

Trust Deed

for

Lambert Family Superannuation Fund

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Important Note:-

This document has been prepared based wholly on written instructions faxed, mailed or e-mailed for the establishment of a self managed superannuation fund. The Trustee(s), Employers, Contributors to the Fund, Members of the Fund should rely on the advice of their own professional advisers concerning the suitability of the attached deed for their own individual circumstances, their structuring of their superannuation affairs; the persons or party who should be appointed as a trustee or trustees; investments which may be undertaken under the superannuation fund and the general administration of a superannuation fund.

THIS DEED is made on the date set forth in the Schedule hereto as the date of making of this Deed

BY The person or persons whose name is set forth in the Schedule hereto beside the words "The Trustee" (hereinafter called "the Trustee" or "the Trustees")

WHEREAS:-

- A. The Trustee wishes to establish an indefinitely continuing superannuation trust fund to provide superannuation benefits for such approved persons who may by application become members of the fund.
- B. The Fund will be a Regulated Superannuation Fund.

1. **THE FUND**

- 1.1 The trust fund constituted by this Trust Deed ("the Fund") shall be called by and be known as the name set forth in the Schedule hereto beside the words "Name of the Fund".
- 1.2 The Fund shall consist of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Deed who shall hold the same on trust for the objects and the purposes of this Deed.

2. **PROPER LAW**

This Deed and the Rules annexed hereto shall in all respects be governed and construed in accordance with the law of the State or Territory set forth in the Schedule hereto beside the words "Law of this Fund".

3. **REQUIREMENTS TO BECOME A REGULATED SELF MANAGED SUPERANNUATION FUND**

- 3.1 If the Initial Trustee of the Fund is a Constitutional Corporation then it shall be a requirement under this Deed that the Trustee shall only be a Constitutional Corporation.
- 3.2 If the Initial Trustee of the Fund is not a Constitutional Corporation then the sole or primary purpose of the Fund is the provision of Old-Aged Pensions.
- 3.3 Where the Trustee is a Constitutional Corporation and the Trustee by a resolution or minute recorded in writing resolves that the sole or primary purpose of the Fund is the provision of Old-Aged Pensions then subject to clause 3.4, the Fund shall have the sole or primary purpose for the provision of Old-Aged Pensions notwithstanding anything to the contrary otherwise provided in this Deed and in such circumstances where the sole or primary purpose of the Fund is the provision of Old-Aged Pensions it shall not be a requirement of this Deed that the Trustee be a Constitutional Corporation.
- 3.4 Where the Trustee is a Constitutional Corporation and the sole or primary purpose of the Fund is the provision of Old-Aged Pensions then the Trustee may by resolution or minute recorded in writing resolve that the requirement that the sole or primary purpose of the Fund is the provision of Old-Aged Pensions no longer applies whereupon it shall be a requirement that the Trustee is a Constitutional Corporation.
- 3.5 A Member and the Trustee must ensure that the Member ceases to be a member of the Fund within six (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 of the Fund or a director of the Trustee unless the requirements of Section 17A of the SIS Act would otherwise be satisfied for the Fund to be a Self Managed Superannuation Fund.

- 3.6 A Member must inform the Trustee if the Member becomes aware that either of the following may occur:-
- (a) the Member intends to enter into an employment relationship with another Member who is not also a relative of the Member; or
 - (b) the Member is likely to be disqualified from being a Trustee of the Fund or a director of the Trustee.
- 3.7 Should a Member enter into an employment relationship with another Member who is not a relative of the Member in question, or becomes disqualified from being a Trustee of the Fund and the Fund would otherwise breach Section 17A SIS Act for the requirements for the Fund to be a Self Managed Superannuation Fund, the Trustee and the Members must undertake within six months from the date of such change in circumstances such action so that:-
- (a) no Member of the Fund is in an employment relationship with another Member who is not a relative of the Member; or
 - (b) no Member of the Fund is disqualified from being a Trustee of the Fund or a director of the Trustee; or
 - (c) such action as may be necessary to ensure that the Fund is a Self Managed Superannuation Fund that complies with Section 17A SIS Act or the Relevant Legislation.
- 3.8 To avoid a breach of clauses 3.5, 3.6 and 3.7:-
- (a) a Member may request the Member's benefits to be paid in accordance with this Deed and the Relevant Legislation or transferred to an Eligible Fund; or
- the Trustee may transfer a Member's benefits in the Fund to an Eligible Fund.

4. **INTERPRETATION**

- 4.1 This Trust Deed shall be read and construed subject to clauses 35.1 and 35.6 (a) of this Deed.
- 4.2 If any clause or part thereof contained in this Deed and the Schedules and Rules forming part of this Deed shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of this Deed including the Schedules and Rules forming part hereof and such invalid clause or part thereof shall be deemed to have been deleted from this Deed.
- 4.3 The headings herein are for reference purposes only and shall not affect the interpretation of the Trust Deed. In this Trust Deed and the Rules annexed hereto, unless the context otherwise requires, the words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa and the following expressions shall have the meanings herein attributed to them:-
- "Account"** means an account established by the Trustee in accordance with this Deed for the administration of the Fund;
- "Account-Based Pension"** means a Pension that meets the standards of SIS Reg's 1.06(9A) and referred referred to in Rule 16 of the Rules.
- "Allocated Pension"** means a Pension Benefit as referred to in Rule 13.2 of the Rules;
- "Ancillary Benefit"** means a benefit not paid as a Pension Benefit or a Lump-Sum Benefit and may include benefits provided under Rules 9 or 10 of the Rules;
- "Annuity"** means an annuity or pension not inconsistent with the requirements of the Relevant Legislation;
- "ATO"** means the Australian Taxation Office or any replacement or corresponding government authority.
- "Beneficiary"** means a person presently and absolutely entitled to receive a Benefit at the relevant time which shall include a Reversionary Beneficiary but shall not unless the context otherwise permits include a person who is then a Member;

"Benefit" or "Benefits" means any amount paid or payable by the Fund to or in respect of a Member or a Member's Spouse in accordance with the provisions of this Deed and the Rules and shall include:-

- (i) Lump-Sum Benefit
- (ii) a Pension Benefit; or
- (iii) an Ancillary benefit (if not paid as a Pension Benefit or a Lump Sum Benefit) under the provisions of this Trust Deed

or any combination of the above in accordance with this Deed and the Relevant Legislation;

"Binding Beneficiary Nomination" means the written direction provided by a Member or Beneficiary directing how the benefits of a Member or a Beneficiary shall be paid after their death which is subject to the Relevant Legislation and the provisions of this Trust Deed binding upon the Trustee.

"Binding Beneficiary Nomination Form" is the form of written direction by a Member to the Trustee for the payment of his or her benefits upon his or her death otherwise referred to in Rule 2.1 of the Rules which subject to the Relevant Legislation is binding upon the Trustee.

"Commissioner" means either the Commissioner of Taxation or the Commissioner of the Australian Prudential Regulation Authority (formerly known as the Insurance and Superannuation Commission) and includes a reference to any person appointed by an Act of Parliament to supervise the conduct of superannuation funds;

"Complying Superannuation Fund" means a complying superannuation fund for the purposes of the Relevant Legislation or a fund which is entitled to concessional taxation treatment as a superannuation fund;

"Compulsory Cashing Age" means 65 years of age or such other age prescribed by the Relevant Legislation for the compulsory cashing of Benefits where the Member is no longer on either a Full-Time Basis or Part-Time Basis Gainfully Employed;

"Contributor" shall mean any person or entity making a contribution on behalf of a Member or Members in accordance with the Relevant Legislation and shall include an Employer or spouse of a Member;

"Constitutional Corporation" means a trading corporation or a financial corporation within the meaning of paragraph 51(xx) of the Commonwealth of Australia Constitution Act;

"Contribution Split Account" has the meaning given to it in clause 11.2(b)(xiii) hereof;

"CPI" shall mean the Consumer Price Index or any replacement index as published by the Australian Statistician or any other official Federal Government authority which is adopted or utilised for the purposes of administering superannuation or the taxation of Benefits under the Relevant Legislation.

"Dependant" is a person who would fall within the class of persons described as Dependents.

"Dependants" means dependants as defined for the purposes of the Relevant Legislation and subject to fulfilling such requirement may include the Spouse (including de facto spouse), widow, widower, or children of a Member or any other person who in the opinion of the Trustee was dependant on the Member at the relevant date;

"Disbursements" means unless the Trustee determines otherwise the costs associated with the establishment, administration, termination and management of the Fund together with Taxation costs and insurance costs of the Fund.

"Eligible Fund" means a superannuation fund, retirement savings account, an Approved Deposit Fund, an Eligible Roll-Over Fund, a roll-over Annuity or any like fund or Annuity or any other entity which the Trustees determine to be an Eligible Fund in respect of which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not be in breach of the Relevant Legislation.

"Eligible Person" means, subject to the requirements of the Relevant Legislation the following which shall be applicable:

- (a) an individual who has not been the subject of a Civil Penalty Order made under the Relevant Legislation and is not otherwise prohibited from acting in the capacity of a Eligible Person under the terms of this Deed;
- (b) an individual who has not died;
- (c) an individual who is not bankrupt or Insolvent Under Administration;
- (d) an individual who has full legal capacity to enter into legal relations;
- (e) an individual who has not been convicted of an offence involving dishonest or fraudulent conduct anywhere in the world which would result in the person being a Disqualified Person;
- (f) an individual whose relationship with other co-trustees is such that the fund would not breach the Relevant Legislation including the requirements for Self Managed Superannuation Funds;
- (g) an individual who is not precluded by the Relevant Legislation from acting as a trustee;
- (h) a company which has not gone into liquidation, receivership or been placed under official management or has not otherwise become Insolvent Under Administration or had a winding up order made against the company; or
- (i) a corporate trustee which is permitted by the Relevant Legislation to act as trustee of the Fund including an Approved Trustee;
- (j) a corporate trustee if all the directors are also Eligible Persons; and
- (k) a corporate trustee if all the directors by virtue of their relationship to each other would not breach the requirements of the Relevant Legislation including the requirements for a Self Managed Superannuation Fund, if applicable.

"Employer" means a Member's Employer or an associate of a Member's Employer who makes contributions to the Fund for and on behalf of a Member in accordance with the Relevant Legislation;

"Exempt Component" has the same meaning as prescribed in the Relevant Legislation for such term applying to the taxation of benefits from a Complying Superannuation Fund and subject to such requirement may include:-

- (a) all non-concessional contributions made to the Fund after July 1, 2007;
- (b) all pre-July 1983 components;
- (c) the CGT exempt component;
- (d) the post-July 1994 invalid component;
- (e) the concessional component; and
- (f) undeducted contributions.

"Family Law Court Order" shall mean a Flagging Order or a Splitting Order made under Part VIII B of the Family Law Act 1975 as amended from time to time or subject to the Relevant Legislation permitting, similar orders made by any other competent Court pursuant to any legislation relating to the transfer or settlement of property arising from a breakdown in a relationship between Spouses or maintenance issues between such parties.

"Family Law Split" shall mean payment splits by reason of a Family Law Court Order, a Splitting Order or a Splitting Agreement.

"Financial Period" means a Financial Year or other period applied by the Trustee to determine the Net Fund/Loss of the Fund.

"Financial Year" means the year ended 30th June unless the Trustee adopts a different financial year which is not in breach the Relevant Legislation.

"Flagging Agreement" shall mean a binding financial agreement incorporating a superannuation agreement in accordance with Part VIII B of the Family Law Act 1975 and otherwise dealing with matters which a Flagging Order would address.

"Flagging Order" shall mean a court order made as a Flagging Order under Part VIII B of the Family Law Act 1975.

"Forfeited Benefits Reserve Account" has the meaning as referred to in clause 11 hereof;

"Full-Time Basis" means a Member who is employed or self-employed on a Full-Time basis within the meaning of the Relevant Legislation;

"Fund Reserve Account" has the meaning as referred to in clause 11 hereof;

"Initial Trustee" refers to the Trustee or Trustees of the Fund referred to in the Schedule of this Deed;

"Lump-Sum Benefit" means a Benefit or any component of it paid otherwise than as a Pension or an Ancillary Benefit;

"Market Linked Pension" means a Pension Benefit as referred to in Rule 14.2 of the Rules;

"Maximum Cashing Age" means the age of 70 years or any other age prescribed by the Relevant Legislation for the compulsory cashing of Benefits where the Member is no longer Gainfully Employed on a Full-Time basis;

"Member" subject to the Relevant Legislation means a person whom the Trustee has admitted as a Member of the Fund and has not ceased being a Member by virtue of clause 6.4 hereof;

"Member's Account" in respect of a Member shall include the net amount then standing to his or her credit in the accounts of the Fund made up of contributions by or on behalf of the Member, contributions made by Contributors, insurance proceeds, monies transferred from Reserves or any amounts transferred to the Fund by or on behalf of the Member plus any Net Fund Income/Loss allocated to that Member less any amounts transferred to a Reserve Account or payments made pursuant to this Deed or pursuant to the requirements of the Relevant Legislation;

"Member's Benefit" in respect of a Member shall include the net amount then standing to his or her credit in the Member's Account plus that proportion of the value (if any) at that time of any policy of insurance which relates to premiums paid out of that Member's Account and which the Trustee has allocated to that Member;

"Member's Maximum Tax Deductible Contribution" shall mean the relevant maximum income tax deductible contribution limit applicable to a Member as prescribed in respect of the relevant Financial Year by the Relevant Legislation.

"Member Spouse" or a "Member's Spouse" shall mean a Spouse of a Member for whom Splittable Contributions, eligible spouse contributions or Payment Split arrangements may be made by a Member or in respect to a Member in accordance with the Relevant Legislation for the benefit of the spouse of such Member.

"Member Spouse Account" shall mean a non-member account in respect of a Member Spouse which shall include the net amount then standing to his or her credit in the accounts of the Fund made up of contribution splits to such accounts by or on behalf of the Member, insurance proceeds, monies transferred from Reserves or any amounts transferred to the Fund by or on behalf of the Member Spouse plus any Net Fund Income/Loss allocated to that Member Spouse less any amounts transferred to a Reserve Account or payments made pursuant to this Deed or pursuant to the requirements of the Relevant Legislation;

"Net Fund Income" means the Net Fund Income/Loss when same is determined to be a positive earnings amount.

"Net Fund Income/Loss" means the net fund income or loss amount which the Trustee in its absolute discretion determines for a Financial Period in accordance with the following formula:-

$NFI/L = (I + Credits) - (Disbursements + Debits)$

Whereas:-

- NFI/L- means the Net Fund Income/Loss determined by the Trustee for the Financial Period.
- I - means income of the fund as determined by the Trustee for the Financial Period which may also include amounts which would otherwise be construed as being of a capital nature and realised and unrealised gains.
- Credits - means such amounts as determined by the Trustee should be credited towards determining the NFI/L including amounts transferred or posted from reserves or other Accounts and may also include insurance proceeds or amounts which may otherwise be of a capital nature.
- Disbursements - has the same meaning as defined in clause 4.3.
- Debits - means such amounts as determined by the Trustee should be debited towards determining the NFI/L including amounts transferred or posted to reserves or other Accounts and may also include Taxes or amounts which may otherwise be of a capital loss nature, whether realised or unrealised, provisions for contingencies and accrued expenses.

"Net Fund Loss" means the Net Fund Income/Loss when same is determined to be a negative earnings amount.

"Nominated Dependant" means a person nominated by a Member as the Nominated Dependant;

"Non-Dependant" is a person or persons who are not Dependents.

"Old-Aged Pensions" or "Old-Aged Pension" has the same meaning as in paragraph 51(xxiii) of the Commonwealth of Australia Constitution Act.

"Part-Time Basis" refers to a Member who is employed or self-employed for at least 10 hours per week or such other number of hours as are prescribed under the Relevant Legislation;

"Pension" means an income stream that is a pension for the purposes of the Relevant Legislation which may take the form of a pension or an Annuity and shall not include a Reversionary Pension unless the Trustee and the Member or the Beneficiary have agreed in writing that the Pension shall be a Reversionary Pension;

"Pension Benefit" means a Pension or any part of which can be paid or provided from the Fund to a Member or Beneficiary in the form of a Pension in compliance with the Relevant Legislation;

"Pension Funding Member" means a Member under the terms of this Deed has made contributions to the Fund or has had contributions made on their behalf and is entitled to a Pension Benefit;

"Pensioner" means a Member who receives or is entitled to receive or who has applied to receive benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of or entitled to receive a Pension;

"Pension Reserve Account" refers to the account described as a Pension Reserve Account in clause 11;

"Permanently and Totally Disabled" subject to the provisions of the Relevant Legislation means -

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member permanently incapable of engaging in full-time work for which he is reasonably fitted by education, training or experience; or
- (ii) where the benefit payable on permanent and total disablement is insured, the definition of permanent disablement contained in the policy document evidencing the contract of insurance;

- (iii) where there is no insurance policy, the physical or mental ill-health of the Member as certified by two registered medical practitioners who certify that, in the opinion of those practitioners, the Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education training or experience;
- (iv) any other circumstances which are acceptable to the Trustee and which are permitted under the Relevant Legislation.

“Preservation Age” shall have the same meaning as prescribed in the Relevant Legislation and subject to fulfilling such overriding requirements shall mean:-

- (a) for a person born before 1 July 1960 – 55 years; or
- (b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years;
- (c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years;
- (d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years;
- (e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years; or
- (f) for a person born after 30 June 1964- 60 years.

“Primary Beneficiary” means a Pension Funding Member who is or may be entitled to a Pension Benefit;

“Relevant Legislation” means the Income Tax Assessment Act, 1936 (C’th), Income Tax Assessment Act, 1997 (C’th), Occupational Superannuation Standards Act, 1987 (C’th), Social Security Act 1991 (C’th), Superannuation Industry (Supervision) Act 1993 (as the case may be) and any regulations made under such legislation and any rules, orders or determinations made pursuant to such legislation and binding as law issued under those Acts and any amending, replacement or additional legislation in respect to superannuation administration, superannuation benefits or superannuation in general which is applicable to the Fund and any reference to the provisions or requirements of the Relevant Legislation means the provisions or requirements of such legislation and the regulations made thereunder and any rules, orders or determinations made pursuant to such legislation and binding as law issued under those Acts which must be complied with in order for the Fund to obtain the maximum income tax concessions available in respect of superannuation or so as to enable the Fund to be deemed a Complying Superannuation Fund;

“Reserve Account” shall be an account set up by the Trustee in accordance with proper accounting standards and practices for contingencies associated with the administration of the Fund and subject to the requirements of the Relevant Legislation, no Member shall be presently entitled to any monies allocated to a Reserve Account.

“Retirement” shall mean subject to any requirements to the contrary contained in the Relevant Legislation:-

- (a) in the case of a person who has reached the Preservation Age that is less than 60 – if:
 - (i) an arrangement under which the member was Gainfully Employed has come to an end; and
 - (ii) the Trustee is reasonably satisfied that the person intends never again to become Gainfully Employed , either on a Full-Time or Part-Time basis; or
- (b) in the case of a person who has attained age 60 – an arrangement under which the member was Gainfully Employed has come to an end on or after the member attained that age.

“Retirement Pre-Requisite Preservation Age” shall mean the Preservation Age where the Trustee must be satisfied of Retirement of the Member prior to the payment of all or part of a Member’s Benefit from the Fund or where the Trustee must be satisfied that the Member has ceased to be Gainfully Employed;

“Revenue Account” has the meaning given to it in clause 11 hereof;

“Reversionary Pension” means a Pension payable to a Beneficiary who succeeds a Member or Beneficiary to the entitlement of the Member or Beneficiary to Pension Benefits.

“Reversionary Pensioner” means a Beneficiary entitled to a Reversionary Pension.

“Reversionary Beneficiary” means a beneficiary who succeeds a Member or Beneficiary and is entitled to a Reversionary Pension;

“Rules” means the Rules contained in the Schedule annexed hereto and any alterations to, additions to or variation thereof made from time to time;

“Self employed” subject to the terms of the Relevant Legislation refers to a Member who is self employed in a business, trade, profession, vocation, calling or occupation;

“SIS Act” refers to the Superannuation Industry (Supervision) Act 1993 (C’th);

“SIS Reg’s” refers to the Superannuation Industry (Supervision) Regulations;

“Segregated Current Pension Asset Account” includes the account(s) referred to in clause 11.2(i);

“Splitting Agreement” shall mean a binding financial agreement incorporating a superannuation agreement in accordance with Part VIII B of the Family Law Act 1975 and otherwise dealing with matters which a Splitting Order would or could address.

“Splitting Order” shall mean a splitting order made by a court under Part VIII B of the Family Law Act 1975.

“Spouse” shall have the same meaning as referred to in the Relevant Legislation and unless contrary to the requirements of the Relevant Legislation or where the Trustee otherwise determines that the SIS Act definition of the term applies in lieu of the following definition, shall also include a person, although not legally married to the Member, cohabits with the Member or had cohabited with the Member immediately prior to the Member’s death on a bona fide domestic basis as husband, wife or lover (including a person who is a Dependant of the Member or was a Dependant at the time of the relevant Member’s death who is lover of the same sex if permitted by or not contrary to the Relevant Legislation) and if at the time of death of the Member there was more than one spouse the Trustee shall have absolute discretion subject to the Relevant Legislation to determine the distribution of the Benefits amongst such spouses including the exclusive payment or vesting in one spouse to the exclusion of another or others.

“Tax” or “Taxes” includes income tax, goods and services tax, surcharges, levies, imposts, duties, penalties associated with any of the foregoing or any similar charges levied or imposed by government which the Trustee determines as being of a taxation nature for the purposes of this Deed and “Taxation” has a corresponding meaning.

“Taxable Component” has the same meaning as prescribed in the Relevant Legislation for such term applying to the taxation of benefits from a Complying Superannuation Fund.

“Taxation Reserve Account” has the meaning given to it in clause 11 hereof;

“Transition to Retirement Pension” means a Pension Benefit as referred to in Rule 15 of the Rules;

“Trust Deed” means this Trust Deed and the Rules annexed hereto or alterations to, additions to or variation thereof made from time to time.

“Trust Law” means primary legislation of a jurisdiction regulating trusts applicable to the Fund and without limiting the above shall include whichever of the Trustee Act 1936 (SA), Trustee Act 1925 (NSW), Trusts Act 1973 (Qld), Trustee Act 1958 (Vic), Trustees Act 1962 (WA), or the Trustee Act 1898 (Tas) as shall apply or any other corresponding or replacement legislation of the Commonwealth, State or Territory legislatures.

“Unconditional Preservation Age” means the age of 60 years or any age prescribed as the Preservation Age by the Relevant Legislation for payment of all or part of a Member’s benefit from the Fund upon the Retirement of the Member where the Trustee does not have to satisfy itself as to the Retirement of the Member upon application for payment of benefits by the Member;

4.4 Unless a contrary intention appears the following terms have the same meanings they have from time to time in the Superannuation Industry (Supervision) Act 1993 and regulations made thereunder:

“Accumulation Interest”
“Actuary”
“Annuity”
“Approved Auditor”
“Approved Deposit Fund”
“Approved Trustee Associate”
“Civil Penalty Order”
“Condition Of Release”
“Beneficiary”
“Constitutional Corporation”
“Disqualified Person”
“Eligible Roll-Over Fund”
“ETP”
“Exempt Business Real Property”
“Flagging Agreement”
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“Gainfully Employed”
“Growth Phase”
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“Retirement”
“Self Managed Superannuation Fund”
“Splittable Contribution”
“Splitting Agreement”
“Splitting Order”
“Superannuation Interest”

and where the plural of such words are used in this Deed then the plural of the above singular forms of definitions shall apply.

5. **DATE OF COMMENCEMENT**

The Fund was constituted on the date hereinbefore mentioned.

6. **ADMISSION AND CESSATION OF MEMBERS**

6.1 Persons who are engaged on a Full-Time Basis or a Part-Time Basis in a business, trade, profession, vocation, calling, occupation or employment OR such persons which the Trustee may otherwise

approve **PROVIDED THAT** the requirements of the Relevant Legislation are satisfied, who wish to become Members shall apply for membership by completing a form of application in a style and format permitted or approved by the Trustee.

- 6.2 All applicants for membership and Members of the Fund shall provide the Trustee with such information that the Trustee may require or demand, including proof of their correct age.
- 6.3 A Member shall inform the Trustee, as soon as practicable, after he ceases:
- (a) to be Gainfully Employed or self employed on a Part-Time Basis after attaining age 65 or such other age as is prescribed under the Relevant Legislation as being the age when benefits must be taken upon ceasing Part-Time employment ; and
 - (b) to be Gainfully Employed or self employed on a Full-Time Basis after attaining age 70 or such other age as is prescribed under the Relevant Legislation as being the age when benefits must be taken upon ceasing Full-Time employment.
- 6.4 A person shall cease to be a Member when:-
- (a) all benefits which are or may be payable in respect of a Member have been paid; or
 - (b) a transfer is made to an Eligible Fund in satisfaction of all the Member's entitlement to Benefits; or
 - (c) the Member's entitlement to Benefits is terminated or forfeited; or
 - (d) where the Trustee shall otherwise reasonably determine in circumstances not otherwise in breach of the Relevant Legislation.
- 6.5 A person shall not be admitted as a Member of the Fund and will not be a Member of the Fund if the admission of that person would result in the Fund not being a Self Managed Superannuation Fund unless:-
- (a) the Fund has an Approved Trustee in accordance with the requirements of the Relevant Legislation; or
 - (b) The Trustee is acting in accordance with Relevant Legislation so that it will comply as a Self Managed Superannuation Fund; or
 - (c) The Trustee has by express resolution resolved that the membership of the fund shall exceed four persons and that the fund shall not be a Self Managed Superannuation Fund and no contrary resolution has been made by the Trustee.

Any contributions received in contravention of this provision shall subject to the Relevant Legislation be deemed to be rejected contributions and shall be held by the Trustee in accordance with clause 7.11 or clause 8.10.

- 6.6 In the case where the Trustee has determined that through representations, omissions or deception that a Member has or is likely to obtain, by reason of their conduct:-
- (a) a greater Benefit than which the Member would have otherwise have been entitled to; or
 - (b) a benefit contrary to the requirements of the Relevant Legislation; or
 - (c) a benefit derived as a result of insurance cover effected by the Trustee;
- the Trustee may, subject to the Relevant Legislation, reduce the Member's Benefit to the amount corresponding with an amount which the member would have been entitled to if the conduct or omission had not occurred or a full and true disclosure had been made to the Trustee or an insurer arranged by the Trustee and the Trustee upon becoming aware of any such representation, omission or deception may notify any insurer for policies or proposed policies to be effected by the Trustee for the benefit of the Member.
- 6.7 The Trustee may at its complete discretion attach conditions to the admittance of a person as a member of the Fund and upon acceptance of the application by the Trustee the person making the application shall be bound by this Trust Deed and the conditions of acceptance in all respects as if he or she were an original party to this Deed.

- 6.8 Notwithstanding the provisions of clause 6.1 the Trustee may admit a person to be a member of the Fund in accordance with the requirements of the Relevant Legislation or provided such form of admission is not contrary to the Relevant Legislation.
- 6.9 The Trustee may accept an application for membership of the Fund from a minor or for a minor duly signed by the parents or legal guardian of the minor and thereafter admit the minor as a Member of the Fund provided the requirements of the Relevant Legislation are satisfied.
- 6.10 Decisions in relation to the minor's membership of the Fund shall be made by the minor's parents or legal guardian until the minor attains the age of eighteen years of age unless such parents or legal guardian after the minor attains sixteen years of age provides notification in writing to the Trustee that the minor will be making decisions in respect to their membership of the Fund and the Trustee is of the opinion that the decisions would be presumptively binding on the minor.

7. **CONTRIBUTIONS ON BEHALF OF A MEMBER**

- 7.1 An Employer, the spouse of a Member or any other person authorised by the Relevant Legislation to make contributions to the Fund for the benefit of a Member or Members (which may include but not limited to another Eligible Fund under contribution split rules or any government body under a superannuation co-contribution scheme), may contribute to the Fund in respect of each Member or a particular Member any amount whatsoever agreed or approved by the Trustee **PROVIDED THAT** such contributions are in accordance with the Relevant Legislation.
- 7.2 At the time of making such contribution, the Contributor shall advise the Trustee of the contribution in respect of each Member, whether the contribution is a Mandated Employer Contribution and such information which the Trustee requests.
- 7.3 Subject to the requirements of the Relevant Legislation any payment of contributions by the Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.
- 7.4 The Trustee may accept an in specie contribution of an asset from a Contributor provided that the Trustee is satisfied that the contribution is made at an arms length market value and the requirements of the Relevant Legislation are otherwise satisfied and such contribution shall be deemed to be a contribution to the Fund on behalf of one or more Members as directed by the Contributor.
- 7.5 Provided the requirements of the Relevant Legislation are satisfied and subject to the Trustee consenting in writing prior to any transactions being entered into, a Contributor may purchase assets directly in the name of the Trustee of the Fund and the consideration paid by the Contributor shall be deemed to be a contribution to the Fund on behalf of one or more Members as directed by the Contributor.
- 7.6 The Trustee shall refuse to accept contributions where to accept such contributions would constitute a breach of the Relevant Legislation or the Trustee is of the opinion that such a contribution would breach the Relevant Legislation.
- 7.7 The Trustee may accept contributions in such manner, which complies with the requirements of the Relevant Legislation.
- 7.8 The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to clause 8.1 hereof from the Member's Salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice thereof.
- 7.9 Provided the requirements of the Relevant Legislation are satisfied, the Trustee may reject any contribution amount, tendered to the Trustee without being bound to give any reason for its rejection, and may return to the Contributor, any contribution which in the Trustee's opinion, could detrimentally affect the Fund's ability to comply with the Relevant Legislation and furthermore the Trustee may reject any contribution which in the Trustee's opinion exceeds the Member's

Maximum Tax Deductible Contribution or any other relevant threshold prescribed by the Relevant Legislation or the Income Tax Legislation.

- 7.10 The Trustee may request information or documentary evidence from a Contributor to ensure the Contributor is eligible to contribute to the Fund or for any other reason where the Trustee is of the opinion that the information provided in the application for Membership by the Member is deficient.
- 7.11 Where the Trustee rejects contributions from a Contributor pursuant to this Deed the Trustee subject to the requirements of the Relevant Legislation may hold such rejected contributions amounts in a separate trust in the capacity as a bare trustee for the Contributor or the person otherwise entitled to the amounts and such amounts shall not form part of the Fund.
- 7.12 Subject to clause 7.13 a Contributor is not bound to make any contribution to the Fund.
- 7.13 The Trustee may as a condition of being admitted as an Employer of the Fund stipulate conditions that the Employer as a Contributor will make contributions to the Fund to fund a proposed Benefit and upon admittance of the person or entity as an Employer of the Fund the Employer shall thereafter be bound to make contributions to the Fund as long as the relevant Member or Members is or are in the Gainful Employment of the Employer Contributor.
- 7.14 If a participating Employer Contributor amalgamates with another participating Employer Contributor or disposes of its business to another participating Employer Contributor, members who were employees of the former participating Employer Contributor are deemed to have become employees of the latter participating Employer Contributor, which can then make contributions in respect of them.

8. CONTRIBUTIONS BY MEMBERS FOR MEMBERS & MEMBER SPOUSES

- 8.1 Each Member may contribute to the Fund such amount as is agreed upon between the Member and the Trustee PROVIDED THAT the contribution is in accordance with the requirements of the Relevant Legislation.
- 8.2 A Member is not bound to make any contribution to the Fund unless the Member is bound under the terms of their admission to the Fund as a Member to make such contributions to the Fund for the purposes associated with the provision of a Pension Benefit or alternatively a separate contributions agreement is entered into between the Member as a Contributor and the Trustee.
- 8.3 At the time of paying the Member's contribution to the Trustee, the Member shall advise the Trustee of the contribution in respect of the Member.
- 8.4 Subject to the requirements of the Relevant Legislation any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the insurance company or investment manager.
- 8.5 The Trustee may accept an in specie contribution of an asset from a Member which may include a Listed Security or Exempt Business Real Property provided that the Trustee is satisfied that the contribution is made at an arms length market value and the requirements of the Relevant Legislation are otherwise satisfied.
- 8.6 Provided the requirements of the Relevant Legislation are satisfied and subject to the Trustee consenting in writing prior to any transactions being entered into, a Member may purchase assets directly in the name of the Trustee of the Fund and the consideration paid by the Member shall be deemed to be a contribution to the Fund for the Member. Any contributions made under this sub-clause must also comply with sub-clause 8.1.
- 8.7 The Trustee shall refuse to accept contributions where to accept such contributions would constitute a breach of the Relevant Legislation.

- 8.8 Provided the requirements of the Relevant Legislation are satisfied, the Trustee may reject any contribution amount, tendered to the Trustee without being bound to give any reason for its rejection, and may return to the Contributor, any contribution which in the Trustee's opinion, could detrimentally affect the Fund's ability to comply with the Relevant Legislation and furthermore the Trustee may reject any contribution which in the Trustee's opinion exceeds the Member's Maximum Tax Deductible Contribution or any other relevant threshold prescribed by the Relevant Legislation or the Income Tax Legislation.
- 8.9 The Trustee may request information or documentary evidence from a Contributor to ensure the Contributor is eligible to contribute to the Fund where the Trustee is of the opinion that the information provided in the application for Membership by the Member is deficient.
- 8.10 Where the Trustee rejects contributions from a Contributor pursuant to this Deed the Trustee subject to the requirements of the Relevant Legislation may hold such rejected contributions amounts in a separate trust in the capacity as a bare trustee for the Contributor or the person otherwise entitled to the amounts and such amounts shall not form part of the Fund.
- 8.11 A Member may in a financial year apply to the Trustee to roll over, transfer or allot an amount of benefits, for the benefit of the Member's Spouse, that is equal to an amount of a Splittable Contribution made by, for, or on behalf of the Member in:
- (a) the last financial year that ended before the application; or
 - (b) the financial year in which the application is made – where the member's entire benefit is to be rolled over or transferred in that year.
- 8.12 An application by a Member for the purposes of the preceding sub-clause must specify, in the application, the amount of the benefit from the following:-
- (a) the Member's Taxed Splittable Contributions;
 - (b) the Member's Untaxed Splittable Contributions;
- that the Member seeks to split for the benefit of the Member's Spouse.
- 8.13 The Trustee may accept an application for Splittable Contributions provided all the following conditions are satisfied:-
- (a) the requirements of the Relevant Legislation which may include subregulation 6.44 of the SIS Reg's are met;
 - (b) the Trustee has no reason to believe that should a statement be provided by the Member's Spouse certifying the following is incorrect:-
 - (i) the Member Spouse is less than the Preservation Age; or
 - (ii) the Member's Spouse is aged between the relevant Preservation Age and 65 years of age and the Member's Spouse satisfies item 101 Conditions of Release set out in Schedule 1 of the SIS Reg's or as otherwise provided in the Relevant Legislation.
 - (c) the amount to which the application relates is not more than the Maximum Splittable Amount for the relevant financial year.
- 8.14 A Trustee that accepts an application for Splittable Contributions must as soon as practicable, and in any case within 90 days after receiving the application, roll over, transfer or allot the amount of the Benefits for the benefit for the Receiving Spouse.
- 8.15 If the application for Splittable Contributions requests a split of Untaxed Splittable Contributions the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the Undeducted contributions that would form part of the ETP that would be payable if the Member withdrew their entire Member's Benefit at the time of the Trustee giving

effect to the application or otherwise such other amount in accordance with the Relevant Legislation or as provided in the Relevant Legislation generally.

- 8.16 If the application for Splittable Contributions requests a split of Taxed Splittable Contributions the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the taxed element of the post-June 83 component that would form part of the ETP that would be payable if the Member withdrew their entire Member's Benefit at the time of the Trustee giving effect to the application or otherwise such other amount in accordance with the Relevant Legislation or as provided in the Relevant Legislation generally.
- 8.17 The Trustee may also accept contributions from a Member as non-concessional contributions from the proceeds of the sale of small business assets which may include concessional or exempt capital gains tax components under the Income Tax Legislation.
- 8.18 A Member if permitted by the Relevant Legislation may request the Trustee to pay any extra tax liability imposed by the ATO as a result of an employment termination payment received by the Trustee in excess of employment termination caps which may be imposed under the Relevant Legislation and the Trustee may debit the account of the Member for the additional tax paid.

9. INVESTMENTS

- 9.1 The Trustee may invest the whole or any part of the monies or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee in exercising its absolute discretion thinks fit and without limiting the generality of the foregoing either directly or indirectly:-
- (a) in investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
 - (b) in the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
 - (c) any mortgage, charge or other security on real property, personalty or leasehold property even though the amount of the loan may exceed such amount which a trustee may be empowered to make as an authorised investment under the Trust Law;
 - (d) on deposit with any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustee, in its absolute discretion, determines **PROVIDED THAT** the Trustee may not loan any part of the monies or assets of the Fund to Members or shall not invest in "In-House Assets" within the meaning of the Relevant Legislation or otherwise loan or invest monies if to do so would result in the Fund not complying with the Relevant Legislation;
 - (e) in shares, stock, options, debentures, bonds, unsecured notes, instalment warrants, hot warrants, bills of exchange, promissory notes, derivatives, or other securities of any company or financial institution carrying on business in Australia or elsewhere in the world;
 - (f) in units or sub-units of any unit trust and in bills of exchange and other negotiable instruments;
 - (g) the purchase or acquisition of any personal property including but not limited to any choses in possession, chattels of any kind, stock, goods, plant, machinery, inventory stock-in-trade, patents, choses in action, trade marks, registered designs and copyrights or any interest in them wheresoever situated in the world;
 - (h) without limiting the operation of any other power specified in this clause, acquire, purchase vend, sell or invest in jewellery, artworks, antiques, coins, stamps, vintage cars, wines or any form of collectable.
 - (i) the granting, acquisition, entering, assignment, transfer or surrender of leases, sub-leases, licenses, sub-licenses or options over real property or personal property or any interest in respect to any of such property;

- (j) acquire a direct or indirect interest in any business anywhere in the world;
- (k) any partnership or joint venture provided the interest in the partnership or joint venture does not contravene the Relevant Legislation; or
- (l) invest in shares in any company or units or interests in any trusts where any Member or any Part 8 Associate of a Member of the Fund is a director, shareholder, unit holder or trustee provided that the in-house asset requirements of the Relevant Legislation or any other requirement of the Relevant Legislation is not breached;
- (m) any form of investment which would not breach the Relevant Legislation,

PROVIDED THAT the proportion of Fund assets invested in any single investment shall be limited to the amount provided for in the Relevant Legislation, if any, in order for the Fund to comply with the Relevant Legislation and **PROVIDED FURTHER THAT** the investments made by the Trustee shall not breach or contravene the Relevant Legislation.

- 9.2 The Trustee shall not invest in In-House Assets if to do so would result in the Fund not complying with the Relevant Legislation.
- 9.3 The Trustee shall invest in a manner that shall not contravene the Relevant Legislation.
- 9.4 The Trustee may hold an interest in a part of any such investment and shall have power to vary, transpose and replace such investments in such manner as it, in its absolute discretion, thinks fit, without being responsible for loss occasioned by so varying, transposing or replacing.
- 9.5 Upon a Member being admitted as a Member or at any time whilst a Member or Beneficiary remains a Member or Beneficiary of the Fund, that person may complete a Request (a "Member-Choice Investment Request") that the Trustee make the specific investment specified in the Member-Choice Investment Request. The Member-Choice Investment Request shall contain the following details:
- (a) the particulars of the said specific investment;
 - (b) the terms and conditions upon which the specific investment is to be made;
 - (c) the amounts to be invested in the specific investment;
 - (d) an acknowledgment by the Member or Beneficiary that the Trustee has an absolute discretion to accept or reject any investment specified in a Member-Choice Investment Request without giving any reasons for the making of its decision; and
 - (e) such other matters as determined by the Trustee.
- 9.6 The Trustee may in its sole and absolute discretion accept the Member-Choice Investment Request **PROVIDED:**
- (a) the amounts specified to be so invested and the Trustee's estimated costs of acquiring the investment shall not exceed the Member's Benefit at the date of the investment adjusted to take into account such reserves and contingencies and other factors that the Trustee may in its sole and absolute discretion determine appropriate;
 - (b) such specific investments are within the powers conferred by Clause 9 and the other provisions of the Deed;
 - (c) such specific investments are in accordance with the investment strategy or strategies formulated by the Trustee;
 - (d) such form of investment shall not be prohibited by the relevant Legislation.
- 9.7 Upon accepting or rejecting the Member-Choice Investment Request, the Trustee shall inform the Member or Beneficiary of its decision forthwith, and where the Trustee has accepted the Request the Trustee shall thereupon acquire the specific investment upon the terms specified therein.
- 9.8 A Member or Beneficiary may submit a further request (a Request for a Variation) by which he/she requests the Trustee to vary or dispose of any specific investments already made by the Trustee