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W.H. Morgan Nominees Pty Ltd

W.H. Morgan Superannuation Fund Trust Deed

Date X 29th June, 2008

Parties

W.H. Morgan Nominees Pty Ltd ACN 120 395 726 of 46 Spence Street,
Cairns, Queensland (Trustee)

Background

- A The Trustee wishes to establish a superannuation fund (**Fund**).
- B The Trustee:
- (a) agrees to act as trustee of the Fund; and
 - (b) intends that the execution of this document by the Trustee constitutes the Trustee's written consent to act.
- C Where the Trustee comprises more than one person, each person:
- (a) agrees to act as Trustee jointly with each other person; and
 - (b) severally consents to their appointment.
-

Agreed terms

From the date of this deed, the Fund is established as a superannuation fund governed by the provisions as set out in the schedule.

Executed as a Deed.

Executed by
W.H. Morgan Nominees Pty Ltd
in accordance with its constitution by the
sole director and sole secretary of the
Company

)
)
)
)
)

+ 

+ 

.....
Sole Director and Sole Secretary

+ WILLIAM HARRY MORGAN

.....
Name of Sole Director and Sole Secretary (print)



Schedule

Trust Deed

1 Name of Fund

The name of the Fund is:

- (a) **W.H. Morgan Superannuation Fund**; or
- (b) any other name determined by the Trustee.

2 Constitution of trust

2.1 Constitution on acceptance of contribution

The Fund is constituted as a trust fund to be held by the Trustee under and in accordance with the terms of this document on the payment to and acceptance by the Trustee of a contribution made for the purposes of the Fund.

2.2 Declaration of trust

The Trustee declares that it will hold on the trusts set out in this document:

- (a) any contributions paid to and accepted by the Trustee for the purposes of the Fund; and
- (b) any property acquired on the investment of contributions made to the Fund, and all assets and income comprising the Fund from time to time.

3 Rules

3.1 Definition

Rules means the provisions identified in this schedule as "rules", as amended from time to time.

3.2 Effect of Rules

The rules form part of this document.

4 Proper law

The rights, liabilities and obligations of the Trustee, the Employers and the Members under this document are governed by the law of the State of Queensland and any proceedings to enforce those rights, liabilities or obligations may be taken in the courts of that State.

Schedule – Rules

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Schedule

Rules

1 Interpretation

1.1 Definitions

In this document:

Act means the *Superannuation Industry (Supervision) Act 1993*.

Amend includes delete or replace.

Assets of the Fund means any form of property including cash held by the Trustee on trust in accordance with the terms of this document.

Child includes an adopted child, a stepchild or an ex nuptial child.

Civil Penalty Order has the same meaning as in section 10 of the Act.

Compassionate Ground has the same meaning as in Regulation 6.01(2).

Constitutional Corporation has the same meaning as in section 10 of the Act.

Contribution Account means an account maintained for a Member under rule 5.1.

Dependant has the same meaning as in section 10 of the Act.

Eligible Person means any person who is eligible under Superannuation Law to become a member of a Regulated Superannuation Fund.

Eligible Rollover Fund has the same meaning as in section 242 of the Act.

Employee has the same meaning as in section 15A of the Act.

Employer has the same meaning as in section 15A of the Act, and in relation to a Member means an Employer of that Member.

Fund means the superannuation fund constituted by this document.

Gainful Employment and **Gainfully Employed** have the same meaning as "gainfully employed" in Regulation 1.03(1).

Investment Portfolio means a portfolio established by the Trustee under rule 8.5(b)(i).

Legal Personal Representative has the same meaning as in section 10 of the Act.

Member means any Eligible Person who:

- (a) has been admitted as a Member; and

- (b) has not ceased to be a Member.

Old-Age Pension has the same meaning as in section 10 of the Act.

Participating Employer means any person who:

- (a) is admitted as a Participating Employer; and
- (b) has not ceased to participate in the Fund.

Preservation Age has the same meaning as in Regulation 6.01(2).

Regulated Superannuation Fund has the same meaning as in section 10 of the Act.

Regulations means regulations made under the Act.

Regulator means the government body responsible for the regulation of, or the administration of tax concessions available to, superannuation funds in Australia, including:

- (a) the Australian Prudential Regulation Authority;
- (b) the Australian Securities and Investments Commission;
- (c) the Australian Taxation Office.

Retirement has the same meaning as in Regulation 6.01(7). **Retire, Retires and Retired** have corresponding meanings.

Service with a Participating Employer means employed by or holding office with the Participating Employer.

Severe Financial Hardship has the same meaning as in regulation 6.01(5) of the Regulations.

Superannuation Entity means any entity which may under Superannuation Law receive a transfer or rollover of a Member's benefit or from which the Trustee may accept a transfer or rollover of superannuation benefits.

Superannuation Law means a requirement of any law or a Regulator:

- (a) prescribed for the operation of Regulated Superannuation Funds; or
- (b) which must be complied with in order to:
 - (i) obtain the maximum tax concessions available to Regulated Superannuation Funds; or
 - (ii) avoid any penalty.

Tax means all forms of taxes, duties and governmental imposts together with interest, penalties, charges, fees and other amounts payable on or in respect of them.

Temporary Incapacity of a Member means:

- (a) in relation to a benefit provided under a policy of insurance, the definition of temporary incapacity or a corresponding term in the policy of insurance;

- (b) in relation to any other benefit, ill-health (whether physical or mental) that has caused the Member to cease to be Gainfully Employed but does not constitute Total and Permanent Disablement.

Termination Date means the date set by the Trustee under **rule 13.1**.

Total and Permanent Disablement of a Member means:

- (a) in relation to a benefit provided under a policy of insurance, the definition of total and permanent disablement or a corresponding term in the policy of insurance;
- (b) in relation to any other benefit, 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,

and **Totally and Permanently Disabled** has a corresponding meaning.

Trustee means the person or persons for the time being acting as trustee of the Fund.

1.2 Construction

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) words importing gender include other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors and assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a section, regulation or other specific provision of a statute, ordinance, code, law or statutory instrument includes the equivalent section, regulation or provision in any consolidation, amendment, re-enactment or replacement of that statute, ordinance, code or statutory instrument;
 - (v) a right includes a benefit, remedy, discretion, authority or power;
 - (vi) this or any other document includes the document as varied or replaced despite any change in the identity of the parties; and

- (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
- (d) headings are for convenience only and do not affect the interpretation of this document.

1.3 Severance and reading down

- (a) The whole or any part of a provision of this document is read down if, and to the extent that, it is necessary to ensure that the provision is not void, voidable, unenforceable or illegal.
- (b) The whole or any part of a provision of this document is severed if, and to the extent that, it is necessary to ensure that the provision is not void, voidable, unenforceable or illegal.

1.4 Compliance with Superannuation Law

- (a) The Trustee may comply with a requirement of Superannuation Law despite any other provision of this document.
- (b) The Trustee does not commit a breach of trust:
 - (i) by complying with a requirement of Superannuation Law; or
 - (ii) by failing to comply with a requirement of Superannuation Law.

1.5 Regulated Superannuation Fund requirements

Either of the following must apply:

- (a) the Fund must have a sole Trustee which is a Constitutional Corporation; or
- (b) the sole or primary purpose of the Fund is the provision of Old-Age Pensions.

2 Members

2.1 Eligibility and application for membership

An Eligible Person may apply to become a Member in a form approved by the Trustee.

2.2 Applicant to provide information

An Eligible Person who wishes to become a Member must:

- (a) have any medical examination; and
- (b) provide any information or take any other steps, which the Trustee requests in relation to the application.

2.3 Membership despite position held

A director, officer or employee of a Participating Employer or Trustee is eligible to be a Member regardless of their position.

2.4 Admission to membership

The Trustee may:

- (a) accept or reject an application to become a Member without giving any reason;
- (b) impose any conditions when accepting an application; and
- (c) at any time remove or vary any condition so imposed.

2.5 Date of admission

An applicant becomes a Member on the date determined by the Trustee.

2.6 Information to new Members

The Trustee must give to a new Member any information required by Superannuation Law within the time required by Superannuation Law.

2.7 Members bound

Each Member is bound by this document.

2.8 Member's interest in Fund

A Member has a beneficial interest in the Fund, but is not entitled to:

- (a) interfere with the exercise of the Trustee's powers or discretions;
 - (b) exercise any rights in relation to any of the Assets of the Fund; or
 - (c) require the transfer to the Member of any Asset of the Fund,
- except as expressly provided in this document.

2.9 Power of attorney

Each Member irrevocably appoints the Trustee as the Member's attorney to act on behalf of the Member in relation to all matters concerning the Fund.

2.10 Termination of membership

A person ceases to be a Member when the total balance in the Member's Contribution Account is paid in accordance with this document.

3 Employers

3.1 Admission of Participating Employer

- (a) A Member may apply to the Trustee for the Member's Employer to be admitted as a Participating Employer for the purpose of making contributions for the Member.

- (b) An Employer may apply to the Trustee to be admitted as a Participating Employer for the purpose of making contributions for any of its Employees who become Members.
- (c) The Trustee may accept or reject any application for admission of an Employer without giving any reason.
- (d) An Employer becomes a Participating Employer on the date determined by the Trustee.

3.2 Terms of participation

- (a) Each Participating Employer is bound by this document.
- (b) The Trustee may regard any instruction given or purported to be given by an officer of a Participating Employer as a valid instruction.
- (c) A Participating Employer may instruct the Trustee that contributions made by the Employer for any of its Employees are subject to a vesting scale.

3.3 Termination of participation

- (a) A Participating Employer ceases to participate in the Fund if a written notice to that effect is given by:
 - (i) the Employer to the Trustee;
 - (ii) the Member to the Trustee; or
 - (iii) the Trustee to the Employer.
- (b) The Employer ceases to participate in the Fund with effect on the date determined by the Trustee.
- (c) A Member may remain a Member despite the Member's Employer ceasing to participate in the Fund.

4 Contributions

4.1 Member contributions

A Member may contribute any amount which the Trustee accepts.

4.2 Contributions by other persons

- (a) A Participating Employer may:
 - (i) contribute to the Fund any amount which the Trustee accepts;
 - (ii) suspend or reduce its contributions by giving notice in writing to the Trustee.
- (b) The Trustee may accept contributions for a Member from any other person.

4.3 Payment and allocation of contributions

- (a) A contribution may be paid in cash or by transfer of assets to the Fund.
- (b) The Trustee may debit from a Member's Contribution Account any expenses in connection with a transfer of assets for the credit of the Member, or make other arrangements with the Member for payment of those expenses.
- (c) A contribution may be made directly to a delegate of the Trustee.

4.4 Contribution splitting

Where Superannuation Law permits, the Trustee may at the request or direction of a Member debit from the Contribution Account of that Member an amount comprising part or all of a contribution or contributions made for the credit of the Member and:

- (a) allocate the amount to the Contribution Account of another Member; or
- (b) transfer the amount to another Regulated Superannuation Fund for the credit of the person nominated by the Member.

4.5 Discretion to refuse contributions

The Trustee may refuse to accept all or any part of a contribution from any person without giving any reason.

4.6 Cessation of contributions

Contributions must cease to be made for a Member when the Member:

- (a) ceases to be a Member; or
- (b) attains an age at which Superannuation Law prohibits the acceptance of those contributions.

5 Accounting for Member benefits

5.1 Contribution Accounts

The Trustee may maintain for each Member an account (**Contribution Account**) to which the Trustee may allocate:

- (a) contributions, transfers or rollovers for the credit of the Member;
- (b) any part of the proceeds of an insurance policy received in respect of the Member;
- (c) any part of a contribution made for the credit of another Member, which that other Member has requested or directed is to be allocated to the Member's Contribution Account (where Superannuation Law permits the allocation and the Trustee determines to make the allocation).

5.2 Allocation of income and profits

- (a) The Trustee may from time to time allocate to each Member's Contribution Account a proportion of the net earnings of the Fund determined by the Trustee.
- (b) In determining the net earnings of the Fund for a period, the Trustee may take into account, in relation to the period:
 - (i) earnings on the Fund's investments;
 - (ii) expenses, and any provision for expenses, of the Fund;
 - (iii) capital gains and losses on realisation of any of the Fund's investments;
 - (iv) unrealised gains and losses arising on revaluation of any of the Fund's investments;
 - (v) allowance for capital appreciation and depreciation on any of the Fund's investments;
 - (vi) any reserves;
 - (vii) any other factors which Superannuation Law permits.
- (c) In allocating net earnings of the Fund, the Trustee may:
 - (i) identify and account separately for different classes of earnings of the Fund;
 - (ii) account separately for expenses attributable to each class of earnings to determine net earnings of each class;
 - (iii) allocate particular classes of net earnings to particular:
 - (A) Contribution Accounts;
 - (B) Investment Portfolios;
 - (C) parts of the Fund identified under **rule 5.7**.

5.3 Portfolio earning rates

Where the Trustee has established 2 or more Investment Portfolios, the net earnings allocated to Members' Contribution Accounts for any period must be determined on the basis of the Investment Portfolio or Investment Portfolios applicable to each Member.

5.4 Reserves

- (a) The Trustee may:
 - (i) maintain a reserve or reserves for any purposes which the Trustee determines and Superannuation Law permits;
 - (ii) allocate any amounts to a reserve which the Trustee determines, including:
 - (A) any contributions by an Employer which are not allocated to a Member's Contribution Account;

- (B) the proceeds of any policy of insurance which are not allocated to a Member's Contribution Account;
 - (C) the balance of a Member's Contribution Account which is applied to pay a pension other than a pension payable out of the Contribution Account.
- (b) Without limiting **rule 5.4(a)**, the Trustee may, if Superannuation Law permits, use a reserve to:
- (i) allocate any amount to one or more Contribution Accounts;
 - (ii) provide benefits or additional benefits for any Member, or any Dependant of a Member or former Member;
 - (iii) pay any contributions otherwise payable by any Participating Employer or Member;
 - (iv) pay any expenses of the Fund.

5.5 Negative earnings

Where for any period the Trustee determines that the net earnings of the Fund, or of any Investment Portfolio, are negative, the Trustee may allocate the loss, or any part of the loss, to Members' Contribution Accounts in proportions determined by the Trustee.

5.6 Revaluation of assets

The Trustee may at any time revalue any of the Fund's investments.

5.7 Segregation of assets

The Trustee may treat any part of the Fund as a separate trust fund for any purpose.

6 Benefits

6.1 Benefits payable to Members

A Member is entitled to a benefit:

- (a) when the Member:
 - (i) Retires;
 - (ii) has attained age 65 and asks the Trustee to pay the benefit;
 - (iii) attains an age at which Superannuation Law requires the benefit to be paid to the Member;
 - (iv) dies;
 - (v) suffers Total and Permanent Disablement;
 - (vi) suffers Temporary Disablement, where the terms of the Member's membership of the Fund entitle the Member to a benefit on Temporary Disablement;

- (vii) otherwise ceases Service with a Participating Employer and asks the Trustee to pay the benefit;
- (b) where Superannuation Law otherwise permits payment of the benefit and:
 - (i) the Member asks the Trustee to pay the benefit; and
 - (ii) the Trustee agrees to pay the benefit.

6.2 Amount of benefit

The amount of the benefit payable to a Member under **rule 6.1** is:

- (a) the balance in the Member's Contribution Account; or
- (b) if a vesting scale applies, the amount determined in accordance with the vesting scale subject to any minimum benefit payable under Superannuation Law.

6.3 Continuity of Service

- (a) If a Member ceases to be in the Service of a Participating Employer (**Former Employer**) but remains in the Service of another Participating Employer, the Member does not become entitled to a benefit because of cessation of Service with the Former Employer unless the Trustee decides that a benefit is payable.
- (b) If the Trustee decides that a benefit is payable, the amount payable as a benefit is calculated in accordance with **rule 6.3(a)** but only to the extent that the benefit is attributable to Service with the Former Employer.

6.4 Death benefits

- (a) A Member may at any time by written notice to the Trustee in the Member's life time or by will:
 - (i) nominate in respect of all or any part of the Member's benefit any one or more Dependants of the Member, or the Member's Legal Personal Representative, or both, as nominated beneficiaries;
 - (ii) revoke or amend the nomination.
- (b) If more than one nominated beneficiary is nominated, the nomination may specify the manner in which the benefit is to be allocated between them, but it need not do so.
- (c) If a Member dies, the Trustee must pay a benefit equal to the amount in the Member's Contribution Account as follows:
 - (i) if the Member has made a nomination in a form prescribed by the Trustee for binding nominations, the Trustee must pay the benefit in accordance with the nomination;
 - (ii) where a binding nomination has not been made in respect of all or part of the benefit, the benefit or that part of the benefit is payable to:

- (A) one or more of the Dependants of the Member; or
 - (B) the Legal Personal Representative of the Member, or both, in proportions determined by the Trustee.
- (d) If after making reasonable enquiries the Trustee has not found either a Dependant or Legal Personal Representative of a deceased Member, the Trustee may:
- (i) pay the benefit payable on the Member's death to any individual the Trustee determines; or
 - (ii) retain the benefit in the Fund, if Superannuation Law permits.
- (e) If a person dies while in receipt of a pension from the Fund, payment of a benefit (if any) on that person's death is governed by the **appendix**.

6.5 Required payment date

The Trustee must pay or commence to pay a benefit if Superannuation Law requires.

6.6 Other grounds for payment of benefits

The Trustee may pay an amount from a Member's Contribution Account to or for the benefit of the Member or the Member's Dependants where:

- (a) the Member has requested payment of the amount;
- (b) the Trustee is satisfied that:
 - (i) the Member is in Severe Financial Hardship;
 - (ii) the amount is required on a Compassionate Ground; or
 - (iii) payment of the amount is otherwise justified; and
- (c) Superannuation Law permits.

6.7 Incapacity

Where a person to whom a benefit is payable is incapable of managing their own affairs, the Trustee may, if Superannuation Law permits:

- (a) pay the person's benefit to another person on trust for, or otherwise to be used for the benefit of, the person entitled to the benefit; and
- (b) accept the other person's receipt as a valid discharge to the Trustee of its obligations in respect of the payment of that benefit.

6.8 Deferral of benefit payments

- (a) If a Member requests, the Trustee may defer payment of all or any part of the Member's benefit.
- (b) Where payment of a Member's benefit is deferred, the Trustee may continue to accept contributions for the Member if Superannuation Law permits.

- (c) If a Member requests, the Trustee must pay all or any part of the Member's deferred benefit.

6.9 Payment of rolled over amounts

The Trustee may pay to a Member any amount which was paid to the Fund for the Member from another Superannuation Entity if:

- (a) the Member requests payment; and
- (b) Superannuation Law permits.

6.10 Benefit payment standards

- (a) Despite any other rule, the Trustee must not pay a benefit in respect of a Member except to the extent that Superannuation Law permits.
- (b) Any benefit which cannot be paid from the Fund as a result of **rule 6.10(a)** must be:
 - (i) paid to another Superannuation Entity in accordance with **rule 7.2**; or
 - (ii) used to purchase a non-commutable life pension or life annuity in accordance with Superannuation Law; or
 - (iii) retained in the Fund.

6.11 Form of benefit payments

- (a) Where the Trustee is a Constitutional Corporation, the Trustee may pay a benefit as a lump sum or pension or a combination of both.
- (b) If the Trustee is not a Constitutional Corporation, a benefit must be paid as a pension.

6.12 Payment of lump sum benefits

Where a benefit is payable as a lump sum, the Trustee:

- (a) must pay the benefit as soon as practicable after it becomes payable unless **rule 6.8** applies; and
- (b) may pay the benefit in more than one instalment.

6.13 Payment of pension benefits

Where a benefit is payable as a pension, the Trustee may:

- (a) pay the pension from the Fund in accordance with the **appendix**; or
- (b) use the benefit to purchase a pension or an annuity.

6.14 Payment by transfer of assets

- (a) If a person who is entitled to a benefit requests, the Trustee may satisfy all or any part of the person's benefit entitlement by transferring any Assets of the Fund to that person.
- (b) Any Assets of the Fund transferred must be equivalent in value to the amount of the benefit entitlement to be satisfied by the transfer.

- (c) The Trustee must calculate the value of any Assets of the Fund transferred at market value, and any Taxes and expenses incurred as a result of the transfer must be paid by that person or deducted from the benefit.

6.15 Payment from the Fund

The Trustee may satisfy an entitlement to a benefit by paying the benefit to another Superannuation Entity in accordance with **rule 7.2**.

6.16 Payment of benefit on Temporary Incapacity

- (a) If a Member ceases to be Gainfully Employed because of Temporary Incapacity, the Trustee may pay the Member as a benefit a regular income payment.
- (b) The Trustee shall determine, subject to Superannuation Law:
 - (i) the amount of the regular income payment to be paid to a Member during a period of Temporary Incapacity; and
 - (ii) the times at which the regular income payment is to be made.
- (c) The Trustee may pay a benefit during a period of Temporary Incapacity out of either or both of:
 - (i) the Member's Contribution Account; or
 - (ii) reserves.

6.17 Deduction of Tax from benefits

The Trustee may deduct from any benefit:

- (a) any Tax attributable to the benefit or the Member;
- (b) the Trustee's estimate of or provision for any Tax which may be attributable to the benefit or the Member.

6.18 Benefit information

- (a) A person who is, or may become, entitled to a benefit must:
 - (i) have any medical examination; and
 - (ii) provide any information or take any other steps, which the Trustee requests in relation to their benefit entitlement.
- (b) If the person does not comply with the request, the Trustee may withhold the payment of their benefit.

6.19 Account reduction at Member's request

If:

- (a) a Member requests, including a request made at any prior time in relation to a subsequent event, and despite the subsequent death of the Member; and
- (b) Superannuation Law permits,

the Trustee may debit an amount from the Member's Contribution Account and allocate that amount to a reserve.

6.20 Discharge to Trustee

- (a) The payment or reduction of any benefit in accordance with **rule 6** is a complete discharge to the Trustee of its obligations in respect of the benefit as against any person claiming an interest in the benefit.
- (b) The payment by the Trustee of an amount in good faith to a person believed by the Trustee to be entitled to receive it, is a complete discharge to the Trustee of its obligations in respect of the payment of that amount.

6.21 Reduction of benefit in relation to Payment Split

- (a) Despite any other provision in these rules or the terms of any agreement in relation to a Member's benefits, where the Trustee:
 - (i) creates a new interest for the Spouse or former Spouse of a Member to give effect to a Payment Split; or
 - (ii) transfers or rolls over the entitlement of the Spouse or former Spouse of a Member under a Payment Split;

the Trustee must reduce the amount of the Member's benefit by an amount determined by the Trustee to account for the interest or entitlement of the Member's Spouse or former Spouse.

- (b) In this **rule 6.21**:

Family Law Act means the *Family Law Act 1975* (C'wlth).

Family Law Requirements means any requirements under:

- (i) the Family Law Act and the regulations to that Act;
- (ii) the Act or Regulations; or
- (iii) any other legislation,

in relation to superannuation benefits of parties or former parties to a marriage and incidental matters.

Payment Split has the same meaning as in section 90MD of the Family Law Act.

7 Payments to and from the Fund

7.1 Payment to Fund

- (a) The Trustee may arrange with any:
 - (i) Member;
 - (ii) Participating Employer;
 - (iii) Employer or former Employer of a Member; or

- (iv) Superannuation Entity,
for a Superannuation Entity to pay to the Fund an amount to be allocated to any Member.
- (b) The arrangement may include that the Trustee will provide benefits for a Member which differ from the benefits set out in this document.
- (c) The payment to the Fund may be made without the consent of the Member if Superannuation Law permits.
- (d) The payment may be made in cash or by the transfer of assets to the Fund as the Trustee determines.

7.2 Payment from Fund

- (a) If a Member is, or is eligible to become, a member of another Superannuation Entity, the Trustee may pay to the Superannuation Entity all or any part of the Member's Contribution Account.
- (b) The payment may be made without the consent of the Member if Superannuation Law permits.
- (c) The payment may be made in cash or by the transfer of any assets of the Fund as the Trustee determines.
- (d) The Trustee may determine that any Taxes or expenses associated with the payment to the Superannuation Entity must be paid by the Member or deducted from the payment.
- (e) The receipt of the payment by the Superannuation Entity satisfies the Member's entitlement to benefits in respect of the amount paid. The Trustee is not responsible for the manner in which the payment is dealt with by the Superannuation Entity.

8 Fund assets and investments

8.1 Fund held on trust

The Trustee must hold the assets of the Fund for the benefit of the Members and their Dependants in accordance with this document.

8.2 Payment of expenses

- (a) The Trustee may pay from the Fund:
 - (i) any expenses of the Fund;
 - (ii) any administration expenses of the Trustee incurred in connection with its office as trustee of the Fund;
 - (iii) expenses incurred in the retirement of a Trustee and appointment of a new Trustee.
- (b) The Trustee may debit expenses paid from the Fund to:
 - (i) Members' Contribution Accounts;

- (ii) the Fund's reserves, or any earnings of the Fund not allocated to Members' Contribution Accounts,
in proportions determined by the Trustee.

8.3 Authorised investments

- (a) The Trustee may invest the Assets of the Fund in any manner in which the Trustee could invest if it were personally entitled to the Assets of the Fund.
- (b) The Trustee may:
 - (i) undertake any activity (including carrying on or participation in a business);
 - (ii) encumber or otherwise deal with any Assets of the Fund;
 - (iii) exercise any right attaching to any Assets of the Fund,
as if the Trustee were personally entitled to the Assets of the Fund.

8.4 Investment restrictions

Despite **rule 8.3**, the Trustee:

- (a) must not lend money of the Fund, nor give any other financial assistance, unless Superannuation Law permits;
- (b) must not intentionally acquire an asset from a Member, or an associate of a Member, or any other person, unless Superannuation Law permits;
- (c) must not make any investment unless:
 - (i) the Trustee and the other party to the investment are dealing with each other at arm's length; or
 - (ii) where the investment is not at arm's length, it complies with Superannuation Law;
- (d) must take all reasonable steps to ensure that the Fund's investments comply with the restrictions on in-house assets under Superannuation Law; and
- (e) must ensure that the Fund's investments comply with Superannuation Law.

8.5 Investment strategy

- (a) The Trustee must set investment objectives for the Fund, and formulate an investment strategy to achieve those objectives, in accordance with Superannuation Law.
- (b) Despite **rule 8.5(a)**, the Trustee may:
 - (i) set different investment objectives for 2 or more Investment Portfolios;
 - (ii) formulate an investment strategy for each Investment Portfolio;

- (iii) divide the Assets of the Fund between the different Investment Portfolios;
- (iv) invite Members to nominate the manner in which the Member's Contribution Account will be invested between Investment Portfolios;
- (v) determine:
 - (A) when, how and in what manner Members may change their nominations;
 - (B) the minimum amount which may be invested in an Investment Portfolio; and
 - (C) any other matters which the Trustee considers appropriate;
- (vi) change the investment objectives, strategies, Investment Portfolios and the Assets of the Fund which comprise the Investment Portfolios.

8.6 Insurance

- (a) The Trustee may:
 - (i) insure one or more Members for endowment, death, disability or accident cover;
 - (ii) vary or terminate that insurance at any time.
- (b) If the Trustee requests, a Member must:
 - (i) have a medical examination; and
 - (ii) provide any information or take any other steps,

which the Trustee considers necessary in order to insure the Member or vary that insurance.
- (c) If a Member does not comply with the request, the Trustee may refuse to insure the Member or vary that insurance.
- (d) The Trustee may pay insurance premiums and related expenses as an expense of the Fund.

9 Trustee

9.1 Eligibility to act as Trustee

The Trustee may be a Constitutional Corporation or one or more individuals.

9.2 Change of Trustee

- (a) A Trustee ceases to hold office if:
 - (i) the Members remove the Trustee by giving notice in writing to the Trustee and Superannuation Law permits that removal;

- (ii) the Trustee resigns from office by notice in writing to the Members;
or
 - (iii) the Trustee ceases to be eligible to act as a trustee of a Regulated Superannuation Fund.
- (b) Where a Trustee ceases to hold office:
- (i) on the Trustee's resignation, the retiring Trustee may appoint a new Trustee;
 - (ii) otherwise, the Members may appoint a new Trustee.
- (c) The Trustee or Trustees currently in office may appoint an additional Trustee.
- (d) The appointment of a new Trustee must be in writing and comply with Superannuation Law.
- (e) Any act of a Trustee is valid despite any defect in the Trustee's appointment.

9.3 Handover from retiring Trustee

If the Trustee changes, the retiring Trustee must as soon as practicable:

- (a) give the new or continuing Trustee all documents and other property relating to the Fund under its control;
- (b) do all things necessary to vest the Fund in, or as directed by, the new or continuing Trustee; and
- (c) give reasonable assistance to the new or continuing Trustee to facilitate the change of Trustee.

9.4 Decisions of individual Trustees

- (a) Where the Trustees are two or more individuals, they may:
- (i) conduct their meetings as they consider appropriate;
 - (ii) exercise their powers and discretions by resolution:
 - (A) passed by a majority of those present and voting at a meeting of the Trustees; or
 - (B) in writing signed by all of them which may consist of several documents in like form each signed by one or more of them.
- (b) Where the Trustee is one individual, that person may exercise any power or discretion conferred on the Trustee by resolution in writing signed by that person.

9.5 Trustee's personal interest

A Trustee or any responsible officer of the Trustee may:

- (a) exercise all powers and discretions conferred by this document or Superannuation Law despite the person having a direct or other personal interest in the outcome;

- (b) enter into transactions with the Trustee or responsible officer in another capacity.

9.6 Discretions absolute

The Trustee has an absolute and uncontrolled discretion in the exercise of its powers and discretions.

9.7 Covenants by Trustee

The Trustee covenants with the Members:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise in relation to all matters concerning the Fund the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries of the Fund;
- (d) to keep the money and assets of the Fund separate from any other money and assets;
- (e) not to enter into any contract or do anything else that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers; and
- (f) if reserves are kept, to formulate and give effect to a strategy for the prudential management of the reserve consistent with the Fund's investment strategy or investment strategies and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due.

9.8 Indemnity to Trustee

- (a) Except as provided in **rule 9.8(b)**, the Trustee:
 - (i) is not liable for its acts or omissions as Trustee; and
 - (ii) is entitled to be indemnified from the Assets of the Fund in respect of any liability incurred while acting as trustee.
- (b) **Rule 9.8(a)** does not apply to any liability for:
 - (i) breach of trust if the Trustee:
 - (A) fails to act honestly in a matter concerning the Fund; or
 - (B) intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee was required to exercise in relation to a matter affecting the Fund; or
 - (ii) a monetary penalty under a Civil Penalty Order.

- (c) **Rules 9.8(a) and (b)** extend to each of the following persons, if Superannuation Law permits, as if a reference to the Trustee was a reference to that person:
 - (i) a director, officer or employee of the Trustee acting in that capacity;
 - (ii) a director, officer or employee of a Participating Employer who is engaged in the administration or management of the Fund.

10 Management and administration

10.1 Trustee's powers of management

The Trustee may do anything which it considers necessary to administer the Fund and to comply with Superannuation Law including:

- (a) leasing and accepting surrenders of leases with power to compromise with lessees and others;
- (b) conducting and settling legal proceedings;
- (c) settling, compromising or submitting to arbitration any claims relating to the Fund or the Trustee;
- (d) developing, improving, subdividing, repairing, managing, and otherwise dealing with any investment;
- (e) purchasing plant, equipment and fittings;
- (f) borrowing, and giving security for that borrowing over any of the assets of the Fund in accordance with Superannuation Law;
- (g) insuring any risks;
- (h) electing to be bound by legislation.

10.2 Delegation of Trustee powers

- (a) The Trustee may delegate any of its powers and discretions to any person.
- (b) The Trustee may:
 - (i) revoke any delegation; or
 - (ii) exercise any delegated power or discretion itself despite the delegation.

10.3 Service providers

The Trustee may appoint any of the following on terms which the Trustee considers appropriate:

- (a) an investment manager to manage the investments of the Fund;
- (b) an administrator to administer the Fund;
- (c) a custodian to hold assets;

- (d) any other service provider.

10.4 Inspection of this document

The Trustee must make a copy of this document available for inspection by Members at all times during usual business hours:

- (a) if the Trustee is a company, at its registered office; or
- (b) if the Trustees are individuals, at the address notified by the Trustees as the address at which this document is held.

10.5 Notices to Member

- (a) Any notice required to be given to a Member under this document is deemed to have been duly given if it is in writing and either:
 - (i) hand delivered; or
 - (ii) sent by post in a properly pre-paid envelope,to the Member's address in the records of the Trustee.
- (b) A statement by the Trustee that a notice is duly given in accordance with **rule 10.5(a)** is conclusive evidence that the notice has been duly given.
- (c) A notice sent by post is deemed to have been given on the third day following the day when it was posted.

10.6 Notices to Trustee

An instruction, consent, request, proposal or notice required by this document to be given by a person to the Trustee must be given in writing and signed by that person or their authorised officer.

10.7 Dispute resolution

The Trustee may make arrangements for the resolution of any disputes.

10.8 Proofs and presumptions

When determining questions of fact, the Trustee may act upon any proofs or presumptions it considers appropriate, whether or not they are strictly legal proofs or presumptions.

11 Records, accounts and audit

11.1 Records and accounts

The Trustee must maintain in accordance with Superannuation Law:

- (a) a complete record of all Members containing all the information which is necessary to administer the Fund; and
- (b) accounting records which correctly record and explain the transactions and financial position of the Fund.

11.2 Audit

The Trustee must:

- (a) prepare any accounts, statements and returns for the Fund as required by Superannuation Law; and
- (b) have those accounts and statements audited in accordance with Superannuation Law.

12 Amendment

12.1 Amendment of this document

The Trustee may amend this document by deed or by written or oral resolution, subject to Superannuation Law.

12.2 Date of effect

An amendment may take effect from a date before or after it is made.

13 Termination of the Fund

13.1 Termination by Trustee

The Trustee may terminate the Fund with effect from a date the Trustee determines.

13.2 Notice of termination

If the Trustee resolves to terminate the Fund, the Trustee must give notice in writing to that effect to the Participating Employers and the Members.

13.3 Contributions on termination

From the Termination Date, the Trustee must not accept contributions from any Employer or Member, other than arrears of contributions.

13.4 Distribution

As soon as practicable after the Termination Date, the Trustee must:

- (a) pay any outstanding liabilities of the Fund excluding benefits;
- (b) provide for any anticipated liabilities of the Fund excluding benefits;
- (c) subject to Superannuation Law, pay the following amounts in the following order of priority:
 - (i) benefits which became payable on or before the Termination Date;
 - (ii) benefits for each Member who attained age 65 on or before the Termination Date and who has not Retired, equal to the credit in the Member's Contribution Account; and
 - (iii) benefits for each Member who has not attained age 65 and has not Retired, equal to the credit in the Member's Contribution Account.

13.5 Deceased Member

If a Member dies before receiving a benefit to which the Member is entitled under **rule 13.4**, the benefit must be paid in accordance with **rule 6.4**.

13.6 Surplus on termination

If after making the payments provided for in **rule 13.4** a surplus remains in the Fund, the Trustee may distribute the surplus to or for the benefit of any of the following persons, in proportions determined by the Trustee:

- (a) any Members or former Members;
- (b) any Dependants of any Member or former Member;
- (c) the Legal Personal Representative of any Member, former Member or Dependant;
- (d) any Participating Employer or former Participating Employer.

13.7 Payments

- (a) A benefit payable under this **rule 13** must be paid in accordance with **rule 6**.
- (b) A payment to a Participating Employer may be made in cash or by transfer of assets of the Fund.

Appendix

Pension payment rules

A General rules for pensions

1 Definitions and interpretation

1.1 Definitions

In this appendix:

CPI Variation means an increase or decrease in the Consumer Price Index over a period of one year:

- (a) in respect of a life expectancy pension, calculated in accordance with Regulation 1.06(7) (and, if the Trustee so determines, sub-section 9B(2) of the Social Security Act, but the method of calculation in Regulation 1.06(7) prevails to the extent of any inconsistency); and
- (b) in respect of a lifetime pension, calculated in accordance with Regulation 1.06(2) (and, if the Trustee so determines, sub-section 9A(2) of the Social Security Act, but the method of calculation in Regulation 1.06(2) prevails to the extent of any inconsistency).

Life Expectancy means:

- (a) for a pension that commences before 20 September 2004, in relation to a Member, the Member's life expectancy at the date on which a pension commences, but if the Member's life expectancy does not consist of a whole number of years the period of life expectancy may be rounded up to the next whole number at the nomination of the Member not later than the date on which the pension becomes payable;
- (b) for a pension that commences on or after 20 September 2004, in relation to a Member or a Member's spouse, the Member's or spouse's life expectancy at the date on which the pension commences to be payable rounded up to the next whole number if the life expectancy does not consist of a whole number of years.

Social Security Act means the *Social Security Act 1991*.

1.2 Interpretation of "clause"

A reference to a clause is a reference to a clause in the part of the appendix in which the reference appears.

2 Restrictions on payment of all pensions

A pension payable from the Fund is subject to the following restrictions:

- (a) the pension cannot be transferred to any person, other than a person entitled on the death of the Member or another person entitled to a reversionary pension in accordance with the terms of payment of the pension; and
- (b) the capital value of the pension, and the income accruing to that capital value, cannot be used as security for a borrowing.

3 Availability of pensions

A pension is only payable under any of Part B, C, D, E or F where Superannuation Law permits a pension of that type to be paid from the Fund.

B Allocated pensions

1 Overriding provision

1.1 Compliance with standards

Part B is intended to provide for the payment of a pension which complies with the standards in Regulation 1.06(4) (**allocated pension**).

1.2 Inconsistency with standards

If the whole or any part of **part B** is at any time inconsistent with a standard in Regulation 1.06(4), the standard prevails to the extent of the inconsistency.

2 Terms of payment of pension

2.1 Amount and frequency of pension payments

The Trustee and the person entitled to the pension may agree on the amount of and frequency of each payment of a pension, subject to the following standards:

- (a) at least one payment must be made in each year; and
- (b) the total amount of the pension paid in each year must not be more than the maximum limit nor less than the minimum limit calculated as specified in the Regulations applicable to allocated pensions.

2.2 Commutation of pension

- (a) The Trustee may commute to a lump sum any part of the capital value of the pension at the request of the person entitled, except where the pension is a non-commutable allocated pension.

- (b) Where the pension is a non-commutable allocated pension, the Trustee may commute to a lump sum any part of the pension at the request of the person entitled only in the circumstances permitted under the Regulations for commutation or cashing of a non-commutable allocated pension.
- (c) The Trustee must adjust the amount of pension payments following any commutation.

3 Benefits on death of pension recipient

On the death of a person in receipt of a pension, the Trustee may:

- (a) pay a lump sum to a person identified in accordance with **rule 6.4**; or
- (b) pay a reversionary pension to any one or more Dependants of the deceased Member in accordance with **clause 2**.

C Market linked pensions

1 Overriding provision

1.1 Compliance with standards

- (a) **Part C** is intended to provide for the payment of a pension which complies with the standards in Regulation 1.06(8) (**market linked pension**).
- (b) If the whole or any part of **part C** is at any time inconsistent with a standard in Regulation 1.06(8), the standards prevail to the extent of the inconsistency.

1.2 Compliance with Social Security Act

The Trustee may determine that a pension payable under this **part C** must meet the requirements of sub-section 9BA(2) of the Social Security Act, and if so those requirements prevail over this **part C** to the extent of any inconsistency, but the standards in Regulation 1.06(8) prevail over any inconsistent requirements of sub-section 9BA(2) of the Social Security Act.

2 Terms of payment of pension

2.1 Frequency of pension payments

The pension must be paid at intervals requested by the person entitled to the pension, but at least once in each year.

2.2 Term of pension

- (a) The term of the pension must be any of the following periods, at the option of the Member:
 - (i) the Member's Life Expectancy;

- (ii) the Member's Life Expectancy as if the Member were up to 5 years younger;
 - (iii) where the Member nominates their spouse as a reversionary beneficiary on commencement of the pension and the spouse has a longer Life Expectancy:
 - (A) the spouse's Life Expectancy;
 - (B) the spouse's Life Expectancy as if the spouse were up to 5 years younger;
 - (iv) for a pension that has a commencement date on or after 1 January 2006 (or, for a pension that has a commencement date before 1 January 2006, if the Regulations applicable to market linked pensions permit in respect of that pension) such other period as the Regulations permit.
- (b) The Trustee must continue to pay the pension for the period required under Superannuation Law.

2.3 Amount of payments

The total amount of the pension paid in each year must be the amount calculated as prescribed in the Regulations applicable to market linked pensions.

3 Commutation of pension

3.1 Terms of commutation

- (a) The Trustee may commute to a lump sum any part of the capital value of the pension, at the request of the Member given not later than 6 months after the commencement day of the pension (unless the commutation is not permitted under the terms of another pension commuted to provide the pension).
- (b) The Trustee must on commutation of any part of a pension adjust the amount of the remaining pension payments.
- (c) The lump sum paid on commutation of the pension must not be greater than the capital value of the pension at the date of commutation.

3.2 Restrictions on commutation

The pension cannot be commuted other than:

- (a) as permitted in this **clause 3**, or in **clause 4**;
- (b) if the amount of the commutation is transferred directly to the purchase of another benefit that is a pension or annuity which the Regulations permit a market linked pension to be transferred to;
- (c) to the extent necessary to pay any superannuation contribution surcharge assessed in relation to the Member; or

- (d) otherwise as permitted by Superannuation Law.

4 Benefits on death of pension recipient

4.1 Death of Member

On the death of a Member in receipt of a pension:

- (a) where the Member nominated a reversionary pension for the Member's spouse on commencement of the pension, and the Member's spouse has survived the Member, the Trustee must pay the pension to the spouse;
- (b) otherwise, the Trustee may:
 - (i) pay a lump sum or a pension to one or more Dependants of the Member; or
 - (ii) pay a lump sum to the Legal Personal Representative of the Member.

4.2 Death of spouse

On the death of a former Member's spouse in receipt of a reversionary pension, the Trustee may:

- (a) pay a lump sum or a pension to one or more Dependants of the Member or the spouse;
- (b) pay a lump sum to the Legal Personal Representative of the Member or the spouse.

4.3 Payment of death benefits to other individuals

If after making reasonable enquiries the Trustee has not found either a Dependant or Legal Personal Representative of a deceased Member or spouse, the Trustee may pay the benefit payable on the Member's or spouse's death as a lump sum to any individual the Trustee determines.

4.4 Amount of death benefit

- (a) The amount of a lump sum death benefit is the balance in the Member's Contribution Account. The pension does not otherwise have a residual capital value.
- (b) The amount of a pension benefit payable on the death of a Member or spouse is calculated in accordance with the applicable provisions of this **appendix**.

D Life expectancy pensions

1 Overriding provision

1.1 Compliance with standards

- (a) **Part D** is intended to provide for the payment of a pension which complies with the standards in Regulation 1.06(7) (**life expectancy pension**).
- (b) If the whole or any part of **part D** is at any time inconsistent with a standard in Regulation 1.06(7), the standards prevail to the extent of the inconsistency.

1.2 Compliance with Social Security Act

The Trustee may determine that a pension payable under this **part D** must meet the requirements of sub-section 9B(2) of the Social Security Act, and if so those requirements prevail over this **part D** to the extent of any inconsistency but the standards in Regulation 1.06(7) prevail over any inconsistent requirements of sub-section 9B(2) of the Social Security Act.

2 Terms of payment of pension

2.1 Frequency of pension payments

The pension must be paid at intervals requested by the Member, but at least once in each year.

2.2 Term of pension

- (a) For a pension that has a commencement date before 20 September 2004, the pension must be payable:
 - (i) if the Life Expectancy of the Member is less than 15 years, throughout the period equal to the Member's Life Expectancy; or
 - (ii) if the Life Expectancy of the Member is 15 years or more, throughout a period requested by the Member in a form approved by the Trustee, that is not less than 15 years but not more than the Member's Life Expectancy.
- (b) For a pension that has a commencement date on or after 20 September 2004, the term of the pension must be any of the following periods, at the option of the Member:
 - (i) the Member's Life Expectancy;
 - (ii) the Member's Life Expectancy as if the Member were up to 5 years younger;
 - (iii) where the Member nominates their spouse as a reversionary beneficiary on commencement of the pension and the spouse has a longer Life Expectancy;

- (A) the spouse's Life Expectancy;
- (B) the spouse's Life Expectancy as if the spouse were up to 5 years younger;
- (iv) for a pension that has a commencement date on or after 1 January 2006 (or, for a pension that has a commencement date before 1 January 2006, if the Regulations applicable to life expectancy pensions permit in respect of that pension) such other period as the Regulations permit.
- (c) The pension must be payable for the duration of the term of the pension.

2.3 Amount of payments

The Trustee must determine the amount of each pension payment. However, the pension must comply with the following standards:

- (a) The total amount of the payments of the pension to be made in the first year after the commencement day (not taking commuted amounts into account) must be fixed on commencement of the pension.
- (b) The first payment of the pension must relate to the period commencing on the day when the Member became entitled to the pension.
- (c) The total amount of the payments of the pension made in a year (**current year**) other than the first year must be calculated on either of the following bases:
 - (i) the total amount of the payments in the current year (not taking commuted amounts into account) must not be less than the total amount of the payments made in the immediately preceding year (**previous total**);
 - (ii) the total amount of the payments made in the current year (not taking commuted amounts into account) may, by agreement between the Member and the Trustee (either on commencement of the pension or at the commencement of the current year) exceed the previous total:
 - (A) if the CPI Variation is less than or equal to 4%, by up to 5% of the previous total;
 - (B) if the CPI Variation is more than 4%, by up to 1% greater than the CPI Variation.

3 Commutation of pension

3.1 Terms of commutation

- (a) The Trustee may commute to a lump sum any part of the capital value of the pension, at the request of the Member given not later than 6 months after the commencement day of the pension (unless the commutation is

not permitted under the terms of another pension commuted to provide the pension).

- (b) The Trustee must on commutation of any part of a pension adjust the amount of the remaining pension payments.
- (c) The lump sum paid on commutation of the pension must not be greater than the capital value of the pension at the date of commutation.

3.2 Restrictions on commutation

The pension cannot be commuted other than:

- (a) as permitted in this **clause 3**, or in **clause 4**;
- (b) if the amount of the commutation is transferred directly to the purchase of another benefit that is a pension or annuity which the Regulations permit a life expectancy pension to be transferred to;
- (c) to the extent necessary to pay any superannuation contribution surcharge assessed in relation to the Member; or
- (d) otherwise as permitted by Superannuation Law.

4 Benefits on death of pension recipient

4.1 Death of member

On the death of a Member in receipt of a pension, before the end of the period of payment of the pension under **clause 2.2**:

- (a) where the Member nominated a reversionary pension on commencement of the pension, and the reversionary beneficiary has survived the Member, the Trustee must pay the pension to the reversionary beneficiary;
- (b) if there is no reversionary beneficiary, the Trustee must pay a lump sum to the Member's estate.

4.2 Terms of reversionary pension

A reversionary pension must be:

- (a) of an annual amount calculated in accordance with **clause 2.3**; and
- (b) payable for the remainder of the period of payment of the pension under **clause 2.2**, at intervals specified by the person entitled to the pension but at least once in each year.

4.3 Death of reversionary beneficiary

On the death of a person to whom a reversionary pension is being paid, before the end of the period of payment of the pension under **clause 2.2**, the Trustee may:

- (a) continue to pay the reversionary pension to another surviving Dependant of the deceased Member in accordance with **clause 4.2**; or

- (b) pay a lump sum to the estate of the deceased person to whom the reversionary pension was being paid.

4.4 Amount of lump sum death benefit

- (a) The amount of a lump sum payment to an estate is the capital value of the balance of the payments that would have been made to the Member for the remainder of the period of payment of the pension under **clause 2.2**.
- (b) The pension does not otherwise have a residual capital value.

E Lifetime pensions

1 Overriding provision

1.1 Compliance with standards

- (a) **Part E** is intended to provide for the payment of a pension which complies with the standards in Regulation 1.06(2) (**lifetime pension**).
- (b) If the whole or any part of **part E** is at any time inconsistent with a standard in Regulation 1.06(2), the standard prevails to the extent of the inconsistency.

1.2 Compliance with Social Security Act

The Trustee may determine that a pension payable under this **part E** must meet the requirements of sub-section 9A(2) of the Social Security Act, and if so those requirements prevail over this **part E** to the extent of any inconsistency, but the standards in Regulation 1.06(2) prevail over any inconsistent requirements of sub-section 9A(2) of the Social Security Act.

2 Terms of payment of pension

2.1 Term of pension

The pension must be payable at intervals requested by the Member, but at least annually throughout the life of the Member.

2.2 Amount of payments

The Trustee must determine the amount of each pension payment. However the pension must comply with the following standards:

- (a) The total amount of the pension payable in the first year after the commencement day (not taking commuted amounts into account) (**initial annual amount**) must be fixed on commencement of the pension.
- (b) The initial annual amount must be calculated on the basis that the balance in the Member's Account is to purchase:
 - (i) annual payments for the lifetime of the Member;

- (ii) annual payments for any reversionary pension or reversionary pension requested by the Member;
- (iii) any guaranteed period of up to 10 years requested by the Member.
- (c) The initial annual amount must be adopted by written agreement between the Trustee and the Member, and the agreement is deemed to form part of these rules in relation to that Member.
- (d) Unless the Regulator otherwise approves, the amount of the pension paid in a year (**current year**) must not be less than the amount of the pension paid in the immediately preceding year, unless the CPI Variation is negative in which case the amount of the pension paid in the current year may decrease by the percentage CPI Variation.

2.3 Variation of annual amount

The Trustee may vary the annual amount of the pension where an actuary certifies that the variation is necessary to ensure that payments will continue for the period required under **clause 2.1** or **clause 2.2**.

3 Commutation of pension

3.1 Terms of commutation

- (a) The Trustee may commute to a lump sum of any part of the capital value of a pension:
 - (i) at the request of the Member, not later than 6 months after the commencement day of the pension (unless the commutation is not permitted under the terms of another pension commuted to provide the pension);
 - (ii) at the request of a reversionary Dependant, within 10 years after the commencement of the pension.
- (b) The Trustee must on commutation of any part of the pension adjust the amount of the remaining pension payments.
- (c) The lump sum paid on commutation of the pension must not be greater than the capital value of the pension at the date of commutation.

3.2 Restrictions on commutation

The pension cannot be commuted other than:

- (a) as permitted in this **clause 3** or in **clause 4**;
- (b) if the amount of the commutation is transferred directly to the purchase of another benefit that is a pension or annuity which the Regulations permit a lifetime pension to be transferred to;
- (c) to the extent necessary to pay any superannuation contribution surcharge assessed in relation to the Member; or
- (d) otherwise as permitted by Superannuation Law.

4 Benefits on death of pension recipient

4.1 Benefit on death

On the death of a Member in receipt of a pension no benefit is payable unless the Member requested on commencement of the pension:

- (a) a reversionary pension to be paid to a Dependant of the Member, in which case the Trustee may pay a reversionary pension to that Dependant; or
- (b) a guaranteed period, and the Member dies within the guaranteed period, in which case the Trustee may pay a lump sum to the Member's Legal Personal Representative.

4.2 Terms of reversionary pension

A reversionary pension must be:

- (a) of an annual amount calculated in accordance with **clause 2.3**;
- (b) subject to **clause 4.3**, payable for the life of the person entitled to the pension, at intervals requested by that person but at least once in each year.

4.3 Reversionary Dependant

Where the person entitled to the reversionary pension is a Child of the Member or of a former reversionary Dependant, payments of the pension under **clause 4.2** must be paid at least until:

- (a) that Child's 16th birthday; or
- (b) if that Child is a full time student at age 16, at the end of whichever occurs sooner of the cessation of that Child's full time studies or at his or her 25th birthday.

4.4 Death of reversionary Dependant

On the death of a person to whom a reversionary pension is being paid no benefit is payable unless at the commencement of the pension:

- (a) the Member requested a subsequent reversionary pension, in which case the Trustee may continue to pay the reversionary pension to another surviving Dependant of the deceased Member; or
- (b) a guaranteed period, and the reversionary Dependant dies within the guaranteed period, in which case the Trustee may pay a lump sum to the reversionary Dependant's Legal Personal Representative.

4.5 Amount of lump sum death benefit

- (a) The amount of a lump sum payment to a Legal Personal Representative shall be as determined by the Trustee, but must not be greater than the capital value of the balance of the payments that would have been made to the Member or reversionary Dependant for the period ending 10 years from the time the pension commenced to be paid to the Member.

- (b) The pension does not otherwise have a residual capital value.

F Defined benefit pensions

1 Overriding provision

1.1 Compliance with standards

Part F is intended to provide for the payment of a pension which complies with the standards in Regulation 1.06(6) (**defined benefit pension**).

1.2 Inconsistency with standards

If the whole or any part of **part F** is at any time inconsistent with any standard in Regulation 1.06(6), the standard prevails to the extent of the inconsistency.

2 Terms of payment of pension

2.1 Frequency of pension payments

The pension must be payable at intervals requested by the Member, but at least once in each year.

2.2 Term of pension

The pension must be payable throughout a period determined by the Trustee on the advice of the actuary taking into account the annual amount of pension payments.

2.3 Amount of payments

The Trustee must determine the amount of each pension payment. However, the pension must comply with the following standards:

- (a) The total amount of the pension payable in the first year after the commencement day (not taking commuted amounts into account) must be fixed on commencement of the pension.
- (b) The variation in payments from year to year must not exceed, in any year, the average rate of increase of the CPI in the preceding 3 years (except in relation to payments by way of commutation to pay any superannuation contribution surcharge assessed in relation to the Member).

3 Commutation of pension

3.1 Permitted commutations

The Trustee may commute to a lump sum any part of the capital value of the pension at the request of the person entitled to the pension.

3.2 Adjustments on commutation

The Trustee must on commutation of any part of the pension adjust the amount of the remaining payments.

3.3 Amount of commutation

The amount of the lump sum paid on commutation must be determined in accordance with the Regulations applicable to defined benefit pensions.

4 Benefits on death of pension recipient

4.1 Lump sum or reversionary pension

Unless the terms of the pension are that no death benefit is payable, on the death of a person in receipt of a pension the Trustee must pay a benefit as a lump sum or as a reversionary pension to any one or more of the Member's Dependants or Legal Personal Representative, in such proportions, as the Trustee determines.

4.2 Payment of reversionary pension

A reversionary pension is of an annual amount calculated as a percentage of the pension payable to the Member.

4.3 Lump sum payment

A lump sum payable on the death of a person entitled to a pension is:

- (a) an amount specified on commencement of the pension as the residual capital value; or
- (b) if no amount is specified (and the terms of the pension do not specify that no death benefit is payable), the amount determined by the actuary as the residual capital value of the benefit.