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**THE THOMSON SUPERANNUATION FUND**

**TRUST DEED**

*LIAISON WITH BANK*  
*CHARLES ACCOUNTANT.*

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- ▲ Income Tax ▲ Capital Gains Tax ▲ Goods & Services Tax ▲ Superannuation and Superannuation Deeds
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DEED made at E. Fremantle the 19<sup>th</sup> day of June, 2009

BY **PETER THOMSON** and **PAMELA THOMSON** both of 15 View Terrace, East Fremantle in the State of Western Australia (the "Trustee")

**WHEREAS**

- A. The Trustee wishes to establish a superannuation trust fund to provide superannuation benefits for those persons who become members of the fund.
- B. The Trustee has agreed to act as the first trustee(s) of the fund constituted by this trust deed which shall be named **The Thomson Superannuation Fund** ("the Fund").
- C. The Trustee intends that the Fund should be an SMSF and a Complying Superannuation Fund.

**THIS DEED WITNESSES AS FOLLOWS:**

1. **THE FUND**

1.1 **Purpose of Paying Old-Age Pensions**

From the date on which the Fund becomes a Regulated Superannuation Fund under the SIS Act, the primary purpose of the Fund shall be:

- (a) if the Trustee is not a Constitutional Corporation – the payment of old-age pensions to Members and their Dependants in accordance with the requirements of these Rules; and
- (b) if the Trustee is a Constitutional Corporation – the payment of superannuation benefits to Members and their Dependants.

Notwithstanding any other provision in this Trust Deed, this Deed nor provision shall not be amended in any manner which affects the purpose of this Rule 1.1.

1.2 **Objects of the Fund**

The Fund shall consist of all moneys (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Trust Deed and the Trustee shall hold the same on trust for the objects and the purposes of this Trust Deed.

2. **PROPER LAW**

This Trust Deed shall in all respects be governed and construed in accordance with the laws of the State or Territory in which it is executed.

3. **DATE OF COMMENCEMENT**

The Fund was constituted on the Commencement Date.

## 4. INTERPRETATION AND DEFINITIONS

### 4.1 Interpretation

- (a) This Trust Deed shall be read and construed on the basis that the provisions of the Act are incorporated herein or are required by the Act to be so incorporated and any reference in this Trust Deed to the provisions or requirements of the Act includes without limitation provisions or requirements which must be complied with in order for the Fund to qualify as or remain as a Regulated Superannuation Fund, SMSF or a Complying Superannuation Fund or for the Fund to obtain the maximum income tax concessions available in respect of superannuation and (and without derogating from the above), unless express provision is made in this Trust Deed excluding the application of the Act, to the extent that the Trustee is able, under or required by the Act to do or to omit to do any act or thing including, without limitation, in relation to paying or dealing with any Member Benefit under this Fund, such provisions setting out such requirements shall be deemed to be incorporated into this Trust Deed in order, to the extent necessary, to give the Trustee the necessary power, direction or assistance as the case may be and where there is a conflict between such terms of the Trust Deed and such provisions of the Act, the provisions of the Act shall prevail.
- (b) If any Rule or part thereof is judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Trust Deed and such invalid Rule or part thereof shall be deemed to have been deleted from this Trust Deed.
- (c) Headings are for convenience only and shall not affect the interpretation of the Trust Deed.
- (d) Words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa.
- (e) A reference to an Act, a Bill before it is enacted or any statutory enactment or to any legislation, regulation, declarations or orders or any provision in the same includes, with any necessary adaptations or modifications, references to any equivalent or substituted Act, Bill or statutory enactment or any such equivalent or substituted legislation, regulation, declarations or orders or provisions contained in any amendment, variation, addition, substitution, enactment or re-enactment which may have been made or may hereafter be made thereto.
- (f) A reference to a person shall include a reference to an organisation, entity and corporation.
- (g) Terms used in these Rules that have not been defined but are used in the Act, shall take the same meaning as in the Act.

### 4.2 Definitions

In this Trust Deed, unless the context otherwise requires:



“**Account**” means an account in the books of the Fund and includes without limitation a Member Account and a Reserve Account;

“**Account-Based Pension**” means a pension that complies with the requirements in regulation 1.06(9A) of the SIS Regulations as outlined in Rule 34;

“**Act**” means the SIS Act and SIS Regulations, declarations or orders made or issued thereunder or any replacement or any other legislation, regulations, declarations or orders in respect of the regulation or taxation of superannuation funds or contributions made in relation thereto or benefits paid therefrom including without limitation the Tax Act, the Corporations Act 2000 and the Family Law Act;

“**Allocated Pension**” means a pension that satisfies the requirements in regulation 1.06(4) and (5) of the SIS Regulations as outlined in Rule 34;

“**APRA**” means the Australian Prudential Regulation Authority;

“**ASIC**” means the Australian Securities and Investments Commission;

“**Beneficiary**” includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a beneficiary for the purposes of the Act;

“**Commencement Date**” means the date of execution of this Deed;

“**Complying Superannuation Fund**” has the same meaning as in the Act;

“**Constitutional Corporation**” has the same meaning as in the Act;

“**Contributions Tax Acts**” means the following acts or any amendments or successive legislation relating thereto, the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, *Superannuation Contributions Tax Imposition Act 1997*, *Termination Payments Tax (Assessment and Collection) Act 1997*, *Termination Payments Tax Imposition Act 1997*, *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, *Superannuation Contributions Tax (Application to the Commonwealth) Act 1997* and the *Superannuation Contributions Tax (Application to the Commonwealth-Reduction of Benefits) Act 1997*;

“**Defined Pension**” means a pension that satisfies the requirements in regulation 1.06(6) of the SIS Regulations as outlined in Rule 34;

“**Dependant**” has the meaning as in the *SIS Act*;

“**Employee**”, subject to the proviso herein, has the same meaning as in the Act and includes and is not limited to a person in the employ of an Employer and includes any person who is a director of an Employer which is a company and any person in respect of whom an Employer wishes to make a contribution to the Fund in lieu of the Employer paying the superannuation guarantee charge under the Guarantee Act provided that where at any time the Fund constituted by this Deed is not an SMSF then the extended meaning of employee in section 17A of the *SIS Act* will not be applicable;

**“Employer”** means the employer of a Member who makes contributions to the Fund and in relation to a particular Member means the employer of that person at the relevant time;

**“Employer Sponsored Member”** means a Member whose Employer is contributing to the Fund at the relevant time;

**“Entity”** means any fund, organisation, or entity that is allowed under the *SIS Act* to receive superannuation contributions or amounts arising from such contributions and includes without limitation a superannuation fund, approved deposit fund, retirement savings account, superannuation holdings account reserve and eligible roll-over fund;

**“Family Law Act”** means the *Family Law Act 1975(Cth)* and all regulations, declarations or orders made or issued thereunder;

**“Full-Time Basis”** means a Member who is Gainfully Employed for at least 30 hours per week or such other time as prescribed by the Act;

**“Fund”** means the Fund established by this Trust Deed and includes without limitation all monies and assets of the Fund;

**“Gainful Employment”** means employment or self-employment for gain or reward in any business, trade, profession, vocation, calling or occupation;

**“GST”** means the tax imposed by any of A New Tax System (Goods and Services Tax Imposition – General) Act 1999, A New Tax System (Goods and Services Tax Imposition – Customs) Act 1999 and A New Tax System (Goods and Services Tax Imposition – Excise) Act 1999;

**“Guarantee Act”** means the *Superannuation Guarantee Charge Act 1992*;

**“Life Expectancy”** has the same meaning as in the Act;

**“Life Expectancy Pension”** means a pension that satisfies the requirements in regulation 1.06(7) of the SIS Regulations as outlined in Rule 34;

**“Lifetime Pension”** means a pension that satisfies the requirements in regulation 1.06(2) and (3) of the SIS Regulations as outlined in Rule 34;

**“Mandated Employer Contributions”** has the same meaning as in the Act;

**“Member”** means either an Employer Sponsored Member or a Non-Employer Sponsored Member who the Trustee has admitted as a member of the Fund and includes a member within the meaning of section 10(3) of the SIS Act;

**“Member's Benefit”** is the net amount standing to the credit of the Member in a Member Account established and maintained by the Trustee in respect of that Member under Rule 15;

**“Non-Commutable Allocated Pension”** means a pension that satisfies the requirements of the Act as outlined in Rule 34;

**“Non-Commutable Income Stream”** has the same meaning as in the Act;

**“Non-Commutable Pension”** means a pension that satisfies the requirements of the Act as outlined in Rule 34;

**“Non-Employer Sponsored Member”** means a person who is not, at the relevant time, an employee or whose employer (if any) is not contributing to the Fund;

**“Non-Member Spouse”** has the same meaning as in the *Family Law Act*;

**“Old-Age Pension”** has the same meaning as in section 51(xxiii) of the *Commonwealth of Australia Constitution Act 1900*;

**“Participating Employer”** means an Employer who has been admitted by the Trustee pursuant to Rule 35 to be a participant in the Fund;

**“Part-Time Equivalent Level”** means Gainful Employment for at least 240 hours in the financial year that ended on the last occurring 30 June;

**“Part-Time Basis”** means, in relation to a financial year, a Member who is Gainfully Employed for at least 40 hours in a period of not more than 30 consecutive days in that financial year, but who is not Gainfully Employed on a Full-Time Basis;

**“Permanent Incapacity”** means, in relation to a Member who has ceased to be Gainfully Employed, ill-health (whether physical or mental), where the Trustee is reasonably satisfied 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;

**“Post-65 Employer Sponsored Benefits”** has the same meaning as in the Act;

**“Preservation Age”** means such age for a Member as set out below:

<i>Date of Birth</i>	<i>Preservation age</i>
Before 1 July 1960	55
Between 1 July 1960 and 30 June 1961	56
Between 1 July 1961 and 30 June 1962	57
Between 1 July 1962 and 30 June 1963	58
Between 1 July 1963 and 30 June 1964	59
After 30 June 1964	60

or such other age as prescribed in the Act;

**“Preserved Benefit”** means any benefit (or part thereof) which is required by the Act, to be preserved for the Member in the Fund or in another Entity until the Member has reached Retirement Age or in such other circumstances as are permitted by the Act;

**“Regulated Superannuation Fund”** has the same meaning as in the Act;

**“Regulator”** has the meaning attributed to it in the Act, being APRA, ASIC or the Commissioner of Taxation as the context requires;

**“Relative”** has the same meaning as in the Act;

**“Reserve Accounts”** has the meaning attributed to it in Rule 16;

**“Retirement Age”** means where a Member:

- (a) reaches 65 years of age;
- (b) terminates Gainful Employment on or after age 60;
- (c) retires on or after attaining the Preservation Age and where the Trustee is reasonably satisfied that the member intends never to become Gainfully Employed on at least a Part-Time basis; or
- (d) as otherwise prescribed in the Act,

**“RSA Act”** means the *Retirement Savings Accounts Act 1997*;

**“Rules”** mean the provisions of this Trust Deed and any alteration to, addition to or variation thereof made from time to time;

**“Service”** means:

- (a) in relation to an Employer Sponsored Member, the most recent continuous service of the Member as an Employee and includes:
  - (i) any period of absence from work attributable to injury or illness during which the Member receives workers’ compensation or other regular income from the Employer or under arrangements organised by the Employer; and
  - (ii) any other period that the Employer stipulates is to be considered as service,

provided that where a Member transfers service from one Employer to another, unless the Trustee and the relevant Employers otherwise agree, the Member’s Service will be considered continuous; and

- (b) in relation to a Non-Employer Sponsored Member, a period of Gainful Employment by the Member.

**“SIS Act”** means the Superannuation Industry (Supervision) Act 1993 (Cth);

**“SIS Regulations”** means the Superannuation Industry (Supervision) Regulations 1994 (Cth);

**“SMSF”** means a self managed superannuation fund as defined in section 17A of the *SIS Act*;

**“Social Security Pension”** means any pension payable under the Social Security Act 1991 including but not limited to:

- (c) a lifetime partially assets test exempt pension payable pursuant to section 9A of the *Social Security Act 1991*; and
- (d) a fixed term partially assets test exempt pension payable pursuant to section 9B of the *Social Security Act 1991*.

**“Spouse”** in relation to a person includes another person who, whether or not legally married to the person, lives (or lived at the time of the Member’s death) with them on a genuine domestic basis as their husband or wife;

**“Tax”** means any tax or charge, including without limitation, GST, any tax assessed pursuant to or under any one or more of the Contributions Tax Acts, income tax levied under the Tax Act or any other State or Federal taxes, charges, duties, levies or imposts;

**“Tax Act”** means the Income Tax Assessment Act 1936 and/or the Income Tax Assessment Act 1997 and all regulations, declarations or orders made or issued thereunder;

**“Temporary Incapacity”** means, in relation to a Member who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), ill-health (whether physical or mental) that causes the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity;

**“Term Allocated Pension”** means a pension that satisfies the requirements in regulation 1.06(8) of the SIS Regulations as outlined in Rule 34;

**“Trust Deed”** means this Trust Deed and any alteration to, addition to or variation thereof made from time to time;

**“Trustee Acts”** includes, as the context requires, the Trustee Act (Vic) 1958, Trustee Act (NSW) 1925, Trusts Act (Qld) 1973, Trustee Act (SA) 1936, Trustees Act (WA) 1962 and the Trustee Act (Tas) 1898;

**“Veteran Pension”** means any pension payable under the Veterans Entitlements Act 1986 including but not limited to:

- (a) a lifetime partially assets test exempt pension payable pursuant to section 5JA of the *Veterans Entitlements Act 1986*; and
- (b) a fixed term partially assets test exempt pension payable pursuant to section 5JB of the *Veterans Entitlements Act 1986*; and

**“WA Property”** means an estate or interest in real property situated in Western Australia.

## 5. THE TRUSTEE

### 5.1 Generally

The expression the "Trustee" means the person referred to or described as such on page one of this Deed and shall include such other replacement or additional trustees as may be appointed hereunder.

### 5.2 Trustee to Use Best Endeavours

Notwithstanding any other provision in this Deed, the Trustee shall use its best endeavours to ensure that the Fund is maintained as an SMSF and as a Complying Superannuation Fund.

## 6. APPOINTMENT AND REMOVAL OF TRUSTEE

### 6.1 Trustee Requirements

- (a) Unless under Rule 1.1 the primary purpose of the Fund is the provision of Old-Age Pensions, the Trustee must be a Constitutional Corporation with effect from the date on which the Fund becomes a Regulated Superannuation Fund.
- (b) Unless otherwise permitted by the Act, where the Fund is an SMSF with only 1 Member:
  - (i) Where there are individual Trustees – the Member is one of only two individuals acting as Trustee, of whom one is the Member and the other is either a Relative of the Member or the Member is not an Employee of the other individual acting as Trustee; or
  - (ii) If there is a corporate Trustee – the Member is the sole director of the corporate Trustee or the Member is one of only two directors of the corporate Trustee and the Member and the other director are either Relatives or the Member is not an Employee of the other director.
- (c) Unless otherwise permitted by the Act, where the Fund is an SMSF with 2 to 4 Members:
  - (i) Each Trustee or director of a corporate Trustee shall be a Member;
  - (ii) Each Member shall be a Trustee or a director of a corporate Trustee; and
  - (iii) No Member shall be an Employee of another Member, unless the Members concerned are Relatives.
- (d) in the event that the Fund fails to qualify as an SMSF, the Trustee shall be:
  - (i) an approved trustee;
  - (ii) such persons that comply with the equal representation rules contained in Part 9 of the *SIS Act*; or

- (iii) such other person as is prescribed under the Act.

## 6.2 Consent to Act as Trustee

A person shall only be appointed as a Trustee or as a director of a corporate Trustee if that person consents in writing to the appointment and agrees to be bound by the provisions of these Rules.

## 6.3 Disqualified from Acting as Trustee

A Trustee, or a director of a corporate Trustee, shall be disqualified from acting as a Trustee or a director of a corporate Trustee if:

- (a) at any time, the person has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct;
- (b) at any time, a civil penalty order was made in relation to the person;
- (c) the person is an insolvent under administration; or
- (d) in such other circumstances as are prescribed under the Act or another Act of Parliament.

## 6.4 Ceasing to Act as Trustee

A Trustee, or a director of a corporate Trustee, shall cease to be a Trustee or a director of a corporate Trustee if:

- (a) the person becomes disqualified from acting as a trustee or a director of a corporate Trustee in accordance with Rule 6.3;
- (b) the person resigns or is removed from his office;
- (c) the person dies;
- (d) the person is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health;
- (e) the person ceases to be a Member of the Fund, unless determined otherwise by the other individuals acting as Trustee or the other directors of a corporate Trustee;
- (f) in the case of a director of a corporate Trustee, the person ceases to hold office as a director;
- (g) in the case of a corporate Trustee, it shall cease to be the Trustee if:
  - (i) a resolution is passed or a petition is presented for its winding up or liquidation; or
  - (ii) a receiver or receiver and manager of its assets is appointed; or

- (iii) an official manager, deputy official manager or administrator has been appointed in respect of the company; or
- (h) in such other circumstances as are prescribed by the Act.

Where, under this Rule 6.4 a director of a corporate Trustee is required to cease to be a director, the other directors of the Trustee shall use their best endeavours to terminate that person's directorship.

#### **6.5 Members may Remove and/or Appoint Trustee**

Subject to the requirements of the Act and these Rules, the Members may, by resolution or in writing, do any or all of the following:

- (a) remove any Trustee from office;
- (b) appoint any replacement Trustee; or
- (c) appoint any additional Trustee.

#### **6.6 Trustee Vacancies**

Subject to Rule 6.7, any vacancy in the office of a Trustee, or a director of a corporate Trustee, shall be filled as soon as practicable after such vacancy arises.

#### **6.7 Death of Member**

Subject to the Act, on the death of a Member:

- (a) where the deceased Member was an individual Trustee – the legal personal representative of the deceased Member shall be appointed as a Trustee for the period from the date of death of the deceased Member until the date of payment of the deceased Member's Benefit; or
- (b) where the deceased Member was a director of a corporate Trustee – the company may continue as the Trustee from the date of death of the deceased Member until the date of payment of the deceased Member's Benefit provided the legal personal representative of the deceased Member is appointed as a director of the Trustee for any such period. If the legal personal representative of the deceased Member is not appointed as a director of the Trustee for the said period, then the Trustee shall resign or be deemed to resign and all Members (including the legal personal representative of the deceased Member) shall be appointed or be deemed to be appointed as individual trustees in lieu thereof for the said period.

#### **6.8 Exclusion of Trustee Acts**

Notwithstanding any provision in the Trustee Acts but subject to the provisions of the Act and these Rules, a single company or any number of individuals or companies may at any time be appointed Trustee of the Fund.



## 6.9 Notice to Commissioner of Taxation

The Trustee shall give written notice to the Commissioner of Taxation within 21 days (or such other period as the Act may allow) of the Trustee becoming aware that the Fund has ceased to be an SMSF.

## 7. POWERS OF TRUSTEE

### 7.1 Generally

Subject to the Act, the Trustee shall have complete management and control of the Fund and may do anything it considers appropriate to administer the Fund and may without limitation exercise any of the following powers:

- (a) to pay out of the Fund all Taxes and costs incidental to the administration, management or winding up of the Fund;
- (b) to pay out of the Fund expenses incurred in:
  - (i) providing for the secretarial work required for proper record keeping and administration to be performed;
  - (ii) having the accounts of the Fund audited;
  - (iii) having taxation returns prepared; and
  - (iv) engaging such persons as the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
- (c) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
- (d) to delegate (by power of attorney or otherwise) to any person any of the powers duties and discretions vested in the Trustee on such terms and conditions as the Trustee, in its absolute discretion, determines and the Trustee shall not be responsible for any loss incurred as a result of such delegation;
- (e) to take and act on the advice of a barrister, solicitor, accountant, actuary, superannuation consultant or any other adviser in relation to the administration of the Fund and pay out of the Fund the fees payable to such advisers;
- (f) to commence, carry on and defend any legal proceedings that the Trustee, in its absolute discretion, determines to undertake for the proper administration of the Fund or to protect the rights of Members;
- (g) to open and maintain such bank accounts as the Trustee determines;
- (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee determines and transfer any assets of the Fund to another trust or fund notwithstanding the Trustee of the Fund and the trustee of the other trust or fund are the same person or persons or entity or if one or more of the

individual trustees of the Fund are directors of the corporate trustee of the other trust or fund or vice versa;

- (i) to borrow any sum of money for the purposes permitted by the Act (including without limitation, for the purposes of sections 67(2) to (6) inclusive of the Act) and secure the repayment thereof in such manner and upon such terms and conditions and at such rate of interest as the Trustee determines and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;
- (j) to give guarantees or indemnities for the payment of money or the performance of obligations by any person, whether or not a Beneficiary, or associated in any way with the Fund or the Trustee or, if the Trustee is a company, any directors of the Trustee, on such terms and conditions and for such reasons as the Trustee may decide and the Trustee may give security for any such guarantee or indemnity by giving mortgages charges or other securities of any nature over any of the assets of the Trust or any part thereof;
- (k) to elect that the Fund become a Regulated Superannuation Fund;
- (l) if required by the Act, to implement and administer an arrangement for a Beneficiary of the Fund to make inquiries into, or complaints about, the operation or management of the Fund in relation to the Beneficiary making the inquiry or complaint;
- (m) to act on a direction given by a Court, the Regulator or the superannuation complaints tribunal established under the Superannuation (Resolution of Complaints) Act 1993 (Cth);
- (n) to comply with the trustee covenants imposed by the SIS Act;
- (o) to do those things permitted or required by the Act or the Contributions Tax Acts;
- (p) to give effect to agreements or orders (including but not limited to superannuation agreements, termination agreements and orders, splitting orders, flagging agreements and orders, flag-lifting agreements and orders and payment flags and splits) made pursuant to the Family Law Act and the Trustee shall be entitled to charge reasonable fees and charges for any actions taken by the Trustee provided such fees are payable or borne by the Member spouse and Non-member Spouse in equal parts or as otherwise determined by the Trustee in accordance with the Family Law Act;
- (q) to register for the GST and to do all such things and perform such acts as the Trustee, in its absolute discretion determines to be appropriate in complying with the obligations imposed under the GST;
- (r) to appoint a custodian; and

- (s) generally to do all such things and perform such acts as the Trustee, in its absolute discretion, determines to be appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed.

## 7.2 **Trustee may Contract with Itself**

The Trustee may contract with or join with any other person or with the Trustee in its own right or in its capacity as the trustee of any other trust in accepting or making or becoming a party to any of the applications or investments of the assets of the Trust authorised by these Rules or in exercising any of the powers or discretions contained in these Rules.

## 7.3 **Conflict of Interest**

Subject to these Rules and the Act, the Trustee may exercise or concur in exercising the powers and discretions given to it by these Rules or by law notwithstanding that the Trustee or any of them or any director or shareholder of a corporate Trustee has or may have a direct, indirect or personal interest (whether as trustee of any other trust or in his personal capacity or as a shareholder, director, member or partner of any company or partnership or otherwise) in the mode or result of exercising the power or discretion or may benefit either directly or indirectly as a result of the exercise of the power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

## 8. **EXERCISE OF DISCRETION BY TRUSTEE**

### 8.1 **Unfettered Discretion**

In administering the Fund and in exercising the trusts, powers and authorities vested in it, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities, provided however that the Trustee shall not discriminate against any person in a way which infringes any law of the Commonwealth or of a State or Territory law, that is applicable to the Fund, in respect of discrimination.

### 8.2 **Reasons**

Subject to the requirements of the Act, the Trustee is not obliged to give reasons for any acts or omission of the Trustee.

## 9. **LIABILITY OF TRUSTEE AND MEMBERS**

### 9.1 **Liability of Trustee**

The Trustee, and each director of a corporate Trustee, shall not be liable for any acts or omissions other than those that are:

- (a) dishonest; or
- (b) attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a trustee or a director of a corporate trustee.

## 9.2 **Liability of Members**

Each of the Members (other than in their capacities as Trustees or directors of a corporate Trustee) shall not be liable for any action taken or omitted in administering the Fund.

## 10. **TRUSTEE INDEMNITY**

- (a) Subject to paragraph (b), the Trustee, and each of the directors of a corporate Trustee shall be indemnified out of the Fund against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund other than in the circumstances stated in Rule 9.1 or where the law prevents such indemnification.
- (b) The Trustee and the directors of a corporate Trustee shall not be indemnified out of the Fund for any penalty imposed on them under the Act.

## 11. **TRUSTEE MEETINGS**

### 11.1 **Individual Trustees**

- (a) Where the Trustee consist of individuals, they may meet together to dispose of business concerned with the administration of the Fund, adjourn the meetings and otherwise regulate their meetings as they see fit.
- (b) Two-thirds of the Trustees shall be a quorum.
- (c) A meeting of the Trustees at which a quorum is present shall be competent to exercise the trusts, powers, authorities and discretions vested in the Trustees by this Trust Deed.
- (d) The Trustees may elect a chairman of each meeting.
- (e) A resolution of the Trustees shall be valid and binding if two-thirds of the total number of Trustees have voted in favour of it.
- (f) The Trustees shall keep minutes of their resolutions and proceedings in a book provided for that purpose.
- (g) A resolution in writing, signed by two-thirds of the Trustees, shall have the same effect and validity as a resolution of the Trustees passed at a duly convened meeting.

### 11.2 **Corporate Trustee**

Where the Trustee is a company, the meetings of the directors shall, subject to the Act, be governed by the articles of association or constitution of the company.

## 12. SIGNING OF DOCUMENTS BY TRUSTEE

Where there are 2 or more individual persons acting as Trustees, any one of the Trustees is hereby authorised on behalf of all the Trustees to execute, sign, enter into and acknowledge all cheques, negotiable instruments, agreements, contracts, writings, proposals for insurance, transfers of shares, policies of insurance or units in a unit trust and all other documents as validly and effectually as all the Trustees could do.

## 13. REMUNERATION OF TRUSTEE

- (a) Where the Fund is an SMSF and unless otherwise allowed by the Act, the Trustee or a director of a company Trustee shall not be entitled to receive any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.
- (b) Where the Fund is not an SMSF, the Trustee shall be entitled to be paid and retain out of the Fund such remuneration as it determines to be reasonable.

## 14. RECORDS, ACCOUNTS AND AUDITING

### 14.1 SIS Requirements

The Trustee shall in accordance with the Act:

- (a) keep such records and accounts for the Fund as correctly record and explain the transactions of the Fund and the financial position of the Fund including without limitation:
  - (i) a minute book in which proceedings and resolutions of the Trustee are recorded;
  - (ii) a Member Account in respect of each Member established in accordance with Rule 15;
  - (iii) a Reserve Account established in accordance with Rule 16;
- (b) prepare financial statements and returns in respect of the Fund;
- (c) arrange for the timely audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund including without limitation:
  - (i) the retention of the accounting and taxation records for at least 5 years or for such other period required by the Act; and
  - (ii) the retention of all other Trust records, including without limitation copies of all reports given to Members, for at least 10 years or for such other period required by the Act; and

- (iii) appoint an actuary to conduct an actuarial investigation and provide all necessary certifications.

## 15. ACCOUNTS

### 15.1 Member Account

Subject to the Act and these Rules, the Trustee shall maintain a Member Account in respect of each Member in which is recorded:

- (a) contributions in respect of that Member pursuant to Rule 22;
- (b) the proceeds of policies of insurance credited to such account pursuant to Rule 24.2;
- (c) amounts debited to such account to pay premiums on policies of insurance pursuant to Rule 24.2;
- (d) profits or losses of the Fund credited or debited to such account pursuant to Rule 25;
- (e) amounts transferred to and from the Fund in accordance with Rule 26;
- (f) forfeited benefits debited to such account pursuant to Rule 27;
- (g) amounts debited to such account to pay Taxes or other expenses;
- (h) amounts debited to such account to pay a benefit in respect of that Member;
- (i) amounts debited to such account to give effect to a contribution splitting by the Trustee in its absolute discretion; and
- (j) such other amounts which may be credited or debited by the Trustee in its discretion.

### 15.2 More than one Member Account

The Trustee may maintain more than one Member Account in respect of a Member including without limitation, an accumulation account and a separate pension account for each pension payable to a Member under these Rules.

### 15.3 Other Accounts

The Trustee may maintain one or more other accounts in the books of the Fund on such basis as the Trustee from time to time determines.

## 16. RESERVE ACCOUNTS

### 16.1 Reserve Account

Subject to the Act, the Trustee may establish one or more Reserve Accounts for the Fund on such basis as the Trustee from time to time determines, including without limitation an investment reserve, a contributions reserve and a pension reserve.

### 16.2 Separate Investment Strategy

The Trustee must formulate and implement a separate investment strategy for the assets contained in any Reserve Account. The investment strategy must be consistent with the Fund's investment strategy and with the Trustee's ability to discharge liabilities, whether actual or contingent, as and when they fall due.

### 16.3 Not Part of a Member Account

Any amount held in a Reserve Account does not form part of a Member Account in respect of a Member.

### 16.4 Accounts Credited to a Reserve Account

Subject to the Act, the Trustee may credit the following amounts in a Reserve Account:

- (a) any investment profits of the Fund determined having regard to Rule 25;
- (b) any amount forfeited in accordance with Rule 27;
- (c) amounts transferred from another Entity that are not allocated to any Member Account;
- (d) any amount in a Member Account that, in the Trustee's opinion, is not required or that cannot be applied to pay benefits in respect of that Member; and
- (e) such other amounts that the Trustee determines.

### 16.5 Amounts Debited to a Reserve Account

Subject to the Act, the Trustee may debit the following amounts from the Reserve Account:

- (a) any amounts to be credited to Member's Accounts by way of:
  - (i) additions to benefits otherwise payable; or
  - (ii) satisfaction in whole or in part of any obligation of an Employer or Member to make contributions to the Fund;
- (b) any investment losses of the Fund determined having regard to Rule 25; and
- (c) such other amounts that the Trustee determines.

## 16.6 **Employer Reserve Account**

If a Reserve Account is created by the Trustee in respect of an Employer, the Employer's consent must be obtained to any application of assets made by the Trustee from that account.

## 17. **DISCLOSURE**

The Trustee shall disclose or cause to be disclosed to the following persons:

- (a) the Members (including prospective and future Members);
- (b) a Beneficiary;
- (c) the Employer;
- (d) the Regulator;
- (e) the trustee of any Entity to which a transfer is made;
- (f) the accountant and auditor; and
- (g) such other persons or may be specified in the Act,

such information as the Act requires or as the Trustee reasonably determines from time to time concerning the management and administration of the Fund, within the period of time that is prescribed in the Act.

## 18. **TRUSTEE AS MEMBER'S ATTORNEY**

Each Member hereby irrevocably appoints the Trustee as his attorney to execute and sign all such deeds and instruments and do all such things the Trustee decides to be necessary or desirable in administering the Fund.

## 19. **MEMBERSHIP**

### 19.1 **Application for Membership**

Persons who wish to become Members must apply by completing the form of application in:

- (a) Appendix "A" for Employer Sponsored Members; or
- (b) Appendix "B" for Non-Employer Sponsored Members,
- (c) or such other form of application as the Trustee determines.

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

Unless otherwise determined by the Trustee and subject to the Family Law Act, a Non-Member Spouse shall not be admitted as a member of the Fund and shall not be entitled to the creation of an interest or Account in the Fund.



### 19.3 Information

Without limiting Rule 19.1, all Members and those individuals who apply for membership of the Fund shall submit to any medical examination as requested by the Trustee and provide the Trustee with such further information and/or written declarations that the Trustee may reasonably require, including proof of their correct age.

### 19.4 Acceptance by Trustee

The Trustee may accept or reject any applications for membership of the Fund or impose any conditions on membership as it, in its absolute discretion determines. Each person admitted as a Member by the Trustee is bound by this Trust Deed in all respects as if the person were an original party to this Trust Deed.

### 19.5 Member must become Trustee

Notwithstanding the other provisions in this Rule 19, an individual shall not be admitted as a Member unless that individual, or a person that is permitted under the SIS Act to act on the individual's behalf, becomes at the time of being admitted to membership:

- (a) if the Trustee consists of individuals – a Trustee of the Fund; or
- (b) if the Trustee is a body corporate – a director of the corporate Trustee.

### 19.6 Cessation of Membership

Notwithstanding any other provision in this Deed, an individual will cease to be a Member of the Fund where:

- (a) the individual is no longer entitled to any benefits from the Fund, contingent or otherwise;
- (b) the individual, or a person acting on that Member's behalf in the circumstances prescribed in Rule 19.5, ceases to act as Trustee or a director of a corporate Trustee in accordance with Rule 6.4; or
- (c) the individual becomes an Employee of another Member of which he or she is not a Relative,

then that Member's membership of the Fund shall be deemed to cease immediately unless determined otherwise by the remaining individuals acting as Trustee or the remaining directors of a corporate Trustee as the case may be.

## 20. MEMBER RIGHTS TO BENEFITS

- (a) A Member shall have no right to or interest in his Member's Benefit or any assets of the Fund except as provided in this Deed.
- (b) The rights of the Members and their Dependants to receive benefits from the Fund shall be those set out in this Trust Deed.

- (c) No Member or any persons claiming through a Member has any interest in any insurance proceeds that may be received by the Fund.

## 21. COMMON LAW RIGHTS OF MEMBERS

### 21.1 Compensation or Damages Claim

The provisions of this Trust Deed shall not in any way affect the right of a Member or his personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law in the event of the Member being injured or dying as a result of an event arising out of and in the course of his employment.

### 21.2 Work-Related Claims

The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

## 22. CONTRIBUTIONS

### 22.1 Eligible Contributors

Subject to the Act, in respect of a Member of the Fund, the Trustee may accept contributions from:

- (a) the Member;
- (b) an Employer of the Member;
- (c) the Spouse of a Member;
- (d) the Federal Government; or
- (e) any other person authorised by the Act to make contributions to the Fund in respect of the Member;

provided that the Trustee shall refuse to accept contributions where the acceptance of the contributions is contrary to the requirements of the Act or in any other circumstances that the Trustee determines.

### 22.2 Unallocated Contributions

Subject to the Act, the Trustee may accept unallocated contributions or contributions subject to certain conditions.

### 22.3 Eligible Contributions

Contributions may be made either in cash or by the transfer of assets in specie provided that the transfer of assets is permitted by the Trustee and meets the requirements of the Act. If a contribution is made by the transfer of an asset to the Fund, the terms and conditions of such transfer (including without limitation the

amount to be recorded in the relevant Member Account) shall be determined by the Trustee.

#### **22.4 Trustee to be Advised by Contributor**

At the time of making such contributions, the person making the contribution shall advise the Trustee of:

- (a) the amount of the contribution in respect of each Member, and whether the contributions are made:
  - (i) pursuant to an industrial award or agreement; and/or
  - (ii) so that the Employer avoids any liability to pay the superannuation guarantee charge pursuant to the Guarantee Act; and
  - (iii) any other information that the Trustee requires.

#### **22.5 Deemed Payment to Trustee by Employer**

Subject to the Act, any payment of contributions by an Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

#### **22.6 Defective Contributions**

If the Trustee finds after accepting contributions that it should have not done so, it will, if the Act permits, repay an appropriate amount to the person making the contribution, with such amount to be calculated on a fair and reasonable basis.

#### **22.7 Leave of Absence by Employee**

If an Employer Sponsored Member is granted leave of absence (other than annual leave or long service leave) by the Employer for any reason, the Member shall remain a Member for the period of leave, unless the Trustee otherwise determines. No contribution shall be made in respect of that Member during the period that the Member is on such leave unless the Employer determines otherwise and so advises the Trustee.

#### **22.8 No Enquiry to be made by Trustee**

The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting an agreed amount from the Member's salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice thereof.

## 23. INVESTMENTS

### 23.1 Investment Powers

- (a) Subject to the qualifications in this Rule 23 and subject to the restrictions contained in and the provisions of the Act, the Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee, in exercising its absolute discretion, determines.
- (b) The Trustee acknowledges that there are detailed provisions and requirements in the Act pertaining to investments made by Complying Superannuation Funds including, without limitation, acquiring assets from a Related Party of the Fund or investing in a related trust of the Fund or in an asset of the Fund subject to a lease or lease arrangement between the Trustee of the Fund and a Related Party of the Fund.
- (c) The Trustee acknowledges that there are certain permitted exceptions and that transitional provisions in the Act can apply to the restrictions referred to above.

### 23.2 Types of Investments

Without limiting the generality of Rule 23.1, but subject to the restrictions contained in and the provisions of the Act, including without limitation the in-house assets rules, the Trustee may invest either directly or indirectly in:

- (a) investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
- (c) on deposit with any bank, building society, company, partnership or other person or institution, either with or without security and on such terms as the Trustee, in its absolute discretion determines provided that the Trustee may not lend any part of the moneys or assets of the Fund to Members or relatives of Members or give any financial assistance to Members or relatives of Members or to lend money or give financial assistance to any other person where to do so would breach the Act;
- (d) shares, stock, options, debentures, bonds, unsecured notes or other securities including commodities;
- (e) units or sub-units of any unit trust;
- (f) bills of exchange and other negotiable instruments; and
- (g) the purchase or the acquisition by way of lease finance or hire purchase or otherwise of any plant, equipment or other property for lease, or rental, or hire purchase or sale to any person provided such transactions do not breach the Act.

### 23.3 Variation of Investments

The Trustee shall have power to vary, transpose and replace such investments in such manner as it determines without being responsible for loss occasioned by so varying, transposing or replacing.

### 23.4 Acquisition of Assets from a Related Party

The Trustee shall not acquire assets from a Related Party except in the circumstances permitted under the Act.

### 23.5 Particular Investments for Particular Members

Subject to the Act, the Trustee may hold particular assets or investments solely for particular Members or category of Members and shall identify such assets or investments in the Member Accounts of such Members or category of Members for whom they are held, in the records of the Fund. The earnings on such investments shall be credited to the relevant Member Account for whom such particular investments are held and the Taxes and expenses payable in respect of such investments shall be debited to the said Member Account.

### 23.6 Restrictions if WA Property Transferred to Fund by Member

Notwithstanding any other provision in this Deed, where WA Property is acquired by the Fund from a Member of the Fund (the "Transferor Member"), either by sale or by way of in-specie contribution, such asset:

- (a) shall be held in the Member Account of the Transferor Member;
- (b) shall not be transferred out of the Member Account of the Transferor Member or pooled with other contributions or assets of another Member or Members; and
- (c) shall be provided to the Transferor Member as a retirement benefit in accordance with the provisions of this Deed or sold and the cash proceeds from the sale distributed to the Transferor Member's Account.

To avoid doubt, the Fund shall be maintained such that only the Transferor Member has an interest in the WA Property whilst the Fund owns the WA Property.

### 23.7 Restrictions if WA Property Transferred to Fund by Members

Notwithstanding any other provision in this Deed, where WA Property is acquired by the Fund from more than one Member of the Fund (the "Transferor Members"), either by sale or by way of in-specie contribution, such asset:

- (a) shall be held in the Member Accounts of the Transferor Members in proportion to their interests in the WA Property;

- (b) shall not be transferred out of the Member Accounts of the Transferor Members or pooled with other contributions or assets of another Member or Members; and
- (c) shall be provided to the Transferor Members as a retirement benefit in accordance with the provisions of this Deed or sold and the cash proceeds from the sale distributed to the Transferor Members' Account.

To avoid doubt, the Fund shall be maintained such that only the Transferor Members have an interest in the WA Property whilst the Fund owns the WA Property.

### **23.8 Investment Strategy**

The Trustee shall, from time to time, formulate and give effect to an investment strategy in accordance with the requirements of the Act.

### **23.9 Agreement with Investment Manager and Custodian**

If the Trustee appoints or has appointed a company as an investment manager or custodian for the Fund or any part of it, the agreement with the investment manager must be in writing and contain provisions which comply with the Act.

### **23.10 Charge over Assets**

The Trustee shall not give a charge over, or in relation to, an asset of the Fund except in the circumstances prescribed in the Act.

## **24. POLICIES OF INSURANCE**

### **24.1 Investment in Insurance Policies**

- (a) The Trustee may, in its absolute discretion, self-insure, invest or apply the whole or any part of the Fund in the payment of premiums of a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest.
- (b) The Trustee may effect such policies with such company on such terms and conditions and for such periods as the Trustee determines. The Trustee has the power to accept an assignment of a policy of life, disability or accident insurance on such terms as the Trustee, in its absolute discretion, determines.
- (c) The Trustee has the power to continue such policies for such periods as the Trustee determines and to discontinue or surrender such policies.

### **24.2 Payment of Premiums and Application of Proceeds**

The premiums for such policies shall be paid for out of the amount standing to the credit of the Member Accounts in such proportion as is agreed upon by the Trustee and the Member or on such basis as the Trustee otherwise determines. Unless otherwise determined by the Trustee, the proceeds of such policies shall be credited to

those Member Accounts in the same proportion as premiums for such policies were paid from those accounts.

## 25. VALUATIONS AND ALLOCATION OF PROFITS OR LOSSES

### 25.1 Allocation of Profits or Losses

- (a) After the end of each financial year of the Fund, the profits or losses arising from the investment of the assets of the Fund during the preceding financial year; or
- (b) on the winding-up of the Fund or whenever the Trustee determines it to be necessary, the profits or losses arising from the investment of the assets of the Fund during the current financial year,

less such provision for expenses and liabilities as the Trustee, in its absolute discretion, deems prudent, shall be credited or debited by the Trustee to the Member Accounts in proportion to the amount standing to the credit of such accounts at the beginning of the Fund's financial year for which the accounts are being prepared or on such other basis as the Trustee determines. The Trustee may, in its absolute discretion, credit such proportion as it determines of the amount that would otherwise be credited to the Member Accounts to any of the Reserve Accounts.

### 25.2 Valuation of Assets of the Fund

- (a) The Trustee may make a valuation of the assets of the Fund (other than policies of life insurance) after the end of each financial year of the Fund or whenever it determines in such manner as the Trustee determines and deduct therefrom the amount of outstanding liabilities and expenses the estimated costs of realizing the investments and such provision for Tax as the Trustee, in its absolute discretion, deems to be prudent.
- (b) If the net value of the assets of the Fund determined in accordance with this Rule exceeds or is less than the aggregate of the net amount standing to the credit of all of the Member Accounts at that date the Trustee shall credit the surplus or debit the deficit to the Member Accounts in proportion to the amounts standing to their respective credits at the beginning of the Fund's financial year for which accounts are being prepared or on such other basis as the Trustee determines to be equitable.
- (c) The Trustee may, in its absolute discretion, credit to any of the Reserve Accounts such proportion as it determines of the amount that would otherwise be credited to the relevant Member Account.

### 25.3 Interim Earning Rate

The Trustee may allocate to the Member's Accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under Rule 25.1 or 25.2 to the date on which the benefit is being paid.

## 25.4 Requirements of the Act

Notwithstanding Rules 25.1, 25.2 and 25.3, the Trustee shall only credit an amount to a Member's Account if to do so would not breach the requirements of the Act.

## 26. TRANSFERS

### 26.1 Transfer into an Account

Subject to the Act, the Trustee may accept to the credit of an Account an amount or asset that is transferred from another Account or Entity provided that:

- (a) where the transfer amount or asset consists of different components (such as preserved, non-preserved, restricted and non-restricted amounts) the Trustee shall ensure that the Account accurately reflects and records those different components; and
- (b) in the case where an amount or asset is to be transferred into an Account held on behalf of a Member, such Member must provide consent.

### 26.2 Transfer out of an Account

- (a) Subject to this Rule and the Act, the Trustee may transfer the whole or part of any amount held in an Account to another Account or Entity.
- (b) The Trustee may only make such a transfer out of any Account held in respect of a Member where:
  - (i) the Member consents; or
  - (ii) the transfer is made to an Entity in circumstances permitted by the Act including without limitation a transfer to a successor fund or an eligible rollover fund.
- (c) The Trustee may make such enquiries as it considers appropriate to satisfy itself that the Entity complies with the requirements of the Act and that any Preserved Benefits continue to be preserved in accordance with the requirements of the Act.
- (d) The receipt by the trustee of an Entity of such payments or assets shall be a complete discharge to the Trustee in respect of any liability to that Member and the persons claiming through the Member in relation to the amount so transferred.
- (e) The Trustee may effect such transfers in any manner it considers appropriate provided it complies with the Act.



## 27. FORFEITURE OF BENEFITS

Subject to the Act, a Member or former Member shall cease to be presently or presumptively or contingently entitled to the Member's Benefit but only at the discretion of the Trustee if:

- (a) in its opinion, the Member has committed an act of bankruptcy or has become an insolvent person under administration;
- (b) in its opinion, the Member has attempted to assign, alienate, charge or encumber all or part of his Member's Benefit;
- (c) the Member's Benefit whether by his own act, operation of law or order of any court or otherwise becoming payable to or vested in any other person,
- (d) the Member is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health; or
- (e) the Member voluntarily forfeits all or part of his Member's Benefit and such forfeiture is permitted by the Act.

## 28. APPLICATION OF FORFEITED BENEFITS

### 28.1 For the Benefit of the Member and/or Dependants

Where Rule 27 applies, but subject to the Act, the Trustee may apply the amount so forfeited for the benefit of the Member or such of the Member's Dependants as the Trustee, in its absolute discretion, determines.

### 28.2 Credit to Reserve Account

The amount of any forfeited benefit in the Fund by reason of the operation of Rule 27 which is not applied in accordance with Rule 28.1 shall be credited to such Reserve Account as may be determined by the Trustee and may be applied at any time:

- (a) to the provision of the benefits that other Members or their Dependants have rights to receive from the Fund;
- (b) to the provision for other Members or their Dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Regulator regards as reasonable having regard to all the circumstances;
- (c) for any other purpose approved in writing by the Regulator; or
- (d) in such other manner, including without limitation the crediting of any Member Accounts, that is permitted or required under the Act.

### 28.3 Payment to Employer

If the Trustee decides to pay the amount of any forfeited benefit to an Employer, the Trustee shall give the Members written notice of the proposed payment not less than 3

months before the day when the payment is proposed to be made to the Employer and shall do and effect all other acts and matters as the Act may require.

#### 28.4 **Unclaimed Money**

The Trustee shall comply with the requirements of the Act in relation to the payment of unclaimed money.

### 29. **BENEFITS GENERALLY**

#### 29.1 **Information**

Subject to the Act, the Trustee may require a recipient requesting payment of a Member's Benefit to provide the Trustee with such information and other particulars as the Trustee determines before the Member's Benefit begins to be paid and during the period of payment of the Member's Benefit.

#### 29.2 **Conditions**

The Trustee may impose any reasonable conditions regarding payment of a Member's Benefit.

#### 29.3 **Transfer of Assets**

The Trustee may, at the request of the recipient of a Member's Benefit and provided the Act allows, pay benefits wholly or partly by transferring one or more assets of the Fund of equivalent value to the recipient.

#### 29.4 **Incapacity of Member**

Where:

- (a) a recipient of a Member's Benefit is a minor;
- (b) the Trustee believes that a recipient of a Member's Benefit is unable to manage their financial affairs because of legal incapacity; or
- (c) the Trustee otherwise considers it appropriate for any reason;

the Trustee may, subject to the Act, pay some or all of the amount payable in respect of the recipient to another person including the guardian or legal personal representative of that person to be applied for the benefit of the recipient.

#### 29.5 **Discharge**

The payment of all benefits to or on behalf of a Member (including without limitation, those payments made in accordance with Rule 29.4) shall be in full and final satisfaction and discharge of the obligations of the Trustee's obligations in respect of that Member and all of the Member's rights, entitlements and interests in the Fund. The Trustee has no obligation to ascertain how the payment is applied.

## 29.6 Preserved Benefits

The Trustee shall deal with the different components (such as preserved, non-preserved, restricted and non-restricted amounts) of each Member's Benefit in accordance with the Act.

## 30. BENEFITS PAYABLE TO A MEMBER

### 30.1 Benefit Payment may be made by Trustee

Subject to the provisions of these Rules and the Act, the amount of the Member's Benefit may be paid or commenced to be paid by the Trustee or rolled over to an Entity in the following circumstances:

- (a) if the Member has reached the Retirement Age;
- (b) if the Member has ceased Service;
- (c) if the Member suffers Permanent Incapacity;
- (d) if the Member suffers Temporary Incapacity;
- (e) if the Member suffers severe financial hardship; or
- (f) as is otherwise allowed under the Act.

### 30.2 Benefit Payment must be made by Trustee

Subject to the provisions of these Rules and the Act, the amount of the Member's Benefit must be paid or commenced to be paid by the Trustee or rolled over to an Entity for payment as soon as practicable after the occurrence of any events set out in the Act:

### 30.3 Deferral of Payment of Benefit

Subject to the Act, the payment of any benefit payable under these Rules may, at the request of the Member and with the consent of the Trustee, be deferred until the Member requests payment of the benefit. Such deferred benefit shall however be paid to the Member in accordance with Rule 30.2. Earnings of the Fund shall be allocated to such a deferred benefit in accordance with Rule 25.

### 30.4 Member to Inform Trustee

A Member shall inform the Trustee as soon as practicable after the occurrence of any event as directed by the Trustee to the Member in writing.

## 31. BENEFIT PAYABLE ON DEATH

### 31.1 Benefit Payable on Death

- (a) On the death of a Member, the amount of the Member's Benefit may be paid to the Member's legal personal representative or may be held by the Trustee on

trust for the benefit of such one or more of the Member's Dependants, to be paid in proportions which the Trustee may determine unless the Member has directed the Trustee to be bound by his or her nomination.

- (b) The Trustee shall take account of any nomination of Beneficiaries made by the Member, but shall only be bound by it if permitted by the Act and where the Member has so stipulated that the Trustee be bound.
- (c) The Trustee may pay such benefit as a lump sum, pension, annuity or in any other form that Rule 33 allows.

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

Subject to Rule 31.1 if the Trustee is unable to establish within 6 months after the Member's death that there are any Dependants, the Member's Benefit shall be paid to the Member's legal personal representative.

### **31.3 Payment other than to Dependant or Legal Personal Representative**

If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants nor a legal personal representative of the deceased Member the death benefit may be paid to such other person as the Act permits.

### **31.4 Beneficiary may be Admitted as Member**

A Beneficiary that is entitled to a benefit from the Fund following the death of a Member may be admitted by the Trustee as a member of the Fund.

## **32. CALCULATION OF A MEMBER'S BENEFIT**

### **32.1 Lump Sum Benefits**

Subject to this Rule 32, the total amount that may be received by a Member by way of lump sum is the amount of the Member's Benefit.

### **32.2 Pension Benefits**

Where a benefit is to be payable in pension form, the total amount that may be applied for the purposes of providing that pension is the amount of the Member's Benefit.

### **32.3 Variation to Amount of Member's Benefit**

The amount of a Member's Benefit may be varied by the Trustee in the following circumstances:

- (a) subject to the Act and these Rules, the Trustee may increase the amount of a Member's Benefit by utilising an amount in another Account or Reserve to finance such a benefit;
- (b) where the Member requests that only part of that Member's Benefit be paid by way of lump sum or pension or that the Member's Benefit be paid in the form

of both a lump sum and a pension and the Trustee accepts that request, the total amount of the Member's Benefit to be received by way of lump sum and/or pension shall be adjusted by the Trustee in the manner that the Trustee considers fair and reasonable;

- (c) the Trustee may deduct from the amount of any Member's Benefit payable the amount of any Tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit or pay any amount so deducted to the Commissioner of Taxation;
- (d) subject to the Act, the total amount of the Member's Benefit to be paid to an Employer Sponsored Member may be reduced in circumstances where the Employer Participation Terms have the effect that the Member is only entitled to receive that part that has vested in the Member; or
- (e) if a Member's Benefit would ordinarily include an insured component under an Insurance Policy but:
  - (i) no amount is paid under that Policy; or
  - (ii) the amount paid under the Policy is less than the amount that would ordinarily be payable,

the amount payable to the Member may be adjusted accordingly by the Trustee in the manner that the Trustee considers fair and reasonable.

#### 32.4 Temporary Incapacity Benefit

Rules 32.1 or 32.2 do not apply in the case of a benefit payable on the Member's Temporary Incapacity. The benefit payable in those circumstances will be a Non-Commutable Income Stream calculated in accordance with the Act and having regard to:

- (a) the amount payable under the Policy in respect of the Member's Temporary Incapacity, provided that the amount of the benefit shall be no more than that amount which the Member was receiving for his Gainful Employment before that Temporary Incapacity;
- (b) the timing of those payments, provided that the period in which the benefit is payable shall not exceed the period commencing from the time of that Temporary Incapacity to the earlier of the following events:
  - (i) the Member is re-engaged in the kind of employment engaged in by the Member immediately before that Temporary Incapacity;
  - (ii) the Trustee forms an opinion that the Member suffers from Permanent Incapacity; or
  - (iii) the Member dies;
- (c) the liabilities incurred by the Trustee in connection with the Policy (including the receipt and payment of proceeds); and

- (d) any relevant Policy terms.

### 32.5 Australian Currency

The benefits payable under these Rules shall be calculated in and be payable in Australian currency.

## 33. MODE OF PAYMENT OF BENEFITS

Subject to the Act and without limiting anything in these Rules, the Trustee and a Member may agree that the whole or any part of a Member's Benefit that is payable under these Rules will be paid in one or more of the following forms:

- (a) a lump sum;
- (b) an Allocated Pension;
- (c) a Term Allocated Pension;
- (d) a Defined Pension;
- (e) a Life Expectancy Pension;
- (f) a Lifetime Pension;
- (g) a Non-Commutable Allocated Pension;
- (h) a Non-Commutable Pension;
- (i) a Non-Commutable Income Stream;
- (j) an Account-Based Pension;
- (k) a Social Security Pension;
- (l) a Veterans Pension;
- (m) by acquiring an annuity or pension from a life office or similar organisation;  
and
- (n) any other form or type of benefit that the Act allows.

## 34. PENSIONS

### 34.1 Pension Arrangements

Subject to the Act, the Trustee may:

- (a) agree with the recipient of the pension on particular arrangements to apply to the pension, such as the commencement date of the pension, the number and identity of any reversionary beneficiaries, the terms and conditions of any reversionary pensions, the frequency of pension payments, the amount of

pension payments, the treatment of benefits on the recipient's death, whether the pension can be commuted and any other relevant matters;

- (b) set rules relating to default arrangements that may apply to pension payments, in the absence of agreement between the Trustee and recipient;
- (c) obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves, or any other relevant matter; and
- (d) establish pension reserves in relation to the funding of pension obligations of the Fund.

#### 34.2 Variation of Terms

Subject to the Act, the Trustee may:

- (a) vary the terms on which an existing pension is paid; or
- (b) offer pensions on any terms that it considers appropriate, including without limitation by way of variation, supplement, qualification or deletion of terms that are otherwise contained in the provisions of the Act that deal with the types of pensions that may be paid from a Complying Superannuation Fund.

#### 34.3 Allocated Pension

Where the Member and the Trustee agree that the pension is an Allocated Pension, the Trustee shall, in its absolute discretion, determine the amount of the pension and the manner in which and period for which it is paid, provided that the pension shall be paid at least annually and the annual amount of the pension shall not be greater than any maximum nor less than any minimum amount prescribed in the Act.

#### 34.4 Term Allocated Pension

Where the Member and the Trustee agree that the pension is a Term Allocated Pension, the Trustee shall ensure that:

- (a) the pension is paid at least annually to the Member or to a reversionary beneficiary throughout such period as specified in the Act;
- (b) the pension payments are made in accordance with the Act;
- (c) the pension does not have a residual capital value;
- (d) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
- (e) the pension can only be transferred:
  - (i) on the death of the Member – to a dependant of the Member or to the estate of the Member; and

- (ii) on the death of the reversionary pensioner – to a dependant of the reversionary pensioner or to the estate of the reversionary pensioner.

#### 34.5 Defined Pension

Where the Member and Trustee agree that the pension is a Defined Pension, the Trustee shall ensure that:

- (a) the pension is paid at least annually; and
- (b) unless the Act otherwise allows, the annual amount of the pension (payable to the Member or to the reversionary beneficiary, as the case may be) is fixed and allowing for variation only in the following instances:
  - (i) as specified in these Rules;
  - (ii) to allow indexation of the annual amount where permitted by the Act;
  - (iii) to allow commutation to pay a superannuation contributions surcharge, and
  - (iv) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and
  - (v) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion.

#### 34.6 Lifetime Pension

Where the Member and the Trustee agree that pension is a Lifetime Pension, the Trustee shall ensure that:

- (a) the pension is paid at least annually throughout the life of the Member and, if there is a reversionary beneficiary, throughout such period as specified in the Act;
- (b) unless the Act otherwise allows, the annual amount of the pension (payable to the Member or to the reversionary beneficiary, as the case may be) is fixed and allowing for variation only in the following instances:
  - (i) as specified in these Rules;
  - (ii) to allow indexation of the annual amount where permitted by the Act;
  - (iii) to allow commutation to pay a superannuation contributions surcharge, and
  - (iv) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged.
- (c) the pension does not have a residual capital value; and



- (d) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion.

#### 34.7 Lifetime Expectancy Pensions

Where the Member and the Trustee agree that the pension is a Life Expectancy Pension, the Trustee shall ensure that:

- (a) the Member only becomes entitled to be paid the pension on or after the day when the Member becomes of pension age; and
- (b) the pension is paid at least annually to the Member or to a reversionary beneficiary throughout such period as specified in the Act:
- (c) unless the Act otherwise allows, the annual amount of the pension (payable to the Member or to the reversionary beneficiary, as the case may be) is fixed and allowing for variation only in the following instances:
  - (i) as specified in these Rules;
  - (ii) to allow indexation of the annual amount where permitted by the Act;
  - (iii) to allow commutation to pay a superannuation contributions surcharge, and
  - (iv) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged.
- (d) the pension does not have a residual capital value; and
- (e) if the pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion.

#### 34.8 Non-Commutable Allocated Pension

Where the Member and the Trustee agree that a pension is a Non-Commutable Allocated Pension, the Trustee shall ensure the following:

- (a) the pension complies with Rule 34.3; and
- (b) if the pension is commuted, the resulting eligible termination payment cannot be cashed unless:
  - (i) the purpose of the commutation is:
    - (A) to cash an unrestricted non-preserved benefit; or
    - (B) to pay a superannuation contributions surcharge; or
    - (C) to give effect to an entitlement of a non-member spouse under a payment split;

- (ii) before commutation, the Member has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is "Nil"; or
- (iii) as otherwise allowed under the Act.

#### 34.9 Non-Commutable Pension

Where the Member and the Trustee agree that the pension is a Non-Commutable Pension the Trustee shall ensure the following:

- (a) that the pension complies with regulations 1.06(2), (7) or (8) of the SIS Regulations; and
- (b) if the pension is commuted in accordance with the SIS Regulations, the resulting eligible termination payment cannot be cashed unless:
  - (i) the purpose of the commutation is to cash an unrestricted non-preserved benefit;
  - (ii) before the commutation, the Member has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is "Nil"; or
  - (iii) in such other circumstances as prescribed by the Act.

#### 34.10 Account-Based Pension

Subject to the Act, where the Member and the Trustee agree that the pension is an Account-Based Pension the Trustee shall:

- (a) determine the amount of the pension and the manner in which and period for which it is paid, provided that the pension shall be paid at least annually and the annual amount of the pension shall not be less than any minimum amount prescribed in the Act;
- (b) the pension is transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be); and
- (c) the capital value of the pension and the income from it cannot be used as security for a borrowing.

#### 34.11 Commutation of Pension

The recipient of a pension under these Rules may only commute the pension or part thereof to a lump sum on making written application to the Trustee, provided the commutation complies with the requirements of the Act; and

- (a) where the pension is a Term Allocated Pension – the commuted amount does not exceed the benefit payable immediately before the commutation, and the commutation is made:

- (i) within 6 months after the commencement day of the pension provided the commutation is not funded from:
    - (A) the commutation of an annuity that meets regulations 1.05(2), (3), (9) or (10) of the SIS Regulations;
    - (B) the commutation of a pension that meets regulations 1.06(2), (3) or (7) of the SIS Regulations; or
    - (C) the commutation of a pension that meets regulation 1.07(3A) of the RSA Act;
  - (ii) by payment, on the death of the Member or reversionary beneficiary, to the benefit of:
    - (A) a dependant of either of them;
    - (B) to the estate of either of them; or
    - (C) if the Trustee is unable to locate a person mentioned in subparagraph (A) or (B), to another individual,

provided that where the Member has opted for the pension to be paid in accordance with Rule 34.10(a)(iii), the Term Allocated Pension cannot be commuted until the death of both the Member and the Spouse;
  - (iii) to purchase another benefit that is:
    - (A) an annuity that meets regulations 1.05(2), (3), (9) or (10) of the Act;
    - (B) a pension that meets regulations 1.06(2), (3), (7) or (8) of the Act; or
    - (C) a pension that meets regulation 1.07(3A) of the RSA Act;
  - (iv) to pay a superannuation contributions surcharge; or
  - (v) to give effect to an entitlement of a Non-Member Spouse under a payment split.
- (b) where the pension is a Defined Pension – the commuted amount does not exceed the benefit payable immediately before the commutation, and the commutation is:
- (i) limited by the amount calculated using the pension valuation factors prescribed in Schedule 1B of the SIS Regulations; or
  - (ii) made to pay a superannuation contributions surcharge.

- (c) where the pension is a Lifetime Pension – the commuted amount does not exceed the benefit payable immediately before the commutation, and the commutation is made:
- (i) within 6 months after commencement day of the pension, provided that the pension was not funded from the commutation of a previous annuity or another pension;
  - (ii) for the benefit of a reversionary beneficiary on the death of the Member and the death occurs within a period being the lesser of the following:
    - (A) the life expectancy of the Member as at the commencement day of the pension; or
    - (B) 20 years;
  - (iii) to purchase another Lifetime Pension, lifetime annuity, Life Expectancy Pension or life expectancy annuity;
  - (iv) to give effect to an entitlement of a Non-Member Spouse under a payment split; or
  - (v) pay a superannuation contributions surcharge.
- (d) where the pension is a Life Expectancy Pension – the commuted amount does not exceed the benefit payable immediately before the commutation, and the commutation is made:
- (i) within 6 months after commencement day of the pension, provided that the pension was not funded from the commutation of a previous annuity or another pension; or
  - (ii) by payment, on the death of the Member, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the Member; or
  - (iii) by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
  - (iv) to purchase another Lifetime Pension, lifetime annuity, Life Expectancy Pension or life expectancy annuity; or
  - (v) to give effect to an entitlement of a Non-Member Spouse under a payment split; or
  - (vi) to pay a superannuation contributions surcharge.

**34.12 No Assignment or Encumbrance**

- (a) Pensions payable from the Fund shall not be assigned or otherwise transferred by the recipient (except to the extent provided for in these Rules) and shall not be mortgaged or encumbered in any manner whatsoever.
- (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.

**34.13 Cessation of Pension Payments**

When the Member's Benefit is reduced to nil, the pension payable under these Rules shall cease to be payable and the person who was receiving the pension shall cease to be entitled to any further benefits and, if a Member, shall cease to be a Member.

**34.14 Pension Reserve**

Subject to the Act, where a pension benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, the Trustee may arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the recipient to whom the pension benefit related and that recipient's Dependents.

**35. EMPLOYERS****35.1 Admission of an Employer into Fund**

The Trustee may admit an Employer as a contributor to and a participant in the Fund on completion of Appendix "C" or such other form of application as the Trustee decides upon. An Employer so admitted shall be bound by the provisions of this Trust Deed as if it had been an original party to the Trust Deed.

**35.2 Withdrawal of an Employer from Fund**

- (a) An Employer shall cease to be a contributor to and a participant in the Fund:
  - (i) from the effective date of a notice that it gives to the Trustee of its intention to cease to be an Employer; or
  - (ii) with effect from the date it becomes bankrupt or is placed in liquidation or ceases to carry on a business.
- (b) The Employees of an Employer that have ceased to be a participant in the Fund shall continue to be Members until such time as their Service ceases and their benefits have been paid in accordance with these Rules. No benefit shall be paid to such Members during the period that their employment by the Employer continues unless such payment is permitted by the Act or unless the consent of the Regulator has been obtained in writing.

- (c) The Trustee can, if it so determines, accept contributions from Employees of an Employer that has ceased to be a participant in the Fund as Non-Employer Sponsored Members.

### 36. EMPLOYER'S RIGHT TO TERMINATE EMPLOYMENT

Nothing herein contained shall restrict the right of the Employer to dismiss or otherwise terminate the employment of a Member or remove a director of the Employer from office and being a Member shall not be taken as guaranteeing continuation of employment.

### 37. INFORMATION REQUIREMENTS REGARDING EMPLOYERS

- (a) The Trustee shall provide an Employer with a copy of this Deed and such notices, statements and other information as are reasonably required by the Employer as a participant in the Fund.
- (b) The Employer shall provide to the Trustee such information which is reasonably required by the Trustee to manage and administer the Fund. The Trustee may act upon any information given to it by an Employer without further enquiry.

### 38. VARIATION OF TRUST DEED

The Trustee may, at any time and from time to time, either by deed executed by the Trustee or by written or oral resolution (including without limitation a resolution of directors of a corporate Trustee), vary, add to or rescind all or any of the provisions from time to time of this Trust Deed and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and such new provisions may take effect from a date before or after the time they are made and shall be subject to being varied, added to or rescinded in like manner but no such variation, addition or rescission shall be made if it breaches the requirements of the Act or if it has the effect of reducing a Member's Benefit that has accrued, or become payable to a Member, before the date of the variation, addition or rescission unless:

- (a) the reduction is required because of, and does not exceed the value of, any Taxes payable by the Fund;
- (b) the reduction is required to enable the Fund to comply with the Act;
- (c) the Member so affected approves in writing of the reduction;
- (d) the Regulator approves in writing of the reduction.

### 39. DISSOLUTION OF THE FUND

#### 39.1 Perpetuity Period

The trusts constituted by this Trust Deed shall endure for such period as is allowed by law for the duration of the trusts hereby established.

### 39.2 **Dissolution of the Fund**

The Trustee shall wind-up and terminate the Fund upon the earlier of the following events:

- (a) the Trustee resolves to terminate the Fund at any time by notice in writing to all of the Members of the Fund;
- (b) all Members agree to terminate the Fund at any time;
- (c) the last remaining Member ceases to be a Member of the Fund; or
- (d) the Regulator determines that the Fund be terminated at any time,

and the date when the first of the above events occurs shall be referred to as the Termination Date.

### 39.3 **Application of Assets**

The assets of the Fund will be applied by the Trustee in its absolute discretion, in the following order on termination of the Fund:

- (a) to provide for the payment of all expenses and liabilities relating to the Fund, except for those relating to benefit payments;
- (b) to provide for the payment and/or transfer of the benefits that became payable on or before the Termination Date including benefits that have begun to be paid in pension form;
- (c) to provide for the payment and/or transfer of the benefit for those Beneficiaries who are entitled to receive a benefit from the Fund but the benefit has not yet become payable under paragraph (6);
- (d) to increase any benefits by application of amounts from the Reserve Account or any Other Account on a basis determined by the Trustee;
- (e) subject to the Act, to pay an Employer any amounts from a Reserve Account attributable to that Employer on a basis agreed between the Trustee and Employer; and
- (f) subject to the Act, to pay and/or transfer any amounts remaining to or for the benefit of one or more of the Members, former Members, Employers or former Employers as the Trustee considers appropriate.

### 39.4 **Discharge**

The payments and/or transfers made in accordance with Rule 39.3 shall be accepted by Members, former Members, Employers and former Employers in full discharge of all claims in respect of the Fund.

