

Superannuation Trust Deed for a Self-Managed Fund

G P Whyte Superfund

The Trustee named in the Schedule
and

The Members named in the Schedule

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Superannuation Trust Deed For A Self-Managed Fund

BETWEEN

THE TRUSTEE NAMED IN SCHEDULE 2

(Trustee)

AND

THE MEMBERS NAMED IN SCHEDULE 2

(Members)

Background

- A. The Members wish to establish the Fund and have requested the Trustee to act as trustee of the Fund.
- B. The Trustee has agreed to act as trustee of the Fund.
- C. The Members have agreed to be the first members of the fund.
- D. The Fund is to be an indefinitely continuing self managed superannuation fund under the *Superannuation Industry (Supervision) Act 1993*.
- E. The parties have entered into this Deed to give effect to their common intentions.

THIS DEED WITNESSES

1. Definitions

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

Annuity means what it means under superannuation law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Corporation means a constitutional corporation under superannuation law.

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

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

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

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

Doctor means a registered medical practitioner.

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

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

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

Employer means what it means under superannuation law.

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

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

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

Excess contributions means contributions by or on behalf of a Member which exceed the annual cap amounts for concessional contributions and non-concessional contributions as defined in sections 292-20 and 292-85 respectively of the Tax Act.

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

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

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

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

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

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

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

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

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

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

Market Value has the same meaning as in section 10(1) of the SIS Act.

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

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

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

Non-Member spouse means a person who is:

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

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

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

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

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

Pension account means a pension account established under clause 8.3.

Pension age means what it means under superannuation law.

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

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

Preserved benefit has the same meaning as preserved payment benefit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tax Act 1936 means the *Income Tax Assessment Act 1936*.

Tax Act 1997 means the *Income Tax Assessment Act 1997*.

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

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

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

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

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

Unclaimed benefits means benefits described as 'unclaimed money' under superannuation law.

Unrestricted non-preserved benefit means what it means under superannuation law.

Withdrawal benefit means the minimum benefit that must be paid to a Member on withdrawal from the Fund under superannuation law. To the extent that a Member's contributions have been applied towards an endowment or whole of life policy, the Member's withdrawal benefit is the surrender value of that policy.

2. Fund establishment

2.1 Establishment and purpose of the Fund

- 2.1.1 The Trustee and the Members hereby establish the Fund as a self-managed superannuation fund under the SIS Act by executing this Deed and with effect from the Fund establishment date. It is an indefinitely continuing superannuation fund.
- 2.1.2 Where the Trustees are individuals, the sole or primary purpose of the fund is to provide old age pensions to the Members on their retirement. Where the Trustee is a constitutional corporation, the sole or primary purpose of the fund is to provide old age pensions and other benefits to the Members on their retirement.

2.2 Trustee of the Fund and decisions

- 2.2.1 The initial Trustee is named in Schedule 2 of this Deed. The Trustee accepts the appointment. The Fund is vested in the Trustee. No other person (including a Member) has any legal or beneficial interest in any asset of the Fund except to the extent expressly stated elsewhere in this Deed. The Trustee must manage the Fund in accordance with this Deed.
- 2.2.2 Subject to clause 2.2.3, if there is more than one Trustee they must act jointly.
- 2.2.3 Where the Trustees are individuals, any Trustee may call a meeting of Trustees by providing 7 days' written notice to each of the other Trustees at their address listed in Schedule 2 (or to any other address of a Trustee if that Trustee has informed each of the other Trustees of the other address). The following rules apply to any such meeting:
- (a) Unless agreed to by all the Trustees, the meeting may only be within business hours;
 - (b) A Trustee may attend the meeting by phone;
 - (c) A quorum for the meeting will be all the Trustees, and if all the Trustees are not in attendance within 15 minutes after the scheduled time the meeting will be adjourned for 5 business days, to be held at the same time of day (adjourned meeting);
 - (d) At the adjourned meeting, the quorum of Trustees will be those Trustees in attendance; and
 - (e) At any meeting, if the Trustees are unable to reach a decision unanimously or by majority then decisions will be made by poll, with each Trustee having the number of votes equal to the nearest dollar figure (rounded up) representing the value of the benefits of the Member whom that Trustee represents.
- 2.2.4 Where the Trustee is a constitutional corporation, the Trustee may only make decisions under this Deed in the manner set out in the Trustee's constitution.

2.3 Deed subject to superannuation law

- 2.3.1 This Deed is to be interpreted so as to comply with superannuation law. In particular, it is to be construed so that the Fund it establishes qualifies as a self-managed superannuation fund and qualifies for concessional tax treatment under the *Tax Act*. To the extent that anything in this Deed is inconsistent with superannuation law, it is to be severed from the Deed. Any obligation imposed by superannuation law in respect of the Fund established by this Deed that is not expressed in this Deed is nonetheless to be regarded as incorporated in it by reference.
- 2.3.2 The Trustee must not do or fail to do anything as Trustee of the Fund that would result in either of the following:
- (a) A breach of law, including superannuation law; or
 - (b) The Fund ceasing to qualify as a self-managed fund under superannuation law or to qualify for concessional tax treatment under the *Tax Act*.

3. Membership

3.1 Initial Members

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

3.2 Additional Members

- 3.2.1 The Trustee may appoint a person as an additional Member of the Fund if he or she has completed and signed a Member application form, or if the Trustee has otherwise accepted the person as a Member.
- 3.2.2 If the Trustee is a constitutional corporation, then the additional Member agrees to do all things necessary to become a director of the Trustee including by providing an executed consent to act in the required form and such other documents as are required by superannuation law.
- 3.2.3 If the Trustees are individuals, the additional Member must become a Trustee and must provide an executed form of consent and such other executed documents as are required by superannuation law for that purpose. This must occur when the person becomes a Member, unless the additional Member is unable to become a Trustee or director of a Trustee under superannuation law.
- 3.2.4 On written request by the Trustee, a Member or applicant for Membership of the Fund must supply the Trustee with information that the Trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the Trustee.
- 3.2.5 If a Member fails to do so, the Trustee may refuse to accept further contributions in respect of that Member may decline to accept the applicant as a Member.
- 3.2.6 Subject to clause 3.7, the Trustee must not accept a person as an additional Member of the Fund unless each of the following conditions is met:
- (a) The total number of Members would be no more than 4;
 - (b) The person is not disqualified from being a Trustee or a director of the Trustee of the Fund;

- (c) The person is not in an employment relationship with another Member of the Fund except another Member who is also a relative of that person; and
- (d) The Trustee is satisfied that the person will become a Trustee or a director of the Trustee of the fund on being accepted as Member of the Fund.

3.2.7 An additional Member becomes bound by this Deed as if he or she were an initial party to this Deed.

3.2.8 An additional Member's Membership commences on the date the Trustee specifies when accepting the person as a Member. If no date is specified, the additional Member's Membership commences on the date the Trustee accepts his or her application.

3.3 Date of additional Member's commencement as Trustee

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

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

3.3.2 Where the Trustee is a constitutional corporation, an additional Member becomes director of the Trustee on the date his or her Membership commences.

3.4 Membership Conditions and Disclosures

3.4.1 The Trustee may impose any conditions the Trustee thinks fit on the Membership of a Member and a Member's rights and duties. The Trustee may remove or vary any condition at any time.

3.4.2 Either before, or as soon as practicable after a person becomes a Member of the Fund (and not later than 3 months after the person becomes a Member), the Trustee must ensure that the Member is given a product disclosure statement (in the form set out in Schedule 1, updated as required) which the superannuation law requires to be given to new Members of the Fund.

3.4.3 The Trustee must ensure that Members, former Members and beneficiaries are provided with information in writing, or copies of accounts, records and documents of the Fund, that the superannuation law requires them to be given.

3.4.4 As soon as practicable after a person ceases to be a Member of the Fund, the Trustee must ensure that that person (or his or her legal personal representative) is given a written statement of the information the superannuation law requires to be given to persons who cease to be Members of the Fund.

3.4.5 A dependant of a Member is not entitled to any additional information relating to the operation or conduct of the Fund which the Trustee thinks it is inappropriate to disclose.

3.5 Membership and Fund compliance

3.5.1 A Member must immediately inform the Trustee if the Member becomes aware that either of the following may happen:

- (a) The Member may enter into an employment relationship with another Member who is not also a relative of the Member; or
- (b) The Member may be disqualified from being a Trustee or a director of the Trustee of the Fund.

3.5.2 A Member and the Trustee must ensure that the Member ceases to be a Member of the Fund within 6 months after either of the following happens:

- (a) The Member enters into an employment relationship with another Member who is not also a relative of the Member; or
- (b) The Member is disqualified from being a Trustee or a director of the Trustee of the Fund.

3.5.3 If a Member of the Fund enters into an employment relationship with another Member who is not also a relative of the Member, or becomes disqualified from being a Trustee or a director of the Trustee of the Fund, the Trustee and the Members must do whatever is necessary to ensure that, within 6 months after the Member entered into the employment relationship or became disqualified:

- (a) No Member of the Fund is in an employment relationship with another Member who is not also a relative of the Member; and
- (b) No Member of the Fund is disqualified from being a Trustee or a director of the Trustee of the Fund.

3.5.4 The types of things that may be done to ensure compliance include each of the following:

- (a) A Member may request the Member's benefits or entitlement in the Fund to be paid in accordance with this Deed or to be transferred or rolled over to an approved benefit arrangement under clause 13.9; or
- (b) The Trustee may transfer the Member's benefits or entitlement in the Fund to an eligible roll over fund under clause 13.9.

3.6 Ceasing to be a Member

3.6.1 A person ceases to be a Member of the Fund as soon as the first of the following happens:

- (a) The person dies;
- (b) The person ceases to be a Trustee or a director of the Trustee of the Fund;
- (c) When payment of all the Member's benefits is made to the Member or to an approved benefit arrangement for the Member; or
- (d) When benefits payable to or for the Member cease to be payable.

3.6.2 When a person ceases to be a Member of the Fund, the person ceases to be a Trustee or director of the Trustee of the Fund (as applicable), if he or she has not already ceased to act in that role.

3.7 Minor as a Member

3.7.1 A minor, being a person who is under 18 years of age, may be a Member of the Fund provided the superannuation law is complied with. In relation to a Member who is a minor:

- (a) The minor's parent or guardian must make the application for the minor to become a Member in the form set out in Schedule 3 or in the form otherwise approved by the Trustee; and
- (b) Decisions in relation to the minor's membership must be made by the minor's parent or guardian until:
 - (i) the minor turns 18; or
 - (ii) after the minor turns 16, the time at which the parent or guardian notifies the Fund that the minor will be making decisions in relation to the minor's membership.

- 3.7.2 When the minor turns 18, if the Trustees are individuals then the minor becomes a Trustee of the Fund or, if the Trustee is a constitutional corporation, then the minor becomes a director of the Trustee of the Fund provided that the Trustee and the Member have done everything necessary to appoint that Member as a director of the Trustee.

4. Fund accounts

4.1 Trustee must establish certain types of account

The Trustee must establish:

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

4.2 Accumulation Accounts

4.2.1 The Trustee may credit (and in the case of clause (k), must allot and credit) each of the following to the accumulation account of a Member according to the class to which they are relevant:

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

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

- (a) The proportion that the Trustee thinks appropriate of the expenses of the Fund;

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

4.3 Contributions-split requests

- 4.3.1 A Member may ask the Trustee (in a way that satisfies the requirements of superannuation law) that contributions made to the Fund in respect of that Member in the previous financial year be:
 - (a) Allotted to the accumulation account of that Member's spouse; or
 - (b) Rolled-over or transferred to the Trustee of an approved benefit arrangement of which that Member's spouse has joined or is eligible to join.
- 4.3.2 The Trustee must allot, roll-over or transfer the relevant contributions pursuant to a request received under clause 4.3.1 provided:
 - (a) The request satisfies the requirements of superannuation law;
 - (b) The Trustee is satisfied that the allotment, roll-over or transfer complies with superannuation law; and

- (c) The amount of the contributions that the Trustee allots, rolls-over or transfers does not exceed the amount in the Member's accumulation account, taking into account any amount that the Trustee otherwise determines to debit from the Member's accumulation account.

4.4 Income Account

- 4.4.1 The Trustee may credit each of the following to the income account of the Fund:
 - (a) Income and profits of the Fund;
 - (b) Adjustment credits made in accordance with clause 4.4.3;
 - (c) The proceeds of an insurance policy which the Trustee decides not to credit to a Member's or beneficiary's accumulation or pension account;
 - (d) A surplus resulting from a valuation under clause 4.6.3;
 - (e) Financial assistance received by the Fund under section 23 of the SIS Act which the Trustee decides not to credit to a Member's or beneficiary's accumulation or pension account; and
 - (f) Any other amount the Trustee thinks it appropriate to credit.
- 4.4.2 The Trustee may debit each of the following to the income account of the Fund:
 - (a) The expenses of the Fund, except those the Trustee debits from a Member's or beneficiary's accumulation or pension account;
 - (b) Tax payable or likely to become payable in respect of contributions, shortfall components, or income and profits of the fund, except tax the Trustee debits from a Member's or beneficiary's accumulation or pension account;
 - (c) Adjustment debits made in accordance with 4.4.3;
 - (d) The cost of an insurance policy which the Trustee decides not to debit from a Member's or beneficiary's accumulation or pension account;
 - (e) A deficiency resulting from a valuation under clause 4.6.3 ;
 - (f) The amount of a levy, except an amount the Trustee debits from a Member's or beneficiary's accumulation or pension account;
 - (g) Any loss on the disposal of an investment of the fund; and
 - (h) Any other amount the Trustee thinks appropriate to debit.
- 4.4.3 At the end of each Fund year, the Trustee must determine the Fund earning rate.
- 4.4.4 When determining a Fund earning rate in respect of a period (whether at the end of a Fund year or on an interim basis):
 - (a) The Trustee must allocate amounts from the income account to each accumulation or pension account in proportion to the amount standing to the credit of that account at the beginning of the relevant period;
 - (b) The Trustee must make an appropriate adjustment for any amount credited or debited to the account since the beginning of the relevant period; and
 - (c) The Trustee may take into account the need for any provision or reserve for future contingencies and, instead of crediting that amount to an accumulation or pension

account, credit that amount to the equalisation account or reserve (if permitted by superannuation law).

4.5 Equalisation Account

4.5.1 The Trustee may establish an equalisation account which the Trustee may use for any of the following purposes:

- (a) To give effect to the reserving strategy the Trustee establishes to smooth the investment earnings of the Fund;
- (b) To increase the Fund earning rate;
- (c) To pay the expenses of the Fund;
- (d) To pay tax payable by the Fund;
- (e) To provide for any contingencies;
- (f) To provide an amount to or for a Member, former Member, pensioner, beneficiary, including adding to an accumulation or pension account, provided there is no breach of superannuation law; or
- (g) To do anything else the Trustee decides to do, provided there is no breach of trust or superannuation law.

4.5.2 The Trustee may credit the equalisation account with any of the following:

- (a) The portion the Trustee thinks fit of an amount paid into the Fund as a transfer or roll over payment;
- (b) An amount transferred from the forfeiture account under clause 11.4;
- (c) An amount transferred from a pension account under clause 8.3; or
- (d) Any other amount the Trustee thinks it appropriate to credit.

4.5.3 The Trustee may debit the equalisation account with any of the following:

- (a) An amount necessary to give effect to the purposes set out in clause 4.5.1; or
- (b) Any other amount the Trustee thinks it appropriate to debit.

4.6 Accounts – General Provisions

4.6.1 The Trustee must make provision for the payment of any tax payable in relation to the taxable income of the Fund and must deduct any tax that is payable and that has not already been deducted from the income account or an accumulation or pension account.

4.6.2 The Trustee may establish or maintain any other account for or reserve of the Fund that the Trustee thinks necessary or desirable or that is required or permitted by superannuation law. The Trustee may use such accounts or reserves for any purpose permitted by superannuation law and may credit or debit amounts from such accounts or reserves as the Trustee sees fit.

4.6.3 The Trustee must value the assets of the Fund at the end of each Fund year, when superannuation law requires it, and when the Trustee thinks it appropriate to do so. The Trustee must also determine whether there is a surplus or deficiency which it is equitable in the Trustee's opinion to transfer to the income account.

- 4.6.4 If the Trustee is required to establish an interim Fund earning rate, clause 4.4.4 applies and the Trustee must do so in accordance with any requirements imposed by superannuation law and on a basis the Trustee believes to be equitable. If the Regulator or superannuation law requires it, the Trustee must inform Members of that basis.
- 4.6.5 The Trustee may only credit or debit accounts established in respect of the Fund in the manner permitted by this Deed provided that superannuation law does not prohibit in any way any such amounts from being so credited or debited.

5. Contributions

5.1 Types of Contributions

- 5.1.1 With the Trustee's consent, a Member may make any contributions to the Fund that the Member decides to. The Trustee and Member may agree that contributions can be paid by deduction from wages or salary.
- 5.1.2 An employer of a Member may make any contributions to the Fund in respect of that Member with the Trustee's and the Member's consent.
- 5.1.3 With the consent of the Trustee and the Member, any other person including:
- (a) A spouse of that Member;
 - (b) Another Member;
 - (c) Another Trustee of a regulated superannuation fund (including pursuant to a contributions-split requested by the Member's spouse); and
 - (d) Any State, Territory or Federal government (including under the Federal government's co-contribution scheme) may make contributions to the Fund in respect of that Member.

5.2 Making contributions

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

5.3 Failure to contribute

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

5.4 Unacceptable contributions

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

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

5.4.3 If excess contributions are made to the Fund by or in respect of a Member, then the Trustee may:

- (a) release funds to the Member if the Trustee has received a Member release authority; and
- (b) release funds to the Commissioner of Taxation where the Trustee has received an ATO release authority.

5.4.4 If the Trustee becomes aware that a contribution or shortfall component has been accepted in breach of clause 5.4.1 or 5.4.2, the Trustee must refund the amount within any time specified by superannuation law. However, the Trustee may deduct each of the following from that amount:

- (a) Any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
- (b) Reasonable administration charges; and
- (c) Any amounts on account of amounts of tax for which the Fund may be liable.

5.4.5 The Trustee may reduce the benefits of the Member to those which the Member would have had if the contribution or shortfall component had not been accepted.

5.5 Allocation of contributions

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

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

5.6 Reduction of contributions by employer

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

5.7 Contributions and tax

- 5.7.1 Either the Trustee or the employer or other appropriate body must deduct any tax that is payable in relation to any contribution or shortfall component before it is credited to the Member's accumulation account.
- 5.7.2 The Trustee must make provision for any surcharge or other amount that is payable under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and related legislation, and must deduct the amount from the relevant contributions.

6. Investment**6.1 Investments - General**

- 6.1.1 The Trustee must invest any assets of the Fund that are not required for payment of benefits or other amounts under this Deed. The Trustee must do so in accordance with the current investment strategy or strategies. The following are the types of investment in which the assets may be invested:
- (a) Investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia;
 - (b) Securities in any company incorporated anywhere, whether carrying on business in Australia or not;
 - (c) Deposit (whether secured or not) with a bank, friendly society, building society, credit co-operative, Trustee company, or other registered financial institution;
 - (d) Real or personal property, including an improvement to that property;
 - (e) Units (including sub-units) in a unit trust established or situated anywhere in the world) by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant;
 - (f) Futures, options or any other synthetic investment;
 - (g) Hedging, swapping or any similar arrangement, even though it is not linked to any property of the Fund;
 - (h) Deposit (whether secured or not) with, or loan (whether secured or not) to, any person (including an employer) on any terms the Trustee thinks reasonable. The fact that the Trustee has a direct or indirect interest in the deposit or borrowing or may benefit directly or indirectly from it is irrelevant;
 - (i) A policy or annuity with an insurer, whether by proposal or purchase;
 - (j) Limited recourse borrowing or receipts;
 - (k) By way of a limited recourse borrowing arrangement in accordance with clause 13.6; and
 - (l) Any other investment allowed by superannuation law that the Trustee thinks appropriate.
- 6.1.2 The Trustee must not invest in any investment that is not permitted by superannuation law. The Trustee must not make an investment in the form of a loan or other financial assistance to a Member or a relative of a Member.
- 6.1.3 The Trustee must formulate one or more investment strategies for the Fund. The Trustee must inform Members and beneficiaries of the strategies adopted by the Trustee. The Trustee may review and change a strategy at any time. The Trustee must monitor the strategies to ensure that they remain appropriate.
- 6.1.4 The Trustee must consider, as part of the investment strategies, whether to hold a contract of insurance that provides insurance cover for one or more members of the Fund.
- 6.1.5 The Trustee must review regularly the investment strategies for the Fund.
- 6.1.6 The Trustee may sell, transfer or vary any investment at the Trustee's absolute discretion in accordance with this Deed. The Trustee must do so in the interests of Members and

beneficiaries. The Trustee must monitor the investments to ensure that they remain appropriate.

6.2 Investment choice

- 6.2.1 The Trustee may decide to allow one or more Members or beneficiaries to choose between investment strategies. If the Trustee does, the Trustee must establish a range of investment strategies, and may designate particular assets for those strategies. The Trustee must provide the Members or beneficiaries with information concerning the strategies and the relevant investment objectives to enable the Member or beneficiary to choose between them on an informed basis. The Trustee must also provide them with information concerning their rights under this Deed.
- 6.2.2 A Member or beneficiary who has been offered investment choice by the Trustee may choose one or more of the strategies prepared by the Trustee by completing any documents the Trustee requires. On having done so, the Member or beneficiary may direct the Trustee to invest any part of the Fund that is held for that person in accordance with those strategies. Any direction must be in accordance with superannuation law.
- 6.2.3 A Member or beneficiary who has directed the Trustee to invest any part of the Fund that is held for that person in accordance with those strategies may not direct the Trustee to invest in any particular investment. However, the Member or beneficiary may request the Trustee to develop an investment specific strategy and to make it available to that Member or beneficiary. The Trustee may accept or reject the request.
- 6.2.4 The Trustee must monitor any strategies adopted by Members or beneficiaries for investment choice to ensure that they remain appropriate for the Members or beneficiaries to whom they are available.
- 6.2.5 If a Member adopts a strategy for investment choice, the Trustee must do each of the following:
- (a) Establish a sub-account of the income account in respect of that strategy;
 - (b) Credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the income account itself;
 - (c) Allocate earnings (which may be positive or negative) attributable to that strategy to the Member's or beneficiary's accumulation account or pension account in a way that the Trustee thinks equitable; and
 - (d) Determine an earning rate for that sub-account, in the same manner as the Trustee determines a Fund earning rate, in which case clause 4.4.4 applies to that determination.
- 6.2.6 The Trustee may sell, transfer or vary any investment made in accordance with a strategy for investment choice, at the Trustee's absolute discretion in accordance with this Deed. The Trustee must do so in the interests of the relevant Members or beneficiaries. The Trustee must monitor the investments to ensure that they remain appropriate.

7. Benefits - general

7.1 Preserved and non-preserved benefits

- 7.1.1 The Trustee must not pay out to a Member or a dependant of a Member any preserved payment benefit that superannuation law does not allow the Trustee to pay out.
- 7.1.2 The Trustee may pay a Member or, if applicable, a dependant of a Member, a preserved payment benefit in any of the following circumstances:

- (a) The Member reaches the relevant preservation age and takes a transition to retirement pension in accordance with clause 8;
- (b) The Member retires from gainful employment on or after reaching the relevant preservation age;
- (c) The Member becomes totally and permanently disabled;
- (d) The Member becomes totally and temporarily disabled;
- (e) The Member reaches age 65;
- (f) The Member dies; or
- (g) Any other circumstance allowed by superannuation law.

7.1.3 With the Trustee's consent, a Member may withdraw any part of the non-preserved amount in the Member's accumulation account. The Member must apply to the Trustee in writing for the withdrawal in a form acceptable to the Trustee. The Trustee may set a minimum withdrawal amount by notifying the Members of the Fund.

7.1.4 A Member's benefit entitlement will vest in accordance with superannuation law. The Trustee must cash or commence to cash a Member's benefit entitlement as soon as practicable after the Member dies. If a lump sum is payable, the Trustee may pay it in several stages: an initial payment and then subsequent payments.

7.2 Payments – general

7.2.1 If a Member ceases to be, or is about to cease as, a Member of the Fund, the Trustee may pay an amount that the Trustee thinks appropriate from the equalisation account (if any) into the Member's accumulation account.

7.2.2 Where the Trustee is to make a payment because a Member has died (a death benefit), the Trustee may pass on to the recipient of that payment any benefit that would accrue to the Fund if a deduction were allowed under section 295-485 of the *Income Tax Assessment Act 1997*.

7.2.3 If a Member or beneficiary requests it, the Trustee may retain any part of a benefit in the Fund. The Trustee may do so until one of the following occurs:

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

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

7.2.4 If a Member or beneficiary is entitled to a benefit which includes an interest in an insurance policy, the Trustee may assign that policy to the Member or beneficiary, or to any of the dependants of the Member the Trustee thinks fit. The Trustee must debit the value of the policy to the relevant accumulation or pension account. Neither the Trustee nor an employer is liable for any further payment of premiums in relation to the policy.

7.2.5 On written request by the Trustee, an applicant, Member or beneficiary must supply the Trustee with information that the Trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the Trustee. If an applicant, Member or beneficiary fails to do so, the Trustee may suspend collection of

contributions in respect of that person, may withhold benefits from that person, and may impose conditions on the person, as the Trustee thinks fit.

- 7.2.6 The Trustee may adjust any benefit payable to or in respect of a Member if an applicant, Member or beneficiary has supplied false or misleading information to the Trustee, or has deliberately withheld information from the Trustee, that affects or is likely to affect the Fund or benefits payable to or in respect of that Member.

8. Pensions - general

8.1 Funding and payment of pensions

- 8.1.1 When any benefit becomes payable to a Member under this Deed or in accordance with superannuation law, the Trustee has a discretion to decide whether to pay from any part of the benefit one or more pensions to the Member or to use the benefit payable to acquire one or more annuities in the name of the Member. The pensions or annuities will be in substitution for the relevant part of any lump sum benefit that was payable to the Member for the amounts credited to the Member's pension account as a transfer of a roll over payment under clause 8.3.2.
- 8.1.2 The Trustee must obtain an actuarial certificate in accordance with superannuation law in relation to any pension that the Trustee decides to pay, unless either section 295-390 (or any other provision) of the Tax Act provides otherwise in which case the Trustee has a discretion as to whether to obtain an actuarial certificate.
- 8.1.3 The Trustee may fund a person's pension by purchasing an annuity payable to the Trustee.

8.2 Type of pensions

The relevant Member or beneficiary may choose the type of pension that is to be paid, including a transition to retirement pension. However, the pension must be of a type that is allowed by superannuation law or is acceptable to the Regulator. It may include a pension wholly determined by reference to policies of life assurance purchased or obtained by the Trustee of a regulated superannuation fund solely for the purposes of providing benefits to Members of that fund. The pension must be paid in accordance with the requirements of the superannuation law.

8.3 Pension account

- 8.3.1 If the Trustee decides to pay a pension to a person in accordance with this Deed, the Trustee must establish a pension account in the name of that person.
- 8.3.2 The Trustee may credit each of the following amounts to the person's pension account subject to superannuation law:
- (a) The amount the Trustee believes necessary to fund the pension;
 - (b) The amount paid into the Fund in respect of the pensioner as a transfer or roll over payment which the Trustee thinks it appropriate to credit to that account;
 - (c) Earnings of the Fund which the Trustee thinks it appropriate to credit to that account;
 - (d) A shortfall component paid in respect of the pensioner;
 - (e) Contributions lawfully paid in respect of the relevant Member;
 - (f) Adjustment credits made in accordance with clause 4.4.3;
 - (g) The proceeds of an annuity or insurance policy effected by the Trustee in respect of the pensioner which the Trustee thinks it appropriate to credit to the account;

(h) Financial assistance under section 23 of the SIS Act which the Trustee thinks it appropriate to credit to the account; and

(i) Any other amount the Trustee thinks it appropriate to credit to the account.

8.3.3 The Trustee may debit each of the following amounts to the person's pension account subject to superannuation law:

(a) The proportion that the Trustee thinks appropriate of the expenses of the fund;

(b) The proportion that the Trustee thinks equitable of any negative earnings of the Fund determined in accordance with clauses 4.4.3, 6.2.5 or 8.4.1;

(c) The proportion of the loss on the disposal of investments of the Fund that the Trustee thinks equitable;

(d) Amounts transferred from the Fund in respect of the pensioner as a transfer of a roll over payment which the Trustee thinks it appropriate to debit to the account;

(e) Payments made to or in respect of the pensioner or a reversionary beneficiary under this Deed;

(f) The cost of an insurance policy or annuity effected by the Trustee in respect of the pensioner which are not debited from the Member's accumulation account;

(g) The proportion of any tax payable in respect of the pension account, or the earnings of the Fund that are credited to the pensioner's account or which arise from a roll over payment that the Trustee thinks equitable;

(h) The proportion of an amount paid in respect of an indemnity to the Trustee or other person under this Deed that the Trustee thinks equitable;

(i) The amount of a levy that the Trustee thinks equitable;

(j) An amount transferred to the accumulation account of a beneficiary; and

(k) Any other amount that the trustee thinks it appropriate to debit from the account.

8.4 Pensions – general

8.4.1 In determining the amount standing to the credit of an accumulation account at the time a benefit or pension is calculated or becomes payable, the Trustee must make an adjustment to the account that the Trustee thinks equitable on the basis of the interim fund earning rate determined by the Trustee as at that date. Clause 4.4.4 applies to that determination and that determination must be made in respect of the period from the beginning of the current Fund year to the relevant date. The income account must be credited or debited accordingly.

8.4.2 The Trustee may segregate from other assets those assets which are to fund the pension of a person under this Deed. The Trustee must value those assets at least annually. If they are insufficient or more than sufficient to fund the pension, the Trustee must do anything that superannuation law requires. The Trustee must obtain any certificate of adequacy that the Trustee considers necessary in respect of those assets in order to comply with the *Tax Act* or superannuation law.

8.4.3 On the death of a pensioner being paid a pension, if the pension is not commuted or transferred in accordance with this Deed, the Trustee must pay any residue in the pension account in any way permitted by superannuation law.

8.5 Trustee's general right to commute pensions

8.5.1 On written request by a pensioner, or in accordance with superannuation law or this Deed, the Trustee may commute any part of a pension to a lump sum, and pay it to the relevant person or his or her legal personal representative. The following general conditions apply in respect of all types of pension:

- (a) The commutation must be allowed by, and be in accordance with, superannuation law; and
- (b) The commutation must not disadvantage the Fund, an employer, a Member, a pensioner or a reversionary beneficiary.

8.5.2 If the Trustee commutes only part of a pension to a lump sum, the Trustee must then adjust the amount of the pension payable as required by superannuation law.

8.6 Qualification of pensions as asset test exempt income streams

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

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

9. Death, disability and retirement benefits**9.1 Death benefit payments**

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

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

9.2 Death benefit

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

9.3 Death benefit agreement payment arrangements

- 9.3.1 On the death of a Member or beneficiary who has a death benefit agreement:
 - (a) the death benefit agreement prevails over clause 9.4 and over any binding death benefit notice or non-binding nomination form;
 - (b) the Trustee must pay, or apply, the relevant benefit in accordance with the rules set out in the death benefit agreement; and
 - (c) clause 10 of this Deed applies to the payment of the relevant benefit.

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

9.4 Binding Death Benefit Notice Payment Arrangements

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

9.5 Non-Binding Death Benefit Notice Payment Arrangements

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

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

9.6 Death of Member or former Member

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

9.7 Discharge of Trustee

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

9.8 Total and permanent disablement benefit

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

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

9.9 Temporary total disablement benefit

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

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

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

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

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

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

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

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

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

9.10 Retirement benefits

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

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

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

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

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

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

10. Payment of benefit

10.1 Notice of payments and claims

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

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

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

10.1.3 If a person makes a claim out of time to an entitlement to a benefit, the Trustee is not bound to make any payment to that person.

10.1.4 The Trustee must give the Regulator a statement of any unclaimed benefits and must pay them to the Regulator as required by superannuation law.

10.2 Payments – general

10.2.1 Either the Trustee or an insurer or other appropriate body must deduct any tax that is payable in relation to a benefit before that benefit is paid.

10.2.2 The Trustee may send a benefit to the postal address that the person entitled to it has last notified to the Trustee, or to the bank account into which that person has asked the benefit to be paid, or to some other place the Trustee decides on.

10.2.3 A person to whom a benefit becomes payable must notify the Trustee of his or her full residential address, and of any change in that address. He or she must also notify the Trustee of a bank account into which he or she asks the benefit to be paid.

10.2.4 On request by the Trustee, a person to whom a benefit is paid must give the Trustee a receipt and release for the payment in the form required by the Trustee.

10.3 Person under legal disability

10.3.1 If a person to whom the Trustee is to pay any part of a benefit is under a legal disability, or the Trustee believes that it would be in that person's best interests for the Trustee not to make the payment to that person, the Trustee may make the payment in any of the following ways as the Trustee thinks fit:

- (a) To or for the maintenance, education, advancement, support or benefit of the person on any conditions; or
- (b) To, and for the benefit of, another person who appears to the Trustee to be any of the following: the Trustee, spouse, child, parent or guardian of the person, or a person having custody of that person.

10.3.2 The receipt by a person of a payment in accordance with clause 10.3.1 discharges the Trustee from liability in relation to it. The Trustee is not responsible for seeing to its application.

10.4 Transfer of assets

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

11. Forfeiture of benefit entitlements

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

11.1 Forfeiture account

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

11.2 Circumstances of forfeiture

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

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

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

11.3 Forfeiture of residue

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

11.4 Application of forfeiture account

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

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

11.5 Limit in relation to payments to Member or dependants

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

11.6 Possible adjustment to entitlements

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

12. Provisions relating to the *Family Law Act***12.1 Payment splits**

- 12.1.1 If the Trustee receives a splitting agreement or court order under Part VIII B of the Family Law Act, then provided the agreement or court order has been properly served and subject to superannuation law, the Trustee may:
- (a) Vary the relevant Member's benefit or benefit entitlement on such bases (including by commutation of any pension having regard to the advice of an actuary) and at any time the Trustee determines from time to time, to the extent permitted by superannuation law; and
 - (b) Make a payment to the non-Member spouse or a transfer in respect of the non-Member spouse in accordance with clause 12.3.
- 12.1.2 The Trustee may as it determines from time to time subject to superannuation law, make rules dealing with:
- (a) The valuation of a non-Member spouse's benefit or benefit entitlement (including any adjustments);
 - (b) The timing of the calculation of the non-Member spouse's benefit or benefit entitlement; or
 - (c) Other matters relating to the payment split or the non-Member spouse's benefit or benefit entitlement.
- 12.1.3 If the Trustee is required by superannuation law or considers that it is appropriate to defer giving effect to a payment split, then provided the splitting agreement has been served properly, the Trustee must:
- (a) Record the existence of the agreement or court order; and
 - (b) Keep a record of the non-Member spouse's benefit or benefit entitlement on such basis (including a notional basis) and in such manner as the Trustee determines from time to time subject to superannuation law.

12.2 Flagging agreements

- 12.2.1 If the Trustee receives a flagging agreement or court order under Part VIII B of the Family Law Act, then provided the agreement or court order has been properly served, the Trustee must:
- (a) Record the existence of the agreement or court order; and
 - (b) Defer payment of the benefit to or in respect of the relevant Member until the agreement or court order is lifted.

12.3 Transfer of non-Member spouse interests

- 12.3.1 If the Trustee receives a splitting agreement or court order under Part VIII B of the Family Law Act, the agreement or court order has been validly served, then if any amount becomes payable in respect of the non-Member spouse under that agreement or order:
- (a) The Trustee must pay that amount to the non-Member spouse – if the non-Member asks for that payment in writing; or
 - (b) The Trustee must transfer that amount to another fund (including an eligible rollover fund) in respect of that non-Member spouse if the non-Member asks for that transfer in writing.

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

12.4 Refusal to admit as Member

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

13. Trustee's powers

13.1 Powers and discretion

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

13.2 Delegation of power and directions

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

13.3 Specific powers

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

13.4 Limit on borrowing

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

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

13.5 Trustee may grant security over asset

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

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

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

13.6.1 The Trustee may borrow or maintain a borrowing of money in any one or more of the following cases:

- (a) to enable the Trustee to pay a surcharge or advance instalment which the Trustee is required to pay under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* – as long as the borrowing complies with section 67(2A) of the SIS Act;
- (b) to enable the Trustee to settle a transaction to acquire any one or more of the securities listed in section 67(3)(a) of the SIS Act – as long as the borrowing complies with all of the requirements of section 67(3) of the SIS Act;
- (c) under an arrangement (a "limited recourse borrowing arrangement") which the Trustee enters, or has entered into, in which the money borrowed is, or has been, used to acquire an asset that superannuation law allows the Trustee to acquire – as long as the borrowing complies with Part 7 of the SIS Act.

13.6.2 Clause 13.6.1 does not limit the circumstances in which the Trustee may borrow or maintain a borrowing of money.

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

13.7 Insurance

13.7.1 The Trustee may arrange one or more insurance policies with one or more insurers to secure the benefit of a Member. A policy may be a group policy or an individual policy.

13.7.2 The Trustee is not bound to arrange one or more insurance policies, except where the Trustee has informed the Member or beneficiary that the Trustee will arrange a policy of a specified type and amount and the Member or beneficiary has not asked the Trustee in writing not to do so, or has withdrawn his or her request for the Trustee to arrange that policy. Even so, the Trustee is not bound to arrange a policy that the Trustee is unable to arrange.

13.7.3 If an insurer will only insure a Member or beneficiary on conditions that are inconsistent with the conditions in respect of a benefit payable in respect of the Member or beneficiary, the Trustee may impose the policy conditions on that benefit despite the conditions stated in this Deed.

13.8 Powers – general

13.8.1 The Trustee may exercise any power under this Deed or at law despite the fact that the Trustee has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise.

- 13.8.2 A Trustee and any director of the Trustee must disclose a conflict of interests of the type described in clause 13.8.1 in accordance with superannuation law.

13.9 Benefits transfers

- 13.9.1 On written request by a Member or beneficiary, the Trustee may transfer to the Trustee of an approved benefit arrangement any part of the amount in the Fund that represents the Member's or beneficiary's benefit or benefit entitlement (including any amount in a pension account). The Trustee may only do so if the following conditions are met:
- (a) The Member or beneficiary is eligible to join or has joined the arrangement;
 - (b) The Trustee is satisfied that the transfer complies with superannuation law; and
 - (c) The amount the Trustee transfers must not exceed the amount in the Member's or beneficiary's accumulation account, except to the extent of any amount that the Trustee decides to add to that account from the equalisation account (if any) under clause 4.5.
- 13.9.2 The Member or beneficiary must complete and execute any documents required by the Tax Act for the transfer to be completed as a roll over payment. A receipt from the approved benefit arrangement discharges the Trustee from all liability in respect of the amount transferred. The Trustee is not responsible for seeing to the application of that amount by the approved benefit arrangement. On completion of the transfer, the Member or beneficiary (and anyone entitled to claim in any way in respect of that person) ceases to have any rights against the Trustee or the Fund in respect of the relevant amount.
- 13.9.3 The Trustee may transfer to the Trustee of an approved benefit arrangement that is a successor fund to the Fund under superannuation law any part of the amount in the Fund that represents a benefit entitlement. The consent of the Member or beneficiary is not required. Nor is it necessary that the Member already be a Member of the successor Fund.
- 13.9.4 In accordance with superannuation law, the Trustee may transfer to an eligible roll over fund any part of the amount in the fund that represents a Member's or beneficiary's benefit entitlement. The Trustee must do so if superannuation law requires it.
- 13.9.5 With the consent of a Member or beneficiary to whom or in respect of whom a transfer is to be made under this clause 13.9, the Trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the Member or beneficiary or to the Trustee of the relevant approved benefit arrangement.
- 13.9.6 The Trustee may take over or acquire by transfer from an approved benefit arrangement any part of the assets of that arrangement that represent the interest of a participant in that arrangement who has become or is to become a Member or beneficiary of the Fund. The Trustee will hold the amount on trust for that person in the relevant accumulation or pension account. The person will have rights in respect of that amount that are equivalent to the rights he or she had under the approved benefit arrangement. The Trustee may decide that the person is to be treated as having been a Member of the Fund from the time he or she became a Member of the approved benefit arrangement.

14. Fund Administration

14.1 Dealing with money received

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

- 14.1.1 Deposited to the credit of the Fund in an account kept with a bank, friendly society, building society, or other similar body chosen by the Trustee or otherwise invested in accordance with clause 6;

14.1.2 Paid to the credit of an insurer for the payment of premiums in relation to a policy of insurance effected by the Trustee for the purposes of the Fund; or

14.1.3 Paid into the trust account of a lawyer, accountant or investment manager appointed in accordance with this Deed.

14.2 Money and other assets to be kept separate

The Trustee must ensure that money and other assets of the Fund are kept separate from those held by the Trustee personally and not for the Fund's members.

14.3 Effect of receipts

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

14.4 Employers to provide information to Trustee

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

14.5 Compliance

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

14.6 Trustee may not charge fees

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

14.7 Trustee entitled to be reimbursed for expenses

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

14.8 Trustee to keep records and accounts

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

14.9 Trustee to collect money owing to the Fund

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

14.10 Trustee to keep records, accounts, books etc

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

14.11 Documents to be prepared

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

14.11.1 A statement of its financial position;

14.11.2 An operating statement; and

14.11.3 Any other account or statement required by superannuation law.

14.12 Assets to be valued at Market Value

When preparing the documents set out in clause 14.11 the Trustee must ensure that the Fund's assets are valued at their Market Value.

14.13 Annual return

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

14.14 Audit

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

14.15 Disclosure requirements

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

- 14.15.1 Employers;
- 14.15.2 The Regulator;
- 14.15.3 The actuary (if one is appointed);
- 14.15.4 The auditor; and
- 14.15.5 Any other person.

14.16 Availability of books and records

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

14.17 Availability of Deed and documents

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

14.18 Appointment of auditor

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

14.19 Appointment of actuary

The Trustee may appoint as actuary of the Fund:

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

14.20 Appointment of administration manager, investment manager, custodian

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

14.21 Superannuation law to be observed

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

14.22 Trustee may remove person from office

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

14.23 Trustee not bound by advice

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

14.24 Liability of the Trustee is limited

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

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

14.25 Liability of the Trustee is limited

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

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

14.26 Indemnity

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

14.27 Other persons who may act

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

- (a) The legal personal representative of a deceased Member, from the date of the Member's death until the Member's death benefits begin to be paid;

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

14.27.2 If there is no person willing and able to act as Trustee, including on account of the death of all Members, the legal personal representative of the last surviving Member may make more appointments under clause 14.27.1.

14.28 Continuity of office

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

14.29 Appointment of Trustee

- 14.29.1 The Trustee will determine who acts as Trustee in accordance with this Deed and superannuation law for the Fund to continue as a self-managed superannuation fund and will take the necessary steps to appoint or remove the persons or body to or from the office of Trustee. The Trustee may accept the Trustee's resignation in writing for this purpose.
- 14.29.2 The appointment or removal of a Trustee must be in writing and must immediately be advised to any other Trustee.
- 14.29.3 Where the Trustee is unable or unwilling to determine who will act as Trustee then the majority of Members of the Fund will determine who will act as Trustee. If there are no Members in the Fund, the former Members of the Fund (or their legal personal representatives) will determine who acts as Trustee of the Fund.

15. Miscellaneous

15.1 Winding-up

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

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

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

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

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

15.2 Legal rights of Member not affected by this Deed

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

15.3 Variation

15.3.1 The Trustee may vary this Deed either prospectively or retrospectively. The Trustee may do so by written resolution or Deed. If superannuation law requires it, the Trustee must promptly give a certified copy of the resolution or a copy of the Deed to the Regulator.

15.3.2 The Trustee does not have power to vary this Deed so as to do either of the following:

- (a) Adversely alter the rights of a Member to accrued benefits or the amount of those accrued benefits that arise before the variation is effected; or
- (b) Reduce the amount of any other entitlement that is or may become payable in relation to a time before the date of the variation.

15.3.3 However, clause 15.3.2 does not apply if the reduction is necessary to enable the Fund to comply with superannuation law or if each affected Member, or the Regulator, consents in writing to the reduction.

15.3.4 The Trustee also does not have power to vary this Deed in a way that would have either of the following effects:

- (a) Unless the Trustee is a corporation, altering the purpose of the Fund so that it is no longer solely or primarily the provision of old age pensions under superannuation law; or
- (b) Unless the sole or primary purpose of the fund is to provide old age pensions to Members, allowing any person except a corporation to be appointed Trustee of the Fund.

15.3.5 If superannuation law requires it, the Trustee must inform Members and beneficiaries in writing of the nature and purpose of the variation and its effect on their entitlements or rights. The Trustee must do so in accordance with superannuation law.

15.4 Dispute resolution

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

15.5 Interpretation

A reference in this Deed to:

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

15.5.5 A clause, schedule or appendix is reference to a clause, schedule or appendix in or to this Deed;

15.5.6 This or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;

15.5.7 The singular includes the plural and vice versa; and

15.5.8 A gender includes the other gender.

15.6 Proper law

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

Schedule 1

Form of Product Disclosure Statement

The Product Disclosure Statement begins on the next page

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