

# **Superannuation Trust Deed for a Self-Managed Fund**

**Osorio Superfund**

**The Trustee named in the Schedule**  
and

**The Members named in the Schedule**

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**Superannuation Trust Deed For A Self-Managed Fund**

**BETWEEN**

**THE TRUSTEE NAMED IN SCHEDULE 2**

**(Trustee)**

**AND**

**THE MEMBERS NAMED IN SCHEDULE 2**

**(Members)**

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**Background**

- A. The Members wish to establish the Fund and have requested the Trustee to act as trustee of the Fund.
- B. The Trustee has agreed to act as trustee of the Fund.
- C. The Members have agreed to be the first members of the Fund.
- D. The Fund is to be an indefinitely continuing self-managed superannuation fund under the SIS Act.
- E. The parties have entered into this Deed to give effect to their common intentions.

**THIS DEED WITNESSES**

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**1. Definitions**

In this Deed, unless expressed or implied to the contrary:

**Annuity** means what it means under Superannuation law.

**Approved benefit arrangement** means an arrangement into which or from which assets of the Fund can be transferred without a breach of Superannuation law. It includes a roll over fund, a complying superannuation fund, an approved deposit fund and an annuity arrangement.

**Approved deposit fund** means a fund which is a complying ADF under section 995-1 of the Tax Act.

**Amount standing to the credit** in relation to an accumulation account, includes an amount the Trustee decides to pay to that account from the equalisation account (if any).

**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:

- (a) any amount standing to the credit of the Fund on or after the date when this Deed commences;
- (b) contributions made by a Member;
- (c) contributions made by an employer;
- (d) contributions allowed by this Deed that are made by another person as permitted by superannuation law;

- (e) interest, dividends, distributions, profits and other benefits of any kind arising from investments and accumulation of income;
- (f) the proceeds of any annuity or insurance policy effected by the Trustee;
- (g) the value of any annuity or insurance policy effected by the Trustee;
- (h) money, investments and other property received by the Trustee as a roll over payment; and
- (i) shortfall components and financial assistance received by the Trustee.

**Beneficiary** means a person immediately and absolutely entitled to a benefit under this Deed in respect of a Member. It does not include a Member except where that Member is immediately and absolutely entitled to a benefit under this Deed in respect of another Member.

**Benefit** means an amount payable out of the Fund to or in respect of a Member or beneficiary.

**Benefit entitlement** means an amount in the Fund which may become payable to a Member, dependant or beneficiary, but to which that person has not become absolutely entitled. It includes a contingent right to payment.

**Binding death benefit notice** means a notice given by a Member or beneficiary to the Trustee in accordance with regulation 6.17A of the SIS Regulations and with this Deed.

**Business day** means Monday to Friday excluding public holidays in Victoria.

**Business hours** means between 9:00 am and 5:00 pm on a Business day.

**Commutation authority** means a commutation authority issued under Subdivision 136-B of Schedule 1 to the Tax Administration Act.

**Complying superannuation fund** means a complying superannuation fund under Superannuation law.

**Contributions** means gross contributions made to the Fund (before any tax which the Fund may be required to pay in respect of that contribution) in accordance with this Deed.

**Corporation** means a constitutional corporation under Superannuation law.

**Death benefit agreement** means all, or that part of, an agreement describing the Trustee's obligations concerning the payment of benefits on a Member's death which:

- (a) directs the Trustee to pay the benefits to a person to whom those benefits may be paid in accordance with superannuation law;
- (b) has been executed by the Trustee and
- (c) the Member; and has not later been
  - (i) terminated by the Member; or
  - (ii) replaced by a separate death benefit agreement with the agreement of the Trustee and the Member.

**Deed** means this deed executed by the Trustee and the Members.

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

**Doctor** means a registered medical practitioner.

**Eligible roll over fund** means what it means in Part 24 of the SIS Act.

**Employment termination payment** means the same as it means in the Tax Act.

**Employee** means a person who is an eligible person under superannuation law for the purpose of an employer making contributions in order to avoid a liability for the superannuation guarantee charge under the Superannuation Guarantee (Administration) Act 1992 (Cth).

**Employer** means what it means under Superannuation law.

**Employment relationship** – an employment relationship exists between 2 persons if any of the following applies:

- (a) one person is an employee of the other within the ordinary meaning of that term, or within the meaning of section 15A of the SIS Act, or is taken to be an employee under superannuation law;
- (b) one person is the Trustee of a trust of which the other person, or a relative of the other person, is a beneficiary;
- (c) one person is a member of a partnership in which the other person, or a relative of the other person, is either a partner or a director of a body corporate that is a partner; or
- (d) one person is a member of a partnership in which the other person, or a relative of the other person, is a beneficiary of a trust, the Trustee of which is a partner.

However, an employment relationship does not exist between 2 persons if superannuation law has the contrary effect.

**Excess contributions** means contributions by or on behalf of a Member which exceed the annual cap amounts for concessional contributions and non-concessional contributions as defined in the Tax Act.

**Expenses of the Fund** means the expenses for which the Trustee is entitled to be reimbursed under this Deed.

**Family Law Act** means the *Family Law Act 1975* (Cth).

**Fund** means the fund established by this Deed, the name of which is set out in Schedule 2.

**Fund earning rate** means the positive or negative earning rate the Trustee determines after taking account of any provision or reserve for future contingencies.

**Fund establishment date** means the date specified in Schedule 2.

**Fund year** means the 12-month period ending on 30 June or a substitute date decided on by the Trustee. At the beginning of the trust, and at the end of the trust, it means the lesser period ending on that date, or commencing on the following day.

**Gainful employment** means what it means under superannuation law. It includes gainful employment on a full-time basis and gainful employment on a part-time basis.

**Insurance policy** means an insurance policy effected on the life of the Member or a beneficiary of the Member, or in respect of the Member's or beneficiary's illness, accident or disablement.

**Interdependency relationship** has the same meaning as in the SIS Act.

**Levy** means a levy payable by the Fund under superannuation law.

**Member** means an Initial Member or a person who has been admitted as a Member of the Fund in accordance with the Deed, and **Members** has a corresponding meaning.

**Member Application Form** means a form acceptable to the Trustee by which a person may apply to become a member of the Fund, including the form set out in Schedule 3.

**Non-binding nomination form** means a notice given by a Member or beneficiary to the Trustee nominating one or more dependants of that person who are to receive some or all of the benefits payable on the Member's or beneficiary's death, but which form does not meet the requirements of regulation 6.17A of the SIS Regulations.

**Non-Member spouse** means a person who is:

- (a) a spouse or former spouse of a Member; or
- (b) a Non-Member Spouse within the meaning of that term under Part VIII B of the Family Law Act.

**Non-preserved amount** means an amount (including a roll over payment) that is payable to or in respect of a Member that is not subject to cashing restrictions under superannuation law at the time of payment.

**Normal retirement age** means 65 or another age that is at least 55 (or, if the Trustee is not a Corporation, 60) that is accepted by superannuation law and is agreed by the Trustee.

**Payment flag** means an agreement or court order referred to in clause 12.2.

**Payment split** means a payment split under Part VIII B of the Family Law Act.

**Pension account** means a pension account established under clause 8.3.

**Pension age** means what it means under superannuation law.

**Pension dependant** means a dependant of a Member to whom a pension may be paid on the Member's death, as defined by regulation 6.21(2A) of the SIS Regulations.

**Preservation age** has the same meaning as in regulation 6.01 of the SIS Regulations.

**Preserved benefit** has the same meaning as preserved payment benefit.

**Preserved payment** means a payment made to the Fund which is required to be preserved under superannuation law if the Fund is to be a complying superannuation fund.

**Preserved payment benefit** means a benefit arising from a preserved payment.

**Regulator** means the particular Commonwealth body responsible for the administration of the relevant aspect of superannuation. It may be the Australian Taxation Office, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or some other body.

**Relative** for the purpose of the definition of 'employment relationship' and for the purpose of eligibility to be a Trustee or director of the Trustee, means each of the following in respect of a person:

- (a) a parent, grandparent, child, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin or second cousin of the person;
- (b) another person who has any such relationship to the person by reason of adoption or re- marriage; and
- (c) the spouse or former spouse of the person or of any of the persons listed in the sub- paragraphs (a) and (b).

For any other purpose, **Relative** means each of the following in respect of a person:

- (d) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the spouse of the person; and
- (e) the spouse of the person or of any person listed in sub-paragraph (d).

**Release Authority** means a written authority or direction given to the Trustee to release funds, given by the Member or the Commissioner of Taxation, and which the Trustee is required to comply with under Superannuation law (including where the purpose is a permissible condition of release under the SIS Regulations).

**Retires** in relation to employment, means retirement under regulation 6.01(7) of the SIS Regulations.

**Reversionary beneficiary** means an eligible dependant for the purpose of superannuation law, including a Pension Dependand, nominated by a pensioner as his or her residuary beneficiary.

**Roll over payment** includes a transitional employment termination payment or an employment termination payment made or received by the Trustee in accordance with superannuation law and an eligible benefit payment rolled out of or in to a complying superannuation fund.

**RSA Regulations** means the regulations made under the *Retirement Savings Account Act 1997* (Cth).



**Securities** includes fully paid and partly paid shares, fully paid and partly paid stocks, debentures, notes, bonds, mortgages, options and other similar securities. Neither security nor registration is required.

**Self-managed superannuation fund** has the same meaning as in section 17A of the SIS Act.

**Shortfall component means** what it means in section 64 of the Superannuation Guarantee (*Administration*) Act 1992 (Cth) and regulations made under that Act.

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

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Spouse** means a person legally married to the Member at any time; and a person who is not legally married to the Member, but who, in the Trustee's opinion, lives or lived with the Member on a bona fide domestic basis as the partner of that Member. If there are 2 or more persons who are spouses within this definition, 'spouse' means that person or those persons whom the Trustee decides to treat as the spouse or spouses.

**Superannuation law** means any law of the Commonwealth of Australia including the *Corporations Act 2001* and the *Social Security Act 1991* (Cth), which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the Fund by the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation. It includes changes to any superannuation law after the date of this Deed. It also includes any proposed law or lawful requirement that the Trustee believes may have retrospective effect.

**Tax** includes any form of taxation, surcharge, levy, duty or other government charge that the Trustee is required to pay out of the Fund, or a Member, former Member or beneficiary is required to pay.

**Tax Act** means the Tax Act 1936 and the Tax Act 1997.

**Tax Act 1936** means the *Income Tax Assessment Act 1936* (Cth).

**Tax Act 1997** means the *Income Tax Assessment Act 1997* (Cth).

**Tax Administration Act** means the *Tax Administration Act 1953* (Cth).

**Temporary total disablement** means what it means in the relevant insurance policy effected by the Trustee. If there is no such policy, it means total physical or mental disablement that is not total and permanent disablement that makes the relevant Member incapable of continuing in the gainful employment that the Member was in immediately before the incapacity.

**Total permanent disablement** means what it means in the relevant insurance policy effected by the Trustee. If there is no such policy, it means such total physical or mental disablement that the Trustee is reasonably satisfied that the relevant Member is unlikely ever again to be able to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**Transfer Balance** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer Balance Cap** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer determination** means an excess transfer balance determination issued under Subdivision 136-A of Schedule 1 to the Tax Administration Act.

**Transition to retirement pension** means a pension to be paid by the Fund under superannuation law, paid as a transition to retirement pension under the conditions set out in Regulation 6.01(2) of the SIS Regulations

**Transitional employment termination payment** means what it means in section 82-130 of the Tax Act 1997.

**Trustee** means the Trustee or the Trustees of the Fund from time to time.

**Unclaimed benefits** mean benefits described as 'unclaimed money' under Superannuation law.

**Unrestricted non-preserved benefit** means what it means under Superannuation law.

**Withdrawal benefit** means the minimum benefit that must be paid to a Member on withdrawal from the Fund under superannuation law. To the extent that a Member's contributions have been applied towards

an endowment or whole of life policy, the Member's withdrawal benefit is the surrender value of that policy.

## **2. Fund establishment**

### **2.1 Establishment and purpose of the Fund**

2.1.1 The Trustee and the Members hereby establish the Fund as a self-managed superannuation fund under the SIS Act by executing this Deed and with effect from the Fund establishment date. It is an indefinitely continuing superannuation fund.

2.1.2 Where the Trustees are individuals, the sole or primary purpose of the fund is to provide old age pensions to the Members on their retirement. Where the Trustee is a Corporation, the sole or primary purpose of the fund is to provide old age pensions and other benefits to the Members on their retirement.

### **2.2. Trustee of the Fund and decisions**

2.2.1 The initial Trustee is named in Schedule 2 of this Deed. The Trustee accepts the appointment. The Fund is vested in the Trustee. No other person (including a Member) has any legal or beneficial interest in any asset of the Fund except to the extent expressly stated elsewhere in this Deed. The Trustee must manage the Fund in accordance with this Deed.

2.2.2 Subject to clause 2.2.3, if there is more than one Trustee they must act jointly.

2.2.3 Where the Trustees are individuals, any Trustee may call a meeting of Trustees by providing 7 days' written notice to each of the other Trustees at their address listed in Schedule 2 (or to any other address of a Trustee if that Trustee has informed each of the other Trustees of the other address). The following rules apply to any such meeting:

- (a) Unless agreed to by all the Trustees, the meeting may only be within business hours;
- (b) A Trustee may attend the meeting by phone;
- (c) A quorum for the meeting will be all the Trustees, and if all the Trustees are not in attendance within 15 minutes after the scheduled time the meeting will be adjourned for 5 business days, to be held at the same time of day (adjourned meeting);
- (d) At the adjourned meeting, the quorum of Trustees will be those Trustees in attendance; and
- (e) At any meeting, if the Trustees are unable to reach a decision unanimously or by majority then decisions will be made by poll, with each Trustee having the number of votes equal to the nearest dollar figure (rounded up) representing the value of the benefits of the Member whom that Trustee represents.

2.2.4 Where the Trustee is a Corporation, the Trustee may only make decisions under this Deed in the manner set out in the Trustee's constitution.

### **2.3. Deed subject to superannuation law**

2.3.1 This Deed is to be interpreted so as to comply with superannuation law. In particular, it is to be construed so that the Fund it establishes qualifies as a self-managed superannuation fund under superannuation law and so that it qualifies for, and payments from it qualify for, all available concessional tax treatment under the Tax Act. To the extent that anything in this Deed is inconsistent with superannuation law, or precludes any available concessional tax treatment under the Tax Act – including in respect of a payment made under this deed, it is to be severed from the Deed. Any obligation or requirement either imposed by superannuation law in respect of the Fund established by this Deed, or required to be included to ensure all available concessional tax treatment under the Tax Act – including in respect of any payment made from the fund - that is not expressed in this Deed is nonetheless to be regarded as incorporated in it by reference.

2.3.2 The Trustee must not do or fail to do anything as Trustee of the Fund that would result in either of the following:

- (a) A breach of law, including superannuation law; or

- (b) The Fund ceasing to qualify as a self-managed fund under superannuation law or to qualify for, all available concessional tax treatment under the Tax Act.

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### **3. Membership**

#### **3.1 Initial Members**

- 3.1.1 The initial Members of the Fund are named in Schedule 2 and the Trustee agrees that they have completed all formalities necessary for their admission as Members.
- 3.1.2 The initial Members of the Fund agree to be bound by this Deed.

#### **3.2 Additional Members**

- 3.2.1 The Trustee may appoint a person as an additional Member of the Fund if he or she has completed and signed a Member application form, or if the Trustee has otherwise accepted the person as a Member.
- 3.2.2 If the Trustee is a Corporation, then the additional Member agrees to do all things necessary to become a director of the Trustee including by providing an executed consent to act in the required form and such other documents as are required by superannuation law.
- 3.2.3 If the Trustees are individuals, the additional Member must become a Trustee and must provide an executed form of consent and such other executed documents as are required by superannuation law for that purpose. This must occur when the person becomes a Member, unless the additional Member is unable to become a Trustee or director of a Trustee under superannuation law.
- 3.2.4 On written request by the Trustee, a Member or applicant for Membership of the Fund must supply the Trustee with information that the Trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the Trustee.
- 3.2.5 If a Member fails to do so, the Trustee may refuse to accept further contributions in respect of that Member may decline to accept the applicant as a Member.
- 3.2.6 Subject to clause 3.7, the Trustee must not accept a person as an additional Member of the Fund unless each of the following conditions is met:
- (a) The total number of Members would be no more than 4;
  - (b) The person is not disqualified from being a Trustee or a director of the Trustee of the Fund;
  - (c) The person is not in an employment relationship with another Member of the Fund except another Member who is also a relative of that person; and
  - (d) The Trustee is satisfied that the person will become a Trustee or a director of the Trustee of the Fund on being accepted as a Member of the Fund, as required by superannuation law, or that alternative arrangements satisfactory under superannuation law have been or are to be made.
- 3.2.7 An additional Member becomes bound by this Deed as if he or she were an initial party to this Deed.
- 3.2.8 An additional Member's Membership commences on the date the Trustee specifies when accepting the person as a Member. If no date is specified, the additional Member's Membership commences on the date the Trustee accepts his or her application.

#### **3.3 Date of additional Member's commencement as Trustee**

Provided that an additional Member has complied in all respects with clause 3.2:

- 3.3.1 Where the Trustees are individuals, an additional Member becomes a Trustee of the Fund on the date his or her Membership commences; and
- 3.3.2 Where the Trustee is a Corporation, an additional Member becomes director of the Trustee on the date his or her Membership commences.

The exception is where alternative arrangements, satisfactory under superannuation law, have been made relating to an appointment in respect of the Member.

### **3.4 Membership Conditions and Disclosures**

- 3.4.1 The Trustee may impose any conditions the Trustee thinks fit on the Membership of a Member and a Member's rights and duties. The Trustee may remove or vary any condition at any time.
- 3.4.2 Either before, or as soon as practicable after a person becomes a Member of the Fund (and not later than 3 months after the person becomes a Member), the Trustee must ensure that the Member is given a product disclosure statement (in the form set out in Schedule 1, updated as required) which the superannuation law requires to be given to new Members of the Fund. However, the Trustee may instead choose to rely on a relevant exemption, available under superannuation law, to the requirement to provide a product disclosure statement.
- 3.4.3 The Trustee must ensure that Members, former Members and beneficiaries are provided with information in writing, or copies of accounts, records and documents of the Fund, that the superannuation law requires them to be given.
- 3.4.4 As soon as practicable after a person ceases to be a Member of the Fund, the Trustee must ensure that that person (or his or her legal personal representative) is given a written statement of the information the superannuation law requires to be given to persons who cease to be Members of the Fund.
- 3.4.5 A dependant of a Member is not entitled to any additional information relating to the operation or conduct of the Fund which the Trustee thinks it is inappropriate to disclose.

### **3.5 Membership and Fund compliance**

- 3.5.1 A Member must immediately inform the Trustee if the Member becomes aware that either of the following may happen:
- (a) The Member may enter into an employment relationship with another Member who is not also a relative of the Member; or
  - (b) The Member may be disqualified from being a Trustee or a director of the Trustee of the Fund.
- 3.5.2 A Member and the Trustee must ensure that the Member ceases to be a Member of the Fund within 6 months after either of the following happens:
- (a) The Member enters into an employment relationship with another Member who is not also a relative of the Member; or
  - (b) The Member is disqualified from being a Trustee or a director of the Trustee of the Fund.
- 3.5.3 If a Member of the Fund enters into an employment relationship with another Member who is not also a relative of the Member, or becomes disqualified from being a Trustee or a director of the Trustee of the Fund, the Trustee and the Members must do whatever is necessary to ensure that, within 6 months after the Member entered into the employment relationship or became disqualified:
- (a) No Member of the Fund is in an employment relationship with another Member who is not also a relative of the Member; and
  - (b) No Member of the Fund is disqualified from being a Trustee or a director of the Trustee of the Fund.
- 3.5.4 The types of things that may be done to ensure compliance include each of the following:
- (a) A Member may request the Member's benefits or entitlement in the Fund to be paid in accordance with this Deed or to be transferred or rolled over to an approved benefit arrangement under clause 13.9; or
  - (b) The Trustee may transfer the Member's benefits or entitlement in the Fund to an eligible roll over fund under clause 13.9.

### 3.6 Ceasing to be a Member

- 3.6.1 A person ceases to be a Member of the Fund as soon as the first of the following happens:
- (a) The person dies;
  - (b) The person ceases to be a Trustee or a director of the Trustee of the Fund;
  - (c) When payment of all the Member's benefits is made to the Member or to an approved benefit arrangement for the Member; or
  - (d) When benefits payable to or for the Member cease to be payable.
- 3.6.2 When a person ceases to be a Member of the Fund, the person ceases to be a Trustee or director of the Trustee of the Fund (as applicable), if he or she has not already ceased to act in that role.

### 3.7 Minor as a Member

- 2.3.1 A minor, being a person who is under 18 years of age, may be a Member of the Fund provided the superannuation law is complied with. In relation to a Member who is a minor:
- (a) The minor's parent or guardian must make the application for the minor to become a Member in the form set out in Schedule 3
  - (b) or in the form otherwise approved by the Trustee; and
  - (c) Decisions in relation to the minor's membership must be made by the minor's parent or guardian until:
    - (i) the minor turns 18; or
    - (ii) after the minor turns 16, the time at which the parent or guardian notifies the Fund that the minor will be making decisions in relation to the minor's membership.
- 3.7.2 When the minor turns 18, if the Trustees are individuals then the minor becomes a Trustee of the Fund or, if the Trustee is a Corporation, then the minor becomes a director of the Trustee of the Fund provided that the Trustee and the Member have done everything necessary to appoint that Member as a director of the Trustee.

## 4. Fund accounts

### 4.1 Trustee must establish certain types of account

The Trustee must establish:

- 4.1.1 An accumulation account and/or a pension account in respect of each Member or beneficiary for each class; and
- 4.1.2 An income account.

### 4.2 Accumulation Accounts

- 4.2.1 The Trustee may credit (and in the case of clause (k), must allot and credit) each of the following to the accumulation account of a Member according to the class to which they are relevant:
- (a) Contributions made by a Member;
  - (b) Contributions made in respect of the Member or a beneficiary of that Member by an employer;
  - (c) Other contributions allowed under this Deed and superannuation law that are made in respect of the Member;
  - (d) Positive earnings transferred from the income account;

- (e) A shortfall component paid in respect of that Member after any tax that is payable in relation to it has been deducted from it;
- (f) An amount paid to the Trustee as a transfer or roll over payment in respect of that Member which the Trustee thinks it appropriate to credit to the account;
- (g) A forfeited amount allocated to the Member or beneficiary under clause 11.4;
- (h) An amount transferred from the pension account of a beneficiary of the Member;
- (i) The proceeds of an annuity or insurance policy effected by the Trustee in respect of the Member or a beneficiary of the Member which the Trustee thinks it appropriate to credit to the account;
- (j) Financial assistance under section 23 of the SIS Act which the Trustee thinks it appropriate to credit to the account;
- (k) An amount deducted from the accumulation account of another Member pursuant to a contributions-split request made by that other Member and accepted by the Trustee; and
- (l) Any other amount the Trustee thinks it appropriate to credit to the account.

4.2.2 The Trustee may debit each of the following from the accumulation account of a Member according to the class to which they are relevant:

- (a) The proportion that the Trustee thinks appropriate of the expenses of the Fund;
- (b) The proportion that the Trustee thinks appropriate of either of the following:
  - (i) tax payable in respect of contributions or any shortfall component that are paid to the Fund; or
  - (ii) any earnings of the Fund credited to the accumulation account or arising as a result of a roll over payment;
- (c) A payment of a benefit to or in respect of the Member or a beneficiary of the Member except a payment from a pension account;
- (d) An amount paid out of the Fund in respect of the Member or a beneficiary of the Member as a transfer or roll over payment;
- (e) The cost of any annuity or policy of insurance effected by the Trustee in respect of the Member or a beneficiary of the Member; and the proportion that the Trustee thinks equitable of any group policy effected by the Trustee in respect of the Member or beneficiary and another Member or beneficiary;
- (f) The amount of a lien in respect of an indemnity exercised by the Trustee in accordance with this Deed;
- (g) An amount forfeited in accordance with this Deed;
- (h) The proportion that the Trustee thinks appropriate of any negative earnings of the Fund determined in accordance with this Deed;
- (i) An amount paid to indemnify the Trustee in accordance with this Deed;
- (j) An amount credited to the pension account of a Member or beneficiary;
- (k) The proportion that the Trustee thinks appropriate of a levy;
- (l) The amount of tax attributable to the Member or a beneficiary of the Member;
- (m) An amount to be allotted and credited to the accumulation account of another Member pursuant to a contributions-split request made by the Member whose accumulation account is to be debited and accepted by the Trustee; and
- (n) Any other amount the Trustee thinks it appropriate to debit.

### 4.3 Contributions-split requests

- 4.3.1 A Member may ask the Trustee (in a way that satisfies the requirements of superannuation law) that contributions made to the Fund in respect of that Member in the previous financial year be:
- (a) Allotted to the accumulation account of that Member's spouse; or
  - (b) Rolled-over or transferred to the Trustee of an approved benefit arrangement of which that Member's spouse has joined or is eligible to join.
- 4.3.2 The Trustee must allot, roll-over or transfer the relevant contributions pursuant to a request received under clause 4.3.1 provided:
- (a) The request satisfies the requirements of superannuation law;
  - (b) The Trustee is satisfied that the allotment, roll-over or transfer complies with superannuation law; and
  - (c) The amount of the contributions that the Trustee allots, rolls-over or transfers does not exceed the amount in the Member's accumulation account, taking into account any amount that the Trustee otherwise determines to debit from the Member's accumulation account.

### 4.4 Income Account

- 4.4.1 The Trustee may credit each of the following to the income account of the Fund:
- (a) Income and profits of the Fund;
  - (b) Adjustment credits made in accordance with clause 4.4.3;
  - (c) The proceeds of an insurance policy which the Trustee decides not to credit to a Member's or beneficiary's accumulation or pension account;
  - (d) A surplus resulting from a valuation under clause 4.6.3;
  - (e) Financial assistance received by the Fund under section 23 of the SIS Act which the Trustee decides not to credit to a Member's or beneficiary's accumulation or pension account; and
  - (f) Any other amount the Trustee thinks it appropriate to credit.
- 4.4.2 The Trustee may debit each of the following to the income account of the Fund:
- (a) The expenses of the Fund, except those the Trustee debits from a Member's or beneficiary's accumulation or pension account;
  - (b) Tax payable or likely to become payable in respect of contributions, shortfall components, or income and profits of the Fund, except tax the Trustee debits from a Member's or beneficiary's accumulation or pension account;
  - (c) Adjustment debits made in accordance with 4.4.3;
  - (d) The cost of an insurance policy which the Trustee decides not to debit from a Member's or beneficiary's accumulation or pension account;
  - (e) A deficiency resulting from a valuation under clause 4.6.3;
  - (f) The amount of a levy, except an amount the Trustee debits from a Member's or beneficiary's accumulation or pension account;
  - (g) Any loss on the disposal of an investment of the Fund; and
  - (h) Any other amount the Trustee thinks it appropriate to debit.
- 4.4.3 At the end of each Fund year, the Trustee must determine the Fund earning rate.

- 4.4.4 When determining a Fund earning rate in respect of a period (whether at the end of a Fund year or on an interim basis):
- (a) The Trustee must allocate amounts from the income account to each accumulation or pension account in proportion to the amount standing to the credit of that account at the beginning of the relevant period;
  - (b) The Trustee must make an appropriate adjustment for any amount credited or debited to the account since the beginning of the relevant period; and
  - (c) The Trustee may take into account the need for any provision or reserve for future contingencies and, instead of crediting that amount to an accumulation or pension account, credit that amount to the equalization account or reserve (if permitted by superannuation law).

#### **4.5 Equalisation Account**

- 4.5.1 The Trustee may establish an equalisation account which the Trustee may use for any of the following purposes:
- (a) To give effect to the reserving strategy the Trustee establishes to smooth the investment earnings of the Fund;
  - (b) To increase the Fund earning rate;
  - (c) To pay the expenses of the Fund;
  - (d) To pay tax payable by the Fund;
  - (e) To provide for any contingencies;
  - (f) To provide an amount to or for a Member, former Member, pensioner, beneficiary, including adding to an accumulation or pension account, provided there is no breach of superannuation law; or
  - (g) To do anything else the Trustee decides to do, provided there is no breach of trust or superannuation law.
- 4.5.2 The Trustee may credit the equalization account with any of the following:
- (a) The portion the Trustee thinks fit of an amount paid into the Fund as a transfer or roll over payment;
  - (b) An amount transferred from the forfeiture account under clause 11.4;
  - (c) An amount transferred from a pension account under clause 8.3; or
  - (d) Any other amount the Trustee thinks it appropriate to credit.
- 4.5.3 The Trustee may debit the equalisation account with any of the following:
- (a) An amount necessary to give effect to the purposes set out in clause 4.5.1; or
  - (b) Any other amount the Trustee thinks it appropriate to debit.

#### **4.6 Accounts – General Provisions**

- 4.6.1 The Trustee must make provision for the payment of any tax payable in relation to the taxable income of the Fund and must deduct any tax that is payable and that has not already been deducted from the income account or an accumulation or pension account.
- 4.6.2 The Trustee may establish or maintain any other account for or reserve of the Fund that the Trustee thinks necessary or desirable or that is required or permitted by superannuation law. The Trustee may use such accounts or reserves for any purpose permitted by superannuation law and may credit or debit amounts from such accounts or reserves as the Trustee sees fit.
- 4.6.3 The Trustee must value the assets of the Fund at the end of each Fund year, when superannuation law requires it, and when the Trustee thinks it appropriate to do so. The



Trustee must also determine whether there is a surplus or deficiency which it is equitable in the Trustee's opinion to transfer to the income account.

4.6.4 If the Trustee is required to establish an interim Fund earning rate, clause 4.4.4 applies and the Trustee must do so in accordance with any requirements imposed by superannuation law and on a basis the Trustee believes to be equitable. If the Regulator or superannuation law requires it, the Trustee must inform Members of that basis.

4.6.4 The Trustee may only credit or debit accounts established in respect of the Fund in the manner permitted by this Deed provided that superannuation law does not prohibit in any way any such amounts from being so credited or debited.

## **5. Contributions**

### **5.1 Types of Contributions**

5.1.1 With the Trustee's consent, a Member may make any contributions to the Fund that the Member decides to. The Trustee and Member may agree that contributions can be paid by deduction from wages or salary.

5.1.2 An employer of a Member may make any contributions to the Fund in respect of that Member with the Trustee's and Members' consent.

5.1.3 With the consent of the Trustee and the Member, any other person including:

- (a) A spouse of that Member;
- (b) Another Member;
- (c) Another Trustee of a regulated superannuation fund (including pursuant to a contributions-split requested by the Member's spouse); and
- (d) Any State, Territory or Federal government (including under the Federal government's co-contribution scheme) may make contributions to the Fund in respect of that Member.

### **5.2 Making contributions**

A contribution to the Fund must be made in the way the Trustee directs. It must be made within the time specified by superannuation law. It may be made in cash, or by the transfer of assets in accordance with superannuation law. The only assets that may be transferred are those that are authorised investments under clause 6.1.

### **5.3 Failure to contribute**

In the absence of an agreement, neither a Member nor his or her employer is under an obligation to make a contribution to the Fund in respect of the Member. A failure to do so does not affect the Member's membership of the Fund.

### **5.4 Unacceptable contributions**

5.4.1 The Trustee must use reasonable endeavors not to accept any of the following:

- (a) A contribution that is not permitted by superannuation law;
- (b) A contribution or shortfall component the acceptance of which would prevent the Fund from qualifying as a complying superannuation Fund; or
- (c) An employer contribution or shortfall component which the regulator lawfully directs the Trustee not to accept.

5.4.2 The Trustee may refuse to accept:

- (a) A contribution that the Trustee has determined not to accept because the Trustee has not been informed of the relevant Member's tax file number; and

- (b) Excess contributions.
- 5.4.3 If contributions of the nature referred to in clauses 5.4.1 or 5.4.2 are made to the Fund by or in respect of a Member, then the Trustee may in appropriate circumstances:
- (a) Release funds to the Member or the Commissioner of Taxation if the Trustee has received a Release Authority; and
  - (b) release funds in any other circumstances, and to such persons, as is permitted under superannuation law.
- 5.4.4 If the Trustee becomes aware that a contribution or shortfall component of the nature referred to in clauses 5.4.1 or 5.4.2 has been accepted, then the Trustee will use all reasonable endeavours to refund the amount to the extent required by, within any time specified by, and only as permitted by, superannuation law. However, the Trustee may deduct each of the following from that amount:
- (a) Any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
  - (b) Reasonable administration charges; and
  - (c) Any amounts on account of amounts of tax for which the Fund may be liable.
- 5.4.5 The Trustee may reduce the benefits of the Member to those which the Member would have had if the contribution or shortfall component had not been accepted.

## **5.5 Allocation of contributions**

If the Trustee receives a contribution in a month, the Trustee must allocate the contribution to the relevant Member of the Fund:

- 5.5.1 Within 28 days after the end of the month; or
- 5.5.2 If it is not reasonably practicable to allocate the contribution to the relevant Member of the Fund within 28 days after the end of the month – within such longer period as is reasonable in the circumstances.

## **5.6 Reduction of contributions by employer**

An Employer who is under an obligation to make contributions in respect of a Member may, with the Trustee's consent, reduce the amount of those contributions to the extent that it becomes required to make contributions in respect of that Member to another Fund of which the Member is also a Member.

## **5.7 Contributions and tax**

Either the Trustee or the employer or other appropriate body must deduct any tax that is payable in relation to any contribution or shortfall component before it is credited to the Member's accumulation account.

# **6. Investment**

## **6.1 Investments – General**

- 6.1.1 The Trustee must invest any assets of the Fund that are not required for payment of benefits or other amounts under this Deed. The Trustee must do so in accordance with the current investment strategy or strategies. The following are the types of investment in which the assets may be invested:
- (a) Investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia;
  - (b) Securities in any company incorporated anywhere, whether carrying on business in Australia or not;
  - (c) Deposit (whether secured or not) with a bank, friendly society, building society, credit co-operative, Trustee company, or other registered financial institution;

- (d) Real or personal property, including an improvement to that property;
  - (e) Units (including sub-units) in a unit trust established or situated anywhere in the world) by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant;
  - (f) Futures, options or any other synthetic investment;
  - (g) Hedging, swapping or any similar arrangement, even though it is not linked to any property of the Fund;
  - (h) Deposit (whether secured or not) with, or loan (whether secured or not) to, any person (including an employer) on any terms the Trustee thinks reasonable. The fact that the Trustee has a direct or indirect interest in the deposit or borrowing or may benefit directly or indirectly from it is irrelevant;
  - (i) A policy or annuity with an insurer, whether by proposal or purchase;
  - (j) Limited recourse borrowing or receipts;
  - (k) By way of a limited recourse borrowing arrangement in accordance with clause 13.6; and
  - (l) Any other investment allowed by superannuation law that the Trustee thinks appropriate.
- 6.1.2 The Trustee must not invest in any investment that is not permitted by superannuation law. The Trustee must not make an investment in the form of a loan or other financial assistance to a Member or a relative of a Member.
- 6.1.3 The Trustee must formulate one or more investment strategies for the Fund. The Trustee must inform Members and beneficiaries of the strategies adopted by the Trustee. The Trustee may review and change a strategy at any time. The Trustee must monitor the strategies to ensure that they remain appropriate.
- 6.1.4 The Trustee may sell, transfer or vary any investment at the Trustee's absolute discretion in accordance with this Deed. The Trustee must do so in the interests of Members and beneficiaries. The Trustee must monitor the investments to ensure that they remain appropriate.

## **6.2 Investment choice**

- 6.2.1 The Trustee may decide to allow one or more Members or beneficiaries to choose between investment strategies. If the Trustee does, the Trustee must establish a range of investment strategies, and may designate particular assets for those strategies. The Trustee must provide the Members or beneficiaries with information concerning the strategies and the relevant investment objectives to enable the Member or beneficiary to choose between them on an informed basis. The Trustee must also provide them with information concerning their rights under this Deed.
- 6.2.2 A Member or beneficiary who has been offered investment choice by the Trustee may choose one or more of the strategies prepared by the Trustee by completing any documents the Trustee requires. On having done so, the Member or beneficiary may direct the Trustee to invest any part of the Fund that is held for that person in accordance with those strategies. Any direction must be in accordance with superannuation law.
- 6.2.3 A Member or beneficiary who has directed the Trustee to invest any part of the Fund that is held for that person in accordance with those strategies may not direct the Trustee to invest in any particular investment. However, the Member or beneficiary may request the Trustee to develop an investment specific strategy and to make it available to that Member or beneficiary. The Trustee may accept or reject the request.
- 6.2.4 The Trustee must monitor any strategies adopted by Members or beneficiaries for investment choice to ensure that they remain appropriate for the Members or beneficiaries to whom they are available.
- 6.2.5 If a Member adopts a strategy for investment choice, the Trustee must do each of the following:

- (a) Establish a sub-account of the income account in respect of that strategy;
- (b) Credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the income account itself;
- (c) Allocate earnings (which may be positive or negative) attributable to that strategy to the Member's or beneficiary's accumulation account or pension account in a way that the Trustee thinks equitable; and
- (d) Determine an earning rate for that sub-account, in the same manner as the Trustee determines a Fund earning rate, in which case clause 4.4.4 applies to that determination.

6.2.6 The Trustee may sell, transfer or vary any investment made in accordance with a strategy for investment choice, at the Trustee's absolute discretion in accordance with this Deed. The Trustee must do so in the interests of the relevant Members or beneficiaries. The Trustee must monitor the investments to ensure that they remain appropriate.

## **7. Benefits – general**

### **7.1 Preserved and non-preserved benefits**

- 7.1.1 The Trustee must not pay out to a Member or a dependant of a Member any preserved payment benefit that superannuation law does not allow the Trustee to pay out.
- 7.1.2 The Trustee may pay a Member or, if applicable, a dependant of a Member, a preserved payment benefit in any of the following circumstances:
  - (a) The Member reaches the relevant preservation age and takes a transition to retirement pension in accordance with clause 8;
  - (b) The Member retires from gainful employment on or after reaching the relevant preservation age;
  - (c) The Member becomes totally and permanently disabled;
  - (d) The Member becomes totally and temporarily disabled;
  - (e) The Member reaches age 65;
  - (f) The Member dies; or
  - (g) Any other circumstance allowed by superannuation law.
- 7.1.3 With the Trustee's consent, a Member may withdraw any part of the non-preserved amount in the Member's accumulation account. The Member must apply to the Trustee in writing for the withdrawal in a form acceptable to the Trustee. The Trustee may set a minimum withdrawal amount by notifying the Members of the Fund.
- 7.1.4 A Member's benefit entitlement will vest in accordance with superannuation law. The Trustee must cash or commence to cash a Member's benefit entitlement as soon as practicable after the Member dies. If a lump sum is payable, the Trustee may pay it in several stages: an initial payment and then subsequent payments.

### **7.2 Payments – general**

- 7.2.1 If a Member ceases to be, or is about to cease as, a Member of the Fund, the Trustee may pay an amount that the Trustee thinks appropriate from the equalisation account (if any) into the Member's accumulation account.
- 7.2.2 Where the Trustee is to make a payment because a Member has died (a death benefit), the Trustee may pass on to the recipient of that payment any benefit that would accrue to the Fund if a deduction were allowed under former section 295-485 of the Tax Act 1997. The Trustee may only do so where the Member died prior to 1 July 2017. In any case, the Trustee may not do so in respect of any benefits paid on or after 1 July 2019.
- 7.2.3 If a Member or beneficiary requests it, the Trustee may retain any part of a benefit in the Fund. The Trustee may do so until one of the following occurs:

- (a) The Member or beneficiary decides otherwise;
- (b) The Member or beneficiary dies;
- (c) The amount has to be paid under this Deed or superannuation law; or
- (d) The Trustee decides otherwise.

The payment the Trustee then makes must be the amount standing to the credit of the Member's or beneficiary's accumulation account at that time.

- 7.2.4 If a Member or beneficiary is entitled to a benefit which includes an interest in an insurance policy, the Trustee may assign that policy to the Member or beneficiary, or to any of the dependants of the Member the Trustee thinks fit. The Trustee must debit the value of the policy to the relevant accumulation or pension account. Neither the Trustee nor an employer is liable for any further payment of premiums in relation to the policy.
- 7.2.5 On written request by the Trustee, an applicant, Member or beneficiary must supply the Trustee with information that the Trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the Trustee. If an applicant, Member or beneficiary fails to do so, the Trustee may suspend collection of contributions in respect of that person, may withhold benefits from that person, and may impose conditions on the person, as the Trustee thinks fit.
- 7.2.6 The Trustee may adjust any benefit payable to or in respect of a Member if an applicant, Member or beneficiary has supplied false or misleading information to the Trustee, or has deliberately withheld information from the Trustee, that affects or is likely to affect the Fund or benefits payable to or in respect of that Member.

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## **8. Pensions - general**

### **8.1 Funding and payment of pensions**

- 8.1.1 When any benefit becomes payable to a Member under this Deed or in accordance with superannuation law, the Trustee has a discretion to decide whether to pay from any part of the benefit one or more pensions to the Member or to use the benefit payable to acquire one or more annuities in the name of the Member. The pensions or annuities will be in substitution for the relevant part of any lump sum benefit that was payable to the Member for the amounts credited to the Member's pension account as a transfer of a roll over payment under clause 8.3.2.
- 8.1.2 The Trustee must obtain an actuarial certificate in accordance with superannuation law in relation to any pension that the Trustee decides to pay, unless the Tax Act provides otherwise in which case the Trustee has a discretion as to whether to obtain an actuarial certificate.
- 8.1.3 The Trustee may fund a person's pension by purchasing an annuity payable to the Trustee.

### **8.2 Type of pensions**

The relevant Member or beneficiary may choose the type of pension that is to be paid, including a transition to retirement pension. However, the pension must be of a type that is allowed by superannuation law or is acceptable to the Regulator. It may include a pension:

- 8.2.1 wholly determined by reference to policies of life assurance purchased or obtained by the Trustee of a regulated superannuation fund solely for the purposes of providing benefits to Members of that fund; or
- 8.2.2 to be commenced from an amount accepted into the fund by the Trustee as a transfer or roll-over on the death of a person in respect of whom the Member is a dependant, and which amount must be applied for the payment of a pension to the Member.

A pension must be paid in accordance with the requirements of the superannuation law.

### 8.3 Pension account

- 8.3.1 If the Trustee decides to pay a pension to a person in accordance with this Deed, or is required to by superannuation law, then, the Trustee must establish a pension account in the name of that person.
- 8.3.2 The Trustee may credit each of the following amounts to the person's pension account subject to superannuation law:
- (a) The amount the Trustee believes necessary to fund the pension;
  - (b) The amount paid into the Fund in respect of the pensioner as a transfer or roll over payment which the Trustee thinks it appropriate to credit to that account;
  - (c) Earnings of the Fund which the Trustee thinks it appropriate to credit to that account;
  - (d) A shortfall component paid in respect of the pensioner;
  - (e) Contributions lawfully paid in respect of the relevant Member;
  - (f) Adjustment credits made in accordance with clause 4.4.3;
  - (g) The proceeds of an annuity or insurance policy effected by the Trustee in respect of the pensioner which the Trustee thinks it appropriate to credit to the account;
  - (h) Financial assistance under section 23 of the SIS Act which the Trustee thinks it appropriate to credit to the account; and
  - (i) Any other amount the Trustee thinks it appropriate to credit to the account.
- 8.3.3 The Trustee may debit each of the following amounts to the person's pension account subject to superannuation law:
- (a) The proportion that the Trustee thinks appropriate of the expenses of the Fund;
  - (b) The proportion that the Trustee thinks equitable of any negative earnings of the Fund determined in accordance with clauses 4.4.3, 6.2.5 or 8.4.1;
  - (c) The proportion of the loss on the disposal of investments of the Fund that the Trustee thinks equitable;
  - (d) Amounts transferred from the Fund in respect of the pensioner as a transfer of a roll over payment which the Trustee thinks it appropriate to debit to the account;
  - (e) Payments made to or in respect of the pensioner or a reversionary beneficiary under this Deed;
  - (f) 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;
  - (g) The proportion of any tax payable in respect of the pension account, or the earnings of the Fund that are credited to the pensioner's account or which arise from a roll over payment that the Trustee thinks equitable;
  - (h) The proportion of an amount paid in respect of an indemnity to the Trustee or other person under this Deed that the Trustee thinks equitable;
  - (i) The amount of a levy that the Trustee thinks equitable;
  - (j) An amount transferred to the accumulation account of a beneficiary; and
  - (k) Any other amount that the trustee thinks it appropriate to debit from the account.

### 8.4 Pensions – general

- 8.4.1 In determining the amount standing to the credit of an accumulation account at the time a benefit or pension is calculated or becomes payable, the Trustee must make an adjustment to the account that the Trustee thinks equitable on the basis of the Interim Fund Earning Rate determined by the Trustee as at that date. Clause 4.4.4 applies to that determination and that determination must be made in respect of the period from the beginning of the

current Fund year to the relevant date. The income account must be credited or debited accordingly.

- 8.4.2 The Trustee may segregate from other assets those assets which are to fund the pension of a person under this Deed. 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 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 superannuation law.
- 8.4.3 On the death of a pensioner being paid a pension, the Trustee must, subject to Superannuation Law:
- (a) act in accordance with the terms on which the relevant pension is paid, including as to payment of the pension to a Reversionary Beneficiary; and
  - (b) then if there is no Reversionary Beneficiary, or if there is any residue in the Pension Account for any reason, pay that residue as a death benefit in accordance with clauses 9 to 11 of this Deed.

## **8.5 Trustee's general right to commute pensions**

- 8.5.1 On written request by a pensioner, or in accordance with superannuation law or this Deed, the Trustee may commute any part of a pension to a lump sum, and pay it to the relevant person, to his or her estate or his or her legal personal representative or to a third party as required by the terms of the Release Authority.
- 8.5.2 The commutation must be allowed by, and be in accordance with, superannuation law.
- 8.5.3 If the Trustee commutes only part of a pension to a lump sum, the Trustee must then adjust the amount of the pension payable as required by superannuation law.

## **8.6 Commutations related to transfer balance caps**

If:

- 8.6.1 a Member has or is likely to exceed that Member's Transfer Balance cap, or the Trustee or Member has received a Transfer Determination in respect of a Member; or
- 8.6.2 the Member is to be paid a new pension either from the Fund (including from an amount transferred into or rolled-over into the Fund on the death of another person) or from another fund,

then the Trustee and Member will work together to decide whether any, and if so which, of the Member's pensions will be commuted in whole or in part, taking into account the Member's Transfer Balance Cap.

## **8.7 Qualification of pensions as asset test exempt income streams**

The Trustee may decide that a pension should qualify as an asset test exempt income stream (as that term is defined by the *Social Security Act 1991* (Cth)). If the Trustee so decides:

- 8.7.1 The superannuation law prevails over the terms of this Deed to the extent of any inconsistency;
- 8.7.2 This Deed is deemed to contain any provision that is required by superannuation law; and
- 8.7.3 This Deed is deemed not to contain any provision that is required to be excluded by superannuation law.

## **9. Death, disability and retirement benefits**

### **9.1 Death benefit payments**

The Trustee must pay the death benefit of a current Member of the Fund. The Trustee can do that under:

- 9.1.1 a death benefit agreement;
- 9.1.2 a binding death benefit notice; or
- 9.1.3 a non-binding death benefit notice.

## **9.2 Death benefit**

In the ways set out in this clause 9, the Trustee must pay the full amount standing to the credit of the accumulation account, and any pension account residue referred to in clause 8.4.3, either as a lump sum, or as one or more pensions or annuities, or both.

## **9.3 Death benefit agreement payment arrangements**

- 9.3.1 On the death of a Member or beneficiary who has a death benefit agreement:
  - (a) the death benefit agreement prevails over clause 9.4 and over any binding death benefit notice or non-binding nomination form;
  - (b) the Trustee must pay, or apply, the relevant benefit in accordance with the rules set out in the death benefit agreement; and
  - (c) clause 10 of this Deed applies to the payment of the relevant benefit.
- 9.3.2 A death benefit agreement need be executed only by the Trustee and the relevant Member or beneficiary. On execution, the terms of any death benefit agreement form part of the Deed. They are to be read together with this Deed and in accordance with the following rules:
  - (a) a death benefit agreement replaces any previous death benefit agreement;
  - (b) if there is a death benefit agreement, then any binding death benefit notice is to be treated as not in effect for the purposes of this Deed and of regulation 6.17A(4) of the SIS Regulations (but see also the next clause which can overrule this clause);
  - (c) if there is any inconsistency between the death benefit agreement and the remaining provisions of this Deed, then the terms of the Death benefit agreement prevail to the extent of that inconsistency – except that clause 2.3 of this Deed prevails over the agreement; and
  - (d) if part of the death benefit agreement is invalid because it directs the Trustee to pay part, or all, of the benefits to a person to whom those benefits may not be paid in accordance with superannuation law (disallowed benefits) then:
    - (i) clause 9.3.1(b) does not apply in respect of the disallowed benefits;
    - (ii) clauses 9.3.1(a), and 9.3.2 (a) to 9.3.2 (c) apply to any part of the death benefit agreement which remains valid (and to the payment of death benefits other than disallowed benefits); and
    - (iii) clauses 9.3.2 (a) to 9.3.2 (c) apply for the purpose of determining the disallowed benefits, and the disallowed benefits must be paid in accordance with the remainder of this clause 9.

## **9.4 Binding Death Benefit Notice Payment Arrangements**

After the death of a Member or Beneficiary who has given the Trustee a Binding Death Benefit Notice, the Trustee must comply with that notice subject to clauses 9.2 and 9.3.

## **9.5 Non-Binding Death Benefit Notice Payment Arrangements**

If after the death of a Member or Beneficiary, not all Death Benefits have been paid or applied in accordance with the Death Benefit Agreement or Binding Death Benefit Notice, then the Trustee must pay or apply the relevant benefit in a way that the Trustee thinks fit in accordance with the following Rules:

- 9.5.1 If the Member or Beneficiary has left dependants, then the Trustee must pay or apply the benefit to or for the benefit of anyone or more of the dependants of the Member or Beneficiary a legal person or personal representatives of the Member or Beneficiary. The Trustee may do so in any proportions the Trustee thinks fit, may take into account the Member's wishes



contained in a non-binding nomination form and may pay the benefit to the member's legal personal representative if satisfied that will be to the benefit of one or more of the member's dependants.

- 9.5.2 If the Member or Beneficiary has not left any dependants but does have a legal personal representative, then the Trustee must pay the benefit to the legal personal representatives of the Member or Beneficiary.
- 9.5.3 If the Member or Beneficiary has not left any dependants and has no legal personal representative, then the Trustee may pay or apply the benefit to or for the benefit of any individual at the Trustee's discretion. The Trustee may do so in any proportions the Trustee thinks fit.
- 9.5.4 If the Trustee has not paid or applied the benefit to or for the benefit of any person under the preceding sub-clauses 9.5.1, 9.5.2 and 9.5.3, then the Trustee must treat the benefit as a forfeited benefit entitlement.

## **9.6 Death of Member or former Member**

If a Member or former Member who has become entitled to a lump sum benefit dies before the payment is made, then the Trustee must pay the amount in accordance with clauses 9.2 to 9.5.

## **9.7 Discharge of Trustee**

The receipt by a dependant, legal personal representative, relative or other person of any part of a benefit under either of the previous clauses 9.2 to 9.6 discharges the Trustee from liability in relation to it. The Trustee is not responsible for seeing to its application.

## **9.8 Total and permanent disablement benefit**

The Trustee must pay a benefit to a Member whom the Trustee believes to be totally and permanently disabled unless requested otherwise by the Member. The benefit may be either of the following:

- 9.8.1 A lump sum equal to the full amount standing to the credit of the accumulation account or pension account of the Member; or
- 9.8.2 One or more pensions or annuities representing that amount.

## **9.9 Temporary total disablement benefit**

9.9.1 The Trustee must pay a benefit to a Member whom the Trustee believes to be temporarily totally disabled unless requested otherwise by the Member. The benefit must be in the form of a pension or annuity that represent the following amounts:

- (a) In the case where the Trustee is entitled to a benefit under an insurance policy in relation to the Member's temporary total disablement, the amount payable to the Trustee; or
- (b) In any other case, the amount decided by the Trustee, provided it does not reduce the minimum withdrawal benefit of the Member under superannuation law.

The Member is not entitled to commute any part of this benefit.

9.9.2 The Trustee must cease paying the benefit for temporary total disablement:

- (a) In a case where the Trustee is entitled to benefit under an insurance policy in relation to the Member's temporary total disablement, when the Trustee ceases to be entitled to that benefit; or
- (b) In any other case, when the Member ceases to be temporarily totally disabled, or reaches normal retirement age, or becomes entitled to another benefit under this Deed or requests that the benefit ceases to be paid.

9.9.3 The Trustee must pay the benefit in respect of temporary total disablement in the following way:

- (a) In a case where the Trustee is entitled to benefit under an insurance policy in relation to the Member's temporary total disablement, in the way the benefit is paid by the insurer; or

(b) In any other case, in the way the Trustee decides.

9.9.4 A Member may suspend his or her contributions during a period while he or she is receiving a benefit in relation to temporary total disablement.

9.9.5 A Member does not cease being a Member because he or she is receiving a benefit in respect of temporary total disablement.

## **9.10 Retirement benefits**

9.10.1 The Trustee may pay a Member the retirement benefit at the Member's request if either of the following applies:

- (a) The Member retires from employment with their employer on or after reaching normal retirement age; or
- (b) The Member becomes entitled under superannuation law to the payment of a benefit despite still being employed.

The Trustee must pay the benefit in any form permitted by superannuation law, including in the form of a lump sum representing the amount standing to the credit of the Member's accumulation account or pension account. However, the Trustee may elect to use part or all of that amount, instead, to purchase one or more pensions or annuities decided on in consultation with the Member. The Trustee must immediately inform Members of the election.

9.10.2 On request by a Member, the Trustee must pay a benefit to that Member in each of the following cases:

- (a) The Member ceased to be employed before normal retirement age, but has reached the relevant preservation age;
- (b) The Member, having reached 60 or another age prescribed by superannuation law, retired from an arrangement under which the Member was gainfully employed; or
- (c) In any other case as permitted by superannuation law.

The Trustee must pay the benefit in any form permitted by superannuation law, including in the form of a lump sum representing the amount standing to the credit of the Member's accumulation account or pension account. However, the Trustee may elect to use part or all of that amount, instead, to purchase one or more pensions or annuities decided on in consultation with the Member. The Trustee must immediately inform Members of the election.

## **10. Payment of benefit**

### **10.1 Notice of payments and claims**

10.1.1 The Trustee may give notice that a benefit is payable to the following persons:

- (a) If the benefit is payable to a Member, to that Member;
- (b) If the benefit is payable on the death of a Member, to the nominated beneficiary, the reversionary beneficiary, the legal personal representatives of the Member, known dependants of the Member and any other person the Trustee reasonably believes may have an entitlement or interest in the benefit; or
- (c) In any other case, any persons the Trustee reasonably believes may have an entitlement or interest in the benefit.

10.1.2 The Trustee may give a person written notice of the time within which that person may claim an entitlement to the benefit and of how to make that claim. If the person satisfies the Trustee that he or she is entitled to a benefit, the Trustee must notify any persons to whom a notice was required to be sent under clause 10.1.1 to enable them to object to a payment to that person. If no objection is received or the specified period for objecting has passed, the Trustee must pay the relevant part of the benefit to that person.

- 10.1.3 If a person makes a claim out of time to an entitlement to a benefit, the Trustee is not bound to make any payment to that person.
- 10.1.4 The Trustee must give the Regulator a statement of any unclaimed benefits and must pay them to the Regulator as required by superannuation law.

## **10.2 Payments – general**

- 10.2.1 Either the Trustee or an insurer or other appropriate body must deduct any tax that is payable in relation to a benefit before that benefit is paid.
- 10.2.2 The Trustee may send a benefit to the postal address that the person entitled to it has last notified to the Trustee, or to the bank account into which that person has asked the benefit to be paid, or to some other place the Trustee decides on.
- 10.2.3 A person to whom a benefit becomes payable must notify the Trustee of his or her full residential address, and of any change in that address. He or she must also notify the Trustee of a bank account into which he or she asks the benefit to be paid.
- 10.2.4 On request by the Trustee, a person to whom a benefit is paid must give the Trustee a receipt and release for the payment in the form required by the Trustee.

## **10.3 Person under legal disability**

- 10.3.1 If a person to whom the Trustee is to pay any part of a benefit is under a legal disability, or the Trustee believes that it would be in that person's best interests for the Trustee not to make the payment to that person, the Trustee may make the payment in any of the following ways as the Trustee thinks fit:
- (a) To or for the maintenance, education, advancement, support or benefit of the person on any conditions; or
  - (b) To, and for the benefit of, another person who appears to the Trustee to be any of the following: the Trustee, spouse, child, parent or guardian of the person, or a person having custody of that person.
- 10.3.2 The receipt by a person of a payment in accordance with clause 10.3.1 discharges the Trustee from liability in relation to it. The Trustee is not responsible for seeing to its application.

## **10.4 Transfer of assets**

With the consent of a Member or beneficiary to whom a benefit is payable, the Trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the Member or beneficiary or to the Trustee of the relevant approved benefit arrangement.

## **11. Forfeiture of benefit entitlements**

Note: Forfeiture accounts are now generally prohibited. Maddocks recommends that you seek professional advice before establishing such an account.

### **11.1 Forfeiture account**

The Trustee may establish or maintain a forfeiture account into which the Trustee must pay any amount forfeited under this Deed. Money held in that account does not form part of an accumulation account or pension account. The Trustee must credit any income from that money to the forfeiture account.

### **11.2 Circumstances of forfeiture**

- 11.2.1 All benefit entitlements of a person are forfeited in each of the events in clauses (a) to (f) — unless the Trustee has determined otherwise within six months after the relevant event. The Trustee's determination has effect from the date specified by the Trustee which may be a date before the date of the event:

- (a) The person assigns or charges, or attempts to assign or charge a benefit entitlement, except in accordance with superannuation law;
- (b) The person's interest in a benefit entitlement becomes payable to or vested in another person or a government or public authority;
- (c) The person is or becomes insolvent or has committed or commits an act of bankruptcy;
- (d) The person is unable personally to receive or enjoy any part of the entitlement;
- (e) In the Trustee's opinion, the person is incapable of managing his or her affairs; or
- (f) In the Trustee's opinion, the person is guilty of fraud or dishonesty.

11.2.2 This clause does not apply to the extent that it would be made ineffective by the *Bankruptcy Act 1966* or superannuation law.

### **11.3 Forfeiture of residue**

A person forfeits the residue in an accumulation account or pension account if the Trustee is satisfied that the person has been paid all benefits that he or she is entitled to be paid under this Deed.

### **11.4 Application of forfeiture account**

The Trustee may pay or apply forfeited money held in the forfeiture account in any one or more of the following ways in accordance with superannuation law:

- 11.4.1 To or for the benefit of the relevant person or the dependants of the relevant Member in any proportions the Trustee decides on;
- 11.4.2 To the Trustee of the relevant Member's estate;
- 11.4.3 To or for the benefit of other Members or their dependants who have rights to receive benefits under this Deed;
- 11.4.4 To provide additional benefits to other Members or their dependants in accordance with superannuation law;
- 11.4.5 To the equalisation account (if any);
- 11.4.6 To any employees of the Member or former Member the Trustee thinks appropriate; or
- 11.4.7 To any other person or entity the Regulator approves in writing.

### **11.5 Limit in relation to payments to Member or dependants**

The Trustee must not make a payment under clause 11.4 to a Member who is still being employed by an employer, except for the purpose of relieving the hardship of that Member or his or her dependants.

### **11.6 Possible adjustment to entitlements**

If the event that gave rise to forfeiture of an entitlement in respect of a Member ceases to affect that Member, the Trustee may re-establish any rights in the Member that the Trustee thinks fit. They must not be greater than they were before the forfeiture.

## **12. Provisions relating to the Family Law Act**

### **12.1 Payment splits**

- 12.1.1 If the Trustee receives a splitting agreement or court order under Part VIII B of the Family Law Act, then provided the agreement or court order has been properly served and subject to superannuation law, the Trustee may:

- (a) Vary the relevant Member's benefit or benefit entitlement on such bases (including by commutation of any pension having regard to the advice of an actuary) and at any time the Trustee determines from time to time, to the extent permitted by superannuation law; and
- (b) Make a payment to the non-Member spouse or a transfer in respect of the non-Member spouse in accordance with clause 12.3.

12.1.2 The Trustee may as it determines from time to time subject to superannuation law, make rules dealing with:

- (a) The valuation of a non-Member spouse's benefit or benefit entitlement (including any adjustments);
- (b) The timing of the calculation of the non-Member spouse's benefit or benefit entitlement; or
- (c) Other matters relating to the payment split or the non-Member spouse's benefit or benefit entitlement.

12.1.3 If the Trustee is required by superannuation law or considers that it is appropriate to defer giving effect to a payment split, then provided the splitting agreement has been served properly, the Trustee must:

- (a) Record the existence of the agreement or court order; and
- (b) Keep a record of the non-Member spouse's benefit or benefit entitlement on such basis (including a notional basis) and in such manner as the Trustee determines from time to time subject to superannuation law.

## **12.2 Flagging agreements**

12.2.1 If the Trustee receives a flagging agreement or court order under Part VIII B of the Family Law Act, then provided the agreement or court order has been properly served, the Trustee must:

- (a) Record the existence of the agreement or court order; and
- (b) Defer payment of the benefit to or in respect of the relevant Member until the agreement or court order is lifted.

## **12.3 Transfer of non-Member spouse interests**

12.3.1 If the Trustee receives a splitting agreement or court order under Part VIII B of the Family Law Act, the agreement or court order has been validly served, then if any amount becomes payable in respect of the non-Member spouse under that agreement or order:

- (a) The Trustee must pay that amount to the non-Member spouse – if the non-Member asks for that payment in writing; or
- (b) The Trustee must transfer that amount to another fund (including an eligible rollover fund) in respect of that non-Member spouse if the non-Member asks for that transfer in writing.

12.3.2 Any payment amount under this clause must be in accordance with superannuation law. The receipt by the non-Member spouse or the Trustee of that other fund will sufficiently discharge the Trustee of its liability in respect of that non-Member spouse.

## **12.4 Refusal to admit as Member**

Provided that the Trustee acts in accordance with superannuation law, the Trustee may refuse to admit a non-Member spouse as a Member of the Fund.

### **13. Trustee's powers**

#### **13.1 Powers and discretion**

- 13.1.1 The Trustee has all the powers in relation to the assets of the Fund that the Trustee would have if the Trustee were the legal and beneficial owner of those assets. It also has all the powers that a Trustee has at law and the powers specifically conferred on the Trustee by this Deed.
- 13.1.2 The Trustee has an absolute discretion in relation to exercising or not exercising any power under this Deed or at law, and in relation to the way in which any power is exercised. The Trustee's decision on such a matter is final and binding.

#### **13.2 Delegation of power and directions**

- 13.2.1 The Trustee may delegate to another person, including one or more Trustees or one or more directors of the Trustee, any power or duty on any terms the Trustee thinks fit including by appointing an attorney under a power of attorney. The Trustee may alter or revoke any delegation including any power of attorney.
- 13.2.2 The Trustee is not subject to direction in exercising any power under this Deed or at law, except to the extent indicated under superannuation law.

#### **13.3 Specific powers**

- 13.3.1 To exclude any possible doubt, the Trustee has the power to do any of the following to the extent allowed by superannuation law:
- (a) To borrow money, on security or not;
  - (b) To underwrite or sub-underwrite risks, contingencies or liabilities under a superannuation arrangement conducted by an employer under an agreement for the transfer of employees to the Fund;
  - (c) To purchase, acquire, sell, transfer, dispose of or deal in any shares, stocks, debentures, notes, bonds, mortgages, options, warrants or other form of interest in or securities of a government authority or company, and any other contractual or other rights or obligations over or in respect of those securities;
  - (d) To indemnify a person;
  - (e) To open and operate bank accounts in the usual way, and to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities; and
  - (f) To do anything the Trustee considers necessary or desirable in connection with performing its obligations under this Deed.

#### **13.4 Limit on borrowing**

The Trustee must not (except as provided by this deed in clause 13.6 and superannuation law):

- 13.4.1 borrow money; or
- 13.4.2 maintain an existing borrowing of money.

#### **13.5 Trustee may grant security over asset**

The Trustee may, to the extent allowed by superannuation law, mortgage, pledge, charge, assign or otherwise provide as security, any asset of the Fund for the purpose of the Trustee borrowing or maintaining a borrowing of money including (without limitation) for the purpose of a "limited recourse borrowing arrangement" referred to clause 13.6.

*Note: there are strict requirements which must be met for a borrowing, any associated mortgaging or charging of assets, to be lawful (see part 7 of the SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act). It is recommended that you seek professional advice before entering into any arrangements under which the Fund borrows money or mortgages or charges its assets.*

### 13.6 When borrowing is allowed (including "limited recourse borrowing arrangements")

- 13.6.1 The Trustee may borrow or maintain a borrowing of money in any one or more of the following cases:
- (a) to enable the Trustee to pay a surcharge or advance instalment which the Trustee is required to pay under the Superannuation Contributions Tax (Assessment and Collection) Act 1997 (Cth) – as long as the borrowing complies with section 67(2A) of the SIS Act;
  - (b) to enable the Trustee to settle a transaction to acquire any one or more of the securities listed in section 67(3)(a) of the SIS Act – as long as the borrowing complies with all of the requirements of section 67(3) of the SIS Act;
  - (c) under an arrangement (a "limited recourse borrowing arrangement") which the Trustee enters, or has entered into, in which the money borrowed is, or has been, used to acquire an asset that superannuation law allows the Trustee to acquire – as long as the borrowing complies with Part 7 of the SIS Act.
- 13.6.2 Clause 13.6.1 does not limit the circumstances in which the Trustee may borrow or maintain a borrowing of money.

*Note: there are strict requirements which must be met for a borrowing, any associated mortgaging or charging of assets, to be lawful (see part 7 of the SIS Act). A breach of those requirements is a strict liability offence (see Part 7 of the SIS Act). It is recommended that you seek professional advice before entering into any arrangements under which the Fund borrows money or mortgages or charges its assets.*

### 13.7 Insurance

- 13.7.1 The Trustee may arrange one or more insurance policies with one or more insurers to secure the benefit of a Member. A policy may be a group policy or an individual policy.
- 13.7.2 The Trustee is not bound to arrange one or more insurance policies, except where the Trustee has informed the Member or beneficiary that the Trustee will arrange a policy of a specified type and amount and the Member or beneficiary has not asked the Trustee in writing not to do so, or has withdrawn his or her request for the Trustee to arrange that policy. Even so, the Trustee is not bound to arrange a policy that the Trustee is unable to arrange.
- 13.7.3 If an insurer will only insure a Member or beneficiary on conditions that are inconsistent with the conditions in respect of a benefit payable in respect of the Member or beneficiary, the Trustee may impose the policy conditions on that benefit despite the conditions stated in this Deed.

### 13.8 Powers – general

- 13.8.1 The Trustee may exercise any power under this Deed or at law despite the fact that the Trustee, or a director or shareholder of the Trustee, has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise.
- 13.8.2 A Trustee, or a director or shareholder of the Trustee, must disclose a conflict of interests of the type described in clause 13.8.1 in accordance with superannuation law.

### 13.9 Benefits transfers

- 13.9.1 On written request by a Member or beneficiary, the Trustee may transfer to the Trustee of an approved benefit arrangement any part of the amount in the Fund that represents the Member's or beneficiary's benefit or benefit entitlement (including any amount in a pension account). The Trustee may only do so if the following conditions are met:
- (a) The Member or beneficiary is eligible to join or has joined the arrangement;
  - (b) The Trustee is satisfied that the transfer complies with superannuation law; and
  - (c) The amount the Trustee transfers must not exceed the amount in the Member's or beneficiary's accumulation account, except to the extent of any amount that the Trustee
  - (d) decides to add to that account from the equalisation account (if any) under clause 4.5.

- 13.9.2 The Member or beneficiary must complete and execute any documents required by the Tax Act for the transfer to be completed as a roll over payment. A receipt from the approved benefit arrangement discharges the Trustee from all liability in respect of the amount transferred. The Trustee is not responsible for seeing to the application of that amount by the approved benefit arrangement. On completion of the transfer, the Member or beneficiary (and anyone entitled to claim in any way in respect of that person) ceases to have any rights against the Trustee or the Fund in respect of the relevant amount.
- 13.9.3 The Trustee may transfer to the Trustee of an approved benefit arrangement that is a successor fund to the Fund under superannuation law any part of the amount in the Fund that represents a benefit entitlement. The consent of the Member or beneficiary is not required. Nor is it necessary that the Member already be a Member of the successor Fund.
- 13.9.4 In accordance with superannuation law, the Trustee may transfer to an eligible roll over fund any part of the amount in the fund that represents a Member's or beneficiary's benefit entitlement. The Trustee must do so if superannuation law requires it.
- 13.9.5 With the consent of a Member or beneficiary to whom or in respect of whom a transfer is to be made under this clause 13.9, the Trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the Member or beneficiary or to the Trustee of the relevant approved benefit arrangement.
- 13.9.6 The Trustee may take over or acquire by transfer from an approved benefit arrangement any part of the assets of that arrangement that represent the interest of a participant in that arrangement who has become or is to become a Member or beneficiary of the Fund. The Trustee will hold the amount on trust for that person in the relevant accumulation or pension account. The person will have rights in respect of the amount that are equivalent to the rights he or she had under the approved benefit arrangement. The Trustee may decide that the person is to be treated as having been a Member of the Fund from the time he or she became a Member of the approved benefit arrangement.

## **14. Fund Administration**

### **14.1 Dealing with money received**

The Trustee must ensure that any money received by the Fund is dealt with as soon as practicable in one of the following ways:

- 14.1.1 Deposited to the credit of the Fund in an account kept with a bank, friendly society, building society, or other similar body chosen by the Trustee or otherwise invested in accordance with clause 6;
- 14.1.2 Paid to the credit of an insurer for the payment of premiums in relation to a policy of insurance effected by the Trustee for the purposes of the Fund; or
- 14.1.3 Paid into the trust account of a lawyer, accountant or investment manager appointed in accordance with this Deed.

### **14.2 Effect of receipts**

A receipt given by the Trustee or the secretary of the Fund or another person authorised by the Trustee in writing to issue receipts is a sufficient discharge to the person by whom money is paid to the Fund.

### **14.3 Employers to provide information to Trustee**

On written request by the Trustee, an employer must give the Trustee any information which it has or can obtain that is, in the Trustee's opinion, necessary or desirable for managing and administering the Fund. The Trustee may act on that information and is not required to verify it.

### **14.4 Compliance**

The Trustee must comply with superannuation law and with any directions of the Regulator in relation to the Fund.



**14.5 Trustee may not charge fees**

The Trustee must not charge any fees in relation to acting as Trustee under this Deed or performing any services in respect of the Fund.

**14.6 Trustee entitled to be reimbursed for expenses**

The Trustee is entitled to be reimbursed from the Fund for all expenses, taxes, levies, charges, fees and other amounts necessarily or reasonably incurred in acting as Trustee under this Deed.

**14.7 Trustee to keep records and accounts**

The Trustee must keep proper records and accounts of all money received by the Fund and paid out by it, including adequate details of all dealings by the Fund in connection with that money.

**14.8 Trustee to collect money owing to the Fund**

The Trustee must ensure that money owing to the Fund is collected promptly and dealt with in accordance with this Deed.

**14.9 Trustee to keep records, accounts, books etc**

The Trustee must ensure that all records, books, accounts, minutes, reports and other documents are maintained and kept safe in accordance with superannuation law for the period required by that law.

**14.10 Documents to be prepared**

The Trustee must ensure that each of the following is prepared in respect of the Fund in accordance with superannuation law:

- 14.10.1 A statement of its financial position;
- 14.10.2 An operating statement; and
- 14.10.3 Any other account or statement required by superannuation law.

**14.11 Annual return**

The Trustee must ensure that an annual return and any other documents required under superannuation law are prepared and lodged with the Regulator in accordance with that law.

**14.12 Audit**

The Trustee must arrange for the books, accounts and records of the Fund to be audited annually or as required by superannuation law by an auditor qualified in accordance with superannuation law.

**14.13 Disclosure requirements**

The Trustee must ensure that information and documents are provided to each of the following persons in accordance with the requirements of superannuation law:

- 14.13.1 Employers;
- 14.13.2 The Regulator;
- 14.13.3 The actuary (if one is appointed);
- 14.13.4 The auditor; and
- 14.13.5 Any other person.

**14.14 Availability of books and records**

The Trustee must ensure that the books of the Fund and information relating to it are available for inspection and copying, and that access is provided to premises where the books and information are available to be inspected and copied, in accordance with superannuation law.

**14.15 Availability of Deed and documents**

The Trustee must ensure that this Deed and any other documents (or copies of the Deed and documents) are made available for inspection by a Member, or by a beneficiary on the beneficiary's request, as required by superannuation law. It is sufficient if they are available for inspection at the place of business of a Trustee.

**14.16 Appointment of auditor**

The Trustee may appoint a suitably qualified person as auditor of the Fund.

**14.17 Appointment of actuary**

The Trustee may appoint as actuary of the Fund:

- 14.17.1 An actuary who is a Fellow of the Institute of Actuaries of Australia;
- 14.17.2 A Member of a firm or company of which at least one Member or director is a Fellow of the Institute of Actuaries of Australia; or
- 14.17.3 An auditor who is appropriately qualified and is independent according to criteria specified by superannuation law.

**14.18 Appointment of administration manager, investment manager, custodian**

The Trustee may appoint one or more suitably qualified persons to act, in relation to the Fund or a specified part of the Fund, an investment manager, administration manager and, or alternatively, a custodian.

**14.19 Superannuation law to be observed**

Any appointment by the Trustee must be in accordance with superannuation law.

**14.20 Trustee may remove person from office**

The Trustee may remove from office a person the Trustee has appointed to an office.

**14.21 Trustee not bound by advice**

Except to the extent required by superannuation law, the Trustee is not bound to follow the advice of a person the Trustee has appointed.

**14.22 Liability of the Trustee is limited**

Where the Trustees are individuals, to the extent allowed by superannuation law, neither the Trustee nor an employee of the Trustee is liable for anything done or not done in connection with acting as Trustee, unless at least one of the following applies:

- 14.22.1 The Trustee failed to act honestly;
- 14.22.2 The Trustee intentionally or recklessly failed to exercise the degree of care required; or
- 14.22.3 The Trustee incurred a monetary penalty under a civil penalty order made in accordance with superannuation law.

**14.23 Liability of the Trustee is limited**

Where the Trustee is a Corporation, to the extent allowed by superannuation law, neither the Trustee nor any of its directors, officers or employees is liable for anything done or not done in connection with acting as Trustee, unless at least one of the following applies:

- 14.23.1 The person fails to act honestly;
- 14.23.2 The person intentionally or recklessly fails to exercise the degree of care and diligence the person is required to exercise; or
- 14.23.3 The person incurs a monetary penalty under a civil penalty order made in accordance with superannuation law.

**14.24 Indemnity**

To the extent allowed by superannuation law, the Trustee (and, if the Trustee is a Corporation then each of its directors and its officers and employees) is entitled to an indemnity from the Fund in all cases where the person is not liable under the preceding clause. The Trustee has a lien on the assets of the Fund for this purpose.

**14.25 Other persons who may act**

14.25.1 Subject to superannuation law, the Trustee may appoint the following persons to act as a Trustee or director of the Trustee of the Fund:

- (a) The legal personal representative of a deceased Member, from the date of the Member's death until the Member's death benefits begin to be paid;
- (b) The legal personal representative of a Member, while he or she holds an enduring power of attorney in respect of the Member or while the Member is under a legal disability;
- (c) Where the Trustees are individuals, the legal personal representative, parent or guardian of a Member who is a minor; or
- (d) Any other person if the superannuation law allows that person to be a Trustee or director of the Trustee and the Fund would remain a self-managed superannuation fund.

14.25.2 If there is no person willing and able to act as Trustee, including on account of the death of all Members, the legal personal representative of the last surviving Member may make more appointments under clause 14.25.1.

**14.26 Continuity of office**

When a person ceases to be a Trustee or becomes a Trustee, any other person acting as Trustee must do everything necessary to vest the Fund in the new or remaining Trustees and must deliver all records and other books to the new or remaining Trustees.

**14.27 Appointment of Trustee**

14.27.1 The Trustee will determine who acts as Trustee in accordance with this Deed and superannuation law for the Fund to continue as a self-managed superannuation fund and will take the necessary steps to appoint or remove the persons or body to or from the office of Trustee. The Trustee may accept the Trustee's resignation in writing for this purpose.

14.27.2 The appointment or removal of a Trustee must be in writing and must immediately be advised to any other Trustee.

14.27.3 Where the Trustee is unable or unwilling to determine who will act as Trustee then the majority of Members of the Fund will determine who will act as Trustee. If there are no Members in the Fund, the former Members of the Fund (or their legal personal representatives) will determine who acts as Trustee of the Fund.

**15. Miscellaneous****15.1 Winding-up**

15.1.1 The Trustee may elect to wind up the Fund on a specified date in the following cases:

- (a) The Trustee decides to wind up the Fund; or
- (b) There are no longer any Members of the Fund.

The Trustee must elect to wind up the Fund on a specified date if the Regulator requires the Fund to be wound up.

15.1.2 After deducting from the assets of the Fund the costs of administering and winding up the Fund, the Trustee must pay the benefits in the following order to the extent that the assets of the Fund are sufficient to do so:

- (a) Benefits to which Members, former Members or their dependants are entitled but which they have not been paid on the day before the termination date; and
- (b) Additional benefits to Members, former Members or their dependants as the Trustee thinks appropriate.

## **15.2 Legal rights of Member not affected by this Deed**

Nothing in this Deed affects any right a person may have to claim compensation or damages at common law or under statute.

## **15.3 Variation**

- 15.3.1 The Trustee may vary this Deed either prospectively or retrospectively. The Trustee may do so by written resolution or Deed. If superannuation law requires it, the Trustee must promptly give a certified copy of the resolution or a copy of the Deed to the Regulator.
- 15.3.2 The Trustee does not have power to vary this Deed so as to do either of the following:
  - (a) Adversely alter the rights of a Member to accrued benefits or the amount of those accrued benefits that arise before the variation is effected; or
  - (b) Reduce the amount of any other entitlement that is or may become payable in relation to a time before the date of the variation.
- 15.3.3 However, clause 15.3.2 does not apply if the reduction is necessary to enable the Fund to comply with superannuation law or if each affected Member, or the Regulator, consents in writing to the reduction.
- 15.3.4 The Trustee also does not have power to vary this Deed in a way that would have either of the following effects:
  - (a) Unless the Trustee is a Corporation, altering the purpose of the Fund so that it is no longer solely or primarily the provision of old age pensions under superannuation law; or
  - (b) Unless the sole or primary purpose of the Fund is to provide old age pensions to Members, allowing any person except a Corporation to be appointed Trustee of the Fund.
- 15.3.5 If superannuation law requires it, the Trustee must inform Members and beneficiaries in writing of the nature and purpose of the variation and its effect on their entitlements or rights. The Trustee must do so in accordance with superannuation law.

## **15.4 Dispute resolution**

If superannuation law requires it, the Trustee must establish a system complying with that law for dealing with enquiries and complaints from Members, beneficiaries and dependants.

## **15.5 Interpretation**

A reference in this Deed to:

- 15.5.1 A statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- 15.5.2 A person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 15.5.3 A person includes the legal personal representatives, successors and assigns of that person;
- 15.5.4 Anybody which no longer exists or has been reconstituted, renamed, replaced or whose powers and functions have been removed or transferred to another body or agency, whether expressly or impliedly, is a reference to the body which most closely serves the purpose or objects of the first-mentioned body;

- 15.5.5 A clause, schedule or appendix is reference to a clause, schedule or appendix in or to this Deed;
- 15.5.6 This or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 15.5.7 The singular includes the plural and vice versa;
- 15.5.8 A gender includes the other gender;
- 15.5.9 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 15.5.10 '\$' or 'dollars' is a reference to Australian dollars; and
- 15.5.11 the word 'includes' in any form is not a word of limitation.

## **15.6 Proper law**

This Deed is governed by and is to be construed in accordance with the laws of the State or Territory in which this Deed is executed. The parties consent to the exercise of jurisdiction by the courts of that place.

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**Schedule 1**

**Form of Product Disclosure Statement**

The Product Disclosure Statement begins on the next page

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# **Product Disclosure Statement**

**(Documentation to be kept by you)**



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## **Introduction**

This PDS contains a summary of the important provisions of the fund's trust deed and the effects which those provisions may have on you. The Corporations Act requires that you be given this PDS within 3 months after you become a member of the fund.

If you have any questions at any time, you should refer those to the trustee. However, the trustee can only provide you with information – so you will need to seek your own legal, accounting and financial advice.

Terms which are capitalised in this PDS are either defined in the fund's trust deed or are contained in Schedule 1 of this PDS.

### **You should consider getting professional advice about the fund**

Your decision to become a member of the fund is important and involves issues including Retirement planning, estate planning, taxation, and social security. The trustee strongly recommends that you consider consulting an appropriately qualified adviser before you decide to become a member or to have contributions made to the fund on your behalf.

This PDS is prepared for your general information only and is not, and is not intended to be, a recommendation to become a member of the fund. This PDS does not take into account your investment objectives, financial situation or Retirement planning needs. You should not base a decision whether to become a member solely on the information in this PDS. You need to consider, and obtain advice on, the suitability of the fund in view of your investment objectives, financial situation and Retirement planning needs.

### **Information about your potential benefits**

#### **1. Details of potential lump sum benefits**

##### **1.1 On your Retirement**

On your Retirement, you will become entitled to a lump sum benefit, equal to the amount in your Accumulation Account on your Retirement. As the definition of Retirement in Schedule 1 suggests, there will be some circumstances in which you will become entitled to payment of a Retirement benefit while you are still employed or when you retire and have reached the relevant Preservation Age: in some circumstances those benefits may only be paid as a pension, rather than a lump sum. Your trustee will be able to advise you further in this regard at the relevant time.

##### **1.2 Total and permanent disability**

If you become totally and permanently disabled, you may become entitled to a lump sum benefit from your Accumulation Account. Your trustee will be able to advise you further in this regard at the relevant time.

##### **1.3 Temporary total disability**

If you become totally disabled temporarily, you may become entitled to payment of a Pension or Annuity representing the amount:

- decided by the trustee, provided it does not infringe the limit set out in the superannuation law; or
- payable to the trustee under an insurance policy which the trustee may have purchased and which covers the disability you suffer (premiums for these insurance policies are generally paid by the

trustee from your Accumulation Account but may be paid out of other Accounts of the fund (such as the Income Account)).

#### 1.4 On death

On your death, the trustee may choose to or may be required to pay a Pension or lump sum benefit from your Accumulation Account and any Pension account to the persons named in your 'Death Benefit: Beneficiary Nomination' (which is on your Application for Membership) or to your Dependants. The trustee may have also taken out a life insurance policy for you which may also entitle your Dependants, or some other person, to a Pension or lump sum benefit. Your 'Death Benefit: Beneficiary Nomination' can be binding or non-binding on the trustee (you can choose). Binding nominations need to be renewed every 3 years.

To overcome the requirement to renew binding nominations every 3 years, you can also choose to implement a 'death benefit agreement' under the fund's trust deed.

Your death benefits will also include any residue in a Pension account previously established for you, unless the arrangements in respect of that Pension are that the Pension will revert on your death to a Pension Dependant.

Generally speaking, you should seek professional advice concerning what plans need to be made in respect of your death benefits and what options are available to you.

The fund's trust deed provides for:

- **death benefit agreements** (which bind the trustee and which do not expire, see clause 9.3);
- **binding death benefit notices** (which binds the trustee but which expire after 3 years or earlier if replaced or revoked); and
- **non-binding nomination forms** (which do not bind the trustee and which do not expire until replaced or revoked).

**Death benefit agreements** take priority over binding death benefit notices and non-binding nomination forms.

#### What you need to consider

When you, as a member, are considering signing a death benefit agreement, a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement takes priority over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and

- if any part of a death benefit agreement is invalid, then the trustee (as required by the fund's trust deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

### 1.5 Upon death of another person

In some circumstances, upon the death of another person, you may be entitled to be paid a Pension from an amount rolled-over or transferred into the fund upon that person's death. The amount rolled-over or transferred must be used to pay a Pension to you. The amount received by you will depend entirely on the balance transferred to the fund from the fund of the deceased person.

In these circumstances, you must work closely with the Trustee to ensure that the amount rolled-over or transferred does not result in your Transfer Balance exceeding your Transfer Balance Cap (refer to item 2.2 for further information).

In some circumstances, if you are already receiving a Pension, and the new pension will result in you breaching your Transfer Balance Cap, then it may be beneficial to Commute part of your existing Pension and transfer the relevant assets back into your Accumulation Account to ensure compliance with the Transfer Balance Cap, and transfer the relevant assets back to your Accumulation Account.

### 1.6 Other circumstances

'Severe Financial Hardship' – in the case of severe financial hardship, you may be able to apply to have all benefits owing to you, paid to you by the trustee. There are certain conditions to be met and the benefits can only be paid to you to meet expenses in the nature of treatment of life-threatening illnesses, prevention of foreclosure under a mortgage, medical transport costs, palliative care costs and so on.

## 2. Details of potential income benefits

### *Income benefits where you retire or reach your Preservation Age*

When you become entitled to payment of a **lump sum benefit**, the trustee may allow you to choose to receive that lump sum in the form of regularly paid income. This is called a Pension. The fund can only provide you with an 'account-based Pension'.

The rules for an 'account-based Pension' include:

- **Minimum annual amount:** a minimum amount of the capital funding the Pension must be paid to the pensioner each year. The minimum, which is expressed as a percentage of the capital, is determined by reference to the pensioner's age. You should speak to your adviser about relief from minimum Pension payment amounts as the government does provide relief from time to time.
- **No maximum:** there will be no maximum amount that can be paid in a year, reflecting the fact that Pensions and lump sums will be taxed in the same way.
- **But a maximum for transition to retirement Pensions:** pensioners being paid a transition to retirement Pension will only be able to be paid a maximum of 10% of the capital per annum. This

also means that there are restrictions on when you can commute your transition to retirement pension.

- **Transfer on death:** on death, the Pension may only be transferred to a Pension Dependant or cashed as a lump sum to the pensioner's Dependents or estate.
- **Transfer balance cap:** rules apply from 1 July 2017 which limit the amount you may have (whether held in one or more superannuation funds) to fund the payment of a Pension. This is discussed in item 2.2.

## **Existing Pensions**

If this PDS is being provided as a consequence of an update to the fund's existing trust deed, and the fund is presently paying you a Pension, and is not a regular account-based pension (so, for example, it was one of the following pensions), then:

- for a pension which started before 20 September 2007, the Pension will be deemed to meet the current rules provided that it was commenced before 20 September 2007 in accordance with the rules that applied at that time (and continues to be paid in accordance with those rules);
- if the Pension is a complying Pension (such as a life Pension) then it will only be able to be terminated pursuant to the rules as they were in force before 1 July 2007; and
- if the Pension is an allocated Pension then it may be transferred to an 'account-based' Pension without having to first be Commuted.

## **Social Security Eligibility**

Your eligibility for a government age pension is means tested.

The assets test reduces the amount of any age pension payments to which a member may be eligible. This will give you a part pension, which will reduce to zero once your assets reach the amount set out in the current asset tables specified by the Government. The current asset tables are available at <http://www.humanservices.gov.au/customer/enablers/assets/>.

### ***Income benefits where you may not have retired but you have reached your Preservation Age.***

In some circumstances, you may be able to be paid a Pension before you actually retire but after you have reached your Preservation Age. In the fund's trust deed these are referred to as 'Transition to retirement Pensions'.

## **2.1 Transition to retirement Pensions**

Once you reach your Preservation Age you may still be restricted from accessing your superannuation benefits (because, for instance, you may not have retired). However, once you reach your Preservation Age you may access a non-Commutable Pension, or what the fund's trust deed refers to as a transition to retirement Pension.

So you may receive an 'account-based' Pension as a 'transition to retirement Pension', but additional restrictions apply if you want to Commute (or cash out) that Pension. Essentially the transition to retirement Pensions are 'non-Commutable' but there are some very limited exceptions. If you are interested in a transition to retirement Pension, you should discuss this in detail with the trustee before requesting the payment of such a Pension.

## **2.2 Transfer balance cap of \$1.6 million**

From 1 July 2017, persons who are receiving or are to receive a Pension will have a 'transfer balance'. In short, this is an amount, capped at \$1.6 million (but indexed), determined by reference to the assets in your superannuation funds which fund all pensions paid to you. That means that your Transfer Balance takes into account, for instance, assets which fund a Pension from this fund, as well as assets which fund Pensions paid to you from other funds. Your Transfer Balance Account must not, at any time, exceed the Transfer Balance Cap. Where your Transfer Balance Account exceeds the Transfer Balance Cap, either you or the trustee will be required to remove the excess assets from the Pension account and either:

- (a) transfer the excess capital back into your Accumulation Account (with any earnings attributable to the excess capital assets being taxed in accordance with the Tax Act); or
- (b) withdraw the excess assets from superannuation.

If you or the trustee become aware of your Transfer Balance Account reaching the Transfer Balance Cap, you should immediately consult with the Trustee to take the necessary action. This may involve withdrawing the excess assets from the Pension account under this fund, or it may involve withdrawing the excess assets from the Pension account you have with another fund, or both. Withdrawing the excess occurs by 'commuting' part or all of your Pension.

If on or before 30 June 2017, the value of your Transfer Balance Account is between \$1,600,000.00 and \$1,700,000.00, then you and the Trustee will have until 31 December 2017 to return the excess assets back to your Accumulation Account to ensure your Transfer Balance is under the Transfer Balance Cap. No penalty will apply within this period,

If on or before 30 June 2017, the value of your Transfer Balance Account is above \$1,700,000.00, then by 30 June 2017 you and the Trustee will be required to remove the excess assets using one of the methods described in paragraphs (a) and (b) above.

## **3. Taxation of benefits**

### **3.1 Seek advice**

This section is general only. You must seek professional advice concerning your own circumstances and how tax will impact on your participation in the fund and on amounts payable to you.

### **3.2 Benefits paid to you**

Superannuation benefits paid to persons **aged less than 60** are taxed as follows:

- **Lump sum benefits have two components:** an exempt component and a taxed component.

The exempt component is tax free (it includes amounts such as pre-1983 contributions and undeducted contributions). The taxed component is tax free up to a low rate threshold (in 2012-2013, \$175,000, in 2013-2014 \$180,000, in 2014-2015, in 2015-2016 \$185,000 and in 2016-2017 \$195,000). After that threshold, it is taxed at 16.5% (including Medicare levy) – except where the recipient is aged less than Preservation Age, in which case the whole taxed component is taxed at 21.5% (including Medicare levy).

- **Pension benefits have two components:** an exempt component and a taxed component. The exempt component is tax free (it includes amounts such as pre-1983 contributions and undeducted contributions). The taxed component is taxed at the member's marginal tax rates less a 15% Pension Rebate – except where the recipient is aged less than Preservation Age, in which case the Pension Rebate of 15% is not available. Once the recipient turns 60, the Pension is tax free, provided that you comply with your Transfer Balance Cap.
- **Proportional drawdown:** In both cases, payments are deemed to include both exempt and taxable components, paid in proportion to the amount these components constitute of the recipient's total benefit.

### 3.3 Death benefits

Benefits paid in the event of your death are taxed as follows:

- **Lump sum benefits** to a member's Dependant are tax free, as long as they are also a death benefits dependant as defined in section 302-195 of the ITAA97. Lump sum benefits paid to a Dependant (who is not a death benefits dependant for ITAA97 purposes) have the taxable component taxed at 16.5% (including Medicare levy).
- If either a member dies on or after 1 July 2017, or a death benefit is to be paid on or after 1 July 2019, the fund will not be permitted to claim a tax deduction for that part of a lump-sum benefit paid to compensate for income tax paid by the fund in respect of contributions made during the deceased member's life ('anti-detriment' payments).
- **Reversionary Pensions** are taxed according to the age of the primary and reversionary beneficiaries. If the primary beneficiary was aged 60 or over at the time of death, then the payments to the reversionary will be tax free. If the primary beneficiary was aged less than 60, then the payments will be taxed at the reversionary beneficiary's marginal tax rate until the reversionary turns 60 (then it will be tax-free). However, a reversionary Pension will only be payable to a Pension Dependant. Also a Pension paid to a Pension Dependant who is a child will have to be cashed to a lump sum when the child turns 25 (unless they're permanently disabled).
- Pensions can only revert to a Pension Dependent: simply being a Dependant is not sufficient. Therefore, benefits which cannot be paid to a Pension Dependant as a pension must be paid as a lump sum to a Dependant or the member's estate.

## **Information about risks associated with the fund**

### **4. Details of risks: General**

The assets of the fund must be invested in accordance with an appropriate investment strategy as devised by the trustee. Although the trustee decides on an investment strategy aimed at increasing the value of the fund's assets, this value can be reduced by movements in the underlying value of the fund's assets, for instances movement in share or property prices. This may mean the value of the assets held in the fund for your benefit, or to pay you a Pension, may be reduced. Indeed, if the performance of the fund's assets is very poor, the value of the assets held in the fund for your benefit, or to pay you a Pension, may be less than the value of the contributions made to the fund on your behalf. Poor investment performance may also affect the trustee's capacity to make payments to you or to sustain the level of payments made to you. More information about risks associated with the fund borrowing in order to invest are set out under "Investment of fund assets" at paragraph 10 below.

If you choose to receive a Pension then the amounts you receive are calculated by reference to the value of the assets in the fund. Therefore, if the value of the assets decreases, there may be a corresponding decrease in benefit or Pension amounts payable to you and you effectively bear the risk associated with potentially poor investment performance of those assets. Broadly speaking, 100% of the amount used to fund the Pension will be taken into account for the age pension means test.

Finally, if a benefit payable to you is Commuted so that the trustee may purchase:

- an Annuity from a third party (such as a life assurance company), then you will have a regular income stream and the associated risk will be born by the third party; or
- an 'account-based' Pension from a third party (such as a life assurance company), then the situation is the same as for an 'account-based' Pension from the trustee and you effectively bear the risk associated with the variations in the value of the assets which fund the Pension.

### **5. Regulatory Risk**

The fund is a self-managed superannuation fund regulated by the ATO. As a member, you will also have to be a trustee, or a director of the corporate trustee. These persons are responsible for ensuring the fund complies with all relevant superannuation laws, as enforced by the ATO.

Serious consequences flow if the fund is operated in a manner inconsistent with these rules. The consequences include prosecution by the ATO or a determination by the ATO that the fund is non-complying, with the result that the concessional tax treatment of the fund ends, and the fund will receive a very significant tax assessment which is aimed at recouping the value of tax concessions previously received by the fund. Accordingly compliance of the fund with regulatory requirements is essential. You must ensure that you are familiar with, and understand these rules. If you are not confident of this, then you should seek professional advice as to whether you will be in a position to comply with these obligations on joining the fund as a member.



## Information about amounts paid to the fund for or by you

### 6. Contributions

If you have an employer then they must contribute a certain portion of your income to superannuation. In most cases, you can choose for those contributions to be made to the fund. In this situation, contributions made personally by you are unlikely to be deductible for taxation purposes although if you are on a smaller wage, you may be entitled to a co-contribution from the Federal Government (that is, the Government will match your payments to set units in certain circumstances which are described generally under "Superannuation co-contributions" below).

If you are unemployed or self-employed, then you may make contributions to the fund yourself. These contributions are deductible for tax purposes, subject to the caps discussed immediately below.

Alternatively you may make contributions, or another person may make contributions on your behalf.

From 1 July 2017, if you are under age 75, or aged 65 to 74 and meet the work test, you are eligible to claim a tax deduction for personal contributions to eligible superannuation funds up to the concessional contributions cap.

### 7. Superannuation co-contributions

You will be eligible to receive a co-contribution from the Federal Government up to a maximum amount (\$500 in 2016-2017) if:

- you make one or more eligible personal super contributions by 30 June of a financial year;
- your total income is less than the prescribed amount (\$51,021 in 2016-2017). Co-contribution income thresholds from previous financial years can be found at <https://www.ato.gov.au>;
- 10% of your income is from employment sources, such as an employer or running your own business;
- you are 71 years or younger;
- you did not hold temporary visa at any time during the financial year (unless you are a New Zealand citizen or it was a prescribed visa); and
- you lodge your income tax return.
- You are not entitled to a super co-contribution for personal contributions that have been allowed as a tax deduction.

### 8. Low income Superannuation Tax Offset

From 1 July 2017, the Federal Government will introduce the Low Income Superannuation Tax Offset (LISTO).

If you have an adjustable income up to \$37,000, you will receive a refund into your fund account of the tax paid on your concessional superannuation contributions, up to a cap of \$500. In effect, this means that most low income earners will pay no tax on their superannuation contributions.

### 9. Tax on concessional contributions:

A tax of 15% applies to all 'concessional' superannuation contributions. An additional amount of tax is payable by individuals who exceed a high income threshold of \$300,000. Where an individual's adjusted income and low-tax contributions are greater than \$300,000, they may have to pay an extra 15% tax on either of the following amounts, whichever is less:

- excess over the threshold; or
- actual taxable contributions.

From 1 July 2017, the high income threshold will be reduced from \$300,000 to \$250,000.

This means that:

- if your excess is greater than your taxable contributions, you will pay the extra 15% tax on all your taxable contributions; alternatively
- if your excess is less than your taxable contributions, you will pay the extra 15% tax (30% tax in total) on the excess and 15% tax only on the rest of your taxable contributions.

You should seek advice concerning what amounts are included in your income for the purposes of this assessment.

**10. Caps on concessional contributions:**

This paragraph sets out the cap which applies to concessional contributions. How much you can contribute to your super before having to pay extra tax depends on your age at the end of the financial year:

Financial Year	Concession (General Cap)	Age	Tax on amounts over the cap
2013 – 2014	\$25,000	under 60 years old	Included in your income tax return and taxed at your marginal rates, plus the excess concessional contributions (ECC) charge.
	\$35,000	59 years old or over on 30 June 2013	
2014 – 2015	\$30,000	under 50 years old	
	\$35,000	49 years old or over on 30 June 2014	
2015 – 2016	\$30,000	under 50 years old	
	\$35,000	49 years old or over on 30 June 2015	
2016 – 2017	\$30,000	under 49 years old	
	\$35,000	49 years old or over on 30 June 2016	
2017 – 2018	\$25,000	Any age – from 1 July 2017	

There is 15% tax payable by your fund on concessional contributions paid into your superannuation fund (subject to the discussion above about the high income threshold). For 2013-14 and later years, if you exceed your concessional contributions cap the excess contributions are included in your taxable income. You will receive a non-refundable tax offset equal to the 15% tax paid by your fund on this amount. Generally, concessional contributions can only be made by employers or persons who are self-employed.

**Catch-up concessional contributions:**

From 1 July 2018, if you have a total superannuation balance of less than \$500,000, you will be allowed to make 'catch-up' contributions, up to your unused cap space amounts.

The ability to carry over any unused cap space amounts will commence from 1 July 2018 (i.e. if you do not meet your limit in 2018-2019, you can catch up in 2019-2020). If you fail to use any unused cap space after five years it will expire.

Individuals aged 65 to 74 who meet the work test will be able to access these arrangements.

**Caps on non-concessional contributions:** This paragraph sets out the cap which applies to non-concessional contributions as follows:

<b>Financial Year</b>	<b>Non-Concession Cap</b>	<b>Tax on amounts over the cap</b>
2012 – 2013	\$150,000	46.5%
2013 – 2014	\$150,000	46.5%*
2014 – 2015	\$180,000	47%*
2015 – 2016	\$180,000	49%*
2016 – 2017	\$180,000	49%*
2017 - 2018	\$100,000	49%*

**Excess non-concessional contributions**

If you make non-concessional contributions to the fund in a financial year in excess of the cap for that year, tax will be levied on the excess contributions at the applicable rate for that year (as set out in the table above). You are personally liable for this tax and must have the fund release an amount of money equal to the tax.

\*For excess contributions made after 1 July 2013, you will be given the choice to withdraw your excess non-concessional contributions from the fund. If you choose this option, you are electing to withdraw all your excess non-concessional contributions and 85% of associated earnings from the fund. In this case, the full amount of associated earnings is added to your assessable income and taxed at your marginal tax rates subject to a 15% tax offset. If you do not choose this option (and leave the excess contributions in the fund), tax on the excess non-concessional contributions will be payable as usual.

In addition, if you are under 65 and eligible to contribute to super, then you may bring forward two years of contributions. This enables you to contribute any amount up to the bring-forward cap over three years without exceeding the contribution limits. The bring-forward cap is three times the non-concessional

contributions limit of the **first** year. For example, if you brought forward your contributions in 2016-2017, the 'bring-forward' cap would be \$540,000 (3 x \$180,000).

From 1 July 2017, the 'bring-forward' option in 2017-2018 will be \$300,000 (3 x \$100,000) provided your total superannuation balance is not greater than or equal to \$1.6 million. Where your balance is close to \$1.6 million, you will only be eligible to bring forward the annual bring forward cap amount for the number of years that would take your balance to \$1.6 million. From 1 July 2017, if your total superannuation balance is \$1.6 million or more, you will no longer be eligible to make non-concessional contributions.

There are transitional rules which apply to those people who triggered the bring-forward cap in either the 2015-2016 year, or the 2016-2017 year, which produces a combined figure based on the \$180,000 annual cap which applied before 1 July 2017. It is important that you seek professional advice to calculate these caps correctly.

### **Contributions-splitting**

Spouses may split superannuation contributions between them. Contributions-splitting allows members to ask the trustee to transfer certain contributions made after 1 January 2006 (**Splittable contributions**) made in respect of the member to the superannuation fund, or account of that member's spouse.

The contributions splitting applications must be lodged with the fund by 30 June in the financial year.

At present, contributions can be split with your Spouse after the end of the financial year and at any time up to the end of the following financial year.

## **Information about amounts deducted from the fund**

### **11. Debits from your Accumulation and Pension Accounts**

The trustee can make deductions from your Accumulation or Pension Accounts to, for example, meet the fund's expenses, to pay taxes (or to set aside for anticipated taxes), to pay for an insurance policy or Annuity premiums or to pay an amount from your Pension Account to your Accumulation Account or vice versa.

### **12. Other application of income**

The trustee also:

- maintains an income account: This is a general account of the fund and does not relate to a specific member. Amounts such as the income and profits of the fund or proceeds of insurance policies (which the trustee decides not to pay to a member or beneficiary) are paid into this account. From this income account the trustee can make payments to your Accumulation Account, but it may also make deductions from the income account to:
  - pay the expenses of the fund;
  - pay taxes due and payable, or likely to become due and payable;
  - pay costs of insurance policies;
  
  - meet losses suffered on disposal of an asset of the fund and so on.
  - may maintain an Equalisation Account: This is also a general account of the fund. The trustee may decide to pay amounts into this account to:
  - smooth the investment earnings of the fund (that is, to even out years of good growth and performance with years of poor growth and performance);

- provide for tax liabilities;
- pay fund expenses;
- otherwise provide for contingencies of the fund.

The trustee is not permitted to charge fees in relation to the services it provides to the fund.

#### **Other significant information about the fund**

#### **13. Preservation Age**

Set out below are the Preservation Ages relevant to members of the fund:

- for a person born before 1 July 1960 – 55 years;
- for a person born during the year 1 July 1960 to 30 June 1961 – 56 years;
- for a person born during the year 1 July 1961 to 30 June 1962 – 57 years;
- for a person born during the year 1 July 1962 to 30 June 1963 – 58 years;
- for a person born during the year 1 July 1963 to 30 June 1964 – 59 years; and
- for a person born after 30 June 1964 – 60 years.

#### **14. Investment of fund assets**

The trustee is permitted to make a wide range of investments provided that they accord with the trustee's investment strategy. The trustee is required to establish an investment strategy or strategies, outlining how the assets of the fund will be invested. The trustee can alter the strategy or strategies provided they remain appropriate. If the trustee offers more than one strategy, you may choose the appropriate strategy but you cannot choose the investments the trustee is to make within the strategy.

The trustee cannot loan money from the fund to a member or a member's relative.

The trustee may borrow money to make any investment — but only in restricted circumstances. In such cases:

- the only fund asset that may be used as security for the borrowing is the asset that the fund is acquiring with the borrowed money;
- the asset acquired must be an asset which the fund could ordinarily and lawfully acquire (for example, the fund is prohibited from acquiring assets which do not satisfy the sole purpose test in section 62 of the SIS Act – this stays the same even though the fund is borrowing to acquire the asset);
- the terms on which the asset is acquired must meet strict requirements set out in superannuation law.

The risks associated with any investment (as described generally under "Details of risks: General" at paragraph 4 above) increase when made using borrowed money. You should always obtain professional advice before making any such investment.

The trustee is required to hold money and other assets of the fund separately from those which it holds personally and not for the fund's members.

When preparing statements of the fund's financial position, the fund's operating statement or any other account or statement required by the SIS Act or the SIS Regulations, the trustee is required to value the fund's assets at their market value. 'Market value' has a specific meaning under section 10 of the SIS Act and means the amount that a willing buyer of the asset could be reasonably expected to pay to acquire the asset from a willing seller if certain assumptions were made.

## **15. Taxation**

### **15.1 Income of the fund**

For tax purposes, the fund's income is divided into 2 components:

- Non-arms length component: which includes income such as private company distributions, non arms-length income and trust distributions, reduced by tax deductions relating to that special income.
- Low tax component: which is the total of all fund income, less the low tax component.

The low tax component is taxed at the concessional rate of 15% in the hands of the trustee. The non-arms length component is taxed at the highest marginal rate.

### **15.2 Pension earnings**

Generally, while you are alive the fund will not have to pay income tax on income or capital gains attributable to the assets in your pension account.

However, from 1 July 2017, the tax exempt status of income from assets supporting transition to retirement pensions will be removed. Earnings from assets supporting transition to retirement pensions will be taxed concessional at 15 per cent.

### **15.3 Contributions**

Contributions to the fund (made by your employer, yourself, your spouse, etc) are generally treated as contributions of capital and will not be included in the fund's Income. However, if the person making a contribution is entitled to a tax deduction in relation to that contribution, then the contribution will usually be treated as fund Income and will be taxed as outlined in paragraph 11.1 above.

Information about the deductibility of contributions is in paragraph 7 above.

### **15.4 Surcharge on High Income Earners**

With effect from 1 July 2005 the superannuation contributions surcharge was abolished in respect of all contributions made on or after 1 July 2005. However it still applies to contributions made before that date. From 1 July 2012 the arrangements in respect of a high income threshold of \$300,000 (\$250,000 from 1 July 2017) apply

(see discussion at paragraph 6).

### **15.5 Low Income Spouse Offset**

If a person makes a contribution on behalf of a member who is their low income (or no income) spouse, the person making the contribution may be entitled to a tax offset of up to \$540 per year.

A member who makes a contribution can get the full tax rebate if:

- they contribute at least \$3,000 to their spouse's account; and
- their spouse's assessable income is less than \$10,800 for the financial year.

If you contribute less than \$3,000, the tax offset will be equivalent to 18% of your contributions. If your spouse's income is higher than \$10,800, the tax offset reduces until it cuts out when your spouse's income reaches \$13,800.

From 1 July 2017, the 18% offset of up to \$540 will be extended from those with an income of up to \$10,800 to those with an income of up to \$37,000. Similarly, the point at which the tax offset reduces will be increased from \$13,800 to \$40,000.

No changes to the current age based contributions rules will apply from 1 July 2017. The spouse receiving the contribution must be under age 70 and meet a work test if aged 65 to 69.

**16. The fund's trust deed**

You should read the fund's trust deed carefully and seek professional advice if you do not understand it.

**17. Other considerations concerning investments made by the fund**

The trustee is required to inform you of whether labour standards or environmental, social or ethical considerations are, or will be, taken into account when the trustee selects, retains or realises an investment. At this stage, the trustee does not take any such considerations into account. However, the trustee is obviously free to incorporate this into its investment strategy if it sees fit.

**18. Contacting the trustee for additional information**

If at any time you require further information including information concerning the fund, the fund's trust deed, the fund's performance or your rights as a member, you can contact the trustee using the contact details at the beginning of this PDS.

# Product Disclosure Statement – Schedule 1

## Definitions

Where a term is capitalised in this PDS, the meaning is either explained below or is explained in the fund's trust deed:

**Accumulation Account** means the account established for you by the trustee. Each member of the fund has an Accumulation Account, into which are paid that member's contributions or contributions made on behalf of that member, as well as other amounts specific to that member (such as the proceeds of an insurance policy taken out by the trustee for your benefit).

**Annuity** means what it means under superannuation law. Essentially, it refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier who undertakes to pay you an income for a specified time. Unlike a Pension, the capital disappears when you purchase the annuity and you receive a contractual right to receive income.

**Commute** refers to when a right to receive a **regular payment** (like Pension or Annuity payments) is converted into the right to receive a **lump sum payment**.

**Dependant** – in relation to a member, former member or beneficiary (the 'primary person'), means each of the following:

- the spouse or widow or widower of that primary person.
- any child of that primary person, including a person who, in the trustee's opinion, is or was actually maintained by the primary person as the child of the primary person.
- any person with whom the primary person has an interdependency relationship.
- any other person who, in the trustee's opinion, was substantially dependent on the primary person at the relevant time.

**Pension** refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier, who invests the lump sum, manages that investment, and pays you a regular income from the proceeds of those investments. As well as paying you the proceeds of the investments, the financial product supplier may include in your payments part of the initial capital you contributed.

**Pension Dependant** means a Dependant of a member to whom a Pension may be paid on the member's death, as defined by regulation 6.21(2A) of the SIS Regulations.

**Preservation Age** means what it means under superannuation law. Essentially it is the minimum age after which your benefit arising from a Preserved Payment may be paid to you. Those ages are set out in paragraph 9 above.

**Preserved Payment** means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.



**Retirement** occurs:

- if you have reached a Preservation Age less than 60, and an arrangement under which you were gainfully employed comes to an end, and the trustee is reasonably satisfied that you never intend to become gainfully employed (either full time or part time); or
- if you have reached age 60 and an arrangement under which you were gainfully employed has come to an end and either of the following circumstances apply, and you have attained that age on or before ending employment; or
- the trustee is reasonably satisfied that you never intend to become gainfully employed (either full time or part time).

**Superannuation Contributions Surcharge** means an amount which you may be liable to pay if your taxable income is greater than the relevant superannuation surcharge level for a year of income.

**Tax Act** means the *Income Tax Assessment Act 1936* or *Income Tax Assessment Act 1997*, as appropriate, and the regulations made under the relevant Act.

**Total Superannuation Balance** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer Balance** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer Balance Account** has the same meaning as in section 995-1(1) of the Tax Act.

**Transfer Balance Cap** has the same meaning as in section 995-1(1) of the Tax Act.

## Schedule 2

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### Fund Details:

Fund name:	Osorio Superfund
Fund establishment date:	31 August 2020
Fund Address:	27 Rabett Cres HORNINGSEA PARK NSW 2171

### Initial Trustee Details:

Trustees Name(s):	George Daniel Osorio Edelweiss Janett Osorio
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### Initial Member Details:


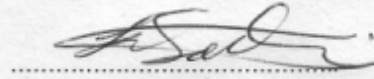
Members Name(s):	George Daniel Osorio Edelweiss Janett Osorio
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# 1.1 SMSF Trust Deed

EXECUTED BY THE PARTIES AS A DEED:

SIGNED SEALED AND DELIVERED by  
the Trustee in the presence of:

)  
)  
)

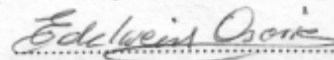
  
George Daniel Osorio

Signature of witness  
Lorena Soto  
Name of witness

ANY person over 18 years of age who is **Not** a Fund Trustee or Member can be a witness to the Trust Deed.

SIGNED SEALED AND DELIVERED by  
the Trustee in the presence of:

)  
)  
)

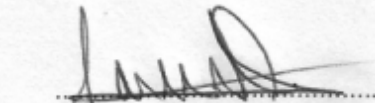
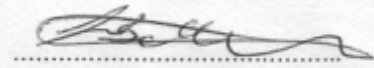
  
Edelweiss Janett Osorio

Signature of witness  
Lorena Soto  
Name of witness

ANY person over 18 years of age who is **Not** a Fund Trustee or Member can be a witness to the Trust Deed.

SIGNED SEALED AND DELIVERED by  
the Member in the presence of:

)  
)  
)

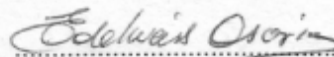
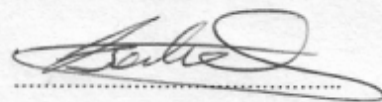
  
George Daniel Osorio

Signature of witness  
Lorena Soto  
Name of witness

ANY person over 18 years of age who is **Not** a Fund Trustee or Member can be a witness to the Trust Deed.

SIGNED SEALED AND DELIVERED by  
the Member in the presence of:

)  
)  
)

  
Edelweiss Janett Osorio

Signature of witness  
Lorena Soto  
Name of witness

ANY person over 18 years of age who is **Not** a Fund Trustee or Member can be a witness to the Trust Deed.



**Schedule 3 Member Application Form**

Sample Only

**Member Application Form**

[##Name of Fund] (Fund)

Date:

To the Trustee

[##Name of fund]

[##Address of trustee]

The person named below, applies to become a member of the Fund and agrees to be bound by, and to comply with, the terms of the deed by which the Fund was established, as if the person had been a member of the Fund, and a party to that deed, from the date on which the trustee accepts the person's application for membership.

Signed for and on behalf of the person applying for membership:

.....

Applicant name: .....

Applicant address: .....

Applicant date of birth:.....