:
- CPI Change means the percentage change in the CPI for the second last quarter before the first payment for the current year is to be made, compared to the CPI for the same quarter in the preceding year; and
  - CPI means the Consumer Price Index number that is the weighted average for the 8 capital cities published by the Australian Statistician in respect of the relevant quarter.
- 6.20 When the pension commences, the rights of the Member in respect of the balance of the relevant Member Accounts are replaced with the right to receive the pension.
- 6.21 Subject to Government Requirements, the Trustee's liability in respect of the pension is limited to the balance for the time being of the relevant Member Accounts.
- 6.22 The pension has no residual capital value and may not be commuted except:
- (a) within 6 months after commencement (unless the pension was funded from the commutation of an annuity or another pension and commutation of the pension would therefore be inconsistent with Government Requirements); or
- (b) within 10 years after commencement (or from 20 September 2004, 20 years or the Member's life expectancy at commencement if less) and in favour of either the Member's estate or a reversionary beneficiary to whom the pension reverts on the Member's death; or
- (c) if the lump sum resulting from the commutation is applied directly to the purchase of another lifetime (RBL complying), fixed term (RBL complying) or market linked (RBL complying) pension provided under these rules or equivalent rules;
- (d) to pay an assessment under the Superannuation Contributions Tax (Imposition) Act 1997; or
- (e) to give effect to an entitlement of a Non-Member Spouse in relation to a payment split under the Family Law Act.
- However, if the Trustee and Member agree that the pension is a "non-commutable pension" then the Trustee must not pay any part of the benefit under (a) unless:
- (f) the purpose of the commutation is:
- to cash an unrestricted non-preserved benefit;
  - to pay a superannuation contributions surcharge; or
  - to give effect to an entitlement of a Non-Member Spouse; or
- (g) the Trustee is satisfied that the payment is consistent with Government Requirements in relation to such a pension.
- The Trustee must comply with Government Requirements in relation to the minimum level of pension for the financial year when the commutation takes place.
- 6.23 If the pension reverts or is commuted, the reversionary component or commuted amount must not be greater than the benefit that was payable before the reversion or commutation.

- 6.24 The pension must not be used as security for a borrowing or transferred except to a reversionary beneficiary on the death of the Member or of another reversionary beneficiary.
- 6.25 The Trustee must continue to keep the relevant Member Accounts and must debit pension payments and commutations to those Member Accounts.

#### Lifetime (ATE) pension

- 6.26 A person entitled to a benefit may make a written request to the Trustee for a lifetime (asset test exempt) pension. The request must specify whether the pension is intended to comply with section 9A of the Social Security Act or section 5JA of the Veterans' Entitlements Act.
- 6.27 Rules 6.17 to 6.25 apply in respect of the pension except that:
- rule 6.30 applies instead of rule 6.19;
  - rule 6.22(a) does not apply and the pension may be commuted within 6 months after commencement unless it was purchased by transferring a payment resulting from the commutation of another pension that is an asset test exempt income stream under the Social Security Act or the Veterans' Entitlements Act;
  - as to rule 6.22(d), the pension is commutable only to the extent necessary to cover any superannuation contributions surcharge that the pensioner is liable to pay in his or her capacity as purchaser of the pension;
  - the pension may be commuted to pay a "hardship amount" as defined in section 9A of the Social Security Act or section 5JA of the Veterans' Entitlements Act;
  - any conversion to a lump sum is limited to the sum determined by applying to the pension the appropriate pension valuation factor under Schedule 1B to the Superannuation Industry (Supervision) Regulations as if

- the commencement day were the day on which the commutation occurs; and
- (f) the Member's reversionary partner under the Social Security Act is taken to be the Member's Spouse.

#### Fixed Term (RBL complying) pension

- 6.28 A person entitled to a benefit may make a written request to the Trustee for a fixed term (reasonable benefit limit complying) pension.
- 6.29 On receipt of the request, the Trustee must pay a pension to the Member at least annually for the Term commencing on the day when the person first became entitled to the pension.

For this purpose:

- **Life Expectancy** means the number of years in the complete expectation of life of the relevant person as at the commencement of the pension according to the Australian Life Tables most recently published by the Australian Government Actuary before the year when the pension commenced or otherwise specified by Government Requirements.
- For a pension commencing before 20 September 2004 **Term** means:
  - if the Member's Life Expectancy is 15 years or more, a period agreed between the Trustee and the Member, being at least 15 years but not more than the Member's Life Expectancy; or
  - if the Member's Life Expectancy is less than 15 years, the Member's Life Expectancy (in each case rounded up to the nearest whole number of years if the Member wishes).
- For a pension commencing on or after 20 September 2004 **Term** means:
  - the Member's Life Expectancy; or
  - the Member's Life Expectancy calculated, at the Member's option, as if the Member were up to 5 years younger; or
  - if the pension reverts to the Member's Spouse whose Life

Expectancy is greater than the Member's, the Spouse's life Expectancy or the Spouse's Life Expectancy calculated, at the Member's option, as if the Spouse were up to 5 years younger (in each case rounded up to the nearest whole number of years if the Member wishes).

- 6.30 The rate of the pension may not be decreased, but may be increased from year to year by the amount (if any) agreed between the Trustee and the Member, being at most:
- (a) 5%; or
  - (b) if the CPI Increase is more than 4%, then 1% plus the rate of the CPI Increase.

For this purpose:

- CPI Increase means the percentage increase in the CPI for the second last quarter before the first payment for the current year is to be made, compared to the CPI for the same quarter in the preceding year; and
- CPI means the Consumer Price Index number that is the weighted average for the 8 capital cities published by the Australian Statistician in respect of the relevant quarter.

- 6.31 The pension has no residual capital value and may not be commuted except:
- (a) within 6 months after commencement (unless the pension was funded from the commutation of an annuity or another pension and commutation of the pension would therefore be inconsistent with Government Requirements); or
  - (b) in favour of either the Member's estate or a reversionary beneficiary to whom the pension reverts on the Member's death; or
  - (c) if the lump sum resulting from the commutation is applied directly to the purchase of another (RBL complying), fixed term (RBL complying) or market linked (RBL complying) pension provided under these rules or equivalent rules; or

- (d) to pay an assessment under the Superannuation Contributions Tax (Imposition) Act 1997; or
- (e) to give effect to an entitlement of a Non-Member Spouse in relation to a payment split under the Family Law Act.

However, if the Trustee and Member agree that the pension is a "non-commutable pension" then the Trustee must not pay any part of the benefit under (a) unless:

- (f) the purpose of the commutation is:
  - to cash an unrestricted non-preserved benefit;
  - to pay a superannuation contributions surcharge; or
  - to give effect to an entitlement of a Non-Member Spouse; or
- (g) the Trustee is satisfied that the payment is consistent with Government Requirements in relation to such a pension.

Any conversion to a lump sum under this rule is limited to the sum determined by applying to the pension the appropriate pension valuation factor under Schedule 1B to the Superannuation Industry (Supervision) Regulations as if the commencement day were the day on which the commutation occurs.

- 6.32 Rules 6.18, 6.20, 6.21 and 6.23 to 6.25 apply in respect of the pension and if the Member has opted for a Term related to the life expectancy of the Member's Spouse, the pension cannot be commuted until the death of both the Member and the Spouse.

#### **Fixed Term (ATE) pension**

- 6.33 A person entitled to a benefit may make a written request to the Trustee for a fixed term (asset test exempt) pension. If the pension commences before 20 September 2004, the person must have reached Pension Age. The request must specify whether the pension is intended to comply with section 9B of the Social Security Act or with the equivalent section of the Veterans' Entitlements Act.

6.34 Rules 6.29 to 6.32 apply in respect of the pension except that:

- (a) rule 6.31(a) does not apply and the pension may be commuted within 6 months after commencement unless it was purchased by transferring a payment resulting from the commutation of another pension that is an asset test exempt income stream under the Social Security Act or the Veterans' Entitlements Act;
- (b) as to rule 6.31(d), the pension is commutable only to the extent necessary to cover any superannuation contributions surcharge that the pensioner is liable to pay in his or her capacity as purchaser of the pension; and
- (c) the pension may be commuted to pay a "hardship amount" as defined in section 9A of the Social Security Act or section 5JA of the Veterans' Entitlements Act; and
- (d) the Member's reversionary partner under the Social Security Act is taken to be the Member's Spouse.

**Market linked (RBL complying) pension**

6.35 From 20 September 2004 a person entitled to a benefit may make a written request to the Trustee for a market linked pension.

6.36 On receipt of the request, the Trustee must pay a pension for:

- (a) the Member's Life Expectancy; or
- (b) the Member's Life Expectancy calculated, at the Member's option, as if the Member were up to 5 years younger; or
- (c) if the pension reverts to the Member's Spouse whose Life Expectancy is greater than the Member's, the Spouse's life Expectancy or the Spouse's Life Expectancy calculated, at the Member's option, as if the Spouse were up to 5 years younger

(in each case rounded up to the nearest whole number of years if the Member wishes).

6.37 The level of the pension must be determined in the manner prescribed by Government Requirements and the Trustee must pay the pension at least annually.

6.38 The pension has no residual capital value and may not be commuted except:

- (a) within 6 months after commencement (unless the pension was funded from the commutation of an annuity or another pension and commutation of the pension would therefore be inconsistent with Government Requirements); or
- (b) in favour of one or more Dependants of either the Member or a reversionary beneficiary; or
- (c) as a lump sum in favour of the legal personal representative of either the Member or a reversionary beneficiary; or
- (d) if the Trustee after making reasonable enquiries is unable to find a person mentioned in (b) or (c), a lump sum to another person; or
- (e) if the lump sum resulting from the commutation is applied directly to the purchase of another (RBL complying), fixed term (RBL complying) or market linked (RBL complying) pension provided under these rules or equivalent rules; or
- (f) to pay an assessment under the Superannuation Contributions Tax (Imposition) Act 1997; or
- (g) to give effect to an entitlement of a Non-Member Spouse in relation to a payment split under the Family Law Act.

However, if the Trustee and Member agree that the pension is a "non-commutable allocated pension" then the Trustee must not pay any part of the benefit under (a) unless:

- (f) the purpose of the commutation is:

- to cash an unrestricted non-preserved benefit;
  - to pay a superannuation contributions surcharge; or
  - to give effect to an entitlement of a Non-Member Spouse; or
- (g) the Trustee is satisfied that the payment is consistent with Government Requirements in relation to such a pension.
- For (b), (c) and (d), if the Member has chosen a term related to the life expectancy of the Member's Spouse, the pension may not be commuted until the death of both the Member and the Spouse. Any conversion to a lump sum under this rule is limited to the sum determined by applying to the pension the appropriate pension valuation factor under Schedule 1B to the Superannuation Industry (Supervision) Regulations as if the commencement day were the day on which the commutation occurs.
- 6.39 Rules 6.23 and 6.24 apply and the pension may be transferred only in accordance with rule 6.38.
- Market linked (ATE) pension**
- 6.40 From 20 September 2004 a person entitled to a benefit may make a written request to the Trustee for a market linked (asset test exempt) pension. The request must specify whether the pension is intended to comply with the Social Security Act or the Veterans' Entitlements Act.
- 6.41 The level of the pension must be determined in the manner prescribed by Government Requirements and the Trustee must pay the pension at least annually.
- 6.42 Rules 6.36, 6.38 and 6.39 apply as if the Member's reversionary pensioner under the Social Security Act were the Member's Spouse and references to RBL complying pensions were to ATE pensions.
- Reversionary pension**
- 6.43 Unless inconsistent with the terms of the relevant pension, a Member who requests a pension may nominate one or more of the Member's Dependants as reversionary beneficiaries (either successive or concurrent) in relation to the pension. If reversionary beneficiaries are nominated as concurrent, the request must nominate the respective portions of the pension that revert to them. If no reversionary beneficiary is nominated then on the Member's death, the Trustee may nevertheless continue paying the relevant pension to any or all of the Member's Dependants and legal personal representative in proportions the Trustee decides after considering any relevant Benefit Nomination.
- Lump sum**
- 6.44 If a person entitled to a benefit requests, the Trustee may pay the benefit as a lump sum.
- Rollover or annuity**
- 6.45 A person entitled to a benefit may direct the Trustee to:
- (a) pay all or part of the benefit to another fund; or
  - (b) apply all or part of the benefit to purchase an annuity in the name of the person or, if the person is a Member, in the name of the Member or one or more of the Member's Dependants.
- 6.46 The Trustee must comply with the direction if the payment complies with Government Requirements.
- Compulsory rollover**
- 6.47 The Trustee may, if Government Requirements permit, pay all or part of a benefit to another fund without the consent of the person entitled to the benefit.

- Benefits in specie**
- 6.48 If a person entitled to a benefit requests, the Trustee may pay all or part of the benefit by transferring assets to the person or the person's nominee. The transfer must comply with Government Requirements.
- Deferral, preservation and flagging**
- 6.49 If a person entitled to a benefit requests, the Trustee may defer payment of all or part of the benefit. The deferral must comply with Government Requirements. If the Trustee believes that the payment of any part of a Member's benefit will contravene the Family Law Act, the Trustee must not pay that part.
- 6.50 If Government Requirements require part of a benefit to be preserved, the Trustee must:
- (a) keep that part in the Fund until Government Requirements permit it to be paid; or
  - (b) with the Member's written consent (if required by Government Requirements) pay that part to another fund that the Trustee believes will comply with Government Requirements regarding preservation of benefits.
- 6.51 If part of a benefit is kept in the Fund and the Member dies before it is paid, the Trustee must pay it under rule 5.4 to 5.10.
- Unclaimed benefits**
- 6.52 The Trustee must comply with Government Requirements as to unclaimed benefits and the transfer of benefits to other funds.
- Types of benefit**
- 6.53 If a Member requests, the Trustee may pay a benefit as one or more pensions or lump sums under rule 6. However, the manner of payment must be consistent with Government Requirements and the Trustee must establish one or more separate Member Accounts as the source
- of each type of benefit in respect of the Member.
- 7 TRUSTEE**
- Nature and number**
- 7.1 The Trustee must be either a sole Constitutional Corporation or (if Government Requirements permit) one or more individuals.
- Retirement**
- 7.2 The Trustee may retire if the Trustee gives prior written notice to the Members.
- 7.3 The Trustee must retire when the Members or Government Requirements so require.
- 7.4 The retiring Trustee must vest all the Fund's property in the new Trustee or its custodian.
- Appointment**
- 7.5 The Members (or their legal personal representatives) may make a written appointment of an additional or replacement Trustee. The appointment may be prospective or retrospective but must comply with Government Requirements.
- Vacancy on Trustee's board**
- 7.6 The Trustee must ensure that any vacancy on its board of directors is filled as and when required by Government Requirements.
- Powers**
- 7.7 The Trustee may do anything it considers appropriate to administer the Fund and to comply with Government Requirements. However, the Trustee must administer the Fund in a manner consistent with Government Requirements.
- 7.8 In dealing with Members, the Trustee may treat any communication as given by a Member if it purports to have been given by or on behalf of the Member.

- Delegation**
- 7.9 The Trustee may delegate any of its powers, duties and discretions to anyone if the delegation complies with Government Requirements.
- Administrators and investment managers**
- 7.10 In particular, the Trustee may appoint anyone to administer the Fund or to manage the Fund's investments or to perform both functions. However, the appointment must be written and must comply with Government Requirements.
- Discretions**
- 7.11 The Trustee is completely unrestricted in the exercise of its powers and discretions.
- 7.12 The Trustee and any of its directors, employees, delegates or agents may be involved in the exercise of the Trustee's powers and discretions even if they have a conflict of interest or duty.
- Remuneration**
- 7.13 The Members may agree a rate of remuneration that the Trustee may receive from the Fund if that would be consistent with Government Requirements.
- Liability**
- 7.14 The Trustee's liability is limited to its own dishonest acts or omissions and its own intentional or reckless failures to exercise the degree of care and diligence that it is required to exercise.
- Indemnity**
- 7.15 The Trustee, former Trustees, and any of their directors or employees are indemnified in respect of any Tax, loss or expenditure that they incur in relation to the Fund or the administration of the Trustee or a former Trustee unless it results from the person's dishonesty or intentional or reckless failure to exercise the degree of care and diligence which the person was required to exercise.
- 7.16 Rule 7.15 does not apply to the extent that its application is inconsistent with Government Requirements.
- 7.17 A Member must indemnify the Trustee for any loss or liability incurred because (or partly because) the Trustee relies on information which the Member gives to the Trustee.
- 8 ADMINISTRATION**
- Information to Trustee**
- 8.1 Every Member and any other person who claims a benefit must give the Trustee any information or documents it reasonably requires to administer the Fund.
- 8.2 The Trustee may require a Member to be examined by a registered medical practitioner approved by the Trustee.
- 8.3 The Trustee must treat any information it acquires in relation to Members and their Dependants as confidential and may use that information only in the administration of the Fund.
- Information to Members and others**
- 8.4 The Trustee must give information and documents to others as and when required by Government Requirements. For this purpose, the Trustee may determine that a particular group of Members comprise a sub-plan.
- Notices**
- 8.5 Any written communication by or on behalf of the Trustee relating to the Fund is taken to be given to a person if it is:
- (a) handed to the person; or
  - (b) delivered to the person's address last known to the Trustee; or
  - (c) posted by ordinary post from within Australia to the person's address last known to the Trustee.
- In the case of posting, the communication is taken to have been received on the second business day after the day it is posted.



**Records**

- 8.6 The Trustee must keep records for the Fund as and when required by Government Requirements.

another person pays Fund Tax or expenses, the Trustee must, if the person requires, reimburse the person from the Fund unless Government Requirements do not permit reimbursement.

**Member Accounts**

- 8.7 The Trustee must keep one or more Member Accounts for each Member to record:
- (a) contributions and other amounts (including, subject to rules 8.18 and 8.22, proceeds of insurance policies) received for the Member;
  - (b) earnings or losses in respect of those amounts and amounts paid in respect of the Member; and
  - (c) a fair proportion of the Fund's Tax and expenses (including insurance premiums) and provisions for Tax and expenses.

**Crediting Rates**

- 8.13 After each 30 June, the Trustee must declare a Crediting Rate for each asset portfolio (or if there are none, for the Fund) to be applied as at 30 June to all Member Accounts remaining when the Trustee makes the declaration.
- 8.14 Whenever it considers appropriate, the Trustee may declare interim Crediting Rates to be applied to a Member's Member Accounts, as at the date when a benefit or transfer becomes payable from them, for the period since the Fund's establishment or since the last 30 June (if later).

**Asset portfolios**

- 8.8 The Trustee may maintain separate asset portfolios to keep particular assets of the Fund.
- 8.9 To establish an asset portfolio, the Trustee must name it and specify the assets to be kept in it.
- 8.10 A Member may:
- (a) elect the asset portfolios to which (and the proportions in which) the Trustee allocates Member Account balances and future contributions for the Member; and
  - (b) elect to switch asset portfolios, or proportions, or both.

- 8.15 The Trustee may apply a Crediting Rate to Member Accounts on the basis of daily, monthly or average balances.
- 8.16 When declaring Crediting Rates, the Trustee must take into account:
- (a) the realised and unrealised earnings or losses of asset portfolios (or if there are none, the Fund), including realised and unrealised capital gains or losses;
  - (b) expenses and Tax not debited to Member Accounts;
  - (c) the level of the Fund's reserve accounts; and
  - (d) the appropriateness of averaging earnings, losses and expenses over several years.

- 8.11 The Trustee must comply with the Member's election if:
- (a) the Trustee approves the election; and
  - (b) the allocation or switch complies with Government Requirements.

- 8.17 The Trustee must not declare a Crediting Rate that takes any of the Fund's reserve accounts into debit.

**Fund expenses**

- 8.12 The Trustee must pay from the Fund all Tax and expenses relating to the Fund unless another person pays them. If

**Reserves**

- 8.18 The Trustee must set up one or more reserve accounts to record earnings or losses of the Fund that are not recorded in Member Accounts, amounts no longer required to pay benefits for Members and any insurance proceeds that the Trustee

- decides not to credit to a Member Account.
- 8.19 The Trustee may use amounts held in the Fund's reserve accounts for any purposes including:
- (a) averaging earnings, losses and expenses over several years;
  - (b) replacing contributions otherwise payable to the Fund; and
  - (c) providing additional benefits.
- However, the Trustee may apply those amounts only as and when the Members approve and Government Requirements permit.
- Audit**
- 8.20 The Trustee must appoint an auditor (who meets Government Requirements) to audit the Fund's accounts and records and to give the Trustee a written report each year when Government Requirements so require.
- Inquiries and complaints**
- 8.21 If Government Requirements so require, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into or complain about, the operation or management of the Fund in relation to that person; and
  - (b) the inquiry or complaint will be considered and properly dealt with within 90 days after it is made.
- Insurance proceeds**
- 8.22 Despite rule 8.7 the Trustee may credit proceeds of insurance policies to the Fund's reserves.
- 9 INVESTMENT**
- Powers**
- 9.1 The Trustee may invest the Fund assets in any manner, as if it were investing its own property.
- Custodian**
- 9.2 The Trustee may appoint a person to perform custodial functions in relation to any of the Fund's assets on terms the Trustee considers appropriate, if the appointment complies with Government Requirements.
- Restrictions**
- 9.3 The Trustee must comply with Government Requirements when investing the Fund's assets.
- 9.4 The Trustee must comply with Government Requirements in relation to:
- (a) making loans; and
  - (b) borrowing.
- 9.5 The Trustee may charge the Fund's assets only if Government Requirements permit.
- 10 AMENDMENT**
- Power**
- 10.1 The Trustee may by deed or written resolution amend, delete or replace the Deed or Rules including rule 10. An amendment may be retrospective.
- Restrictions**
- 10.2 An amendment may not alter a beneficiary's right or claim to an accrued benefit adversely to the beneficiary or reduce the amount of that benefit unless Government Requirements permit.
- 10.3 An amendment may not permit an individual to be appointed Trustee unless Government Requirements permit.
- Notice**
- 10.4 If Government Requirements so require, the Trustee must notify Members of an amendment. However, the amendment is effective even if the Trustee fails to notify Members.

## 11 WINDING UP

- 11.1 The Trustee may wind up the Fund.
- 11.2 The Trustee must wind up the Fund if the Members direct it to do so.

### Notice

- 11.3 If the Fund is to be wound up, the Trustee must as soon as practicable notify each Member in writing. However, if the Trustee fails to notify any Member, the winding up is still effective.
- 11.4 As from the date of the Trustee's notice to Members, the Trustee must take reasonable steps to recover contributions then due, but must stop accepting other contributions.

### Winding up procedure

- 11.5 The Trustee must declare interim Crediting Rates for each asset portfolio (or if there are none, for the Fund) to be applied to Member Accounts as at the date of the notice to Members. The Trustee must then apply the Fund towards:
- (a) satisfying actual and contingent liabilities (except benefits); then
  - (b) providing pro rata for each Member in respect of the benefits then payable for the Member or, if a benefit is not then payable, a benefit equal to the Member's Account Balance; then
  - (c) increasing those benefits with the consent of the Members.
- 11.6 The Trustee must comply with rules 5.4 to 5.10 and 6 regarding benefits payable for Members on winding up.

## 12 GUARDIAN

- 12.1 The Members may appoint a Guardian of the Fund. The appointment terminates only if the Guardian dies, resigns or becomes incapable of managing financial affairs. The Guardian may appoint a successor Guardian to take office in any of those events.
- 12.2 An appointment of a Guardian must be in writing.
- 12.3 If there is a Guardian then despite anything else in the Deed or Rules:
- (a) in acting as trustee of the Fund, the Trustee must comply with any direction of the Guardian;
  - (b) rules 7.3 and 7.5 have no effect; and
  - (c) the Guardian may replace the Trustee if the replacement Trustee meets Government Requirements.

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