

## OPERATIVE PART

### 1. INTERPRETATION

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#### Definitions

1.1 The meanings of the terms used in this deed are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Accumulation Account</b>	the account established on behalf of each Member
<b>Annuity</b>	the same meaning as in the SIS Act
<b>Beneficiary</b>	a person presently and absolutely entitled to receive a Benefit including a Member and a Pensioner
<b>Benefit</b>	any amount that is payable out of the Fund to or in respect of a Member
<b>Benefit Entitlement</b>	any amount held in the Fund that may become payable to a person but to which the person has not become absolutely and indefeasibly entitled
<b>Binding Death Benefit Nomination</b>	a nomination referred to in clause 22.4 or that is binding on the Trustee
<b>Complying Superannuation Fund</b>	a complying superannuation fund pursuant to the Relevant Requirements
<b>Condition of Release</b>	the same meaning as in the SIS Regulations
<b>Constitutional Corporation</b>	the same meaning as the SIS Act
<b>Contribution Splitting Request</b>	a valid application by a Member under regulation 6.44 of the SIS Regulations that the Trustee has accepted
<b>Contributions</b>	gross payments to the Fund in respect of Members prior to the withdrawal of any Taxation payable in respect of those Contributions, and for the purposes of this definition, payments includes the transfer of an asset that is intended by the transferee to be a contribution
<b>Death Benefit</b>	an amount equal to the total of the balances of the Member's Accumulation Accounts and Pension Accounts, as adjusted under this deed
<b>Death Benefit Guardian</b>	the person nominated in accordance with clause 22.9



<b>Term</b>	<b>Meaning</b>
<b>Dependant</b>	in relation to a Member or former Member includes a dependant as defined in the SIS Act
<b>Eligible Recipient</b>	<ul style="list-style-type: none"> <li>(a) the Dependants of a Member</li> <li>(b) the legal personal representative of a Member</li> <li>(c) the trustees of a trust of which the only beneficiaries are Dependants of the Member</li> <li>(d) the trustees of a Superannuation Proceeds Trust</li> <li>(e) any person who is not prohibited by the Relevant Requirements from receiving a Death Benefit</li> </ul>
<b>Eligible Rollover Fund</b>	the same meaning as in the SIS Act
<b>Forfeiture Account</b>	the account established pursuant to clause 17.3
<b>Fund</b>	the Fund established by this deed
<b>Fund Year</b>	a period of 12 months ending on 30 June, or any other period nominated by the Trustee
<b>Impaired Capacity</b>	does not have capacity (as defined in the <i>Powers of Attorney Act 1998</i> (Qld))
<b>Income Account</b>	an account established in accordance with clause 6.8
<b>Member</b>	a person who has been accepted as a Member of the Fund and who has not ceased to be a Member, and includes a Pensioner
<b>Nominated Beneficiary</b>	an Eligible Recipient nominated by a Member in a Binding Death Benefit Nomination
<b>Non-commutable Allocated Pension</b>	the same meaning as in the SIS Regulations
<b>Non-commutable Pension</b>	the same meaning as in the SIS Regulations
<b>Pension</b>	a Benefit paid in accordance with the Pension Conditions
<b>Pension Account</b>	the account established in respect of a Pensioner in accordance with clause 6.2
<b>Pension Conditions</b>	the operating standards contained in regulation 1.06 of the SIS Regulations and any other provisions of the Relevant Requirements necessary for the Fund to pay a Pension or superannuation income stream for the purposes of the Relevant Requirements



<b>Term</b>	<b>Meaning</b>
<b>Pension Reserve Account</b>	the account established in respect of a Pensioner in accordance with clause 6.20
<b>Pensioner</b>	<p>(a) a Member who has applied to receive some or all of the Benefits payable to the Member as a Pension in accordance with this deed</p> <p>(b) a person in receipt of a Pension from the Fund (including a Reversionary Beneficiary in receipt of a Pension)</p>
<b>Policy</b>	any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance
<b>Preserved Payment</b>	a payment made to the Fund or a transfer from a Rollover Fund that must be preserved under the Relevant Requirements
<b>Preserved Payment Benefit</b>	a benefit arising from a Preserved Payment or any other amount that is included in a Member's preserved benefits under the Relevant Requirements
<b>Registrable Superannuation Entity</b>	the same meaning as in the SIS Act
<b>Regulated Fund</b>	a regulated superannuation fund as defined in the SIS Act
<b>Regulator</b>	as the case requires, the Commissioner of Taxation, Australian Prudential Regulation Authority or other regulatory body having responsibility for administration of the Relevant Requirements in relation to the Fund
<b>Relevant Requirements</b>	any requirements (including the provisions of the SIS Act) that the Trustee or the deed must comply with to avoid a contravention of the requirements or in order for the Fund to qualify for concessional Taxation treatment as a Complying Superannuation Fund, and includes Part VIIIA of the <i>Family Law Act 1975</i> (Cth) and the <i>Family Law (Superannuation) Regulations 2001</i> (Cth)
<b>Reserve Account</b>	an account established in accordance with clause 6.15
<b>Restricted Non-Preserved Benefit</b>	in respect of a Member means an amount determined in accordance with regulation 6.08 of the SIS Regulations
<b>Reversionary Beneficiary</b>	a Dependant nominated by a Pensioner as a reversionary beneficiary
<b>Rollover Fund</b>	any other fund or benefit arrangement into which or from which assets can be transferred without causing the Fund to be in breach of the Relevant Requirements
<b>Rollover Payment</b>	any payment made or received by the Trustee in circumstances that satisfy the Relevant Requirements to or from any Rollover Fund

<b>Term</b>	<b>Meaning</b>
<b>Rollover Request</b>	a request to the Trustee by a Beneficiary to rollover their Benefits to a new fund
<b>SIS Act</b>	the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth)
<b>SIS Regulations</b>	the <i>Superannuation Industry (Supervision) Regulations 1994</i> (Cth) and any other regulations made under the SIS Act
<b>Spouse</b>	includes a spouse as defined in the SIS Act
<b>Superannuation Proceeds Trust</b>	a trust, the only beneficiaries of which are prescribed persons for the purpose of section 102AC of the <i>Income Tax Assessment Act 1936</i> (Cth) and that complies with the requirements in that section
<b>Tax Act</b>	the <i>Income Tax Assessment Act 1936</i> (Cth), the <i>Income Tax Assessment Act 1997</i> (Cth) and any regulations pursuant to those Acts
<b>Tax Saving Amount</b>	the total amount that the Trustee must pay to Beneficiaries in order to claim a deduction for the amount calculated in accordance with section 295-485 of the Tax Act following the death of a Member
<b>Taxation</b>	includes any tax, surcharge, levy, impost or duty payable by the Trustee in respect of income, Contributions, capital gains, benefits or any transaction entered into by the Trustee
<b>TRIS Restrictions</b>	the rules in paragraph (b)(ii) and (b)(iii) of the definition of transition to retirement income stream in regulation 6.01(2) of the SIS Regulations
<b>Trustee</b>	the Trustee and any other trustee appointed under the provisions of this deed

## Construction

### 1.2 In this deed:

- (a) words in the singular include the plural and vice versa;
- (b) words indicating any gender indicate the appropriate gender;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (e) references to any document (including this deed) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (f) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;



- (g) a reference to a regulation (including in clause 20) is a reference to the SIS Regulations;
- (h) monetary references are references to Australian currency;
- (i) the Schedule forms part of this deed; and
- (j) headings are included for convenience only and do not affect interpretation of this deed.

### **Fund subject to Relevant Requirements**

1.3 This deed is to be read and construed on the basis that:

- (a) the provisions of the Relevant Requirements are incorporated in the deed to the extent they are required to be incorporated in order for the Fund to be a Complying Superannuation Fund;
- (b) the Trustee may do or refuse to do anything that may be necessary to comply with the Relevant Requirements even if the action or refusal may be in conflict with any provisions of this deed; and
- (c) if there is an inconsistency between the express provisions of this deed and the provisions of the Relevant Requirements incorporated into this deed, the provisions of the incorporated Relevant Requirements prevail.

## **2. ESTABLISHMENT**

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2.1 The Fund was established on the date of establishment specified in Schedule 1.

2.2 The Fund is known by the name specified in Schedule 1.

## **3. PURPOSE**

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3.1 The primary purpose of the Fund is to provide Benefits as old age pensions.

3.2 The Trustee covenants that it will perform and observe the terms of this deed.

## **4. MEMBERSHIP OF FUND**

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### **Application for membership**

4.1 Any person may apply to become a Member by completing an application for membership, which may be in the form in Schedule 2.

### **Admission to membership**

4.2 Subject to clause 4.5, a Member is deemed to have joined the Fund on the date:

- (a) the completed application for membership is received and the application has been accepted by the Trustee;
- (b) the Trustee accepts a Contribution in respect of that person;
- (c) the Trustee determines to pay a Pension following the death of a Member to that person if they are not already a Member; or
- (d) any other date determined by the Trustee.



- 4.3 The Trustee may impose conditions on a person's admission as a Member and may vary the conditions at any time.
- 4.4 Upon admission to membership the Member will be bound by this deed in all respects as if the Member were an original party to the deed.
- 4.5 The Trustee has a discretion as to whether an application for membership is accepted. If the Trustee does not accept a person as a Member, the Trustee must notify the person of that decision as soon as possible.
- 4.6 The Trustee must not admit any person as a Member if it may in the reasonable opinion of the Trustee result in the Fund becoming a public offer superannuation fund for the purposes of the Relevant Requirements, or make the Trustee a Registrable Superannuation Entity.
- 4.7 The Trustee may create different classes of membership and if the Trustee does, the Trustee must specify the rights of a Member in each different class of membership at the time that class of membership is created.

### **Cessation of membership**

- 4.8 A person ceases to be a Member upon the earliest to occur of the following:
- (a) the date upon which all the Member's Benefits are paid;
  - (b) the date the Death Benefit for the Member commences to be payable; or
  - (c) any other date as the Trustee reasonably determines.

### **Members' rights and powers**

- 4.9 Any power or right given to a Beneficiary in this deed (including, without limiting this clause, powers and rights given to a Member under clause 8) can be exercised by:
- (a) if the person has died, the legal personal representative of the person, and if more than one, jointly (except for any power or right of a Beneficiary in clause 22);
  - (b) if the person is under a legal disability, the trustee of the estate of the person, or any person who holds an enduring power of attorney from the person (in accordance with the terms of the appointment); and
  - (c) any person who holds an enduring power of attorney from the person (in accordance with the terms of the appointment).
- 4.10 A person who holds an enduring power of attorney from a Beneficiary cannot make, amend, refresh or alter:
- (a) a Binding Death Benefit Nomination unless the terms of the enduring power of attorney or the terms of the Binding Death Benefit Nomination specifically allow them to; or
  - (b) the appointment of a Death Benefit Guardian unless the terms of the enduring power of attorney specifically allow them to.

## **5. FUND RECORDS AND NOTIFICATION**

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### **Records and accounts to be kept**

- 5.1 The Trustee must keep and maintain minutes and other records and documents required by the Relevant Requirements.





**Audit**

- 5.2 The financial statements and other relevant records must be audited when required by the Relevant Requirements.

**Trust deed**

- 5.3 A copy of this deed must be made available for inspection as required by the Relevant Requirements.

**Information for Trustee**

- 5.4 When requested by the Trustee a person who is a Beneficiary must provide all information in its power or possession that may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund.

**Disclosure and reporting requirements**

- 5.5 The Trustee must provide to Beneficiaries and the Regulator any information, reports and returns in relation to the Fund required by the Relevant Requirements.
- 5.6 The Trustee may provide the tax file numbers of the Beneficiaries of the Fund to any person where the Trustee has or reasonably believes it has the consent of the relevant person to the disclosure or is required or allowed to do so by law.

**Member notification**

- 5.7 The Trustee must provide to Beneficiaries and the Regulator any information that is required by the Relevant Requirements.

**6. ACCOUNTS**

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**Separate Member accounts**

- 6.1 The Trustee must establish one or more Accumulation Accounts in respect of each Member but not a person who is only a Pensioner.
- 6.2 Where the Trustee determines to pay any part of a Benefit as a Pension, it must establish a Pension Account and transfer to it the amount that the Trustee believes necessary to provide the Benefits as a Pension. The Trustee may also transfer an amount to a Reserve Account in relation to that Pension.

**Accumulation Accounts**

- 6.3 The Trustee must credit the following amounts to the relevant Accumulation Account as appropriate:
- (a) any amount paid into the Fund in respect of the Member;
  - (b) the proceeds of any Policy or Annuity effected by the Trustee that the Trustee considers it appropriate to credit;
  - (c) any positive earnings as are determined by the Trustee;
  - (d) any amounts transferred from the Pension Account of a Member;
  - (e) any other amount to be transferred under the Relevant Requirements to a person who is already a Member, or becoming a Member, from another Member's Benefit Entitlement;



- (f) an amount to be transferred to the Accumulation Account of the Member from the Accumulation Account of the Member's Spouse pursuant to a Contribution Splitting Request accepted by the Trustee; and
  - (g) any other amounts as the Trustee from time to time determines.
- 6.4 The Trustee must debit the following amounts to the relevant Accumulation Account as appropriate:
- (a) any amount paid out of the Fund in respect of the Member from an Accumulation Account;
  - (b) the costs of any Policy or Annuity effected by the Trustee that the Trustee considers it appropriate to debit subject to clause 6.9;
  - (c) such proportion of any Taxation payable in respect of the Fund as the Trustee determines;
  - (d) any part of the costs and expenses incurred under clauses 12 or 13 as the Trustee determines;
  - (e) the amount of any lien exercised pursuant to this deed;
  - (f) any amount forfeited pursuant to this deed;
  - (g) any negative earnings as determined by the Trustee in accordance with this deed;
  - (h) any moneys paid in respect of the Trustee's indemnity;
  - (i) any amount transferred to the Pension Reserve Account or the Member's Pension Account as the Trustee considers necessary to pay the Member a Pension under clause 19;
  - (j) any other amount to be paid or transferred under the Relevant Requirements to a person other than the Member from the Member's Benefit Entitlement;
  - (k) the amount specified by the Member in a Contribution Splitting Request accepted by the Trustee;
  - (l) any amount required to comply with an authority, direction, notice or request provided by the Regulator; and
  - (m) any other amounts the Trustee from time to time determines.
- 6.5 If a Member has more than one Accumulation Account, the Trustee must:
- (a) credit amounts paid into the Fund to the Accumulation Account directed by the payer or Member, and failing a direction, as the Trustee determines;
  - (b) credit amounts transferred from a Reserve Account, a Pension Account or the Pension Reserve Account to the Accumulation Account directed by the Member, and failing a direction from the Member, as the Trustee determines; and
  - (c) debit amounts paid from the Fund to the Accumulation Account as directed by the Member, and failing a direction from the Member, as the Trustee determines.



### **Pension Account**

6.6 The Trustee must credit the following amounts to the relevant Pension Account of a Pensioner:

- (a) any amount transferred into the account under clause 6.2;
- (b) any Rollover Payment that the Trustee considers it appropriate to credit;
- (c) the proceeds of any Policy or Annuity that the Trustee considers it appropriate to credit;
- (d) such earnings of the Fund as the Trustee determines to be equitable;
- (e) any amount transferred from a Reserve Account as the Trustee determines reasonable;
- (f) any amount received under clause 19.4 in relation to the Pensioner; and
- (g) any credit arising out of any adjustments made in accordance with clause 6.23.

6.7 The Trustee must debit the following amounts to the relevant Pension Account of a Pensioner:

- (a) any amount transferred out of the Fund as a Rollover Payment that the Trustee considers it appropriate to debit;
- (b) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to this deed;
- (c) the costs of any Policy or Annuity that the Trustee considers it appropriate to debit;
- (d) such proportion of any Taxation payable in respect of the Fund or arising as a result of a Rollover Payment as the Trustee determines;
- (e) such of the amounts paid or incurred in accordance with clauses 12 or 13 as the Trustee considers equitable;
- (f) a proportion of any losses of the Fund as the Trustee considers equitable;
- (g) any amount transferred to the Accumulation Account of a Beneficiary;
- (h) if the Trustee is going to pay a Pension under clauses 20.17 to 20.20 or under clauses 20.21 to 20.24, the amount transferred to the Pension Reserve Account;
- (i) any amount transferred to a Reserve Account;
- (j) any amount paid under clause 19.4 in respect of the Pensioner;
- (k) any amount required to comply with an authority, direction, notice or request provided by the Regulator; and
- (l) any other amounts as the Trustee considers equitable.

### **Income Account**

6.8 The Trustee must establish an Income Account for the Fund. The Trustee must credit the Income Account, subject to clauses 6.14 and 7.5, with the following:

- (a) all income and profits of the Fund;
- (b) credits arising out of adjustments pursuant to clause 6.23;



- (c) any amount transferred from a Reserve Account pursuant to clause 6.15;
  - (d) the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to an Accumulation Account, a Pension Account or the Pension Reserve Account; and
  - (e) any other amounts that the Trustee from time to time determines.
- 6.9 The Trustee must debit the Income Account, subject to clauses 6.14 and 7.5, with the following:
- (a) any loss sustained on the disposal of any investments of the Fund;
  - (b) any costs or charges incurred pursuant to clauses 12 or 13 that are not debited to an Accumulation Account;
  - (c) any debits arising out of adjustments pursuant to clause 6.23;
  - (d) the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Accumulation Account, a Pension Account or the Pension Reserve Account;
  - (e) any deficiency arising from a valuation of the Fund;
  - (f) any amount payable or that may become payable by way of Taxation in respect of the Contributions and the income and profits of the Fund that are not debited to an Accumulation Account as the Trustee determines to be equitable;
  - (g) any income transferred to a Reserve Account;
  - (h) any income transferred to an Accumulation Account, Pension Account or the Pension Reserve Account; and
  - (i) any other amounts that the Trustee from time to time determines.
- 6.10 At the end of each Fund Year the Trustee must determine the fund earning rate and calculate the amount available for distribution.
- 6.11 Before allocating any portion of the amount available for distribution the Trustee may transfer a portion of the amount to any of the Reserve Accounts.
- 6.12 Subject to clause 7, the Trustee must allocate the earnings of the Fund available for distribution after any transfer to Reserve Accounts to each Accumulation Account and Pension Account and the Pension Reserve Account in proportion to the amounts standing to the credit of that account at the beginning of the relevant Fund Year, appropriate adjustments being made for amounts credited or debited to each account since that date, or in any other way the Trustee in its discretion determines.
- 6.13 If the Trustee is required to establish a fund earning rate in respect of a portion of a Fund Year or before the fund earning rate has been or can be established for a full Fund Year, the Trustee must determine that rate in accordance with the Relevant Requirements on a basis that the Trustee considers to be equitable.
- 6.14 The Trustee may determine to credit the amounts in clause 6.8 or debit the amounts in clause 6.9 or debit or credit any amount that this deed requires to be transferred to or from the Income Account directly to any Accumulation Account, Pension Account, the Pension Reserve Account or Reserve Account rather than to the Income Account.



### Reserve Account

- 6.15 The Trustee may establish one or more Reserve Accounts and may transfer amounts from:
- (a) the Income Account pursuant to clause 6.9;
  - (b) a Member's Accumulation Account pursuant to clause 6.4;
  - (c) the Pension Reserve Account pursuant to clause 6.22;
  - (d) one Reserve Account to another; or
  - (e) Contributions made to the Fund before allocation to a Member.
- 6.16 Funds in a Reserve Account do not form part of any Accumulation Account or Pension Account.
- 6.17 The Trustee must credit any income derived on funds held in a Reserve Account back to that Reserve Account.
- 6.18 The purpose of a Reserve Account must be determined when it is established, and may include the following:
- (a) to stabilise the investment earnings of the Fund in accordance with its reserving policy; and
  - (b) to provide for contingencies including supplementing the fund earning rate or to secure payment of any Pension.
- 6.19 The Trustee may deal with any part of the balance in a Reserve Account as it considers fit, including:
- (a) transferring it to an Accumulation Account or Pension Account;
  - (b) treating the Reserve Account in accordance with clause 17 as if the Reserve Account were the Forfeiture Account;
  - (c) transferring it to the Pension Reserve Account;
  - (d) debiting it with any Taxation payable or any other cost or expense incurred in the management or administration of the Fund; or
  - (e) debiting it with any amount required to comply with an authority, direction, notice or request provided by the Regulator.

### Pension Reserve Account

- 6.20 If the Trustee is going to pay a Pension under clauses 20.17 to 20.20 or clauses 20.21 to 20.24, the Trustee must establish a Pension Reserve Account for the Fund.
- 6.21 The Trustee must credit the following amounts to the Pension Reserve Account:
- (a) any amount transferred into the account under clauses 20.19 or 20.23;
  - (b) such earnings of the Fund as the Trustee determines to be equitable;
  - (c) the proceeds of any Policy or Annuity that the Trustee considers it appropriate to credit;

- (d) any amount transferred from a Reserve Account as the Trustee determines reasonable; and
- (e) any credit arising out of any adjustments made in accordance with clause 6.23.

6.22 The Trustee must debit the following amounts to the Pension Reserve Account:

- (a) any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to this deed;
- (b) such proportion of any Taxation in respect of the earnings of the Fund credited to the Pension Reserve Account as the Trustee determines;
- (c) the costs of any Policy or Annuity that the Trustee considers it appropriate to debit;
- (d) such of the amounts paid or incurred in accordance with clauses 12 or 13 as the Trustee considers equitable;
- (e) a proportion of any losses of the Fund as the Trustee considers equitable;
- (f) any amount transferred from the Pension Reserve Account under clause 6.15;
- (g) any amount required to comply with an authority, direction, notice or request provided by the Regulator; and
- (h) any other amounts as the Trustee considers equitable.

### **Adjustments**

6.23 In determining the amount standing to the credit of an Accumulation Account or Pension Account at the time a Benefit is calculated the Trustee must make an adjustment reflecting the fund earning rate that it considers equitable.

### **Contribution Splitting Request**

6.24 The Trustee can choose not to accept a Contribution Splitting Request in whole or in part in its absolute discretion.

6.25 Despite clauses 6.3(f) and 6.4(k), the Trustee must not accept a Contribution Splitting Request if it does not comply with the Relevant Requirements.

6.26 The Trustee may after accepting a Contribution Splitting Request reduce the Accumulation Account of a Member under clause 6.3(f) and then roll over or transfer the appropriate amount to a Rollover Fund for the Member's Spouse, or otherwise deal with the amount as allowed under the Relevant Requirements.

## **7. ASSET SEGREGATION AND SPECIFIC INVESTMENTS**

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### **Specific investments**

7.1 The Trustee may invest separately in respect of certain Members or certain classes of Members.

7.2 A Member may request the Trustee to make a specific investment (investment request) that will authorise the Trustee to make a specific investment in accordance with that request of all or any part of the Accumulation Account or the Pension Account of the Member or the Pension Reserve Account.



- 7.3 The Trustee may in its absolute discretion approve or reject the investment request of the Member, and will inform the person of its decision.
- 7.4 If the Trustee undertakes to invest separately in respect of certain Members in accordance with clause 7.1, the Trustee must record on whose behalf the specific investments are made for the purposes of determining the allocation to Accumulation Accounts, Pension Accounts or the Pension Reserve Account.
- 7.5 The profits and losses arising from specific investments and any Taxation or charges applicable to them must be allocated directly to the relevant Accumulation Account or Pension Account or Pension Reserve Account (and not to the Income Account) on such basis as the Trustee considers reasonable.

### **Segregation of Pension assets**

- 7.6 In relation to a Pension payable under this deed, the Trustee may:
- (a) segregate or set apart the assets that represent the Pension Account or the Pension Reserve Account for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and
  - (b) constitute the segregated assets as segregated current and non-current pension assets within the meaning of the Tax Act and obtain any certificates in relation to the adequacy of the assets segregated and set apart as the Trustee considers necessary for the purposes of the Tax Act or the Relevant Requirements.

## **8. FUND TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL**

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### **Trustee criteria**

- 8.1 The appointment, removal and composition of the Trustee is governed by this deed unless the Relevant Requirements otherwise provide.

### **Appointment of Trustee**

- 8.2 The majority of Members, subject to the other provisions of this clause, determine who acts as the Trustee, and may appoint a new or additional trustee by deed, resolution or written document.

### **Change of Trustee**

- 8.3 A person or Constitutional Corporation immediately ceases to act as a Trustee if:
- (a) that entity resigns by instrument in writing;
  - (b) the Trustee is disqualified from holding office by operation of law;
  - (c) it is or takes any step that results or may result in it becoming a Chapter 5 body corporate as defined in section 9 of the *Corporations Act 2001* (Cth); or
  - (d) a majority of Members resolve to terminate the appointment of the Trustee.

### **Member may be director of Trustee**

- 8.4 A director, officer or employee of a Trustee that is a Constitutional Corporation is not disqualified from being a Member of the Fund merely because of that role.



## Confirmation of discharge of retiring Trustee

- 8.5 Despite any rule of law or legislative provisions to the contrary, a person who retires or is removed as Trustee or a co-Trustee of the Fund in accordance with the provisions of this deed is discharged from the trusts contained in this deed as from the date of retirement or removal provided that there is at least one continuing Trustee.

## 9. TRUSTEE'S INVESTMENT POWERS

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### Investment policy and strategy

- 9.1 The Trustee must formulate the investment strategy of the Fund and determine a policy to give effect to that strategy.

### Authorised investments

- 9.2 The assets of the Fund may be invested in any of the following investments so long as it will not constitute a contravention of the Relevant Requirements:
- (a) any investment being authorised by the laws of the Commonwealth of Australia or any state or territory for the investment of trust funds;
  - (b) the purchase or acquisition of shares, stocks, debentures, notes, bonds, mortgages (including a second or subsequent mortgage), options or other similar securities;
  - (c) on deposit with any bank, building society, credit co-operative, trustee company or other similar financial institution whether secured or unsecured and on such terms as the Trustee determines;
  - (d) on deposit with or on loan to any person or organisation with or without security on any terms the Trustee considers reasonable;
  - (e) any Policy or Annuity;
  - (f) the purchase, acquisition or leasing of any real or personal property, including statutory licences;
  - (g) the acquisition of any unit or sub-unit in unit trusts or any other interest in any trust;
  - (h) a loan or other financial assistance using resources of the Fund to any Member or any relative or associated entity of a Member;
  - (i) any other investments that the Trustee considers appropriate.

### Power to sell and vary investments

- 9.3 The Trustee, in its absolute discretion, has the power to:
- (a) retain any investments in that form; or
  - (b) sell or convert into money any investments for cash or on such other terms the Trustee thinks fit (including to allow a purchaser any time for payment of the whole or part of the purchase price with or without interest and with or without security); and
  - (c) vary or transpose any investments into other investments authorised by this deed.



## Policies of assurance

- 9.4 The Trustee may effect separate Policies and may secure the Benefit of a Member or class of Members by means of individual Policies or group Policies providing any benefits the Trustee considers appropriate.
- 9.5 The Trustee is not responsible or liable to the Member, the Member's legal personal representative or the Dependants of the Member if the Trustee does not take out a Policy or if there are no or insufficient proceeds payable under a Policy.

## 10. TRUSTEE'S POWERS OF MANAGEMENT

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In addition to the powers the Trustee otherwise has at law or under this deed, the Trustee has the following powers:

- (a) to settle, compromise or submit to arbitration any claims, or matters relating to this deed or to the rights of Members, former Members or Beneficiaries;
- (b) to commence, carry on or defend legal proceedings;
- (c) to open and operate accounts with banks and other financial institutions including joint and partnership accounts and accounts where the Trustee may be operating the account as trustee of more than one trust fund and to sign, make, draw, execute, endorse, discount, hypothecate or otherwise negotiate cheques, bills of exchange, promissory notes, drafts and orders for the payment of money in any manner the Trustee thinks fit, and to authorise other persons to operate on any account and sign, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (d) to borrow money or raise financial accommodation in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for the purpose of acquiring an asset (other than an asset that the Trustee is prohibited by the Relevant Requirements from acquiring) upon such terms with or without security or interest as the Trustee deems fit and to assign, pledge, mortgage or charge any asset of the Fund as security for any such financial accommodation in any manner and upon such terms and conditions that the Trustee considers appropriate;
- (e) to give any guarantee or indemnity for the payment of money or the performance of any contract, liability, obligation or guarantee incurred or entered into by anyone else and to guarantee or indemnify, to become liable for the payment of money or for the performance of any obligations by anyone else, and for the purpose of securing the payment of any moneys or the performance of any obligations for which the Trustee may become liable under any guarantee or indemnity to mortgage, encumber, pledge or charge the Fund or any part of it;
- (f) to enter into any agreement, instrument or transaction that is, or that evidences, a derivatives transaction that is an interest rate swap transaction, basic swap, forward rate transaction, commodity swap, interest rate option, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, current option or any other similar transaction or any combination of these transactions that the Trustee considers appropriate;
- (g) to insure or reinsure any risks, contingencies or liabilities of the Fund;
- (h) to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member;



- (i) to retain the services of professional or other advisers and consultants;
- (j) to pay out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay out of the Fund the Trustee's professional fees (if any);
- (k) to indemnify anyone in respect of any claims, matters or things relating to the Fund or to the rights of Beneficiaries in respect of the Fund;
- (l) to provide a full or partial release to anyone in respect of any matters that have arisen or may arise as a result of an association, involvement or membership of the Fund by that person;
- (m) to insure any liability of the Trustee or any directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its directors or officers pursuant to clause 12;
- (n) to permit any asset of the Fund to be held or registered in the name of any nominee of the Trustee;
- (o) to deal with itself in different capacities;
- (p) to sell, transfer, hire, lease or dispose of any real or personal property of the Fund, whether at a profit or not;
- (q) notwithstanding section 32(e) of the *Trusts Act 1973* (Qld) or any similar legislation in other jurisdictions where the Trustee owns property, to grant a lease or sublease of land or buildings for any term, including a term of more than 21 years;
- (r) to buy, transfer, acquire, hire to lease any property;
- (s) to grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such option will be at a profit or not;
- (t) to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this rule, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises;
- (u) to carry on any business that the Trustee considers appropriate;
- (v) generally to do anything the Trustee considers appropriate for the administration, maintenance and preservation of the Fund;
- (w) generally to do all things the Trustee could do if the discretion or power were vested in the Trustee personally; and
- (x) to do anything incidental to the exercise of any of the powers as set out in this deed.

## 11. EXERCISE OF TRUSTEE'S POWERS

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### Relevant Requirements

#### 11.1 Despite anything to the contrary in this deed:

- (a) the Trustee must not exercise any of its powers in a way that would result in the contravention of the Relevant Requirements;



- (b) but subject to clauses 22.6 and 22.11, in exercising its powers the Trustee is not subject to the direction of any other person;
- (c) if any provisions of this deed would permit a person to give a direction to the Trustee in circumstances prohibited by the Relevant Requirements, the Trustee may disregard any such direction; and
- (d) if a discretion under this deed may be exercised by a person other than the Trustee, that discretion must not be exercised without the consent of the Trustee except in circumstances not prohibited by the Relevant Requirements.

### **Exercise of trustee powers**

- 11.2 All the powers and discretions conferred upon the Trustee or any director of a Trustee by this deed or by law may be exercised even if the Trustee, any director or shareholder of the Trustee or any relative of the Trustee or director or shareholder of the Trustee may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation, partnership, trustee of any settlement, beneficiary of any trust or in their personal capacity) in the manner or result of exercising the power or discretion or may benefit directly or indirectly as a result of the exercise of the power or discretion and notwithstanding that the Trustee may be the sole Trustee.

### **Trustee discretion**

- 11.3 Subject to clauses 19.6(b), 22.6 and 22.11, the Trustee has an absolute and uncontrolled discretion as to the exercise and the manner, mode and timing of exercise of the trusts, authorities, powers and discretions conferred on it by this deed.
- 11.4 In exercising any power or discretion, the Trustee is not required to provide any reasons for its decisions unless required to do so under the Relevant Requirements.

### **Trustee may delegate**

- 11.5 The Trustee may delegate to any person or company any of the Trustee's powers or discretions in its absolute discretion unless this would constitute a contravention of the Relevant Requirements.
- 11.6 The power to delegate includes the power to appoint a delegate as its attorney either in a general or limited capacity and to execute any powers of attorney or other instruments necessary for such purpose.

### **Valuation**

- 11.7 The Trustee may have the assets of the Fund valued whenever it considers it appropriate (and must do so if the Regulator or the Relevant Requirements require). After the valuation, the Trustee must determine whether there is a surplus or deficiency and whether it is equitable to transfer the surplus or deficiency to the Income Account.

### **Tax on Benefits**

- 11.8 The Trustee may deduct from any Benefit any Taxation required to be deducted or that the Trustee considers should be deducted from it.

### **Tax on Contributions**

- 11.9 The Trustee may deduct any Taxation payable in relation to a Contribution prior to the Contribution being credited to an Accumulation Account or a Reserve Account.



## 12. INDEMNITY OF TRUSTEE

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### Limitation of liability of Trustee

- 12.1 Neither the Trustee nor any director, officer or employee of a Trustee that is a Constitutional Corporation will be liable for anything done or omitted to be done in relation to the Fund except in the case of dishonesty, fraud or other intentional or reckless neglect on its part.

### Indemnity and lien

- 12.2 The Trustee and any directors, officers or employees of a Trustee that is a Constitutional Corporation will be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in them pursuant to this deed or at law.
- 12.3 The Trustee will have a lien on and may use the money representing the assets of the Fund for the purposes of this indemnity provided that the exercise of any lien does not contravene the Relevant Requirements.

### Payments in good faith

- 12.4 This indemnity extends to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled to the payment although it may be subsequently found that the person was not in fact so entitled.

### Opinion or advice

- 12.5 This indemnity extends to circumstances where the Trustee acts upon the opinion or advice of lawyers who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee to be expert in relation to the matters upon which they are consulted.

### Failure to carry out agreement

- 12.6 This indemnity extends to circumstances where any person breaches or fails to carry out any agreement made with the Trustee.

## 13. REMUNERATION OF TRUSTEE

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### Fees

- 13.1 The Trustee may charge professional fees for its services as Trustee unless this would constitute a contravention of the Relevant Requirements.

### Reimbursement

- 13.2 The Trustee is entitled to reimbursement from the Fund for and in respect of expenses properly incurred in carrying out its duties including:
- (a) all costs and expenses incurred in connection with the acquisition and disposal of or other dealings with investments of the Fund;
  - (b) fees and expenses of the service providers and consultants engaged by the Trustee;
  - (c) all Taxation payable by the Trustee in connection with the Fund;
  - (d) all fees, wages and expenses of any employees or agents employed by the Trustee;



- (e) any administrative costs charged in relation to the Fund; and
- (f) any expenses in connection with the maintenance of accounting records and the preparation and distribution of any accounting, taxation or other reports or notices.

## **14. APPOINTMENT OF SERVICE PROVIDERS**

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### **Actuary and auditor**

14.1 The Trustee must if necessary appoint:

- (a) an actuary;
- (b) an auditor who is appropriately qualified according to any criteria specified by the Relevant Requirements.

14.2 If an actuary has been appointed, the Trustee may ask the actuary for information or advice from time to time in accordance with the provisions of this deed but the Trustee is under no obligation to be bound by or to act upon the advice provided unless required by the Relevant Requirements.

### **Administration manager**

14.3 The Trustee may appoint an administration manager to provide fund administration services to the Trustee on terms that the Trustee considers appropriate.

### **Investment manager**

14.4 The Trustee may appoint in writing one or more companies or individuals to act as investment managers for the Fund on such terms as the Trustee determines unless this would constitute a contravention of the Relevant Requirements.

### **Custodian**

14.5 The Trustee may appoint one or more companies or individuals to act as a custodian for the Fund, or any part of it, or to hold the legal title of any asset acquired or to be acquired by the Trustee, on terms and conditions the Trustee determines unless this would constitute a contravention of the Relevant Requirements.

## **15. CONTRIBUTIONS TO FUND**

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### **Contributions**

15.1 Subject to clause 15.5, the Trustee may accept any Contributions or other amounts that the Trustee is not prohibited from accepting under the Relevant Requirements.

### **No obligation to contribute**

15.2 In the absence of any agreement to the contrary, a person may contribute to the Fund any amount in any manner and at such times as they in their absolute discretion determine.

15.3 No person is under any obligation to make a Contribution in respect of any Fund Year.

15.4 A Member may remain a Member of the Fund notwithstanding a Contribution is not made in respect of that Member in respect of any Fund Year.

### Limitation on acceptance of Contributions

- 15.5 The Trustee must not accept any Contribution by or in respect of a Member where the acceptance will (or may, in the reasonable opinion of the Trustee) constitute a contravention of the Relevant Requirements or that may result in the Fund becoming a public offer fund, or make the Trustee a Registrable Superannuation Entity.

### Ineligible Contributions

- 15.6 If the Trustee considers that Contributions have been accepted in breach of the Relevant Requirements, or the Trustee is required to refund Contributions under the Relevant Requirements, the Trustee must refund the Contributions (less any charge that an insurer makes in respect of any extra cover provided in relation to those Contributions, reasonable administration expenses, any amount the Trustee is required to deduct under the Relevant Requirements and any amount the Trustee chooses to deduct that is allowed under the Relevant Requirements) and reduce the Benefits held for the Member to those that would have been held if the Contribution had not been made.

### Allocating Contributions

- 15.7 The Trustee must allocate Contributions to Accumulation Accounts within the time allowed by the Relevant Requirements. The Trustee may credit Contributions received to a Reserve Account for the period between receiving them and allocating them to an Accumulation Account.

## 16. TRANSFERS TO AND FROM ROLLOVER FUNDS

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### Transfers to Rollover Funds

- 16.1 Where:

- (a) a Beneficiary joins or is eligible to join any Rollover Fund (**Other Fund**) and that person requests that any part of their entitlement be transferred to the Other Fund; or
- (b) the Trustee is otherwise permitted to transfer the entitlement to the Other Fund under the Relevant Requirements, including by way of a successor fund transfer,

the Trustee may pay or transfer to the trustee of the Other Fund an amount or investments of the Fund of equivalent value (**Transferred Amount**) that reflects the relevant part of the entitlement.

### Effect and method of transfer out

- 16.2 The receipt of the Transferred Amount by the proper officer of the Other Fund is a complete discharge to the Trustee of all liabilities in respect of the Transferred Amount.
- 16.3 Upon the completion of a payment or transfer under this clause, all of the rights and interests of the relevant Beneficiary under this deed in respect of the Transferred Amount are entirely extinguished.

### Rollover

- 16.4 Where a Beneficiary wishes to effect a Rollover Payment in respect of all or any of the entitlement of that person in the Fund, that person must make a written request to the Trustee nominating the Rollover Fund and must provide any other details the Trustee requires.



### **Preserved Payment transfers**

- 16.5 Where a Beneficiary has Preserved Payment Benefits in the Fund the Trustee must ensure that the provisions of the Other Fund require that the Preserved Payment Benefit must be preserved and vested in accordance with the Relevant Requirements.

### **Transfers from Rollover Funds**

- 16.6 Where a Member is or was a member or a beneficiary under any other Rollover Fund the Trustee may take over any part of the assets of the Rollover Fund.
- 16.7 The Trustee holds any amounts transferred as part of the particular Member's Accumulation Account.

### **Overriding conditions on portability**

- 16.8 Despite anything to the contrary in this deed, no payment or transfer can be accepted from or made to another Rollover Fund if, in the opinion of the Trustee, this would cause the Fund to be in breach of any of the Relevant Requirements.

### **Transfers to Eligible Rollover Fund**

- 16.9 Despite anything to the contrary in this deed the Trustee may and, if required by the Relevant Requirements must, transfer the entitlement of a Beneficiary to an Eligible Rollover Fund where such a transfer is permitted or required under the Relevant Requirements.

## **17. FORFEITURE OF BENEFITS**

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### **Account residue**

- 17.1 Any person who has been paid all Benefits that the Trustee considers should be paid to the person pursuant to this deed and who still has a residual amount standing to the credit of their Accumulation Account or Pension Account forfeits the amount, which is dealt with as a forfeited Benefit.
- 17.2 Once the liability for all pensions being paid from the Pension Reserve Account has ceased, any further amount in the Pension Reserve Account is forfeited and are dealt with as a forfeited Benefit.

### **Forfeiture Account**

- 17.3 The Trustee may establish a Forfeiture Account and transfer to it any amounts forfeited under this deed.
- 17.4 Any money held in the Forfeiture Account does not form part of any Accumulation Account or Pension Account or the Pension Reserve Account and income derived on the Forfeiture Account is credited back to the Forfeiture Account.
- 17.5 The Forfeiture Account may be applied in accordance with the remaining provisions of this clause.

### **Application of forfeited Benefits**

- 17.6 The Trustee may pay or apply any amount in the Forfeiture Account:
- (a) to or for the benefit of a Beneficiary or to the Dependants of a Member in whatever proportions the Trustee may determine;



- (b) to the legal personal representative of a deceased Member, or the trustee of the estate of a former Member;
- (c) to or for the benefit of other Members or their Dependants;
- (d) for the provision of additional Benefits for Members or Dependants;
- (e) for any other purpose approved by the Regulator or permitted under the Relevant Requirements.

## 18. BENEFITS

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18.1 Despite any other provision of this deed, the Trustee must not pay out any Benefits where the payment could constitute a contravention of the Relevant Requirements.

### **Moneys owing to Fund**

18.2 Where a Member owes any money to the Trustee, the Trustee may debit an Accumulation Account or Pension Account of the Member for a sum equivalent to the amount owing provided it is permitted by the Relevant Requirements, and may retain the money in the Fund.

### **Benefits**

18.3 Where a Benefit is payable to or in respect of a Beneficiary, the maximum amount of the Benefit is the total of the balances in all that Beneficiary's Accumulation Accounts and Pension Accounts, as adjusted under this deed.

18.4 The Trustee may pay Benefits when and to the extent that the Trustee is permitted to pay them under the Relevant Requirements and must be paid when and to the extent that the Trustee is required to pay them under the Relevant Requirements.

18.5 A Member is only entitled to the Member's Preserved Payment Benefits or Restricted Non-Preserved Benefits if the Member has satisfied a Condition of Release or if otherwise required by the Relevant Requirements.

18.6 Subject to the provisions of this deed (including this clause and clauses 19.6 and 22) and the Relevant Requirements, Benefits may be cashed in any one or more of the following ways:

- (a) one or more lump sums;
- (b) one or more pensions;
- (c) the purchase of one or more Annuities; or
- (d) in any other ways allowed by the Relevant Requirements.

### **Payment to others on behalf of Beneficiaries**

18.7 The Trustee may pay all or any part of any Benefit to a parent, guardian or other person who has the care or custody of the Beneficiary where the Beneficiary is an infant, under a legal disability or the Trustee otherwise determined it would be in the best interest of the Beneficiary, without the Trustee being responsible to see to any application of the amount. Receipt of the person to whom the Benefit is paid is a complete discharge to the Trustee.

18.8 The Trustee is not bound as Trustee to see to the application by any person of the Benefit paid to, for or on behalf of a Beneficiary pursuant to this deed.



### **Increases to Benefits**

18.9 The Trustee may take into account amounts in a Reserve Account (if any) in determining whether any amount should be transferred from the Reserve Account for purposes of the payment of a Benefit unless it constitutes a contravention of the Relevant Requirements.

### **Trustee must pay Benefit**

18.10 When a Beneficiary calls on the Trustee to pay a Benefit under this deed, the Trustee must pay the Benefit, subject to the terms of this deed and the Relevant Requirements.

### **Retention of Benefits in Fund**

18.11 Subject to clause 18.10, where a person does not require Benefits to be immediately paid, the Trustee may retain all or any part of any Benefit until:

- (a) the Trustee is required to pay it under the Relevant Requirements; or
- (b) the Trustee decides to pay it.

## **19. PENSIONS**

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### **Commencement of Pension**

19.1 A Pension commences when the Beneficiary and Trustee agree. Failing agreement a Pension commences when the Beneficiary and Trustee have agreed the terms of the Pension.

19.2 Where a Benefit is payable from the Fund as a Pension, the Trustee must choose which of the conditions in clause 20 apply to the payment of the Pension. If the Trustee does not specifically choose, then the conditions in clause 20.1 to 20.3 apply to the Pension.

### **Cashing restriction**

19.3 Where the Condition of Release applying to a Member's entitlement to payment of a Benefit is subject to a cashing restriction the Trustee may only pay a Benefit subject to the relevant cashing restriction.

### **Purchased Pension**

19.4 The Trustee may purchase a Pension for a Member from an outside source from the balance in the Pension Account of the Member, or the Pension Reserve Account. Income from the Pension and any commuted amounts must be credited to the Member's Pension Account (if purchased from the balance in the Member's Pension Account), or to the Pension Reserve Account (if purchased from the balance in the Pension Reserve Account).

### **Pension Account limitation**

19.5 Where a Pension is payable to or in respect of a Member or where the Trustee purchases an Annuity on behalf of a Member the amount transferred into the Pension Account or Pension Reserve Account to support the payment of the Pension, or the total purchase price of the Annuity, must not exceed the amount in the Fund to which the Member is entitled at the date of the transfer or purchase.

### **Reversionary Pension**

19.6 After the death of a person who was at the time of death in receipt of a Pension, the Trustee:



- (a) has the power to pay to the Reversionary Beneficiary a Pension as allowed by the Relevant Requirements; and
- (b) must pay a Pension to the Reversionary Beneficiary:
  - (i) as required by the terms of the Pension; and
  - (ii) unless it would breach the Relevant Requirements.

19.7 Subject to the Relevant Requirements a Pensioner may nominate or change the nomination of a Reversionary Beneficiary at any time while alive, including at the time the Pension commences or during the term of the Pension without having to commute the Pension.

### **Changing Pension terms**

19.8 Subject to the Relevant Requirements, the Trustee and the Pensioner can at any time during the life of the Pensioner agree to change the terms of a Pension without having to commute the Pension.

### **Conditions of commutation**

- 19.9 On the written application of a Pensioner the Trustee may commute the whole or any part of a Pension to an Accumulation Account for that Pensioner, or to a Pension Account for that Pensioner, or as a lump sum Benefit, or as otherwise permitted by the Relevant Requirements, provided that:
- (a) the commutation is permitted by the Relevant Requirements that apply to the particular Pension, and incorporated into this deed, and this deed and the terms of payment of the Pension;
  - (b) where any amount remains in the Fund after the entitlement of all Pensioners have been paid out that amount will be dealt with as though it were a forfeited Benefit; and
  - (c) the Trustee is satisfied the commutation would not materially disadvantage the remaining Members.

### **Adjustment of Pension following the commutation**

19.10 Following the commutation of a part of a Pension the Trustee must reduce the total amount of the instalments of any Pension payable to the Pensioner by any amount it considers appropriate.

### **Death of Pensioner**

19.11 If a Pensioner dies the Trustee must pay the balance of the Pension Account or if the Pension is being paid from the Pension Reserve Account, that part of the Pension Reserve Account in accordance with clause 22.

### **Adding to Pension Account or Pension Reserve Account**

19.12 Despite the other provisions of this deed, the Trustee must not add any amount to a Pension Account or Pension Reserve Account unless it is allowed by the Relevant Requirements.

### **Pension increase**

19.13 Any Pension payable under this deed must, if required by the Relevant Requirements and agreed to by the Trustee, be increased from time to time by an amount the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living



increases provided that any increase must be at least the minimum required by the Relevant Requirements and does not exceed any maximum permitted by the Relevant Requirements.

### **Reduction of Pension payments**

- 19.14 Despite any other provision of this deed and subject to the Relevant Requirements, the Trustee may reduce the payments for any Pension by any amount it considers reasonable in consultation with an actuary.

## **20. PENSION PAYMENT CONDITIONS**

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### **Account Based Superannuation Income Stream (regulation 1.06(9A)(a))**

- 20.1 Subject to clause 20.7, the terms of payment of the Pension must comply with the limitations and requirements set out in regulations 1.06(9A)(a) and 1.07D and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with regulation 1.06(9A)(a) as if those provisions were incorporated into this deed.
- 20.2 The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.
- 20.3 The Pension is payable from the amount standing to the credit of the Pension Account of the Pensioner.

### **Other Superannuation Income Stream (regulation 1.06(9A)(b))**

- 20.4 Subject to clause 20.7, the terms of payment of the Pension must comply with the limitations and requirements set out in regulations 1.06(9A)(b) and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with regulation 1.06(9A)(b) as if those provisions were incorporated into this deed.
- 20.5 The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.
- 20.6 The Pension is payable from the amount standing to the credit of the Pension Account of the Pensioner.

### **Transition to Retirement Income Stream**

- 20.7 Subject to clause 20.8, if the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the terms of the Pension paid include the TRIS Restrictions.
- 20.8 If the terms of a Pension include the TRIS Restrictions and the Pensioner satisfies a Condition of Release for which the cashing restriction is 'Nil', then the terms of the Pension automatically cease to include the TRIS Restrictions, unless otherwise stated in the terms of the Pension.

### **Allocated Pension (regulations 1.06(4) and 1.06(5))**

- 20.9 The terms of payment of the Pension must comply with the limitations and requirements set out in regulations 1.06(4), 1.06(5) and 1.07A and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with regulation 1.06(4) as if those provisions were incorporated into this deed.
- 20.10 The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.



- 20.11 The Pension is payable from the amount standing to the credit of the Pension Account of the Pensioner.
- 20.12 If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a Non-commutable Allocated Pension.

#### **Flexi-Pension (regulation 1.06(6))**

- 20.13 The terms of payment of the Pension must comply with the limitations and requirements set out in regulations 1.06(6) and 1.07B and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid under regulation 1.06(6) as if those provisions were incorporated into this deed.
- 20.14 The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.
- 20.15 The Pension is payable from the amount standing to the credit of the Pension Account of the Pensioner.
- 20.16 If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a Non-commutable Pension.

#### **Complying Fixed-Term Pension (regulation 1.06(7))**

- 20.17 The terms of payment of the Pension must comply with the limitations and requirements set out in regulations 1.06(7) and 1.07B and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with regulation 1.06(7) having regard to the commencement date of the Pension as if those provisions were incorporated into this deed.
- 20.18 The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.
- 20.19 The Trustee must transfer an amount that it considers necessary to pay the Pension from the Pensioner's Pension Account to the Pension Reserve Account, and the Pension is payable from the amount standing to the credit of the Pension Reserve Account.
- 20.20 If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a Non-commutable Pension.

#### **Lifetime Pension (regulation 1.06(2))**

- 20.21 The terms of payment of the Pension must comply with the limitation and requirements of regulations 1.06(2) and 1.07B (subject to the exceptions set out in regulation 1.06(3)) and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with regulation 1.06(2) having regard to the commencement date of the Pension as if those provisions were incorporated into this deed.
- 20.22 The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.
- 20.23 The Trustee must transfer an amount that it considers necessary to pay the Pension from the Pensioner's Pension Account to the Pension Reserve Account, and the Pension is payable from the amount standing to the credit of the Pension Reserve Account.



20.24 If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a Non-commutable Pension.

#### **Market Linked Pension (regulation 1.06(8))**

20.25 The terms of payment of the Pension must comply with the limitations and requirements set out in regulations 1.06(8) and 1.07C and any other provisions of the Relevant Requirements from time to time that relate to a Pension intended to be a Pension paid in accordance with regulation 1.06(8) as if those provisions were incorporated into this deed. If the Pension is one to which regulation 1.06(1B) applies, then the terms of payment of the Pension must comply with the limitations and requirements set out in regulation 1.06(1B) as well.

20.26 The terms of the Pension may include any other terms permitted under the Relevant Requirements for this type of Pension.

20.27 The Pension is payable from the amount standing to the credit of the Pension Account of the Pensioner.

20.28 If the cashing restriction for a Benefit being paid to a Member requires the Pension to be a non-commutable form of income stream, the Pension paid under this clause may only be paid as a Non-commutable Pension.

#### **Other permitted Pensions**

20.29 Any other type of pension permitted by the Relevant Requirements may be paid provided that the terms of the pension comply with the provisions of the Relevant Requirements that set out the specific requirements for a pension of that category.

### **21. TRANSFER IN SPECIE**

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#### **Transfer of investments**

21.1 The Trustee:

- (a) may, with the consent of a Member or the Dependants of a Member to whom a Benefit is payable; and
- (b) must, if required to by clause 22.7,

transfer investments of the Fund of equivalent value instead of paying the whole or part of the amount otherwise payable.

#### **No beneficial interest**

21.2 With the exception of the provisions of clause 7 and this clause 21, no Member or Beneficiary has or may acquire any beneficial or other interest in specific assets of the Fund.

### **22. PAYMENT OF BENEFITS ON DEATH**

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22.1 Following the death of a Member, the Trustee may, and must if required by the Relevant Requirements, pay the Member's Death Benefit in accordance with clause 22.2.

#### **Priority of payment**

22.2 The order of priority for the payment of a Member's Death Benefit is:



- (a) if the Member was in receipt of a Pension that nominated a Reversionary Beneficiary, in accordance with clause 19.6(b);
- (b) to the extent that clause 22.2(a) does not apply, as required by a Binding Death Benefit Nomination in accordance with clause 22.6;
- (c) to the extent that clauses 22.2(a) and 22.2(b) do not apply, as directed by the Death Benefit Guardian in accordance with clause 22.11;
- (d) to the extent that clauses 22.2(a), 22.2(b) and 22.2(c) do not apply, as determined by the Trustee in accordance with clause 22.12; and
- (e) to the extent that clauses 22.2(a), 22.2(b), 22.2(c) and 22.2(d) do not apply, as determined by the Trustee in accordance with clause 22.13.

### **Binding Death Benefit Nomination**

- 22.3 A Member may require the Trustee to pay some or all of their Death Benefit as specified by them by making a Binding Death Benefit Nomination.
- 22.4 A document will be a Binding Death Benefit Nomination if it:
- (a) is signed by the Member;
  - (b) specifies that a Benefit is to be paid to any one or more Eligible Recipients;
  - (c) states the document is binding on the Trustee; and
  - (d) is not in breach of Relevant Requirements.
- 22.5 The Member may stipulate that the Binding Death Benefit Nomination will remain in force for a particular period, but if no period is specified in the Binding Death Benefit Nomination, it does not lapse merely by the passing of time.
- 22.6 The Trustee must pay the Member's Death Benefit to the Nominated Beneficiaries in accordance with the Binding Death Benefit Nomination in the form and on the terms specified in the Binding Death Benefit Nomination unless:
- (a) the Trustee has received a written revocation signed by the Member;
  - (b) the Binding Death Benefit Nomination has lapsed either under the terms of the Binding Death Benefit Nomination or as a result of the operation of the Relevant Requirements;
  - (c) the Nominated Beneficiary has died before the date of the death of the Member;
  - (d) the Trustee considers it would be in breach of the Relevant Requirements if it pays the Benefit in accordance with the Binding Death Benefit Nomination; or
  - (e) a Nominated Beneficiary disclaims the benefit under the Binding Death Benefit Nomination, in which case the Trustee does not need to comply with the Binding Death Benefit Nomination to the extent of the disclaimer.
- 22.7 If agreed by the Trustee and the Member, the Trustee must transfer the agreed assets to the Nominated Beneficiary to satisfy their entitlement under a Binding Death Benefit Nomination in part or in whole.
- 22.8 If any part of a Binding Death Benefit Nomination is invalid, unenforceable or would otherwise cause the Trustee to breach the Relevant Requirements, then that part only of the Binding



Death Benefit Nomination (if possible) will be read down to the extent necessary to avoid the invalidity or unenforceability or to prevent the Trustee from breaching the Relevant Requirements, or alternatively will be deemed deleted and the Binding Death Benefit Nomination will otherwise remain in full force.

### Death Benefit Guardian

22.9 A Member may appoint a Death Benefit Guardian by a document (including a Will) that:

- (a) is signed by the Member;
- (b) nominates a person as their Death Benefit Guardian; and
- (c) is not in breach of Relevant Requirements.

22.10 A Member may stipulate in the document that the appointment of the Death Benefit Guardian will remain in force for a particular period, but if no period is specified, it does not lapse merely by the passing of time.

22.11 The Trustee must pay a Benefit payable on the death of a Member:

- (a) only with the written consent of the Death Benefit Guardian;
- (b) to Eligible Recipients nominated in writing by the Death Benefit Guardian; and
- (c) in the form and on the terms specified by the Death Benefit Guardian (if any),

unless:

- (d) the Trustee has received a written revocation of the appointment of the Death Benefit Guardian signed by the Member before the death or Impaired Capacity of the Member;
- (e) the appointment of the Death Benefit Guardian has lapsed either under the terms of the appointment or as a result of the operation of the Relevant Requirements;
- (f) the Death Benefit Guardian has died or has Impaired Capacity before the date the Death Benefit Guardian consents to or makes a nomination under clauses 22.11(a) or 22.11(b);
- (g) the Eligible Recipient nominated by the Death Benefit Guardian has died before the date of the death of the Member;
- (h) the Trustee would be in breach of the Relevant Requirements if it complies with this clause 22.11;
- (i) the Trustee cannot locate the Death Benefit Guardian within a reasonable time after taking reasonable steps; or
- (j) the Death Benefit Guardian does not consent to or nominate any Eligible Recipients within a reasonable time.

### Discretion

22.12 On the death of a Member leaving Dependants, the Trustee may pay or apply all or any part of the Death Benefit to or for the benefit of Eligible Recipients in whatever proportions as the Trustee determines in its absolute discretion.

22.13 If a Member dies and the Trustee cannot locate any surviving Dependants after reasonable enquiries, the Trustee must pay the Death Benefit to the legal personal representative of that



Member. If the Trustee cannot locate a legal personal representative of that Member after reasonable enquiries, the Trustee may pay the Death Benefit to any person the Trustee considers reasonable in whatever proportions the Trustee determines.

#### **Additional payment on death**

22.14 In addition to the amounts the Trustee pays as a Death Benefit, the Trustee may also pay an additional amount equal to the Tax Saving Amount, where the Trustee is satisfied that the Trustee will be entitled to claim a deduction under section 295-485 of the Tax Act.

### **23. VARIATION OF TRUST DEED**

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#### **Variation**

23.1 The provisions of this deed may be amended by the Trustee by deed, oral declaration or written resolution of the Trustee or of the directors of the Trustee.

#### **Notice**

23.2 The Trustee must, as soon as practicable, advise the Members of the nature and purpose of the amendment and the effect (if any) on their entitlements as required by the Relevant Requirements.

#### **Variation must not reduce Benefits**

23.3 Despite anything to the contrary in this deed, the Trustee must not amend the deed in a way that reduces the accrued benefits of any Member except in circumstances where the variation would not result in any breach of the Relevant Requirements.

#### **Limitation on variations**

23.4 If at any time the Fund is a Regulated Fund this deed must not be amended in any way prohibited by the Relevant Requirements.

23.5 This deed must not be amended in any way to revoke or alter the effect of a Binding Death Benefit Nomination that is binding on the Trustee at the date of the amendment. A Binding Death Benefit Nomination that is binding on the Trustee at the date of the amendment remains binding on the Trustee despite the terms of the amendment to this deed.

23.6 This deed must not be amended in any way to revoke or alter the effect of an appointment of a Death Benefit Guardian with which the Trustee must comply had the Member died at the date of the amendment. The Trustee must continue to comply with it as if the terms of this deed still applied despite the terms of the amendment to this deed.

### **24. WINDING UP OF FUND**

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#### **Election to terminate**

24.1 The Trustee may elect to wind up the Fund at a certain date (**Termination Date**) if:

- (a) there are no further Members remaining in the Fund; or
- (b) the Trustee determines for any reason that the Fund should be wound up.

#### **Procedure on winding up of Fund**

24.2 Where the Fund is to be wound up the Trustee must:





- (a) give written notice to each Member and Beneficiary of the Termination Date;
- (b) arrange to pay or transfer Benefits to or apply on behalf of Members, former Members and Beneficiaries, after deducting the costs of administering and winding up the Fund.

### Exhaustion of Fund

- 24.3 The Trustee will pay Benefits in the following order to the extent that the assets of the Fund permit:
- (a) Benefits to which Members and Beneficiaries are entitled at the Termination Date;
  - (b) the provision of additional Benefits to Members and their Dependants and Beneficiaries as the Trustee in its absolute discretion considers appropriate.
- 24.4 All procedures required by the Relevant Requirements must have been complied with before any payment is made under clause 24.3.

### Duration

- 24.5 Unless previously terminated the trusts constituted by this deed continue for a period of 80 years or any longer period allowed by law.

## 25. DISPUTE RESOLUTION

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- 25.1 This clause 25 applies if a Beneficiary (**Outgoing Member**) gives a Rollover Request and the Trustee does not rollover the Outgoing Member's Benefits in accordance with the Rollover Request within 90 days of the Trustee receiving all things reasonably necessary from the Outgoing Member to process the Rollover Request.
- 25.2 The Outgoing Member can give at least fourteen days' notice in writing to each Member, Trustee and director of any Constitution Corporation that is a Trustee requiring the Trustee to rollover the person's Benefits in accordance with the Rollover Request.
- 25.3 If the Trustee fails to comply with the notice in clause 25.2, the Trustee is deemed to have:
- (a) decided to comply with the Rollover Request; and
  - (b) authorised the Outgoing Member on behalf of the Trustee to do the following to satisfy the Rollover Request in whole or in part:
    - (i) take all steps to sell assets to provide funds; and
    - (ii) transfer in specie the assets to the nominated Rollover Fund.
- 25.4 As security for the performance of the obligations of the Trustee under this clause 25, each Trustee (who is not the Outgoing Member) irrevocably appoints the Outgoing Member as their attorney from the date of this deed to perform all acts, sign all documents and do all things required to be done by that party under this clause 25 or any resulting transaction.
- 25.5 The parties consent to this power of attorney being provided to or registered with any authority and covenant to ratify and confirm everything the attorneys lawfully do or cause to be done in exercising their powers under the power of attorney.
- 25.6 A statutory declaration by the attorney that the requirements of this clause 25 have been satisfied will be conclusive evidence of that fact for the purposes of this agreement.
- 25.7 An attorney appointed under clause 25.4 may act despite any conflict of interest.



## 26. GENERAL

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### Reference to a party

- 26.1 Any reference to a party in this deed includes, and any obligation or benefit under this deed will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.

### Severability

- 26.2 If any part of this deed is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and this deed will remain otherwise in full force.

### Proper law

- 26.3 This deed will be governed and construed in accordance with the laws of the state or territory of the Commonwealth of Australia in which the deed is signed.

SRJ10216028 3471-5838-2861v3





# SCHEDULE 1

## THE FUND

- (a) Name of the Fund: Tom Butler Superannuation Fund
- (b) Original trustee: Metre Investments Pty Ltd ACN 601 839 427
- Date of Trust Deed: 6 December 1999
- Date of establishment: 6 December 1999
- Variations and related trust documents: Nil



## SCHEDULE 2

### Application for membership

#### CONFIDENTIAL

TO: THE TRUSTEE, Tom Butler Superannuation Fund

- I, \_\_\_\_\_, apply for membership of the Fund.
1. I will be bound by the Trust Deed governing the Fund as varied from time to time.
  2. I consent to the Trustee acting as Trustee of the Fund.
  3. I declare that the information in this Application is accurate in every respect.

#### APPLICATION DETAILS

Name:

Address:

Occupation:

Date of birth:

Tax file number: \_ \_ \_ \_ \_

**NOTE:** Your Tax File Number (TFN) is confidential. Before you provide it, you must be told:

1. The Fund is authorised to collect your TFN under the *Superannuation Industry (Supervision) Act 1993* (Cth).
2. If you provide your TFN, it will only be used for lawful purposes. These purposes may change in the future as a result of legislative change.
3. It is not an offence not to provide your TFN. However giving your TFN to the Fund will have the following advantages (which may not otherwise apply):
  - (a) The Fund will be able to accept all types of contributions to your account/s.
  - (b) The tax on contributions to your superannuation account/s will not increase.
  - (c) Other than the tax that may ordinarily apply, no additional tax will be deducted when you start drawing down your superannuation benefits.
  - (d) It will make it much easier to trace different superannuation accounts in your name so that you receive all your superannuation benefits when you retire.
4. If you provide your TFN, the trustee may provide it to:
  - (e) the trustee of another superannuation fund when you transfer your benefits to it, unless you instruct the trustee not to; and
  - (f) the Commissioner of Taxation,but otherwise it will be treated as confidential.

#### DEATH BENEFIT RECIPIENTS

I nominate the following persons as my preferred recipients of my death benefits:

SURNAME(S)	GIVEN NAME(S)	RELATIONSHIP	% OF BENEFIT
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DATED

2019

Signature .....

