



*The Professionals*  
**Patricia Holdings** Pty.Limited  
Company Incorporations & Trust Deeds  
S I N C E 1 9 6 8

## **PT & LJ VICARY SUPER FUND**

### **Deed of Trust**

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**PT & LJ VICARY**

**SUPER FUND**

## INTRODUCTION

*This document establishes a Superannuation Fund which commenced on the date specified in the Schedule.*

*This is a Superannuation Fund established and maintained to provide benefits in the form of a lump sum payment or an old age pension for its Members upon retirement and for the Dependants of Members upon the death of Members. It permits the payment of benefits to other persons connected with Members in certain circumstances.*

*The Fund is intended to be a 'Regulated Superannuation Fund' and a 'Complying Superannuation Fund' as defined in the Superannuation Law and the Regulations made under that Act.*

*The intention of the Deed is to impose an obligation upon the Trustee and Manager of the Fund to manage the Fund in accordance with Superannuation Law for the benefit of Members and the Dependants of Members so that Members and their Dependants may take advantage of the benefits available to persons who contribute to Superannuation to provide for their retirement.*

*The primary (but not necessarily the sole) purpose of this Fund is the provision of benefits to a Member or a Member's Dependant upon retirement or death of a Member.*

*This document is intended as a general guide to the Trustee who should on all matters have recourse to professional advice concerning the particular requirements of the Superannuation Law.*

# INDEX

<u>Item</u>	<u>Rule No.</u>
<b>Membership of the Fund</b>	
Membership Rules.....	1
Binding Rules.....	2
Application Rules.....	3
<b>Contributions and Investments</b>	
Contribution Rules.....	4
Superannuation Guarantee Payments .....	5
Split Contributions.....	6
Types of Contributions .....	7
Trustee Enquiry into Contributions .....	8
Refund of Contributions.....	9
Investments of Monies .....	10
Excluded Investments .....	11
Borrowing.....	12
Calculation of Earnings .....	13
Deductions from Earnings.....	14
Retention of Earnings .....	15
Reserve Strategy.....	16
Allocation of Earnings.....	17
Division of Funds.....	18
Investment and Risk strategy.....	19
Establishment of Reserve.....	20
Acquisition of Assets.....	21
Establishment of Pension Accounts.....	22
Crediting to a Pension Account.....	23
Debiting from a Pension Account.....	24
Separation of Assets.....	25
Creation of Accounts .....	26

## **Benefits**

Method of Payment .....	27
Lump Sum Payments.....	28
Method of Lump Sum Payments.....	29
Deductions for Taxation.....	30
Purchase of Annuity .....	31
Payment as Income Stream (Pension) .....	32
Alternative Payment of Benefits .....	33
Changing the type of Pension .....	34
Changing from Pension to Accumulation Account .....	35
Benefits paid as an Accumulation Account .....	36
Minimum Requirements of Pension.....	37
Other provisions relating to Pension .....	38
Payment of Pension after Retirement Age.....	39
Payment of Pension on Death .....	40
Payment of Pension on Disability.....	41
Payment of Pension to a Spouse .....	42
Transfer Value .....	43
Payment to Legal Representative .....	44
Commencement of Payment .....	45
Variation of Payments .....	46
Split Payments .....	47
Split Payments between Spouses .....	48

## **Provisions for Payment of Benefits**

Conditions of Payment of Benefits .....	49
Payments made to Dependants.....	50
Effect to Election of Payment .....	51
Provision of Medical Certificate.....	52
Member ceases to be Employed .....	53
Member on Death leaving Dependants but no Spouse .....	54
Member on Death leaving no Spouse or Dependants .....	55
Benefits paid in Specie .....	56
Conversion of Lump Sum Benefits .....	57
Proportioning of Benefit Payments .....	58
Limitation on Proportioning .....	59

## **Limitation on Benefits**

Breach of Superannuation Law .....	60
------------------------------------	----

## **Dealing with Benefits**

Interest .....	61
Dealing with Interest .....	62

## **Vesting of Benefits**

Vesting in a Member .....	63
Contributions made by an Employer .....	64

## **Actuarial Appointment & Investigation**

Appointment of Actuary .....	65
Role of Actuary .....	66
Disclosure to Actuary .....	67
Preparation of Solvency Plan .....	68
Solvency in Doubt .....	69

## **Transfer Of Benefits**

Rules of Transfer .....	70
Transfer of Assets .....	71
Transfer of Insurance Policy .....	72
Payment of Insurance Policy .....	73
Transfer a Tax Benefit .....	74

## **Forfeiture Of Benefits**

Conditions of Forfeiture .....	75
Account Residues .....	76
Dealing with Forfeited Benefits .....	77
Unapplied Forfeited Benefits .....	78
Remaining Forfeited Benefits .....	79

## **Preservation Of Benefits**

Rules of Preservation .....	80
-----------------------------	----

## **Auditor**

Appointment of Auditor .....	81
------------------------------	----

## **Trustee**

Requirement of Trustee .....	82
Rules of Office of Trustee .....	83
Vacation of Office of Trustee (Corporate).....	84
Vacation of Office of Trustee (Director of Corporation) .....	85
Vacation of Office of Trustee (Nominee) .....	86
Vacation of Office of Trustee (Natural Person) .....	87
Liability of Trustee.....	88
Indemnifying of Trustee .....	89
Indemnifying of Trustee by Member .....	90
Filing of Annual Return by Trustee .....	91
Administration of Fund by Trustee.....	92
Provision of Annual Statements to Members by Trustee.....	93
Provision of Statements to New & Exiting Members .....	94
Knowledge of Rules.....	95
Dealing with Conflict .....	96
Other Obligations.....	97
Casting Vote .....	98
<b>General Powers of Trustee .....</b>	<b>99</b>
<b>Alteration to Rules .....</b>	<b>100</b>
<b>Service of Notices .....</b>	<b>101</b>
<b>Inspection of Rules</b>	
Member Access to Rules .....	102
Supply of copy of Rules .....	103
<b>Deduction of Taxes &amp; Expenses</b>	
Allowable Deductions .....	104
Effect of Deductions .....	105
<b>Termination of Fund</b>	
Rules of Termination .....	106
Winding up .....	107
Residual Monies .....	108

## **Miscellaneous**

Purpose of the Fund .....109

Variation of Benefits .....110

Regard to Superannuation Law .....111

Capacity of Trustee .....112

**Circumstances of Pension Fund**.....113

## **Covenants & Requirements**

General Inclusions.....114

Requirements of Rules .....115

**Contravention of Rules** .....116

**Meetings of Trustee**.....117

**Interpretations**.....118



# SUPERANNUATION FUND

## DEED AND RULES

**THIS DEED** which establishes a **Superannuation Fund** is made on the day stated at Item 1 (the date of this Deed) in the Schedule by the person or persons (a Company is a legal person) named as Trustee in the Schedule (hereinafter called "the Trustee") for the benefit of:-

- the person or persons who are now Members of the Fund; and
- any person who on any date after the date hereof applies to be a Member; and
- any person who as a consequence of the operation of the law relating to succession or the operation of the Superannuation Law on any date after the date hereof becomes a Member.

### **BACKGROUND**

- (1) There is no Government funded compulsory universal Superannuation Insurance Scheme in Australia however the Government encourages individuals to save and make provision for their retirement.
- (2) By way of encouragement the Superannuation Law firstly makes it compulsory for all employers to contribute to superannuation for employees and secondly gives concessional tax treatment to Superannuation Funds that comply with the Superannuation Law.
- (3) The Superannuation Law allows the establishment of Superannuation Funds that are both large and small so that an individual may have the choice of contributing to an industry managed Superannuation Fund or to a Self Managed Superannuation Fund.
- (4) The Superannuation Law permits payments to be made to a Superannuation Fund by or for the benefit of a person who is gainfully employed either full time, part time or on a casual basis. This includes payments made under an award, agreement, or under Superannuation Guarantee Legislation.
- (5) The Trustee wishes to replace the rules of an existing Fund, so that the Fund can continue build up to pay benefits to a Member or a dependant of a Member on the death of a Member or the full or part retirement of a Member from gainful employment.

### **WHEREAS**

- A) The Trustee is desirous of **establishing** and indefinitely continuing a Superannuation Fund named in the Schedule for the benefit of the Member as at the date of this Deed and any person (including the dependants of such persons) who is entitled at law to be a Member of a Superannuation Fund and who joins the Fund on or after the date of this Deed.
- B) The Trustee has agreed to continue to act as Trustee and in that capacity is in this Deed and the governing rules called the Trustee.

- C) The Fund is to be managed and administered and the assets thereof are to be applied by the Trustee for the benefit of Members and the dependants of Members in accordance with The Superannuation Law.
- D) The rules of the Fund permit the Trustee to amend the rules.

### **NOW THIS DEED WITNESSETH**

#### **ESTABLISHMENT OF THE FUND**

- 1) That as and from the date of this Deed the Superannuation Fund shall be established and the Trustee shall from the date of this Deed hold all contributions, assets, investments and other property of the Fund upon and in accordance with the trusts contained in this Deed, the Governing Rules and the Superannuation Law.
- 2) The Fund shall commence operation upon execution of this Deed by the Trustee and shall be known by the name specified in the Schedule or any other name that the Trustee may from time to time decide upon.
- 3) The Governing Rules shall be the Rules as set out in this Deed under the heading The Governing Rules. The Governing Rules may be amended from time to time subject to any contrary or overriding requirement contained in the Superannuation Law.
- 4) In the event that any part of this Deed or any rule or any part of a rule shall offend against the Superannuation Law or is unenforceable or is illegal or is so vague as to be meaningless, such part of this Deed, such rules, rule or part of a rule shall be read down so as to be given as much affect as is possible so as to be valid, enforceable and comply with the Superannuation Law and ensure that no re-settlement shall be allowed to occur or if it cannot be so read down the rules, rule or part of a rule, or where possible, the offending words, shall be severed from this Deed and the Rules without affecting the validity or legal enforcement of the remaining part or rules or rule or part of a rule so as to allow the Fund to continue in force and effect as if the written down or the severed part, rules, rule or part of a rule had never been part of this Deed or the Governing Rules.

## **THE GOVERNING RULES**

### ***Who can be a Member?***

- 1.1 Any person may be a Member of this Fund (including a person under the age of 18) provided such person shall be not be excluded by any provision in the Superannuation Law.
- 1.2 If a person under the age of 18 applies to be a Member then:-
  - the application for membership must be made by the person's parent or guardian; and
  - all decisions of the under age Member must be made by the person's parent or guardian; and
  - when the under age Member becomes 18 he or she must become a Trustee or Director of the Trustee Corporation as the case may require.

### ***Are all Members bound by these Rules?***

- 2. Each person whom the Trustee has invited to join the Fund and who intends to join the Fund shall sign an application in a form determined by the Trustee. Such application shall be deemed to be an agreement by the Member to be

bound by these rules. Each Member on joining the Fund shall receive a copy of these rules and shall be bound by them.

***How are new Members admitted to the Fund?***

- 3.1 If a person wishes to become a Member then the person must make application to the Trustee in such form as the Trustee may from time to time determine. The applicant must provide the Trustee with the following:-
- 3.1.1 the applicant's full name;
  - 3.1.2 the applicant's address, phone number, and an electronic address;
  - 3.1.3 the applicant's date of birth;
  - 3.1.4 the applicant's Tax File Number;
  - 3.1.5 the applicant's undertaking to comply with these rules, the Superannuation Law, and the obligations of a Trustee imposed by Trust Law;
  - 3.1.6 such other information as the Trustee may reasonably request.
- 3.2 As soon as practicable after the Trustee has received the application the Trustee must meet and make a determination as to whether or not to admit the applicant to membership and communicate that decision to the applicant.

**CONTRIBUTIONS AND INVESTMENTS**

***Who can contribute to this Fund?***

4. A Member, Member's spouse, employer, a government, or government instrumentality, another fund, and any other person permitted by the Superannuation Law, may contribute to the Fund in such manner, at such times and for such time as the Member, Member's spouse, employer or other person may from time to time agree with the Trustee.
- 4.1 The Trustee may accept contributions:-
- 4.1.1 if a Member is under 65;
  - 4.1.2 if the Member is not under 65 but is under 75, contributions that are mandated employer contributions, or if the Member has been gainfully employed on at least a part time basis during the relevant financial year, contributions received on or before the day that is 28 days after the end of the month in which the Member turns 75 that are employer contributions (except mandated contributions) or Member contributions made by a Member;
  - 4.1.3 if the Member is not under 75 contributions that are mandated employer contributions;
  - 4.1.4 any other contribution permitted by regulation 7.04.
- 4.2 No contribution may be made and no contribution may be accepted by the Trustee other than as permitted by the Superannuation Law.

***Can the Trustee accept Superannuation Guarantee payments?***

5. The Trustee is authorised to accept payments pursuant to the Superannuation Guarantee and Government Co-Contribution Laws as amended from time to time.

***Can the Trustee split contributions?***

6. The Trustee may “split” contributions made by or on behalf of a Member in any manner and in any proportion as may from time to time be permitted by the Superannuation Law or as directed by a Court. The maximum splittable contribution shall be:-
  - 6.1 for taxed splittable contributions, the lesser of 85% of the concessional contributions for that financial year and the concessional contributions cap for that financial year; and
  - 6.2 for untaxed splittable contributions, 100% of the amount of the untaxed splittable contributions made in the financial year; and
  - 6.3 for untaxed splittable employer contributions, 100% of the concessional cap for that financial year.

***How can contributions be made?***

7. Contributions may be in cash or non-cash provided the value attached to a non-cash contribution is fair and reasonable in all the circumstances. Contributions may include transfers from other Funds.

***Is the Trustee required to enquire into contributions?***

8. Provided the Trustee shall be satisfied upon reasonable enquiry as to the value of the contribution, the Trustee is not required to make any other enquiry as to the tax deductibility or otherwise of the contribution.

***Can contributions be refunded?***

9. A contribution may be refunded to the person who made the contribution only if the Superannuation Law so permits and, the Member requests it, the law requires the refund to be made, the person who made the contribution requests that the refund be made and the Member has consented thereto in writing or the contribution was made by mistake and the Trustee agrees (after reasonable enquiry) that this is so and the person asking for the refund to be made makes the request in writing and provides the Trustee with such information as reasonably supports that the payment was made by mistake. The request must be made within three months of the contribution being made.

***How must contributions and other monies be invested?***

10. The contributions to the Fund, or other monies and assets of the fund and any monies that the Trustee may from time to time borrow, shall be invested as a common fund by or on behalf of the Trustee in the Trustee's own name or in the name of any nominee selected by the Trustee in any one of the following investments (with liberty to the Trustee at any time and from time to time to vary and transpose the same) namely:-
  - 10.1 any investment authorised by the law of the Commonwealth of Australia or any of the States or Territories thereof for the investment of trust funds;
  - 10.2 the purchase or acquisition of real estate (whether income producing or not and wherever situated) or any estate or interest or part therein;
  - 10.3 on deposit at interest or otherwise with any Bank, Building Society, Company or Body Corporate or on loan at interest or otherwise and either with or without security and upon such terms as the Trustee may think fit to any Corporation or person AND the Trustee is authorised to open and operate such Bank, Building Society or other

institution account or accounts as is necessary to give effect to this power including, endorsing, discounting or issuing or otherwise dealing with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument and making any transaction by means of any electronic medium;

- 10.4 the shares or stock of any class or the bonds, debentures debenture stock notes or other securities or obligations however called of any Corporation or Body Corporate;
- 10.5 any investment, interest in any Trust arrangement or property (wherever situated) or any form or mode of investment from time to time approved by the Trustee (the intention of this rule being that the Trustee may invest or cause to be invested the moneys of the Fund in the same manner as if the Trustee were absolute and beneficial owner thereof);
- 10.6 policies of insurance or assurance as a "whole of life", "endowment", or other with any Corporation registered under the Life Insurance Act 1945 (as amended);
- 10.7 in any manner that the Trustee could invest the "Trustee's" own money. Provided however no investment shall be made that contravenes any standard fixed by the Regulator or the Superannuation Law.

***What investments are not permitted?***

- 11. Except as permitted by the Superannuation Law the Trustee shall not invest any of the Funds money or assets:-
  - 11.1 in or upon any loan to a Member or a relative or related party of a Member (as defined in the Superannuation Law) either directly or by means of an arrangement being entered into for lending money to a Member in the exercise of a general power of investment;
  - 11.2 in or upon any loan, investment or other security in or for the benefit of an employer of any Member;
  - 11.3 in or upon any investment other than an investment permitted by the Superannuation Law;
  - 11.4 in any way other than on an arms length basis;
  - 11.5 in or upon any asset acquired from a Member or relative of a Member unless the same be permitted by the Superannuation Law.

***The Trustee must not borrow money***

- 12. The Trustee must not borrow or maintain any borrowing of money whether by way of secured or unsecured loan except:-
  - 12.1 to secure temporary finance as permitted by the Superannuation Law;
  - 12.2 as permitted by Section 67 A & B (as amended from time to time) of the Act (which borrowing is specifically authorized by this rule) and for that purpose the Trustee may borrow money or raise any money or financial accommodation in any lawful manner, including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument, and entering into any option agreement relating to any lending or financing facility, agreement or transaction and for the purpose of securing the repayment of any money so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all

respect as the Trustee thinks fit the Trustee may assign, pledge or mortgage or charge any of the assets of the Fund as security for any such financial accommodation in any manner permitted by the Act from time to time, and may appoint any person as custodian to hold Legal Title for any asset acquired or to be acquired by the Trustee in such form as the Trustee thinks fit;

12.3 as permitted by the Superannuation Law.

which money so raised by the Trustee shall form part of the Fund.

***Can the Trustee determine the basis of calculating earnings?***

13. The Trustee and in the case that the Trustee shall engage an Investment Manager, the Investment Manager may exercising an unfettered discretion to determine the basis for calculating the amount of investment earnings allocated to Members. In calculating investment earnings the Trustee may deduct amounts for any anticipated liabilities, expenses or losses for which the Trustee thinks it would be appropriate to provide.

***Can the Trustee determine amounts to be deducted from earnings?***

14. The Trustee may determine which liabilities, expenses or losses (or provisions for those amounts) will be deducted directly from Members' accounts and which shall be deducted from investment earnings (which may be later allocated to Members). The Trustee may also determine how to split the liabilities, expenses or losses between various Members' accounts.

***Can the Trustee hold back earnings?***

15. The Trustee may hold back any amount of investment earnings from allocation to Members which the Trustee thinks appropriate but if any amount of investment earning is held back it shall be held in a reserve account. The Trustee may later release amounts from the reserve account to increase investment earnings in a later period or otherwise apply them for the benefit of Members in such manner as the Trustee thinks appropriate.

***Must the Trustee have a reserve strategy?***

16. The Trustee shall at all times have a reserve strategy which is consistent with the Trustee's investment, objectives and strategies for the Fund.

***Are earnings to be allocated on a pro rata basis?***

17. Unless the Trustee otherwise determines, the Trustee must allocate investment earnings (or losses) between Members on a pro rata basis according to each Member's monthly account balance. The Trustee may from time to time select another system for the allocation of investment earnings between Members, however if the Trustee selects another allocation system or changes the system the Trustee must tell any Member who is effected by the change in accordance with the requirements of the Superannuation Law.

***Can the Trustee divide the Funds into parts?***

18. The Trustee can divide the Fund into parts either physically or by accounting means. The Trustee in determining whether to divide the Fund into parts may take account of the needs of different investment portfolios, where different parts of the Fund have different tax rates applying to them, whether it's appropriate to separate assets that relate to one type of benefit from assets that relate to a different type of benefit and whether the Trustee generally considers such a division appropriate. The Trustee may invest different parts of the Fund differently and may apportion any income, gains, losses or outgoings, provision, tax credits, other credits or other amounts between the various parts and determine the attributes of any apportioned amount for tax or other purpose in such manner as the Trustee thinks fit.

***Must the Trustee formulate investment and risk strategy?***

- 19.1 The Trustee must formulate an investment objective and strategy and a risk management strategy to give effect to the Fund's objectives and requirements. The Trustee may determine objectives and strategies for the Fund as a whole or for parts of the Fund, invested differently. The strategies must comply with the requirements of the Superannuation Law.
- 19.2 The Trustee may permit a Member to have an investment choice. If it does then it must establish an investment strategy and a risk management strategy for each of the investment choices available to Members and Beneficiaries and where appropriate shall allocate or designate particular assets to be held within that strategy and shall advise Members and Beneficiaries of the investment strategies and provide any other information required by the Superannuation Law to enable the Members and Beneficiaries to make decisions concerning the strategies.

***Can the Trustee establish a reserve?***

- 20. The Trustee has power to create a general reserve account which may be divided into parts or sub-parts and may pay into that account such monies as may be permitted by the Superannuation Law. The Trustee may later release such amounts from the reserve account for the benefit of Members and their Dependants as the Trustee thinks fit. The Trustee shall at all times have a strategy for the reserve account which is consistent with the Trustee's investment objective and strategy for the Fund.

***Can the Trustee acquire assets from a Member or a related party?***

- 21. The Trustee must not acquire an asset from a Member or a related party of a Member unless the asset acquired is:-
  - 21.1 a listed security acquired at market value or;
  - 21.2 a business or real property acquired at market value (provided the fund has fewer than five Members) or;
  - 21.3 an asset transferred from a self-managed superannuation fund to the Fund as a consequence of a Family Law splitting transfer or;
  - 21.4 an exempt in-house asset as permitted by section 66(2A) of the Act or;
  - 21.5 an asset which the Regulator determines may be acquired.

***Must the Trustee establish pension account?***

- 22. If the Trustee decides to pay a Pension the Trustee must establish a pension account in the name of that pensioner and in addition to any other power or obligation may set aside assets of the Fund in specie for the purposes of the account.

***What amounts must be credited to a pension account?***

- 23. The Trustee must credit each of the following amounts to a Member's pension account:-
  - 23.1 the amount the Trustee believes necessary to fund the Pension;
  - 23.2 the amount paid into the Fund in respect of the pensioner as a transfer or roll over payment which the Trustees thinks it appropriate to credit to that account;
  - 23.3 earnings of the Fund which the Trustee thinks it appropriate to credit to that account;

- 23.4 adjustment credits;
- 23.5 the proceeds of an annuity or insurance policy affected by the Trustee in respect of the pensioner which the Trustee thinks it appropriate to credit to the account;
- 23.6 financial assistance under Section 23 of the Superannuation Industry (Supervision) Act 1993 which the Trustee thinks it appropriate to credit to the account;
- 23.7 any other amount the Trustee thinks it appropriate to credit to the account;
- 23.8 any other amount required or permitted by the Superannuation Law.

***What amounts may be debited to a pension account?***

- 24. The Trustee may debit each of the following amounts to the person's pension account:-
  - 24.1 the proportion that the Trustee thinks appropriate of the expenses of the Fund;
  - 24.2 the proportion that the Trustees thinks equitable of any negative earnings of the Fund;
  - 24.3 the proportion of the loss on the disposal of investments of the Fund that the Trustee thinks equitable;
  - 24.4 payments made to or in respect of the pensioner or a reversionary beneficiary;
  - 24.5 the cost of an insurance policy or annuity effected by the Trustee in respect of the pensioner which are not debited from the Member's Accumulation Account;
  - 24.6 the amount of a levy that the Trustee thinks fair and equitable;
  - 24.7 an amount transferred to the accumulation account of a Member or beneficiary;
  - 24.8 any other amount that the Trustee thinks appropriate to debit from the account taking into account the requirements of the Superannuation Law;
  - 24.9 any other amount required or permitted by the Superannuation Law.

***Must the Trustee separate assets which fund a pension?***

- 25. Unless an appropriate actuarial certificate has been obtained, the Trustee must segregate from other assets those assets which are to fund a pension. The Trustee must value those assets at least annually. If they are insufficient or more than sufficient to fund the pension, the Trustee must do anything that the Superannuation Law requires. The Trustee must obtain any certificate of adequacy that the Trustee considers necessary in respect of those assets in order to comply with the Tax Act or the Superannuation Law.



***Can the Trustee create accounts and sub-accounts?***

26. The Trustee may, in addition to any other power to create reserve accounts, create such accounts and sub-accounts as the Trustee considers necessary and expedient for the management of the Fund.

26.1 An account shall be established and maintained for each Member or Beneficiary to be called a Member's accumulation account:-

26.1.1 The following amounts may be credited to the appropriate account:-

- 26.1.1.1 contributions made for or on behalf of a Member;
- 26.1.1.2 transfers from the operating account;
- 26.1.1.3 transfers of credit amounts held in the name of a Member previously held in an approved fund;
- 26.1.1.4 transfers from a reserve account;
- 26.1.1.5 transfers from a Member's pension account;
- 26.1.1.6 eligible termination payments to which the Member is entitled;
- 26.1.1.7 the proceeds of a claim made on an insurance policy;
- 26.1.1.8 any other amount that the Trustee shall determine from time to time; provided the same shall not result in the Fund losing concessional tax treatment or be in breach of the Superannuation Law.

26.1.2 The following amounts may be debited to the appropriate accumulation account:-

- 26.1.2.1 transfers to the operating account;
- 26.1.2.2 transfers to a Member's Pension account;
- 26.1.2.3 transfers to a reserve account;
- 26.1.2.4 transfers to an approved fund made at the written request of a Member;
- 26.1.2.5 transfer to pay costs or expenses incurred by the Trustee which are specific to a Member including but not necessarily limited to insurance premiums and any other costs related to the purchase or maintenance of any insurance policy for the benefit of a Member or a Member's dependants;
- 26.1.2.6 the payment of a benefit ( other than a payment from a pension account) to a Member or a Member's dependant or a beneficiary of a Member;
- 26.1.2.7 the purchase of an annuity;
- 26.1.2.8 any taxation, costs, charges and expenses and provisions in respect of any of those items as the Trustee may from time to time determine;

- 26.1.2.9 any other amount that the Trustee shall from time to time determine provided the same shall not be in breach of the Superannuation Law.
- 26.2 the Trustee must maintain records to show in relation to a Member's Accumulation Account the amount:-
  - 26.2.1 that is required to be preserved;
  - 26.2.2 that is a restricted non-preserved benefit;
  - 26.2.3 that is or are subject to a "Nil" cashing requirement under the Superannuation Law.
- 26.3 An account shall be established and maintained for each relevant Member to be called a Pension Reserve Account:-
  - 26.3.1 Provided the relevant credit is permitted by the Superannuation Law and the minimum balance of any relevant account does not fall below the amount required by the Superannuation Law the following amounts may be credited to a Member's Pension Reserve Account:-
    - 26.3.1.1 a transfer from a Member's Accumulation Account;
    - 26.3.1.2 a transfer from a Member's Pension Account;
    - 26.3.1.3 a transfer from an Operating Account;
    - 26.3.1.4 a transfer from any other relevant Pension Reserve Account.
  - 26.3.2 Provided the relevant transfer is permitted by the Superannuation Law the following amounts may be transferred from a Pension Reserve Account:-
    - 26.3.2.1 a transfer to a Member's Accumulation Account;
    - 26.3.2.2 a transfer to a Member's Pension Account;
    - 26.3.2.3 a transfer to an Operating Account;
    - 26.3.2.4 a transfer to an Operating Reserve Account;
    - 26.3.2.5 a transfer to some other relevant Pension Reserve Account.
- 26.4 An account shall be established and maintained for the general purposes of the Fund to be called an Operating Account.
  - 26.4.1 The following amounts may be credited to the Operating Account:-
    - 26.4.1.1 all income and profits derived from investments of the Fund as they arise ( but excluding benefits that have been rolled over or transferred into the Fund);
    - 26.4.1.2 any unrealized gain arising from a revaluation of the assets of the Fund;
    - 26.4.1.3 any adjustment necessarily or desirably made to a Member's Accumulation Account or a Members Pension account;
    - 26.4.1.4 any amount transferred from a Reserve Account;

- 26.4.1.5 the proceed of any insurance policy which for some reason should not be transferred to a Member's Accumulation Account; and
- 26.4.1.6 any other amount that the Trustee shall determine from time to time.
- 26.4.2 The following amounts may be debited to an Operating Account:-
  - 26.4.2.1 any loss realized on the sale or disposal of any asset of the Fund;
  - 26.4.2.2 any Taxation, costs, charges, and expenses which have not been debited to a Member's Accumulation Account;
  - 26.4.2.3 any unrealized loss resulting from a revaluation of the assets or asset of the Fund;
  - 26.4.2.4 any cost or expense of purchasing or continuing an insurance policy for the benefit of a Member or Member's dependant which have not been debited to a Member's Accumulation Account;
  - 26.4.2.5 any amount transferred to a Reserve Account;
  - 26.4.2.6 any other account that the Trustee may from time to time determine.
- 26.5 If the Trustee has provided one or more Members or Beneficiaries with an investment choice then the Trustee may create a separate Member's Operating Account or Beneficiary Operating Account for each such Member or Beneficiary to facilitate the calculation of the earning rate for the relevant investment strategies.

## **BENEFITS**

### ***How can benefits be paid?***

- 27. Benefits may be paid in any manner that is permitted by the Superannuation Law and the following rules are a guide.

### ***Can benefits be paid as a lump sum payment?***

- 28. Subject to any requirement that benefits be paid in the form of an income stream, benefits may be paid in the form a lump sum payment.

### ***How are benefits paid if payment is by lump sum?***

- 29. If payment of benefits is by way of lump sum then by way of an amount equal to the aggregate of:-
  - 29.1 the Member's accumulation; and
  - 29.2 the amount of any Life Insurance which may be received by the Trustee in respect of the Member by reason of his or her retirement, disability or death (if the case so requires) and the Trustee shall cause to be paid from the Fund to the Member or to such other person institution or approved roll-over facility as the Member directs, the whole or such part of the amount as the Member advises and shall remain in the Fund until the Member dies or requests payment of same the remainder (if any) of the amount determined adjusted by the share of any further investment earnings determined by the Trustee to be attributed to that amount; and

- 29.3 any other amount that is required or permitted by the Superannuation Law.

***Can taxation payments be deducted from payments?***

30. All proper and appropriate Taxation shall be deducted from any payment made to a Member, a Dependant, a Beneficiary, and in the case of a deceased Member a Personal Legal Representative before a payment is made and accounted to the Commissioner at the earliest reasonable opportunity.

***Can the Trustee purchase an Annuity?***

31. The Trustee may purchase for the benefit of a Member an Annuity as defined in the Superannuation Law which shall provide for the payment of an immediate or deferred Annuity to the Member from such date as the Member selects being not later than the Member's age requiring payments to commence under the Superannuation Law.

***Can benefits be paid as Income Stream (Pension)?***

32. If the Member requests in writing and the Superannuation Law permits the Trustee may pay benefits progressively to the Member as an income stream which income stream may be a Pension of any type permitted by the Superannuation Law from time to time and if at the date these rules came into effect a Pension of a particular type is being lawfully paid then the Trustee may continue to pay such a Pension as long as the Superannuation Law so permits.

***How else can benefits be paid?***

33. Provided the Member or Beneficiary (as the case requires) agree benefits can be paid in any manner permitted by the Superannuation Law.

***Can the Trustee change the type of Pension?***

34. If the Superannuation Law permits the Trustee may change the type of pension being paid from time to time and may pay a pension in any manner permitted by the Superannuation Law.

***Can a Member stop the payment of a pension and return to an accumulation phase?***

35. The Trustee upon being requested so to do by a Member may terminate the payment of a pension and rollover the balance of the Member's net account balance back to an Accumulation Account for a Member who has: -
- 35.1 returned to work; or
  - 35.2 no need for an income stream because of changed circumstances; or
  - 35.3 decided to change the income stream or benefit generally that the Member is receiving; or
  - 35.4 wishes to take advantage of a change in the Superannuation Law; or
  - 35.5 satisfies some other requirement of the Superannuation Law that permits a rollover.

***If benefits are paid as an accumulation?***

36. If benefits are paid as an accumulation then the Member or the Member's Dependents or Personal Representative as the case requires shall be paid at least the total of the Member's Member Financed Benefits, the Member's Mandated Employer Financed Benefits and any roll-overs or transfers from other Funds.

***What are the Minimum Requirements of Income Stream?***

37. If benefits are paid in the form of an income stream then the same shall be paid from the account established for that purpose and in accordance with the requirements of the Superannuation Law:-
- 37.1 The following rules shall apply as a guide to the requirements of the Superannuation Law and in particular the requirements of Divisions 1A.1 and 1A.2 of the regulations concerning the payment of pensions (income streams);
- 37.2 No pension may be paid until the Trustee is satisfied upon reasonable grounds that the Superannuation Law permits the fund to pay the pension in the particular form proposed;
- 37.3 The minimum payment of an Account Based Pension must (unless from time to time the Superannuation Law permits otherwise) be the following percentage of the Member's account balance in the Fund at the commencement of the relevant financial year or, in the case of a new pension fund, at the commencement of the fund for the minimum Member's relevant age;

<b>Age of Beneficiary</b>	<b>Minimum Percentage that must be paid</b>
Under 65	4
65 – 74	5
75 – 79	6
80 – 84	7
85 – 89	9
90 – 94	11
95 plus	14

- 37.4 The maximum annual payment of a Transition to Retirement Pension (excluding payments by way of commutation) including payments under a payment split must not exceed 10% of the Member's net account balance of the assets supporting the payment stream.

**Other provisions relating to payment of pensions*****When do these Rules apply?***

38. These rules shall apply in the case of benefits being paid in the form of a pension and shall be complimentary to all other rules.

***What Payment of Pension is payable at or After Attaining the "Normal Retirement Age"?***

39. The Trustee may pay or cause to be paid to the Member on or after attaining the retirement age, or on such earlier date as may be permitted by the Superannuation Law such income stream in one of the forms permitted by the Superannuation Law as may be agreed to between the Member and the Trustee PROVIDED HOWEVER THAT the Trustee shall not be permitted to pay

a pension or instalment of a pension which would exceed the Member's equitable share.

***What Payment of Pension can be made to a Spouse on Death of Member during Employment?***

40. On the death of a Member who is survived by a spouse the Trustee shall pay a pension to the spouse of such amount as the Trustee shall determine taking into account the amount of the pension which would have been payable to the Member PROVIDED THAT the Trustee shall not be permitted to pay a pension or instalment thereof if such payment would exceed the balance of the deceased Member's account or if such pension shall breach any requirement of the Superannuation Law. If the spouse has not attained an age that permits a pension to be paid to the spouse the benefits shall be retained in the Fund or otherwise dealt with as permitted by the Superannuation Law until the spouse attains the required age.

***What Payment of Pension can be paid on Disability of a Member During Employment?***

41. In the event of a Member ceasing to be gainfully employed on account of permanent disablement the Trustee may pay or cause to be paid to the Member a pension in such manner as shall be agreed to between the Member and the Trustee having regard to the requirements of the Superannuation Law which shall not exceed the pension that would have been payable to the Member had he or she ceased to be in gainful employment by reason of attaining normal retirement age PROVIDED HOWEVER THAT the Trustee shall not be obliged to pay a pension or installment thereof if the payment would exceed the balance of the Member's account.

***Can a Pension be paid to a Spouse on Death of Pensioner?***

42. On the death of a Member receiving a pension who is survived by a spouse, the Trustee may pay a pension to the spouse of such amount as the Trustee shall determine PROVIDED HOWEVER THAT the Trustee shall not be obliged to pay a pension or installment thereof if the payment would exceed the balance of the deceased Member's account or if such pension shall breach any requirement of the Superannuation Law and for the purposes of determining whether the payment of a pension or an installment thereof might exceed the balance of the Member's account during the life of the spouse, the Trustee may seek the advice of the Actuary either generally or for the purposes of this Rule and the Trustee shall adjust the pension to take account of the Actuary's report, advice and/or recommendations.

***How does a Transfer Value Determine Benefits?***

43. Notwithstanding anything stated to the contrary in these Rules, the capital value of any pension payable to or in respect of a Member shall not be less than its Transfer Value together with interest thereon from the date of receipt into the Fund to the date the Member ceases to be a Member at such rate or rates as the Trustee shall in the absolute discretion of the Trustee determine having regard to the earning rate of the Fund.

***Can payment be made to a Legal Personal Representative?***

44. Subject to the rules concerning payment of pensions and the Trustee's obligations concerning pension account balances, in the event that there shall be no person entitled to be paid a pension by reason of the death of a person who prior to such person's death was receiving payment of a pension then the Trustee shall pay the whole of the benefits standing to the credit of the deceased person to the Legal Personal Representative of such person upon production of Probate or Letters of Administration and if no Legal Personal Representative shall claim the benefit within two years of the death of the

person entitled to the pension the benefit shall cease to be payable and shall be retained in the Fund for the general purposes thereof and as required by the Superannuation Law.

***When do pensions become payable?***

45. Subject to the Superannuation Law a pension shall commence on the day following the day when the Member (or other person) becomes entitled at Law to the pension. Pensions shall accrue from day to day.

***Trustee May Approve Commutation?***

46. Following the request of a Member or pensioner, the Trustee may, subject to the Superannuation Law after exercising an absolute discretion, vary the benefits and entitlements of a Member from time to time and may commute to a lump sum benefit such proportion as shall be permitted by the Superannuation Law of any pension payable from the Fund.

***May the Trustee split payment of pensions?***

47. The Trustee must upon being notified of a relevant binding agreement made under the provisions of the Family Law Legislation Amendment (Superannuation) Act or a relevant Court order "split" the payment of any pension between a Member and a Member's spouse (or other permitted person) in such manner and in such proportions as may be permitted from time to time by the Superannuation Law. The Trustee must take such action to give effect to the "split" as the regulations require including the payment of a lump sum to the spouse or ex-spouse and the recommencing of pension payments.

***May the Trustee split payment of pensions between spouses?***

48. If upon the death of a Member there is more than one spouse of a Member the Trustee may determine whether or not all or some of the spouses are entitled to benefit and if so in what proportions each spouse is entitled to benefit.

**General Provisions concerning Payment of Benefits**

***What are the Conditions for payment of benefits?***

49. A Member's entitlement to benefits shall may be paid or commenced to be paid if:-
- 49.1 the Member has attained the age at which payment is permitted by the Superannuation Law; or
  - 49.2 the Member has died; or
  - 49.3 the Member has retired permanently from gainful employment by reason of total and permanent incapacity or permanent invalidity or permanent disability; or
  - 49.4 the Member has a temporary incapacity such that the Superannuation Law permits a payment to be made; or
  - 49.5 the Member has a terminal medical condition; or
  - 49.6 the Member has attained an age that requires the payment ; or
  - 49.7 the Member has left the service of an Employer or ceased to be gainfully employed in other circumstances that may allow the payment; or
  - 49.8 the Member has severe financial hardship; or

- 49.9 the Member has demonstrated compassionate grounds for the payment; or
- 49.10 the Member has met some other criteria which permits or requires payment.

***What payments are to be made to Dependants?***

- 50.1 Any amount which becomes payable by reason of the death of a Member shall at the option of the Trustee be paid to or for the benefit of the Dependants of that Member or such one or more of them and to the exclusion of the other or others of them and in such proportions and such manner as the Trustee in the Trustee's absolute discretion shall determine. Where any Dependant to whom such benefit is paid is an infant or under a disability the payment may be made in Trust to the person appearing to the Trustee to be the Guardian, Administrator, person who has the control and management of the persons affairs under the Laws relating to disability or the person having the actual custody or control of such person or disabled person or to the person with whom such person will permanently reside or to such other person or institution (subject to such directions as to the manner in which the payment is to be applied) for the benefit of the person as the Trustee shall determine. The receipt of such person or the appropriate official of such institution shall be a good and sufficient discharge to the Trustee for any monies so paid and the Trustee shall not be bound to see to the application thereof nor to the carrying out of directions. A payment may be paid to the Legal Personal Representative or Representatives of a Member.
- 50.2 The Trustee may increase the amount of any death benefit that is not an Eligible Termination Payment to the amount that would have been available to be paid if taxable contributions had not been included in the assessable income of the Fund and generally take advantage of the provisions of section 279D of the Act.

***Must the Trustee Give Effect to Election?***

- 51.1 The Trustee in making a determination to pay a benefit or benefits to a Dependant of a Member or where there is no Dependant to another person shall take account of and give full effect to any election, direction, agreement or nomination that may have been made by a Member in writing to the Trustee prior to the date of the determination by the Trustee. If the Superannuation Law so permits such an election, direction, agreement or nomination may be made in writing at any time during the Member's lifetime or by Will or some other testamentary documentation and may take the form of a Binding or Non Binding Nomination or a Death Benefit Agreement.
- 51.2 If a Member wishes to give the Trustee a form of Binding Death Nomination then:-
  - 51.2.1 upon being requested so to do by a Member the Trustee must give to the Member such information as the Trustee reasonably believes the Member need for the purpose of understanding the right of the Member to make the nomination; and
  - 51.2.2 the notice must be in writing; and
  - 51.2.3 the notice must state the persons who are to benefit upon the death of the Member; and



- 51.2.4 the persons to benefit must be the legal personal representative or a dependant of the Member; and
- 51.2.5 the notice must state the proportion of the benefit that is to be paid to the person or each of the persons; and
- 51.2.6 the notice must be signed and dated by the Member in the presence of two witnesses each of whom are 18 years or older and neither of whom are mentioned in the notice; and
- 51.2.7 the notice must contain a declaration signed and dated by the witnesses stating that the notice was signed by the Member in their presence; and
- 51.2.8 the notice shall cease to bind the Trustee at the expiration of 3 years from the date it is signed unless it is renewed or amended within the three year period in which case three years from the renewal or amendment; and
- 51.2.9 the notice does not bind the Trustee if the Trustee is aware of the existence of a court order restraining or prohibiting the Member from giving the notice, requiring the Member to amend the notice, or restraining or prohibiting the Trustee from acting on the notice.

- 51.3 If a Member wishes to enter into a Death Benefit Agreement then the Member and the Trustees must enter into the agreement in writing and comply with the Superannuation Law so as to give as much effect as possible to the agreement.

***May the Trustee require a Medical Certificate?***

- 52. Any Member seeking payment of benefits from the Fund on his or her retirement from the work force on the ground of permanent incapacity or permanent invalidity shall provide to the Trustee a Certificate, signed by two registered Medical Practitioners certifying that in the opinion of those Medical Practitioners the Member is unlikely to ever be able to work again in a job for which the Member is reasonably qualified by education training or experience.

***What must happen if a Member ceases to be employed but is not entitled to benefits?***

- 53. If a Member ceases to be in gainful employment in circumstances which do not entitle him or her to a benefit then the Trustee shall:-
  - 53.1 retain in the Fund all of the benefits to which such Member is entitled upon withdrawal and which are required to be preserved and retain the same for the benefit of the Member until the Member satisfies any requirement of these Rules or the Superannuation Law permitting payment; or
  - 53.2 transfer all of the benefits to which the Member is entitled on such withdrawal and that are required to be preserved to another Superannuation Fund nominated by the Member being a Superannuation Fund of which the Member is or intends to become a Member and that is required to preserve any benefits so transferred in accordance with the Superannuation Law; or
  - 53.3 an approved deposit Fund nominated by the Member being a Fund that is required to preserve any benefits so transferred in accordance with the standards in the Superannuation Law; or
  - 53.4 such other Fund as may be authorised by the Superannuation Law; or

- 53.5 pay to the Member such portion of the benefits that are unrestricted, non-preserved benefits as defined in the Superannuation Law by paying the same in one or more lump sum payments, one or more pensions that comply with the Superannuation Law for the purchase of one or more annuities in the form of an income stream, provided by a Life Insurance Company, Friendly Society or a Registered Organization in accordance with the Superannuation Law.

***What benefits are payable on the death of a Member leaving Dependants but no spouse?***

54. Following the death of a Member leaving no spouse entitled to a benefit pursuant to these Rules but leaving Dependants, the Trustee shall pay any balance of that Member's account to such one or more of the former Member's Dependants in the manner, at the times, by the installments and subject to the terms and conditions and in such proportions between them, if more than one, as the Trustee may from time to time exercising an absolute discretion and taking into account the provisions of these Rules and the Superannuation Law decides.

***How are benefits paid on the death of a Member leaving no entitled spouse and no Dependants?***

55. Following the death of a Member not leaving a spouse entitled to a benefit pursuant to these Rules, and not leaving any Dependants, the Trustee shall pay or apply any balance of the Member's account to his or her Legal Personal Representative, or if there is no Legal Personal Representative, to such relatives of the deceased Member as appear to the Trustee to be entitled under the Laws of Intestacy to share in his or her estate, provided that if there be no such relative, any balance of the Member's account shall be absolutely forfeited and shall remain subject to the Superannuation Law in the Fund for the benefit of the remaining Members and beneficiaries.

***Can benefits be paid "in Specie"?***

56. If the Trustee and the person receiving a benefit so agree and provided the same shall not offend against the Superannuation Law, the Trustee may pay benefits by transferring assets of the Fund to the recipient without converting them into cash. The assets may be real or personal and the value attributable to such assets shall be determined by the Trustee after exercising a reasonable discretion and taking reasonable advice from an appropriately qualified Valuer, but shall be equal in value to the amount of benefit being paid to the recipient at the date of payment or provision of the benefit. The Trustee shall have all necessary powers to pay benefits in this manner including the power to select the particular asset for transfer.

***Can lump sum benefits be converted?***

57. Benefits payable in the form of a lump sum may be converted to an income stream (pension).

***Can the Trustee proportion benefit payments?***

58. Any tax payable on benefits payable from the Fund may be proportioned between the taxable and tax free component of the payment.
- 58.1 the Trustee must when determining the proportionate Tax to be deducted from the payment determine the amount of value of the payment and the amount of the taxable and tax free components :-
- 58.1.1 if the payment is a pension when the pension commenced to be paid; and

58.1.2 if the payment is a lump sum payment immediately before the payment is made; and

58.1.3 if the payment of the benefit arises from the commutation of a pension when the relevant pension commenced.

58.2 any proportioning is subject to the provisions of the Superannuation Law and the Tax Act.

***Limitation on proportioning***

59. No proportioning may be made in the case of a superannuation guarantee payment, a superannuation co-contribution benefit payment, or a contributions splitting superannuation benefit.

**LIMITATION ON BENEFITS**

***Can a payment be made if it breaches the Superannuation Law?***

60. No payment shall be made if the payment shall offend against the Superannuation Law.

**MEMBER NOT TO DEAL WITH BENEFIT**

***Can a Member deal with interest?***

61. A Member shall not charge or otherwise deal with his or her interest in the Fund or any of its investments.

***What must happen if a Member deals with interest in Fund?***

62. If a Member charges or otherwise attempts to deal with his or her interest in the Fund or becomes Bankrupt or commits an act of Bankruptcy or has his or her affairs made the subject of the Bankruptcy Law, then his or her interest in the Fund shall, subject to the provisions of the Superannuation Law cease and the Trustee may at any time pay or apply a benefit not exceeding the interest of the Member to such one or more of the Member or Member's Dependants to the exclusion of the others or other of them as the Trustee shall in the Trustee's absolute discretion determine **PROVIDED HOWEVER THAT** no benefit shall be paid to or in respect of a Member whilst the Member remains in gainful employment and is under the age at which a benefit may be legally paid and any balance not so applied by the Trustee shall be applied in such manner as shall be permitted by the Superannuation Law.

**VESTING OF BENEFITS**

***When must benefits vest in a Member?***

63. Subject to any overriding requirement in the Superannuation Law or Law effecting the administration of a Superannuation Fund, the total amount of Member financed benefits accruing to a Member from the date upon which this Fund is established shall vest in the individual Member on the day upon which the benefit or benefits accrue.

***What must happen if contributions made by an employer?***

64. In the event that any part of a Member's benefit (other than death or disability benefits) accrue directly or indirectly from contributions made by an Employer to the Fund in accordance with a prescribed agreement or award, or as a consequence of a payment made to comply with any requirement of the Superannuation Guarantee (Charge) Act 1992, or any mandated payment,

or if there is no award but the Employer so intends or the Law so requires, the benefits applicable thereto shall vest in the Member on the date on which the benefits accrue being the date on or after the date of the agreement, award or requirement.

## **ACTUARIAL APPOINTMENT AND INVESTIGATIONS**

### ***Can the Trustee appoint an Actuary?***

65. The Trustee may from time to time appoint and remove (on such conditions as the Trustee may think fit) an Actuary to the Fund for the purpose of providing assistance to the Trustee on any matter concerning the operation of the Fund. The Actuary shall be a Fellow of the Institute of Actuaries in Australia or a firm of Actuaries of which each Member is such a Fellow or such other person who may be from time to time permitted to act as an Actuary by the Superannuation Law.

### ***What can an Actuary do?***

66. If an Actuary has been appointed then the Trustee may from time to time ask the Actuary to make an actuarial investigation of the Fund and to report in writing to the Trustee as to the results of the investigation and on the state and sufficiency of the Fund, having regard to the then present and future liabilities of the Fund and to further make any recommendation which the Actuary shall consider appropriate concerning the Fund. Such actuarial investigations shall take place in accordance with prudent actuarial practice and the provisions of the Superannuation Law.

### ***Must the Trustee give information to Actuary?***

67. The Trustee shall give the Actuary any information which the Actuary may reasonably request for the purposes of the investigation.

### ***Preparation of Solvency Plan***

68. Prepare a solvency plan to ensure the continued solvency of the fund; and

### ***Action if Solvency in Doubt***

69. if the Trustee becomes aware or is notified by the Auditor or the Actuary that the Fund is or may become insolvent the Trustee must meet with the Actuary or Auditor to determine a solvency plan to ensure the Funds continued solvency including but not limited to reducing any Member's accounts or benefits and notify all Member's of any action required under the solvency plan and take such action as is required under the solvency plan prior to the lodgment of the Funds next regulatory return.

## **TRANSFER OF BENEFITS**

### ***Can benefits be transferred?***

70. If upon ceasing to be gainfully employed a Member becomes eligible for Membership in another Superannuation Fund or becomes eligible to make a deposit or deposits into an Approved Deposit Fund maintained in accordance with the Superannuation Law or wishes to purchase or acquire a Deferred Annuity or an Immediate Annuity as defined in the Superannuation Law, the Trustee may upon the written request of the Member and provided the rules of such other fund and the Superannuation Law permit:-

- 70.1 transfer to any one or more of the Trustees of any such Superannuation Fund or Approved Deposit fund assets (and such terms shall include Cash Funds) representing the whole or any part

of the value of the interest of the Fund attributable to such Member; or

- 70.2 apply the whole or any part of the value of the interest in the Fund attributable to such Member to the purchase of a Deferred Annuity or an Immediate Annuity.

***Can the Trustee accept a transfer of assets?***

71. The Trustee may at the request of a Member accept a transfer of assets from:-
- 71.1 the Trustee of any Superannuation Fund of which such Member was or is a Member;
  - 71.2 any person by whom such Member was or is employed;
  - 71.3 the Trustee of any Approved Deposit Fund in which such Member was or is a depositor;
  - 71.4 any person from whom such Member has purchased a Deferred Annuity or an Immediate Annuity;
  - 71.5 a Member provided such transfer is in accordance with the Superannuation Law on the condition that ;–
    - 71.5.1 the Trustee and such Member agree as to benefits payable to the Member in the given circumstances referred to in these Rules as a consequence of such transfer of assets;
    - 71.5.2 the assets so transferred are to form part of the Fund to pay benefits to any person as provided for in these Rules;
    - 71.5.3 the Trustee is provided with such information as the Trustee may reasonably request as to:
      - the age;
      - the sex;
      - the period or periods of Membership of the Member with any previous Fund;
      - the period or periods of service of the Member with any Employer in respect of which the assets so transferred represent benefits accrued to the Member including an allocation of those benefits between the respective period or periods and the extent to which the assets so transferred represent the Member's Personal contributions and dates or periods (as specified by the Trustee) upon or during which such contributions were made; and
      - the extent to which the assets so transferred represent non preserved assets (which non preserved assets so far as the Superannuation Law permits may continue to be held as non preserved assets);
    - 71.5.4 any reasonable information is supplied to the Trustee about any other matter which in the opinion of the Trustee is incidental to or consequent upon a transfer or admitting a Member to Membership of the Fund or allowing a Member to remain a Member of the Fund.

***Can the Trustee accept a Transfer of an Insurance Policy?***

72. The Trustee may, if the Trustee thinks fit, accept a transfer of any Life Insurance policy existing on the life of a Member.

***Can Benefits from an Insurance policy be paid to a Member?***

73. In the event that assets or Life Insurance Policies are transferred to the Fund for the benefit of a Member, then except in the event of the Member's death or permanent disability or in accordance with the Superannuation Law such benefits shall not be paid on to the Member or any other person, prior to the Member attaining the permitted age.

***Can the Trustee accept or transfer a Tax Benefit?***

74. When accepting a transfer or making a Transfer the Trustee shall transfer to the new Fund or accept from the old Fund the benefit of any taxation concession on the benefits being transferred, including the benefit of any capital gain or other tax relief.

**FORFEITURE OF BENEFITS**

***What are the Conditions of Forfeiture?***

75. Any Member, former Member, or, after his or her death any of the dependants or the Personal Representatives of a Member or former Member who cannot (subject to reasonable enquiry having been made) be located and whose dependants cannot be located by the Trustee during a period of two years after a payment was last made to him or her by an employer, particulars of which employer have been given in writing to the Trustee or by the Trustee or if the Member was immediately before ceasing to have contact with the Trustee, self employed, then from the date the Member was last in contact with the Trustee, shall forfeit entitlement to all his or her benefits and in the event that he or she shall not have prior to that date given notice of his or her retirement from the Fund shall on that date cease to be a Member of the Fund. Any benefits that have accrued to a Member, former Member and beneficiary that is forfeited under this sub Rule shall be paid to the Regulator or the appropriate receiver of unclaimed monies in accordance with any requirement of the Superannuation Law.

***How is a Member's account residue dealt with?***

76. Any Member or former Member or other Beneficiary who has been paid all benefits which the Trustee considers should be paid to him or her in accordance with these Rules and who still has a residual amount standing to his or her credit shall, subject to these rules and the Superannuation Law, upon the day that the Trustee declares all benefits due to the Member have been paid to the Member, forfeit such amount and such amount shall be dealt with as a forfeited benefit.

***How are forfeited benefits to be dealt with?***

77. The Trustee shall hold upon trust and pay or apply any benefits which have been forfeited which represent Members' vested contributions or preserved payment benefits to or for the benefit of the Member or his or her dependants or any one of them in such portions between them and on such terms as the Trustee may from time to time in the Trustee's absolute discretion determine provided that no benefit shall be paid to or in respect of a Member whilst the Member remains in full time gainful employment (except in the case of a transition to retirement income stream) and any balance not so applied by the Trustee shall be applied in such manner as is authorised by the Superannuation Law.

***What is to happen to unapplied forfeited benefits?***

78. Moneys released in respect of any benefits forfeited and not subsequently paid or applied in accordance with these Rules and the Superannuation Law shall remain in the Fund for the general purposes of the Fund.

***How are remaining forfeited benefits dealt with?***

79. Subject to any overriding requirement of the Superannuation Law, the Trustee may, exercising an absolute discretion, pay or apply any benefits which have been forfeited:-
- 79.1 to or for the benefit of the Members or former Members of the Fund or any of their respective dependants or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time exercising an absolute discretion, deem fit;
  - 79.2 to or for the benefit of Members or former Members of the Fund who have rights to receive benefits from the Fund or for any of their respective dependants on a basis that the Trustee considers reasonable having regard to all the circumstances in which benefits may be paid in lieu of contributions which were otherwise payable by an Employer or a Member to the Fund;
  - 79.3 to repay to an Employer or a contributor contributions made to the Fund in respect of a Member whose rights to receive benefits under the Fund have ceased; or
  - 79.4 for any other purpose permitted from time to time by the Superannuation Law; or
  - 79.5 as required by the Superannuation Law.

**PRESERVATION OF BENEFITS**

***What benefits must be preserved?***

80. The amount of any benefits vested in a Member in accordance with these Rules or the Superannuation Law shall be preserved and in relation to each Member of the Fund and any amounts that may be transferred to the Fund for the benefit of a Member in accordance with these Rules or under the Superannuation Law shall be preserved in the manner and to the extent required by the Superannuation Law.

**AUDITOR**

***Must the Fund have an Auditor?***

81. The Fund shall (if the Superannuation Law so requires) have an Auditor to audit the Fund and such Auditor shall:-
- 81.1 be an independent registered auditor; or
  - 81.2 if the Superannuation Law permits be a person who:-
    - 81.2.1 is a Member of the Institute of Chartered Accountants or the Australian Society of Certified Practising Accountants or the National Institute of Accountants or is a Fellow or Member of the Association of Taxation and Management Accountants or is a Fellow of the National Tax and Accounts Association Ltd or such other person as shall be permitted by the Superannuation Law; and
    - 81.2.2 is not a Trustee or Member of or contributor to the Fund, Member of the Management Board, Committee or other body exercising actual control over the policies, assets or property

of the Fund, or a partner, employee or officer of such Trustee, Member or contributor; and

81.2.3 does not have actual control over the investments or administration of the Fund and is not a partner, employee or officer of any person having such control.

81.3 take office immediately upon being appointed by the Trustee and shall remain in office until:-

81.3.1 death; or

81.3.2 he or she becomes mentally ill or his or her affairs come under the protective jurisdiction; or

81.3.3 he or she has such illness as incapacitates him or her from carrying out the duties of Auditor; or

81.3.4 resignation; or

81.3.5 ceasing to satisfy any of the requirements for acting as Auditor as provided in these Rules or the Superannuation Law; or

81.3.6 removal from office by the Trustee.

## **TRUSTEE**

### ***Must the Fund have a Trustee?***

82. The Fund must at all times have a Trustee.

### ***What rules apply to the Office of Trustee?***

83. The Fund must be managed by a Trustee who shall:-

83.1 unless the primary purpose of the Fund is to pay benefits in the form of a pension, be a Constitutional Corporation; and

83.2 once appointed, continue to hold office until removed or ceasing to hold the qualifications for office; and

83.3 be appointed and hold office in accordance with these Rules and the Superannuation Law; and

83.4 in the case of the first Trustee be the persons or Corporation named in the Schedule; and

83.5 if the Fund is not a Self Managed Superannuation Fund, comply with the equal representation rules contained in the Superannuation Law; and

83.6 if the Fund is a Self Managed Superannuation Fund, comply with the requirements of the definition of Self Management Superannuation Fund in the Interpretations part of these rules and the Superannuation Law; and

83.7 in the case that the Fund has fewer than 5 Members but is not a Self Managed Superannuation Fund, be a Trustee who is an independent Trustee approved to act as a Trustee by the Regulator.

83.8 be appointed by the Members or if the case requires by the Members and Employer.

### ***When does the Office of Trustee become vacant?***

84. The office of Trustee shall become vacant if being a Corporation:-



- 84.1 it is placed in receivership or goes into liquidation or in some other manner ceases to hold the qualification required for it to be a Trustee; or
- 84.2 if the Members and the Employer (if there be an Employer) agree to remove the Trustee and in the event that there shall only be Members the Members and in the event that there shall be a disagreement between the Members and an Employer (if there be an Employer) or Members on the question of the removal of the Trustee if the Auditor upon the request of any Member shall direct upon reasonable grounds that the Trustee be removed;
- 85. A person acting as a Director of a Trustee Corporation shall cease to hold office if:-
  - 85.1 he or she dies or resigns by notice in writing; or
  - 85.2 he or she is disqualified from acting as a Director pursuant to the Corporations Law; or
  - 85.3 he or she is disqualified from acting as a Director pursuant to any of the provisions of the Superannuation Law; or
  - 85.4 he or she becomes mentally ill or his or her affairs come under the protective jurisdiction; or
  - 85.5 he or she becomes bankrupt or makes an assignment to or composition with his or her creditors; or
  - 85.6 the Members and the Employer (if there be an Employer) and if there only be Members the Members agree to remove the Director and in the event that there shall be a disagreement between the Members and an Employer (if there be an Employer) or the Members on the question of removal of the Director, if the Auditor upon written request from a Member shall direct upon reasonable grounds that the Director be removed.
- 86. If the Trustee or Director holds office as a result of an agreement to appoint or nominate as an independent Trustee or Director such Trustee or Director shall cease to hold office as soon as such mutual agreement or nomination ceases.
- 87. The office of Trustee shall become vacant if being a natural person:-
  - 87.1 he or she dies or resigns by notice in writing; or
  - 87.2 he or she is disqualified from acting as a Trustee pursuant to any of the provisions of the Superannuation Law; or
  - 87.3 he or she becomes mentally ill or his or her affairs come under the protective jurisdiction; or
  - 87.4 he or she becomes bankrupt or makes an assignment to or composition with his or her creditors; or
  - 87.5 is guilty of gross misconduct in the management of the affairs of the Fund.

***Is the Trustee personally liable?***

- 88. A Trustee or the directors of a Corporate Trustee shall not be under any personal liability in respect of any loss or breach of trust relating to the Fund unless the same shall have been due to its or his or her dishonesty or gross neglect.

***Is the Trustee entitled to be indemnified?***

89. A Trustee shall be indemnified by the Fund against all liabilities and damages incurred by the Trustee in the execution or attempted execution or in respect of the non execution of the trust, authorities, power and discretions contained in these Rules provided the Trustee shall have acted reasonably, and the Trustee shall have a lien on and may use any monies for the repayment of all proper legal and other costs and charges, and expenses of administering or winding up the Fund, and otherwise of performing the Trustee's duties under these Rules. The indemnity provided shall extend and apply to any payment made on the death of a Member to any person whom the Trustee bona fide believed to be entitled thereto.

***Does a Member have to indemnify a Trustee?***

90. A Trustee shall not be entitled to indemnity, reimbursement or payment of expenses from the Members or any of them or any other person entitled to benefit from the Fund and the Members likewise shall not be personally liable for the debts of the Fund.

***Must the Trustee file Annual Return?***

91. The Trustee shall in each year of the Fund's existence as soon as practicable after the end of a year of income and not later than the date which may be prescribed for that purpose in respect of that year by the Regulator as being the last date for filing of a return as required by the Superannuation Law, give or cause to be given to the Regulator in relation to the year of income:-
- 91.1 a return (Regulatory Statement) in a form approved by the Regulator for the purposes of providing such information relating to the Fund and the Fund's compliance with the Superannuation and Taxation Law during the year of income as is required by the Superannuation and Taxation Law; and
  - 91.2 a certificate by the Trustee of the Fund as to the matters required by the Superannuation Law in the form prescribed; and
  - 91.3 a certificate by the Fund's Auditor as to the matters required by the Superannuation Law in the form prescribed; and
  - 91.4 the prescribed fee and any other information that may be required by the Regulator or the Superannuation Law.

***Must the Trustee ensure that the Fund is properly administered?***

92. The Trustee, whether original or substituted, shall see to the proper administration of the Fund and use the Trustee's best endeavors to ensure that in the administration of the Fund there is no breach of the Superannuation Law.

***Must the Trustee provide annual statement to Members?***

93. As soon as practicable after the end of the year of income of the Fund first occurring after the date hereof and of each succeeding year of income (and in no case later than 6 months after the end of each year) the Trustee shall provide to each and every Member a written statement setting out:-
- 93.1 the amount of benefits vested in the Member at the commencement of the first day of the year of income to which the statement relates; and
  - 93.2 the amount of benefits vested in the Member at the expiration of the last day of that year of income; and
  - 93.3 the method of determining the amount of the benefits payable to the Member;

- 93.4 the amount or proportion of the benefits that is required by the Superannuation Law to be preserved in relation to the Member in the event of the Member's withdrawal from the Fund; and
- 93.5 the amount of contributions made by the Member or on behalf of the Member during that year of income; and
- 93.6 the amount of net earnings allotted to the Member during that year of income and the rate at which those earnings were allotted; and
- 93.7 the amount of any current death benefit of the Member; and  
where the amount of benefits that are vested in a Member of the Fund is calculated on the basis of the benefits purchased by the Trustee under an endowment or whole of life policy, the amount of:-
- 93.8 the sum assured; and
- 93.9 any bonuses that have accrued to the Member on or before the end of the year of income to which the statement relates; and
- 93.10 contributions made by that Member during that year of income; and
- 93.11 any other information required to be given pursuant to the Superannuation Law.

***Must the Trustee give statement to new Members and exiting Members?***

- 94. The Trustee shall give the following written statements as soon as practicable after the relevant event:-
  - 94.1 when a person becomes a Member a statement containing details of the kinds of benefits available to Members; and the conditions relating to those benefits; and such other information as shall from time to time be required by the Superannuation Law.
  - 94.2 when a person ceases to be a Member a statement containing:-
    - the amount of the benefit entitlement of the Member, identifying any amounts that are required to be preserved; and
    - the method of determining that entitlement; and
    - such other information, statements and material required by the Superannuation Law.

***Must the Trustee know these Rules?***

- 95. The Trustee shall, as soon as practicable after appointment become familiar with the provisions of these Rules and the requirements of the Superannuation Law and apply them fairly between the Members and beneficiaries of the Fund.

***Must the Trustee deal with conflict?***

- 96. The Trustee shall deal appropriately with any conflict between the interests of the Members and or those in receipt of payments or benefits and the interests of the Employer (if there be an Employer) and the Trustee and if a conflict of interest arises disclose it to the Members or, if the case requires, the persons in receipt of benefits and:-
  - 96.1 Because it is desirable that if there is a dispute it be resolved without the need to resort to litigation if there shall be any dispute touching upon the management of the Trust, the parties in dispute must attempt to resolve the dispute by mediation and the following rules shall apply:-

- 96.1.1 either party may start mediation by serving a Mediation Notice on the other;
- 96.1.1 the Notice must state that a dispute has arisen and identify the dispute;
- 96.1.2 the parties must jointly appoint a Mediator;
- 96.1.3 if the parties fail to agree on the appointment within fourteen days of service of the Notice a Mediator will be appointed by the President for the time being of the Law Institute or Law Society (as the case requires) of the Place of Proper Law upon the application of either party;
- 96.1.4 the parties must observe the instructions of the Mediator about the conduct of the mediation execute any written agreement that the Mediator may reasonably ask them to execute and make a genuine and determined effort to resolve the dispute;
- 96.1.5 if the dispute is not resolved within twenty days after the Mediator is appointed or any other time that the parties are agreed to in writing the mediation ceases;
- 96.1.6 no proceeding may be commenced until such time as the parties have attended a mediation meeting;
- 96.1.7 each party must pay an equal share of the cost of the mediation to the Mediator and pay their own costs of the mediation;
- 96.1.8 if the dispute is resolved each party must sign the Terms of the Agreement and the terms are binding on the parties;
- 96.1.9 the mediation procedure is confidential and written statements prepared for the Mediator or for a party and any discussions between the parties and between the parties and the Mediator before or during the mediation procedure cannot be used in any legal proceedings. The Mediator shall destroy any notes made during the mediation at the end of the mediation.

***What other obligations does the Trustee have?***

- 97. In addition to the duties and obligations of a Trustee otherwise provided in these Rules, the Trustee must:-
  - 97.1 take all reasonable steps to ensure that there are at all times in force arrangements under which Members and beneficiaries have the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to the Member or beneficiary making the enquiry or complaint, and
  - 97.2 ensure that enquiries or complaints so made are properly considered and dealt with within 90 days after they are made.
  - 97.3 if the Trustee enters into an agreement with an Investment Manager under which money of the Fund will be placed under the control of the Investment Manager ensure that the agreement contains adequate provision to enable the Trustee to require the Investment Manager from time to time -
    - ensure the provision of appropriate information as to the making of, and return on, the investment to ensure the provision of such information as is necessary to enable the

Trustee to assess the capability of the Investment Manager to manage the investments of the Fund and

ensure that wherever it is necessary or desirable to do so, the Investment Manager provides the information.

- 97.4 keep and retain for at least 10 years minutes of all meetings of Trustees or Directors of a Trustee Corporation as the case requires; and
- 97.5 keep and retain for at least 10 years up to date records of all changes of Trustees and changes of Directors of any Corporate Trustee and of all consents given under Section 118 of the Superannuation Industry (Supervision) Act 1993; and
- 97.6 keep and retain for as long as they are relevant and in any event for at least 10 years copies of all reports that are given from time to time to all Members of the Fund or to all Members included in a particular class and to make those copies available for inspection by the Regulator if required so to do; and
- 97.7 notify the Regulator in writing not later than the third business day after becoming aware of the event of the occurrence of any event having a significant adverse effect on the financial position of the Fund; and
- 97.8 make and publish Rules setting out a procedure for appointing the individual Member Trustees or the Member Directors of a Corporate Trustee ensuring that the Member Representatives so appointed can only be removed by the same procedure as that by which they were appointed except in the event of:-
- death, or
  - mental or physical incapacity, or
  - retirement, or
  - termination of employment, or
  - the Member Representative becoming a disqualified person within the meaning of Part 15 of the Superannuation Industry (Supervision) Act 1993 or the suspension or the removal of the Trustee under Part 17 of the Superannuation Industry (Supervision) Act 1993, or
  - any other circumstance prescribed in the Superannuation Law; and
  - publish those Rules in such a way as will make Members of the Fund aware of the procedure for appointment and removal of the Member Representatives;
- 97.9 except in the case of the Fund being a Self Managed Superannuation Fund or relying on Sub-Section 89(2) of the Superannuation Industry (Supervision) Act 1993 in order to comply with the basic Equal Representation Rules, to the extent that these Rules do not so provide, the Trustee shall establish Rules ensuring that the additional independent Trustee or additional independent Director, as the case may be, can only be removed by the same procedure as that by which such Trustee or Director was appointed except in the event of:-
- death, or
  - mental or physical incapacity, or

becoming a disqualified person within the meaning of the Superannuation Law, or

being suspended or removed under the Superannuation Law

and shall publish those Rules in such a way as will make Members of the Fund aware of the procedure for removal of such Trustee or Director as the case may be;

- 97.10 keep such accounting records as correctly record and explain the transactions and financial position of the Fund, so keeping the accounting records as to enable the accounts and statements of the Fund as required by the Superannuation Law and the returns referred to in the Superannuation Law to be prepared, keeping the accounting records, statements and returns so that the same may be conveniently and promptly audited, retaining the records for at least 5 years after the end of the year of income to which the transaction relates, causing the records to be kept in Australia and keeping the records in writing in the English language or in a form in which they are readily accessible and readily convertible into writing in the English language;
- 97.11 satisfy all of the requirements concerning the proper and efficient conduct of and management of the Fund as are contained in the Superannuation Law;
- 97.12 satisfy all of the requirements of the Superannuation Law for the preservation of small balances in Members' accounts.

***Does a Director have a casting vote?***

- 98. No Director of a Corporation acting as Trustee shall have a second or casting vote.

**GENERAL POWERS OF THE TRUSTEE**

***What general powers does the Trustee have?***

- 99. In addition to the powers which may by Law be conferred upon or which are provided for by these Rules, the Trustee shall have the following powers:-
  - 99.1 to settle, compromise or submit to mediation or arbitration any claims, matters or things relating to this Deed or to the rights of Members or any other person making any claims upon the Fund; and
  - 99.2 to commence, carry on and defend proceedings relating to the Fund or to the rights of any Members, former Members or any Beneficiaries under the Fund; and
  - 99.3 to insure or re-insure risks, contingencies or liabilities of the Fund with any insurance company, mortgage insurance company, re-insurance company or other superannuation fund; and
  - 99.4 to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any participating Employer where there exists the possibility of transfers of employees to the Fund; and
  - 99.5 to retain the services of such professional or other advisers in relation to the management, administration or investment of the Fund and to pay out all expenses properly incurred and incidental to the management and administration and investment of the Fund; and

- 99.6 to indemnify or to undertake to indemnify any person in respect of any claim matter or thing relating to the Fund or to the rights of any Member, former Member or Beneficiary in respect of the Fund; and
- 99.7 generally to do all acts, things and matters as the Trustee may consider necessary and expedient for the proper administration, maintenance and preservation of the Fund including the making of an election to be a Regulated Superannuation Fund; and
- 99.8 to delegate in writing the exercise of all or any of the powers or discretionary authorities conferred by these rules on the Trustee and to execute any powers of Attorney or other instruments necessary to effectuate such purpose; and
- 99.9 generally to exercise or concur in exercising all of the powers and discretions contained in these rules or otherwise by Law conferred on the Trustee notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof ( being a Corporation ) has or may have a direct or personal interest in ( whether as a Trustee of any other settlement or in his or her personal capacity or as a shareholder or director or Member or partner of any company or partnership or as a Unit Holder or Beneficiary of any Discretionary Trust or as a Member of this fund or otherwise however) in the mode or result of exercising such power or discretion and notwithstanding that the Trustee for the time being is the Sole Trustee.

## ALTERATIONS TO RULES

### *How can these rules be altered and what rules apply to amendment?*

- 100. These Rules may from time to time whether prospectively or retrospectively be altered, repealed or added to by the Trustee by Deed or resolution and such alterations or additions may in like manner be altered, repealed or added to **PROVIDED HOWEVER** that no amendment shall detrimentally effect the benefits which have already been provided in respect of any Member (or Beneficiary) from contributions made by a Member or on behalf of a Member to the date of such amendment unless such amendment is made in conformity with these Rules and either with the consent in writing first had and obtained from all the Members of the Fund or the Regulator. No amendment shall be made which has the effect of creating a re-settlement of this Superannuation Trust.
  - 100.1 Any amendment made shall be binding on each Member of the Fund whether or not such Member has executed a Deed of Adoption before or after such amendment and shall take effect as and from the date of the Deed or resolution or as and from such earlier or later date as may be specified for that purpose in the Deed or resolution and shall be of the same validity as if it had been originally contained in these Rules.
  - 100.2 As soon as practicable after such amendment the Trustee shall give to each of the Members a written statement explaining the nature and purpose of the alteration and the effect (if any) of the alteration on the entitlements of Members.
  - 100.3 In the event that the Trustee shall become aware that any of the provisions of these rules offend against the Superannuation Law, the Trustee shall, within 30 days of becoming aware, cause this Deed to be amended so as to remedy that breach.

## **SERVICE OF NOTICES**

### ***How may notices be served?***

101. Every notice or other communication whatsoever to be made or given by the Trustee a Member or an Employee shall be in writing, signed by an officer appointed by the Trustee or Employer or by the Member (and if the notice be given on behalf of a group of Members then by a nominee of the group) and shall be sent by post or electronic means to the last advised address of the person to whom the notice is sent. If sent by mail it shall be deemed to be served 2 working days after the day of posting. If sent by electronic means it shall be deemed to be served 4 hours after the time of transmission.

## **INSPECTION OF RULES**

### ***Who may inspect these Rules?***

102. A copy of these Rules shall be kept by the Trustee at the Trustee's office and shall be open to inspection by any Member at all reasonable times.
103. Every Member upon request to the Trustee shall be supplied with a copy of this Deed and Rules of the Fund.

## **DEDUCTION OF TAXES AND EXPENSES**

### ***What expenses can the Trustee deduct?***

104. The Trustee may deduct from any benefit or payment including a death benefit made under these Rules:-
- 104.1 Any taxes payable from or in respect of it whether by the person entitled thereto or the Fund and shall thereupon pay the taxes deducted to the Commissioner of Taxation or such other person entitled to receive the same.
- 104.2 The costs or expenses incurred in locating and determining the identity of any person entitled to benefit hereunder and any costs or expenses in determining the amount of any benefit payable hereunder.

### ***What effect do deductions have on benefits?***

105. A person entitled under the Fund shall be entitled to receive only the benefits or payments due after the deduction or deductions have been made.

## **TERMINATION OF FUND**

### ***When must the Fund be wound up?***

106. The Fund shall be wound up:-
- 106.1 if in the opinion of the Trustee there are circumstances affecting the Fund that make it necessary for the Fund to be wound up; or
- 106.2 if the Superannuation Law requires that it be wound up; or
- 106.3 if the Regulator requires that it be wound up; or
- 106.4 if there is no person to whom a benefit is or may be payable; or
- 106.5 if the liabilities of the Fund at any time exceed the assets of the Fund (other than for a temporary short term)



106.6 if all of the Members agree that it be wound up.

***What happens when the Fund is wound up?***

107. In the event of a winding up of the Fund any liability of any Employer or any Member or other person to make contributions shall cease and determine (save and except to the extent of any payment the liability for which has arisen but in respect of which payment has not been made) and the Trustee shall distribute amongst the Members or former Members or their dependants the assets of the Fund in accordance with these Rules either as a death benefit or a withdrawal benefit or a permanent disablement benefit or by way of payment to another Fund as appropriate provided that the Trustee shall have the absolute discretion to vary such benefits in such circumstances and on a basis that the Trustee considers reasonable having regard to the circumstances and the provisions of the Superannuation Law.

***What happens to money remaining in Fund?***

108. If any amount remains in the Fund after all the Members' entitlements have been paid the amount so remaining shall be paid to the Employers and/or the Members in such proportions as the Trustee considers to be appropriate or to such other persons or Corporation as the Superannuation Law may require.

**MISCELLANEOUS**

***What is the purpose of the Fund?***

109. This Fund is an indefinitely continuing Fund and shall be maintained primarily for either or all of the following purposes:-
- 109.1 the provision of benefits for each Member of the Fund in the event of the retirement of the Member from any business, trade, profession, vocation, calling, occupation or employment;
  - 109.2 the provision of benefits for dependants of each Member of the Fund in the event of the death of Member;
  - 109.3 for such ancillary purpose as the Superannuation Law may permit.

***Can the Trustee provide different benefits etc?***

110. The Trustee may take any action, make any payment or investment, borrow any money, establish any Fund or Sub-Fund, divide the Fund into any number of parts, exercise any discretion, pay any Benefit or Income Stream (Pension) and give effect to any request made by a Member, Member's Dependant or other Beneficiary as shall be permitted by the Superannuation Law.

***Must the Trustee have regard to Superannuation Law?***

111. The Trustee shall at all times whilst exercising a discretion, exercise the discretion having regard to the provisions of the Superannuation Law, the Tax Act any other relevant legislation and prudent business and investment practice being mindful at all times that the Superannuation Law and the interests of Members and beneficiaries take precedence over these rules.

***Must the Trustee act as a Trustee?***

112. Notwithstanding the provisions of any of these Rules or any other Rule of Law, any right acquired or action taken by the Trustee in the terms of these Rules shall be deemed to be acquired or taken by the Trustee in a capacity of Trustee and any monies payable to the Trustee shall be received and disbursed by the Trustee as such Trustee as provided by these Rules and shall not form part of the personal or separate assets of the Trustee.

**IN WHAT CIRCUMSTANCES IS THIS FUND DEEMED TO BE A PENSION FUND?**

113. The Fund shall be deemed to exist primarily (but not only) for the purpose of paying benefits in the form of an Income Stream (Pension) if:-
- 113.1 the Fund is described as being a Pension Fund in the Schedule (either specifically or by default); or
  - 113.2 the Trustee pays benefits to Members or Dependants in the form of an income stream; or
  - 113.3 the Trustee declares in writing that the Fund is or is to be a Pension Fund; or
  - 113.4 the Trustee is a committee of individuals (natural persons); or
  - 113.5 such circumstances exist from time to time that require the Fund be a Pension Fund.

**COVENANTS AND REQUIREMENTS DEEMED TO BE INCORPORATED IN THESE RULES**

***To the extent that they are not incorporated in these Rules what standards and rules are to be incorporated in these rules?***

114. The covenants set out and the standards prescribed by the Superannuation Law and any additions to or modifications of those requirements, covenants and standards that may become operative at any time after the date of this Deed, shall be **DEEMED TO BE INCLUDED IN THESE RULES** and where any inconsistency exists between any matter or thing contained in or referred to in these Rules and the covenants and standards so prescribed and any other regulation and any additions to or modifications of those covenants, standards, requirements and regulations that may become operative at any time after the date of this Deed such covenant, standard, requirement, or regulation, shall take precedence and **SHALL BE DEEMED** to be incorporated in these Rules as and from the date upon which such amendment, addition or modification shall become Law.

***What requirements are incorporated in these rules?***

115. A requirement that the Fund comply with the equal representation rules, the rules relating to the appointment of a Trustee, the investment rules and the rules for payment of benefits and pensions, contained in the Superannuation Law **SHALL BE DEEMED** to be incorporated in these Rules.

**TRUSTEE NOT IN CONTRAVENTION**

***When will the inappropriate actions of the Trustee not contravene these Rules?***

116. The Trustee shall not be taken to be in contravention of these Rules or to be in breach of trust if the Trustee does anything, or fails to do anything, which is in contravention of the Superannuation Law or any provision of these Rules if:-
- 116.1 the contravention is permitted by the Superannuation Law; or
  - 116.2 the contravention is approved by the Regulator or the person or persons (if any) specified for that purpose, in accordance with the Superannuation Law; or

- 116.3 the contravention is rectified within 28 days, or (where applicable) such other period allowed by the Superannuation Law, from the date the Trustee became aware of the contravention.

## MEETINGS OF TRUSTEE

### *How are the meetings of the Trustee to be conducted?*

117. The Trustee must have regular meetings of its Members and must meet at least twice each year and:-
- 117.1 if the Trustee is a Constitutional Corporation the procedure for calling meetings, making decisions whether by resolution or otherwise, and the recording of decisions shall be in accordance with the Corporations Constitution and the Corporations Act 2001;
  - 117.2 if the Trustee is comprised of individuals, the Trustee may meet in person, meet using a telephone or other electronic link, agree by way of circulated resolution, or make a decision using any combination of those means provided that each individual Trustee is given a reasonable opportunity to participate in the decision making process;
  - 117.3 if the Trustee is comprised of individuals, the Trustee's decisions shall be made by simple majority, but where there is a deadlock then the vote cast by each individual Trustee shall then be multiplied by the combined balance of all accounts held by each individual Trustee in his or her capacity as a Member unless the Superannuation Law requires otherwise;
  - 117.4 all decisions of the Trustee must be recorded in writing.

## INTERPRETATIONS

### *The purpose of these definitions is to assist the Trustee.*

118. The interpretations of these Rules shall be in accordance with the Laws of the State of residence of the Trustee and if more than one the majority of Trustees and the requirements of the Superannuation Law.

In these "Rules" and for the administration of the Fund and for a better understanding of Superannuation Law the following words and expressions shall unless the context otherwise requires have the following meaning and if any meaning given in this Interpretation Rule shall be inconsistent with a meaning given in the "Superannuation Law" then the meaning given in the Superannuation Law shall prevail:-

**"Act"** means the Superannuation Industry (Supervision) Act 1993, and any Act that shall from time to time be substituted for the Act.

**"Actuary"** means the Actuary for the time being appointed pursuant to the Rules.

**"Assets"** means the cash, investments and other property of the Fund held by the Trustee on the trusts established by or under this Deed, including:-

- any amount standing to the credit of the Fund on or after the date when this Fund commences,
- a contribution made by a Member,
- a contribution made by an employer,

contributions allowed by these rules that are lawfully made by another person,

interest, dividends, distributions, profits and other benefits of any kind arising from investments and accumulation of income,

the proceeds of any annuity or insurance policy,

the value of any annuity or insurance policy,

money, investments and other property received by the Trustee as a roll over payment,

shortfall, components and financial assistance received by the Trustee,

any other real or personal property of any kind and wherever situated.

**"Beneficiary"** means a person immediately and absolutely entitled to a benefit from this Fund. It does not include a Member except where that Member is immediately and absolutely entitled to a benefit from this Fund personally or in respect of another Member.

**"Benefit"** means any amount paid or payable by the Trustee out of the Fund to or in respect of a Member or Member's Dependant or a beneficiary.

**"Binding Death Benefit Notice"** means a notice given by a Member or beneficiary to the Trustee in accordance with Regulation 6.17A of the Superannuation Industry (Supervision) Regulations.

**"Child"** includes a step-child, a legally adopted child or a person recognised by the Trustee as a defacto adopted child of a Member or a Dependant or any person who, in the sole discretion of the Trustee, is or was at any relevant date a child in respect of whom a Member is or was standing in Loco Parentis.

**"Complying Superannuation Fund"** means a complying Superannuation fund as defined in the Superannuation Law.

**"Contributions"** means payments to the Fund by Members and Employers permitted by the Rules and the Superannuation Law.

**"Co-Contribution"** means a payment made under the Superannuation (Government Co-Contribution for Low Income Earners) Act 2003.

**"Corporation"** means a Constitutional Corporation as defined in the Corporations Act 2001.

**"Dependant"** means the spouse, former spouse and any child of a Member and any person who in the opinion of the Trustee is or was at the relevant date wholly or partially dependant on a Member.

**"Doctor"** means a registered Medical Practitioner.

**"Disability"** means physical or mental disablement which the Trustee considers will render the Member unable to perform his or her duties to his or her Employer or engage in gainful employment.

**"Employee", "Employer" and "Employed"** have their ordinary meaning as modified by Section 15A of the Superannuation Industry (Supervision) Act 1993 and includes the Principal Employer or any Participating Employer and wherever appearing means the Employer by which the Member is for the time being employed. For the purposes of determining whether or not a person is an employee of an employer sponsor of the Fund, the term employee shall also be taken to mean a person who is an employee of another person if the employer-sponsor is:-

a relative of the other person; or

either of the following:

a body corporate of which the other person, or a relative of the other person, is a director; or

a body corporate related to that body corporate; or

the Trustee of a trust of which the other person, or a relative of the other person, is a beneficiary; or

a partnership; where:

the other person, or a relative of the other person, is a partner in the partnership; or

the other person, or a relative of the other person, is a director of a body corporate that is a partner in the partnership; or

the other person, or a relative of the other person, is a beneficiary of a trust, if the Trustee of the trust is a partner in the partnership.

**“Full-time in relation to being gainfully employed”** means gainfully employed for at least the number of hours provided from time to time in the Regulations.

**“Income Stream”** has the same meaning as “Pension”

**“Member Financed Benefits”** means a Member’s contributions and investment earnings thereon less any expenses applicable to those amounts but excludes any salary sacrifice contributions.

**“Membership”** means Membership of this Fund and any previous fund accepted by the Trustee as Membership for the purposes of this Fund.

**“Membership Period”** in relation to a Member means the latest continuous period of Membership expressed in years and any fraction of a year, in respect of which contributions have been made or are deemed to have been made in relation to a Member and shall include any additional or varied Membership Period granted to a Member by the Trustee.

**“Normal Retirement Age”** means the Member’s retirement age as defined in the Superannuation Law.

**“Non-binding nomination”** means a notice given to a Trustee by a Member that does not meet the requirements of Regulation 6.17A.

**“Part-time in relation to being gainfully employed”** means gainfully employed for at least the time provided from time to time in the Superannuation Law.

**“Participating Employer”** means any corporation person or firm which has applied to participate (such application being in any way that the Trustee may decide) and which the Trustee may exercising an unfettered discretion permit to participate in the Fund.

**“Payment Split”** means a payment split under Part VIIIB of the Family Law Act 1975.

**“Pension”** means a benefit payable by way of an Income Stream at a yearly rate by installments, in a manner that complies with the Regulations.

**“Pensioner”** means a person receiving a pension/income stream.

**“Permanent Incapacity”** means an incapacity, disability or invalidity which is either total or partial which in the opinion of the Trustee, after considering a certificate or certificates signed by two registered medical practitioners,

renders a Member incapable of engaging in any employment for which he or she is reasonably qualified by education, training or experience or where the benefit payable on permanent incapacity or invalidity is insured, a permanent incapacity or invalidity as defined in any policy effecting such insurance for the Member.

**"Permitted Age"** means the age at which the Superannuation Law permits benefits to be paid to a Member.

**"Regulated Superannuation Fund"** has the meaning given by Section 19 of the Superannuation Industry (Supervision) Act 1993.

**"Regulations"** mean the Superannuation Industry (Supervision) Regulations.

**"Regulation"** means a Regulation in the Superannuation Industry (Supervision) Regulations.

**"Regulator"** means the person or authority for the time being carrying out the duties of ensuring that the provisions of the Superannuation Law are complied with by this Fund.

**"Relative"** means in relation to an individual a parent, child, grandparent, grandchild, sibling, aunt, uncle, great aunt, great uncle, niece, nephew, first cousin or second cousin of the individual or of his or her spouse or former spouse or some other individual having such a relationship to the individual or his or her spouse or former spouse because of adoption or remarriage or the spouse or former spouse of one of those individuals or by reason of some provision in the Superannuation Law and if permitted by the Superannuation Law a person falling into any of the above categories by reason of the existence of a bon-fide domestic relationship including such a relationship between persons of the same gender.

**"Related Party"** means a Member, an associate of a Member, an employer-sponsor and an associate of an employer-sponsor.

**"Reversionary Beneficiary"** means a dependant of a Member nominated by the Member at the commencement of the payment of an income stream

**"RSA Regulations"** means the Retirement Savings Accounts Regulations.

**"Salary"** means in relation to a Member his or her salary or remuneration as advised by the Employer or if the Member is self employed the Member from time to time and includes (where the context requires) Final Average Salary.

**"Self Managed Superannuation Fund"** means, unless otherwise defined in the Superannuation Law, a Superannuation Fund of which there are fewer than 5 Members, where all Members are Trustees or a Constitutional Corporation is the Trustee and all the Directors of the Trustee are Members of the Fund and all the Members of the Fund are Trustees or Directors of the Trustee Corporation and no Member of the Fund is an employee of another Member of the Fund unless the Members and Trustee concerned are relatives and the Trustee or Trustees (including the Directors of a Trustee company) do not receive remuneration for services as Trustee or Trustees.

In the case of a Fund with only one Member, the Trustee is a Constitutional Corporation of which the Member is the sole director or the Member is one of only two directors of the Corporate Trustee and the Member and the other director are relatives or the Member is one of only two directors of the Corporate Trustee and the Member is not an employee of the other director or if individuals are Trustees, there are only two Trustees and one is a Member and the other is a relative of the Member or the Member is one of only two Trustees and the Member is not an employee of the other Trustee and no Trustee of the Fund receives any remuneration from the Fund or from

any person for any duties or services performed by the Trustee in relation to the Fund.

**"Spouse"** means the wife or husband of a Member and includes the widow or widower of the Member or any other person accepted by the Trustee as being in a bona fide domestic relationship with a Member or former Member which shall include a same gender relationship (if the Superannuation Law so permits).

**"Tax Act"** means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 (as amended) and any amendment or re-enactment thereof for the time being in force.

**"Superannuation Law"** means the law which collectively deals with any aspect of Superannuation or the taxation of Superannuation in Australia.

**"Transfer Value"** in relation to a Member means the amount (if any) transferred to the Fund from another Fund.

**"Trustee"** means the Trustee for the time being of this Fund whether original additional or substituted.

**"Trust Deed"** means the foregoing of which these Rules form part including any amendments.

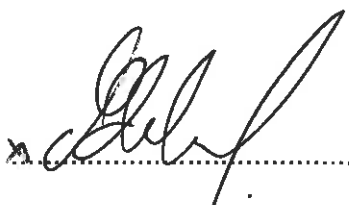

Words importing the singular or plural number shall (where the context permits) include the plural or singular number respectively and words importing one gender shall include other genders; all references to the Rules shall be deemed to be the Rules of the Fund for the time being in operation and any reference to an individual shall include a Corporation and vice versa.

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**EXECUTED** as a Deed on the day stated in the Schedule as the date of execution.

**THE TRUSTEE(S):**

Executed by )  
**PT & LJ VICARY PTY LTD** )  
**ACN 152 020 187** )  
in the manner provided for in )  
Section 127 of the Corporations Act 2001 )

.....Director .....Director  
Peter T. Vicary.....Name Lynda J. Vicary.....Name



## THE SCHEDULE

1. Date of making this deed: 11 July 2011
2. Name of this Fund: PT & LJ VICARY SUPER FUND
3. Trustee: PT & LJ VICARY PTY LTD  
ACN 152 020 187  
1 ALBERT ROAD  
BEECROFT  
New South Wales 2119
4. Names of First Members: PETER THOMAS VICARY  
LYNDA JANE VICARY
5. Type of Fund: Lump Sum or Pension Payment
6. New or Existing: New