

# Egan Simpson

SOLICITORS & NOTARY

Our Ref: JE:LC:21057  
Your Ref: KS:FM HAMIET

10 May 2011

WHK  
Accountants  
PO Box 459  
MURWILLUMBAH NSW 2484

Attention: Karina Sandercock

Dear Sir/Madam

RE: **A.J.HAMILTON HOLDINGS PTY LTD - DEED OF VARIATION OF TRUST  
THE HAMILTON FAMILY TRUST**

We refer to your letter of 15 April, 2011 in regard to the above matter and enclose Deed of Variation of Trust for execution by the Trustee.

Our view is that the Variation does not give rise to a resettlement of the Trust. However, if this view was incorrect then for more abundant caution we have included Clause 2 which makes the Deed void ab initio should it be determined that the Deed does amount to a resettlement.

We also enclose our Tax Invoice in the matter and look forward to receiving a cheque for the balance due.

Yours faithfully  
**EGAN SIMPSON**

Jeff Egan

Enclosure

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Murwillumbah NSW 2484

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Jeff Egan BALLB NOTARY  
Anne Simpson BALLB



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by a Scheme  
approved under  
Professional  
Standards  
Legislation

Hand Delivery

PAID

# **Deed of Trust**

## **Hamilton Family Superannuation Fund**

Dated 19<sup>th</sup> May 2003

Drawn By:  
**Mallesons Stephen Jaques**

Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

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# Superannuation Trust Deed

Date: 19<sup>th</sup> May 2003

Parties: A J HAMILTON HOLDINGS PTY LTD (ACN – 002 238 002)  
("Trustee")

## Recital:

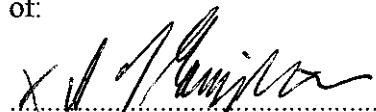
The Trustee has resolved to establish an indefinitely continuing superannuation fund ("**Fund**") to provide retirement and other benefits for persons who participate in the Fund.

## Operative provisions:

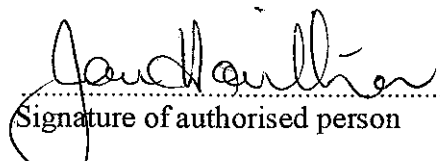
- 1 The Fund is to be known as the **Hamilton Family Superannuation Fund**.
- 2 This deed includes the rules ("**Rules**") attached to it.
- 3 The Trustee must hold the assets of the Fund on trust to apply them in the manner set out in the Rules.
- 4 This deed may be amended in the manner set out in the Rules.

**EXECUTED** as a deed

THE COMMON SEAL of A J  
HAMILTON HOLDINGS PTY LTD )  
(ACN – 002 238 002) is affixed by )  
authority of its directors in the presence  
of:

  
.....  
Signature of authorised person

ALAN JAMES HAMILTON  
.....  
Name of authorised person (block  
letters)

  
.....  
Signature of authorised person  
JAN LOIS HAMILTON  
.....  
Name of authorised person (block letters)

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## Rules

### 1 Definitions and interpretation

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1.1 Unless the contrary intention appears:

**Accumulated Credit** means the total balances of the Contribution Accounts of a Member.

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

**Commencement Date** means the date of establishment of the Fund.

**Constitutional Corporation** has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

**Contribution Account** means the account kept for a Member under rule 7.6.

**Death Benefit** means a benefit payable under rule 4.4.

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

**Dependant** of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person whom the Trustees believe is, or was at the date of death, dependent on the Member.

**Distribution Date** means a date determined by the Trustees under rule 7.9 for the declaration of a Fund Earning Rate.

**Distribution Period** means a period commencing on the Commencement Date or the day after a Distribution Date and ending on the next Distribution Date.

**Financial Year** means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

**Fund** means the entire superannuation fund as constituted by the Deed.

**Fund Earning Rate** means a rate declared under rule 7.10.

**Investment Fluctuation Reserve** means an account maintained under rule 7.15.

**Investment Portfolio** means a separate part of the Fund maintained under rule 7.19.

**Legal Personal Representative** in relation to a person means the executor of the will or administrator of the estate of the deceased person, the trustee of the estate of the person under a legal disability or

a person who holds an enduring power of attorney granted by the person.

**Member** means a person who has been admitted to membership under rule 2.3 and has not ceased to be a Member under rule 2.9.

**Preserved Benefit** means the whole or any part of any benefit which is required by Superannuation Law to be preserved for the Member in the Fund or in another fund or superannuation arrangement until the Member has retired from the workforce and attained the age prescribed in Superannuation Law as being the preservation age for that Member or until the Member's earlier death or Total and Permanent Disablement or payment of the benefit in other circumstances as are permitted by Superannuation Law.

**Required Payment Date** means any date at which a Member's benefit must be paid or commence to be paid under Superannuation Law.

**Reserve Account** means the account kept under rule 7.17.

**Rules** means the rules forming part of the Deed.

**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 husband or wife of the Member.

**Superannuation Authority** means the Australian Securities and Investment Commission, the Australian Prudential Regulation Authority or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

**Superannuation Law** means any requirements under the Superannuation Industry (Supervision) Act 1993, the Corporations Act, 2001 or any other law, or by a Superannuation Authority:

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

**Total and Permanent Disablement** means ill-health (whether physical or mental), to an extent that the Trustee is reasonably satisfied that a Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education, training or experience. "Totally and Permanently Disabled" has an equivalent meaning.

**Trustee** means the trustee of the Fund.

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or the Rules or any other document includes any variation or replacement of any of them;



- (b) 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;
- (c) the singular includes the plural and vice versa;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) **amend** includes delete or replace;
- (f) **including** when introducing a list of items does not exclude a reference to other items of the same class;
- (g) **person** includes a firm, a body corporate, an unincorporated association or an authority;
- (h) **tax** includes any duty or government impost.

### **Objects**

- 1.3 The sole or primary purpose of the Fund is to provide old age pensions.

## **2 Eligibility and membership**

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### **Eligibility**

- 2.1 A natural person is eligible to become a Member if:
  - (a) the Trustee invites the person; and
  - (b) the person applies within the time specified in the invitation.

### **Membership**

- 2.2 Before admitting a person as a Member, the Trustee may require the person:
  - (a) to have a medical examination; and
  - (b) to provide information which the Trustee considers relevant to the administration of the Fund.
- 2.3 A person becomes a Member on the date when the Trustee has approved the person's application.
- 2.4 The Trustee may:
  - (a) reject an application; or
  - (b) impose special conditions when accepting an application.
- 2.5 Each Member agrees to be bound by the Rules.

### **Transfer to Fund**

- 2.6 The Trustee may make arrangements they consider appropriate with:
  - (a) a Member; or

- 
- (b) any previous employer of the Member; or
  - (c) the trustees of any superannuation fund of which the Member has been a member,

to transfer assets to the Fund and to provide benefits in respect of the Member, which may be determined in a different manner than set out in the Rules. The arrangement must be consistent with Superannuation Law.

#### **Transfer from Fund**

- 2.7 If a Member is, or is eligible to be, a member of another superannuation fund, then the Trustee may transfer assets to the other fund.
- 2.8 Such transfer will be regarded as satisfying the Member's entitlement to any benefit in respect of the amount transferred and the Trustee may agree with the Member that it satisfies the Member's entitlement in full. The Trustee is not responsible for the manner in which the trustees of the other fund deals with the amount transferred.

#### **Membership ceases**

- 2.9 A person ceases to be a Member when:
  - (a) all benefits which are or may be payable in respect of the Member have been paid; or
  - (b) a transfer is made under rule 2.7 in satisfaction of all the Member's entitlement to benefits; or
  - (c) all the Member's entitlement to benefits is terminated.

### **3 Contributions**

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#### **Member**

- 3.1 A Member may contribute or have contributions made on the Member's behalf of any amount, if the Trustee agrees.

#### **Employer**

- 3.2 An employer of a Member may contribute any amount for the Member if the Trustee agrees.

#### **General**

- 3.3 The Trustee may refuse to accept all or part of money or other assets from a person without giving any reason.
- 3.4 If the Trustee finds that it has received money or other assets which cannot be accepted into the Fund, the Trustee must repay them. The Trustee may deduct an amount for insurance effected or expenses incurred in relation to the money or other assets.

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## **4 Benefit entitlement**

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### **Retirement**

- 4.1 A Member who retires from the workforce is entitled to a benefit equal to the Accumulated Credit.
- 4.2 A Member who:
- (a) is working on or after age 65; and
  - (b) requests payment,
- is entitled to a benefit equal to the Accumulated Credit.

### **Total and Permanent Disablement**

- 4.3 A Member who:
- (a) retires from the workforce because of ill-health (whether physical or mental);
  - (b) lodges a claim for a Total and Permanent Disablement benefit within 12 months of retiring from the workforce; and
  - (c) was Totally and Permanently Disabled at the date of retiring from the workforce,
- is entitled to a benefit equal to the Accumulated Credit.

### **Death**

- 4.4 On the death of a Member the Trustee must pay a benefit equal to the Accumulated Credit.

### **Leaving employment**

- 4.5 A Member who leaves an employment in circumstances other than those described in rules 4.1 to 4.4 is entitled to a benefit equal to the Accumulated Credit.

### **Rollover benefits**

- 4.6 The Trustee may pay a benefit to a Member where:
- (a) the benefit is attributable to another benefit that was transferred to the Fund; and
  - (b) the Member requests payment.

### **Severe financial hardship and compassionate grounds**

- 4.7 The Trustee may pay a benefit and make any consequential modification to a Member's other benefit entitlements it considers appropriate:
- (a) if the Superannuation Authority determines that a benefit may be paid on a compassionate ground; or
  - (b) by reason of severe financial hardship.

**Voluntary deferral**

- 4.8 The Trustee may defer payment of all or part of a benefit if the Member entitled to it requests.

**Preservation**

- 4.9 If the Trustee considers it necessary under Superannuation Law or convenient for the purposes of the administration of the Fund to preserve any part of a benefit, then the Trustee must:
- (a) pay that part of the benefit under rule 6.1 or 6.3; or
  - (b) retain it in the Fund.

**Retained benefits**

- 4.10 Any part of a benefit retained under rule 4.8 or 4.9 remains credited to the appropriate Contribution Account until payment. The Trustee must adjust the amount of the benefit on the basis of further credits and debits recorded in the Contribution Account. If the Member dies before the benefit is paid in full then the Trustee must pay the remainder of the benefit to the Member's Legal Personal Representative.

**Required Payment Date**

- 4.11 If a Member continues working but reaches the Required Payment Date, the Trustee must apply the Member's Accumulated Credit under rule 6.1, 6.2 or 6.3.

**Trustee's determinations**

- 4.12 A benefit is only payable if the Rules permit it.
- 4.13 The Trustee may act on any proofs or presumptions which they consider satisfactory whether or not they are strictly legal proofs or presumptions.

**Interest**

- 4.14 The Trustee may credit or debit interest at a rate they consider appropriate to a benefit which is paid after the date it becomes payable.

**5 Restrictions on benefit entitlement****Forfeiture**

- 5.1 The Trustee may forfeit any benefit which has yet to become payable and which is the subject of an order or agreement (other than under the Family Law Act), in favour of a person other than the Member.
- 5.2 The Trustee must apply a forfeited benefit for one or more of the Member and the Member's Dependants as the Trustee considers appropriate.

**Assignments**

- 5.3 The Trustee must not recognise any purported assignment of a benefit, other than under the Family Law Act.

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## **6 Payment of benefits**

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### **Annuity or pension**

- 6.1 If the Member requests in writing, the Trustee may apply all or part of the Member's benefit to purchase an annuity in the name of the Member, or of the Member and one or more Dependants.
- 6.2 The Trustee may pay a benefit on terms agreed between the Trustee and the Member or in accordance with Schedule A.

### **Payment to other fund**

- 6.3 If a person entitled to a benefit requests in writing, the Trustee must pay all or part of it to another fund.
- 6.4 The Trustee may pay all or part of a benefit to another fund without the consent of the person entitled to it.

### **Unclaimed benefits**

- 6.5 The Trustee must comply with Superannuation Law in relation to benefits which Superannuation Law:
- (a) treats as unclaimed money; or
  - (b) requires to be transferred to another fund.

### **Death Benefits**

- 6.6 The Trustee must pay a Member's Death Benefit to one or more of the Member's:
- (a) Dependants; and
  - (b) Legal Personal Representative.

If there is no Dependant or Legal Personal Representative to whom a Death Benefit can be paid, then the Death Benefit may be paid to any other person, as the Trustee considers appropriate.

### **Binding nominations**

- 6.7 A Member may give the Trustee a binding nomination notice in the form approved by the Trustee stating:
- (a) the form in which the Member's Death Benefit is to be paid including, if appropriate, the extent to which it is paid as one or more lump sums, pensions, annuities or any of these; and
  - (b) those of the Member's Dependants and Legal Personal Representative to whom the Member's Death Benefit is to be paid.
- 6.8 The Member may give a new notice at any time or may withdraw an existing notice in a form approved by the Trustee.
- 6.9 If, at the time of a Member's death, the Trustee holds a notice in respect of the Member under rule 6.7 or 6.8, the Trustee must distribute so much of the Member's Death Benefit as is validly covered by the notice, in accordance with the notice.

- 6.10 If, at the time of a Member's death, the Trustee holds a notice in respect of the Member under rule 6.7 or 6.8 and the notice does not cover the whole of the Member's Death Benefit, the Trustee must pay so much of the Member's Death Benefit as is not covered by the notice to the Member's Legal Personal Representative.

#### **Member's wishes**

- 6.11 If at any time the Trustee does not hold a binding nomination notice under rule 6.7 or 6.8, the Member may give the Trustee a notice indicating how the Member would prefer the Member's Death Benefit to be distributed among the Member's Dependants and Legal Personal Representative. The Member may give a new notice at any time. A notice given under this rule is given for information only and does not limit the Trustee's discretion in the distribution of the Death Benefit.
- 6.12 If all or any part of a Member's Death Benefit cannot be paid under rule 6.9 or 6.10, the Trustee may pay the benefit in proportions that the Trustee decides and as a lump sum, pension or annuity or in any other form as the Trustee considers appropriate.

#### **Transfer of assets**

- 6.13 If a person entitled to a benefit requests in writing, the Trustee may pay the benefit by transferring assets of equivalent value to the person or the person's nominee.

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

- 6.14 The Trustee is discharged from all obligations in respect of a benefit if the Trustee pays it in good faith to or on behalf of a person the Trustee believes to be entitled to it.

#### **Financial incapacity**

- 6.15 If the Trustee believes that a person who is entitled to a benefit is unable to manage his or her own financial affairs the Trustee may:
- (a) pay the benefit to another person to be used for the advantage of the person entitled to it; and
  - (b) accept the other person's receipt as a good discharge.

The Trustee is not responsible for the application of the benefit by the person to whom it is paid.

#### **Tax**

- 6.16 The Trustee may deduct from a payment from the Fund any amount which they are required to deduct for tax.

## **7 Records and accounts**

### **Records**

- 7.1 The Trustee must keep records for the Fund;
- (a) of the matters; and
  - (b) for the period; and

- 
- (c) in the manner,  
prescribed by Superannuation Law.

### **Accounts and audit**

- 7.2 The Trustee must appoint an auditor.
- 7.3 For each Financial Year the Trustee must prepare any financial statements for the Fund.
- 7.4 The Trustee must ensure that, for each Financial Year, the auditor:
- (a) audits the accounts and records of the Fund; and
  - (b) reports in writing to the Trustee,
- within the time specified by Superannuation Law.
- 7.5 The Trustee must give to the Members upon request a copy of the financial statements and auditor's report.

### **Contribution Accounts**

- 7.6 The Trustee must record for each Member in a Contribution Account contributions made by the Member, on behalf of the Member or by an employer for the Member.
- 7.7 The Trustee must also record in each Contribution Account:
- (a) amounts transferred from other funds which the Trustee decides to credit to the account;
  - (b) life insurance premiums which the Trustee decides to debit to the account;
  - (c) proceeds of life insurance policies to the extent that they were funded by premiums debited to the account;
  - (d) amounts debited to the account for tax or other expenses;
  - (e) amounts credited or debited to the account for earnings or losses of the Fund;
  - (f) amounts paid as benefits or transferred to other funds from the account;
  - (g) amounts transferred to or from the Reserve Account;
  - (h) amounts transferred to or from another Contribution Account which the Trustee decides to transfer with the consent of the Member;
  - (i) amounts debited or credited to the account in accordance with an order or agreement under the Family Law Act;
  - (j) any other matters or amounts which the Trustee considers appropriate.

**Tax and expenses**

- 7.8 The Trustee may debit to Contribution Accounts:
- (a) tax incurred by the Trustee;
  - (b) expenses of the Fund;
  - (c) administration expenses of the Trustee;
  - (d) provisions for (a), (b) and (c),
- in proportions which the Trustee considers fair.

**Distribution Date**

- 7.9 The Trustee must declare a Distribution Date at least once in each Financial Year.

**Fund Earning Rate**

- 7.10 The Trustee must declare:
- (a) as soon as practicable after a Distribution Period ends, a Fund Earning Rate to be applied as at the Distribution Date to Contribution Accounts that remain at the date of declaration; and
  - (b) whenever it considers appropriate, an interim Fund Earning Rate to be applied to the Contribution Accounts of a Member as at the date when a benefit or transfer becomes payable from them,
- for the period since the last date as at which a distribution was made to those Contribution Accounts.
- 7.11 The Trustee must decide whether a Fund Earning Rate is to be applied to Contribution Accounts:
- (a) on daily balances; or
  - (b) on average balances; or
  - (c) on some other basis.
- 7.12 In determining a Fund Earning Rate the Trustee must take into account:
- (a) the earnings of the Fund, including all income and realised and unrealised capital gains;
  - (b) the realised and unrealised losses and expenses of the Fund (including any tax that is or may be incurred by the Trustee) which are not debited to a Contribution Account;
  - (c) the appropriateness of averaging earnings, losses and expenses over several Distribution Periods.
- 7.13 A Fund Earning Rate may be positive or negative.



- 
- 7.14 The Trustee must apply the Fund Earning Rate to the Contribution Accounts .

**Investment Fluctuation Reserve**

- 7.15 The Trustee may set up a reserve account called the Investment Fluctuation Reserve to handle any differences between the actual earnings or losses of the Fund and the total amount distributed to Contribution Accounts for a Distribution Period.
- 7.16 The Trustee must not declare a Fund Earning Rate that would take the Investment Fluctuation Reserve into debit.

**Reserve Account**

- 7.17 The Trustee must keep a Reserve Account to hold:
- (a) provisions for tax or other expenses;
  - (b) amounts deducted from benefits for tax;
  - (c) any part of a Member's Accumulated Credit no longer required to pay benefits for the Member.
- 7.18 The Trustee must apply amounts held in the Reserve Account for one or more of the following purposes:
- (a) payment of tax or other expenses;
  - (b) additional benefits for Members;
  - (c) other purposes which the Trustee determines.

**Investment Portfolios**

- 7.19 The Trustee may maintain the Fund in separate parts called Investment Portfolios. For any Investment Portfolio the Trustee must:
- (a) select the assets which comprise it; and
  - (b) apply rules 7.10 to 7.16 separately to the Investment Portfolio and the Contribution Accounts it represents.
- 7.20 The Trustee may transfer assets between different Investment Portfolios.
- 7.21 The Trustee must divide a Contribution Account into sub-accounts representing the proportions in which the Contribution Account is invested in different Investment Portfolios.
- 7.22 The Trustee may make rules on when and how Members may give directions to apply:
- (a) future contributions; or
  - (b) existing balances in Contribution Accounts,
- to Investment Portfolios.

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## **8 Assets, investments, borrowings**

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### **Assets**

- 8.1 The assets of the Fund consist of:
- (a) money or other assets that the Trustee holds for the purposes of the Fund; and
  - (b) investments that the Trustee makes and all income on those investments.
- 8.2 The Trustee holds the assets of the Fund on trust to apply them in the manner set out in the Rules.

### **Investments**

- 8.3 The Trustee may invest all money which is not required to meet current payments in any manner in which it could invest the money if the Trustee were personally entitled to the money, including:
- (a) in investments authorised by the law relating to investment of trust funds;
  - (b) in policies of life insurance;
  - (c) in trusts or common funds;
  - (d) on deposit or loan, with or without security;
  - (e) in real property;
  - (f) in shares, stocks, notes, options, debentures or other securities;
  - (g) in options, hedging contracts, futures contracts and other financial instruments.
- 8.4 The Trustee may:
- (a) mix investments with investments of other people or trusts ; and
  - (b) vary, replace, encumber and deal with the investments, as if it were dealing with its own property.
- 8.5 The Trustee must invest in a manner which is consistent with Superannuation Law.
- 8.6 The Trustee may make a loan or give financial assistance to a person.
- 8.7 The Trustee may appoint nominees to hold investments.

### **Borrowing**

- 8.8 The Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which they think fit.

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## 9 Trustee

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### Nature

- 9.1 The Trustee may be two or more individuals or a Constitutional Corporation.

### Removal

- 9.2 A Trustee ceases to hold office when:
- (a) the Trustee retires after appointing its replacement as Trustee; or
  - (b) the Trustee serves written notice to that effect on the Members; or
  - (c) the Members serve written notice to that effect on the Trustee; or
  - (d) if an individual - the Trustee dies or, in the opinion of the other Trustee, is mentally ill.

### Appointment

- 9.3 The Members or the remaining Trustee may appoint a new Trustee. The appointment of a Trustee must be made in writing.
- 9.4 A retiring Trustee must transfer all assets to the new Trustee or its nominee.

### Trustee's powers

- 9.5 The Trustee may do anything it considers appropriate including:
- (a) giving receipts and discharges;
  - (b) conducting and settling legal proceedings;
  - (c) referring claims to arbitration;
  - (d) compromising any claim;
  - (e) giving any guarantee or indemnity;
  - (f) insuring any risks;
  - (g) acting as an underwriter;
  - (h) making rules for rounding off contributions and benefits;
  - (i) providing for and transferring liability for any tax;
  - (j) electing to be bound by any legislation; and
  - (k) anything which is not prohibited by Superannuation Law.

### Manager

- 9.6 The Trustee may appoint any person to administer the Fund or to manage investments of the Fund or both. The appointment must be in writing on terms which the Trustee considers appropriate.

**Delegation**

- 9.7 The Trustee may delegate any of their powers, duties and discretions to any person.

**Trustee's liability**

- 9.8 The Trustee is only liable for their acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it.

**Trustee's indemnity**

- 9.9 The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund or the administration of the Trustee unless:

- (a) it results from the Trustee's dishonesty or an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) the law prevents it.

- 9.10 A Member must indemnify the Trustee for:

- (a) any liability incurred; or
- (b) any overpayment made; or
- (c) any failure to provide for tax,

as a result of the Trustee relying on information given to it by that Member.

- 9.11 The benefit of rules 9.8 to 9.10 also applies to:

- (a) any directors or employees of the Trustee;
- (b) any other person nominated in writing by the Trustee;
- (c) any former Trustee or any person who previously fell within any of (a) and (b).

**Member authorisation**

- 9.12 The Trustee may treat a written or oral authorisation purported to be given by a Member as given by the Member.

**Trustee's discretions**

- 9.13 The Trustee and any officer of the Trustee may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise or owes other duties in respect of it.

- 9.14 The Trustee is completely unrestricted in the exercise of its powers and discretions. The Trustee may discriminate between beneficiaries.

**Remuneration**

- 9.15 Rule 9.16 only has effect if it is required in order to ensure that the Fund is not a public offer superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993.

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9.16 The Trustee must not receive remuneration from:

- (a) the Fund; or
- (b) any person,

in relation to the performance of the Trustee's duties or the provision of any other services in relation to the Fund.

### Meetings

9.17 If the Trustee is two or more individuals, they:

- (a) may regulate their meetings as they consider appropriate;
- (b) may act on a resolution approved by  $\frac{2}{3}$  of the total number of Trustees;
- (c) must appoint a chairperson from time to time or of each meeting;
- (d) may attend and vote at a meeting of Trustees by proxy if a copy of the proxy is delivered to the chairperson before the meeting;
- (e) may hold meetings by telephone or similar means;
- (f) may validly pass a resolution if all Trustees sign the written resolution. It is effective as if it had been passed at a meeting of the Trustees and may consist of several documents in the same form each signed by one or more Trustees.

## 10 Administration

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### Expenses

- 10.1 All the expenses in connection with the Fund are payable from the Fund, with the exception that the Trustee may charge fees of amounts that it determines for providing information or carrying out a transaction in accordance with the Family Law Act.

### Deed and Rules

- 10.2 A Member may inspect a copy of the Deed and Rules.

### Giving of information

- 10.3 Every person participating in the Fund or claiming a benefit must give the Trustee any information or documents that the Trustee requires to administer the Fund.
- 10.4 The Trustee may require a Member to have a medical examination.
- 10.5 The Trustee may modify a Member's benefit, as in its absolute discretion it thinks fit, if any information given to it about a Member is incomplete or incorrect.

**Confidentiality**

- 10.6 The Trustee must treat as confidential, information relating to Members which it acquires as Trustee and only use the information for the purposes of the Fund or as required by law.

**Dispute resolution**

- 10.7 If Superannuation Law requires, 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) inquiries or complaints will be considered and dealt with within 90 days after they were made.

**Notices**

- 10.8 Any notice or other written communication in connection with the Fund is given to a person if it is:
- (a) handed to the person; or
  - (b) delivered to the person's last known address; or
  - (c) posted by ordinary post from within Australia to the person's last known address; or
  - (d) sent by facsimile to person at the facsimile number notified by the person to the Fund.
- 10.9 If the notice or communication is:
- (a) posted - it is taken to be received on the third business day after posting;
  - (b) sent by facsimile - it is taken to be received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the person.

**Power of attorney**

- 10.10 Each Member or person claiming a benefit irrevocably appoints the Trustee as the Member or person's attorney to do all things which the Trustee considers appropriate to administer the Fund.

**Governing law**

- 10.11 The Fund and the Deed and Rules are governed by the law in force in \*9\*.

**11 Termination of the fund****When terminated**

- 11.1 The Trustee may decide to terminate the Fund by giving written notice to the Members specifying a termination date.

**Contributions**

- 11.2 Any contributions in arrears at the termination date must be paid immediately.
- 11.3 The Trustee must not accept any other contributions after the termination date.

**Final distribution**

- 11.4 The Trustee must treat the termination date as a Distribution Date.

**Application of Fund**

- 11.5 On termination, the Trustee must apply the Fund assets in this order of priority:
- (a) to provide for all expenses and liabilities for which the Trustee is or may become liable;
  - (b) to provide in respect of each Member:
    - (i) any benefit which became payable before the termination date; or
    - (ii) if (i) does not apply - a benefit equal to the Accumulated Credit calculated as at the termination date;
  - (c) to increase any benefits as the Trustee may decide.

**Payment of benefits**

- 11.6 A Member may not receive a benefit under rule 11.5 before Superannuation Law permits.
- 11.7 If a Member dies before receiving a benefit provided under rule 11.5, the Trustee must pay it as a Death Benefit.

**Application of other rules**

- 11.8 On termination and pending the final distribution of all the assets of the Fund, the provisions of this Deed and Rules continue to apply. However, to the extent of an inconsistency between this rule 11 and any other provision of the Deed and Rules, rule 11 prevails.

**12 Amendment of deed and rules****Power to amend**

- 12.1 The Trustee may amend any of the provisions of the Deed or Rules including this rule 12.

**Form of amendment**

- 12.2 An amendment must be in writing.

**Date of effect**

- 12.3 An amendment may take effect from a date before or after the time it is made.

**Limitation of power**

- 12.4 No amendment may amend rule 1.3 unless:

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- (a) the Rules then provide and will continue to provide after the amendment that the Trustee of the Fund must be a Constitutional Corporation; or
  - (b) having the power to amend rule 1.3 would not under Superannuation Law make any part of the governing rules of the Fund invalid.

### **13 Saving provision**

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13.1 If a provision of the Deed or Rules would otherwise be wholly or partly invalid because it:

- (a) subjects the Trustee to direction by another person; or
- (b) permits a person to exercise a discretion without the consent of the Trustee,

then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.



## **Schedule A - Fixed term pensions, Allocated pensions and Non-complying lifetime pensions**

### **MODE OF PAYMENT OF BENEFITS**

#### **Lump sum or pension**

- A.1 The benefits payable under the rules shall, in the discretion of the Trustee, be paid in a lump sum or by way of pension or a combination of the two unless any part of the benefit is required by Superannuation Law to be paid by way of lump sum or pension. Subject to any permitted commutations by Members and beneficiaries to lump sums, a benefit that is payable under rule 4 will be paid by way of a pension that is an old-age pension within the meaning of Section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900 if the Trustee is not, at the time the benefit becomes payable, a Constitutional Corporation.

#### **Transfer in specie**

- A.2 The Trustee may, at the request of the recipient of a benefit and, if required under Superannuation Law, with the approval of the Regulator, pay benefits by transferring in specie, assets of equivalent value to the benefit payable.

#### **Pension conditions Trustee's discretion**

- A.3 Where a benefit is payable by way of pension, the Trustee and the Member may agree that the pension be paid as a complying lifetime pension in accordance with rule A.7, or as a fixed term pension in accordance with rule A.13, or as an allocated pension in accordance with rule A.19, or as a non-complying lifetime pension in accordance with rule A.24. In the absence of agreement, the Trustee will determine the basis on which the pension is paid.

#### **No assignment or encumbrance**

- A.4 (a) A pension payable from the Fund must not be assigned or otherwise transferred by the person who receives it (except to the extent permitted by the rules) and must not be mortgaged or encumbered.
- (b) Neither the capital value (if any) of any pension payable from the Fund, nor any income from it, may be used as a security for a borrowing.

#### **Annuities**

- A.5 The Trustee may, in its absolute discretion, (including where an old-age pension is required to be paid) provide pensions payable under these rules by applying a Member's benefit to the purchase of an annuity.

#### **Imputation credits**

- A.6 The Trustee may, in its absolute discretion, debit amounts to the accounts of Members to whom current pensions are not being paid and credit corresponding amounts to the accounts of Members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

## **COMPLYING LIFETIME PENSIONS**

### **Pension complies with Act**

- A.7 (a) A complying lifetime pension will be paid, at least, annually throughout the life of the Member.
- (b) A complying lifetime pension will comply with the requirements of Superannuation Law in relation to such pensions.

### **Pension amount**

- A.8 Subject to meeting the requirements of Superannuation Law in relation to the amount of pension payments, the annual amount of a complying lifetime pension is to be determined by the Trustee and will be paid by instalments of such amounts and on such dates as the Trustee and Member agree on, or, in the absence of agreement, as the Trustee determines.

### **Indexation**

- A.9 Subject to meeting the requirements of Superannuation Law in relation to pension increases, the amount of a complying lifetime pension will be increased annually by the amount (if any) agreed on by the Trustee and the Member or, in the absence of agreement, as the Trustee determines.

### **Commutation of Pension**

- A.10 (a) A person in receipt of or entitled to a complying lifetime pension may make a written application to the Trustee requesting the Trustee to commute part or all of the pension to a lump sum payment.
- (b) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amount calculated by the Trustee, but only in the circumstances and manner permitted by Superannuation Law.
- (c) If the pension is commuted under this rule A.10, the amount payable must not be greater than the benefit that was payable before the commutation.
- (d) Notwithstanding rules A.10(a) and A.10(b), if part or the whole of the lump sum amount is a Preserved Benefit, the Trustee will deal with that benefit in accordance with the requirements of Superannuation Law.

### **Pension payable to reversionary pensioner on death of Member**

- A.11 (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine that, on the death of the Member, a pension be paid to a reversionary pensioner or pensioners.
- (b) The amount of the reversionary pension will be the amount agreed on by the Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.
- (c) The reversionary pension will only be paid for the period and on the terms permitted by Superannuation Law.

### **Payment to reversionary pensioner or legal personal representative**

- A.12 (a) Subject to rule A.11, if a Member entitled to a complying lifetime pension dies within 10 years after the commencement date of the pension, the Trustee will pay to a reversionary pensioner of the deceased Member or, if there is not a surviving reversionary pensioner, to the deceased Member's Legal Personal Representative, an amount equal to the total payments that the Member would have received, had the Member not died, from the date of death until 10 years after the commencement date of the pension.
- (b) Subject to rule A.11, if a Member entitled to a complying lifetime pension dies within 10 years after the commencement date of the pension and, if there is a reversionary pensioner who dies within that 10 year period, the Trustee will pay to the reversionary pensioner's Legal Personal Representative an amount determined by the Trustee not exceeding the differences between:
- (i) the sum of the amounts that would have been payable to the deceased reversionary pensioner in the period of 10 years; and
  - (ii) the sum of the amounts paid to the deceased reversionary pensioner.
- (c) If a Legal Personal Representative of a deceased Member or reversionary pensioner is not appointed within 3 years after the date of death (or any longer period as the Trustee determines), any assets of the Fund which were funding the lifetime pension will be treated as forfeited benefits and applied by the Trustee in accordance with rule 5.
- (d) No benefit is payable in respect of a Member who dies more than 10 years after the commencement date of a pension if the deceased Member does not have a reversionary pensioner to whom a pension is paid or payable under rule A.11. Any assets of the Fund which were funding the lifetime pension will be treated as forfeited benefits and applied by the Trustee in accordance with rule 5.

### **FIXED TERM PENSIONS**

#### **Pension complies with Act**

- A.13 (a) A fixed term pension must be paid, at least, annually for a fixed term agreed on by the Member and the Trustee.
- (b) A fixed term pension must comply with the requirements of Superannuation Law in relation to fixed term pensions.

#### **Pension amount**

- A.14 Subject to meeting the requirements of Superannuation Law in relation to the amount of pension payments, the annual amount of a fixed term pension will be determined by the Trustee, and will be paid by instalments of amounts and on dates as the

Trustee and Member agree on or, in the absence of agreement, as the Trustee determines.

### **Indexation**

- A.15 Subject to meeting the requirements of Superannuation Law in relation to pension increases, the amount of a fixed term pension will be increased annually by the amount (if any) agreed on by the Trustee and the Member or, in the absence of agreement, as the Trustee determines.

### **Commutation of pension**

- A.16 (a) A person in receipt of or entitled to a fixed term pension may make a written application to the Trustee requesting the Trustee to commute part or all of the pension to a lump sum payment.
- (b) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amount calculated by the Trustee, but only in the circumstances and manner permitted by Superannuation Law.
- (c) If the pension is commuted under this rule A.16, the amount payable will not be greater than the benefit that was payable before the commutation.
- (d) Notwithstanding rules A.16(a) and (b), if the whole or part of the lump sum amount is a Preserved Benefit, the Trustee will deal with that benefit in accordance with the requirements of Superannuation Law.

### **Pension payable to reversionary pensioner on death of Member**

- A.17 (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that, if a Member dies, a pension will be paid to a reversionary pensioner or pensioners.
- (b) The total amount of the reversionary pension or pensions will be the amount that would have been payable to the deceased Member, had the deceased Member not died, apportioned between the reversionary pensioners on the basis agreed by Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.

### **Payment to Legal Personal Representative**

- A.18 (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that, if a Member dies and there is not a surviving reversionary pensioner, the Trustee will pay to the deceased Member's Legal Personal Representative, an amount equal to the pension payments that the Member would have received, had the Member not died. The Trustee may commute those payments to a lump sum payment of an amount calculated by the Trustee.
- (b) If a pension is paid to a reversionary pensioner who dies within the fixed term for which the pension is payable, the Trustee may either pay to another reversionary pensioner or to the

deceased Member's Legal Personal Representative an amount equal to the pension payments that the Member would have received, had the Member not died. The Trustee may commute those payments to a lump sum payment of an amount calculated by the Trustee.

- (c) If a Legal Personal Representative of a deceased Member (to whom an amount payable under rule A.18(a) or (b)) is not appointed within 3 years after the date of death (or such longer period as the Trustee determines), any assets of the Fund which were funding the pension are to be treated as forfeited benefits, and applied by the Trustee in accordance with rule 5.

## **ALLOCATED PENSION**

### **Terms of the pension**

- A.19 (a) An allocated pension must be paid at least annually.
- (b) The annual amount of an allocated pension must not be greater than nor less than any maximum or minimum amounts referred to in Superannuation Law, and the pension must comply with the requirements of Superannuation Law.

### **Paid until Member's account is exhausted**

- A.20 An allocated pension must be paid on such dates and by instalments of any amounts as the Trustee and the Member agree on or, in the absence of agreement, as the Trustee determines, and ceases to be payable if the Member's benefit is reduced to nil.

### **Commutation of pension**

- A.21 A person in receipt of an allocated pension may commute from time to time the whole or part of the pension to a lump sum payment on making a written application to the Trustee. The Trustee will only act on the written application to the extent that doing so will not breach Superannuation Law.

### **Benefit payable to allocated pension reversionary pensioners**

- A.22 (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that, on the death of a Member to whom an allocated pension is being paid, a pension may be paid to one or more reversionary pensioners. The Trustee will pay an allocated pension to such of the reversionary pensioners as it, in its absolute discretion, determines.
- (b) The amount and the terms and conditions of the allocated pension paid to a reversionary pensioner under this rule will be agreed on by the reversionary pensioner and the Trustee. In the absence of agreement, the amount and the terms and conditions of the allocated pension will be determined by the Trustee.
- (c) Notwithstanding rule A.22(b), if the allocated pension has to be paid on some other basis for the Fund to comply with Superannuation Law, it will be paid on that basis.

- (d) The annual amount of the allocated pension must not be greater than nor less than any maximum or minimum amounts referred to in Superannuation Law.
- (e) The allocated pension payable under this rule A.22 ceases to be payable:
  - (i) if the Member's benefit is reduced to nil; or
  - (ii) on the death of the reversionary pensioner.

#### **Payment to Member's Dependants**

- A.23 (a) When, in respect of a deceased Member, an allocated pension:
- (i) ceases to be payable to all of the Member's reversionary pensioners under rule A.22(e); or
  - (ii) is not payable because the Member has no reversionary pensioners; or
  - (iii) is not payable because the Trustee has determined to not pay an allocated pension to any of the Member's reversionary pensioners,

the balance of that Member's Accumulated Credit (if any) shall be:

- (A) held by the Trustee on trust for the benefit of one or more of the Member's Dependants, to be paid in a lump sum in the shares and proportions as the Trustee, in its absolute discretion, determines; and/or
  - (B) paid to the Member's Legal Personal Representative.
- (b) When deciding to whom to pay a death benefit, the Trustee may take account of any nomination of beneficiaries made by the Member, but is not bound by it, unless the nomination is in the form of a binding direction given in accordance with the requirements of Superannuation Law, in which case, the Trustee will pay the benefit in accordance with that direction if it is still current and valid at the date of the Member's death.
- (c) If, after making inquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a Legal Personal Representative of the deceased Member, the Trustee may pay the benefit to a person or persons selected by the Trustee, if permitted by Superannuation Law.
- (d) Subject to rule A.23(c), if a grant of probate or letters of administration is not made in respect of the estate of the Member within 3 years after his or her death (or such longer period as the Trustee determines), the benefit payable under this rule A.23 is to be treated as a forfeited benefit, and will be

applied in the manner provided for in Superannuation Law or, in the absence of any such provision, will be applied by the Trustee in accordance with the provisions of rule 5.

- (e) If payment of the whole or part of the benefit payable under this rule A.23 does not comply with the requirements of Superannuation Law, the proportion of the benefit that does not so comply is to be treated as a forfeited benefit, and will be applied by the Trustee in accordance with the provisions of rule 5.

## **NON-COMPLYING LIFETIME PENSIONS**

### **Pensions payable for life**

- A.24 A non-complying lifetime pension will be paid, at least, annually throughout the life of the Member.

### **Pension amount**

- A.25 The annual amount of a non-complying lifetime pension is to be determined by the Trustee and will be paid by instalments and on the dates that the Trustee and Member agree on, or, in the absence of agreement, as the Trustee determines.

### **Indexation**

- A.26 The amount of a non-complying lifetime pension will be increased annually by the amount (if any) agreed on by the Trustee and the Member or, in the absence of agreement, as the Trustee determines.

### **Commutation of Pension**

- A.27 (a) A person in receipt of or entitled to a non-complying lifetime pension may make a written application to the Trustee requesting the Trustee to commute part or all of the pension to a lump sum payment.
- (b) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amount calculated by the Trustee.
- (c) If the pension is commuted under this rule A.27, the amount payable must not be greater than the benefit that was payable before the commutation.
- (d) Notwithstanding rules A.27(a) and (b), if part or the whole of the lump sum amount is a Preserved Benefit, the Trustee will deal with that benefit in accordance with the requirements of Superannuation Law.

### **Pension payable to reversionary pensioner on death of Member**

- A.28 The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine that, on the death of the Member, a pension be paid to a reversionary pensioner or pensioners.

The amount of the reversionary pension will be the amount agreed on by the Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.

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**Payment on death of pensioner**

A.29 Subject to rule A.28, in the event of the death of the pensioner, the Trustee will pay the amount underwriting the lifetime pension as a death benefit in accordance with rule 6.6.