

**SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993**

**DEED OF TRUST**

**OF**

**HARPER SUPER FUND**

**VICTORIA**

**THIS DEED WAS DRAWN BY  
GRIMM & GRIMM  
SOLICITORS**

**FOR**

**ABBOTS  
1ST FLR, 225 BRIDGE ROAD  
RICHMOND VIC 3121  
PO Box 384, RICHMOND VIC 3121  
PH: (03) 9427 8888 FAX: (03) 9427 7888**

**THIS TRUST DEED** is made on the date set out in Schedule A hereto against "Date Of Execution of this Deed" **BETWEEN** the person(s) whose name and address are set out in Schedule A against "Name and Address of Original Member(s)" (in this Deed called "the Original Member") **AND** the person the name and address of which are set out in Schedule A against "Name and Address of Trustee(s)" (in this Deed called "the Trustee")

**WHEREAS**

The Original Member wishes to establish a superannuation fund for the provision of benefits for the Original Member and for such other persons as become members of the Fund or for their dependants and the Trustee has agreed to act as the trustee of the superannuation fund named in Schedule A (hereinafter called "the Fund")

**NOW THIS DEED WITNESSES**

that the Parties hereto hereby verify the establishment of the superannuation Fund to be known by the name set out in Schedule A to this Deed which commenced on the Commencement Date set out in the said schedule and subject to the following provisions:

**INTERPRETATION**

1 In this Trust Deed unless the context otherwise requires:

"Accumulation Benefit" means a benefit which is not a Defined Benefit

"Accumulation Member" means a Member in respect of whom the Fund makes provision for Accumulation Benefits.

"Act" means the Superannuation Industry (Supervision) Act 1993 and Regulations thereunder (each as amended) and includes any Act which comes into force to govern the conduct of superannuation funds regulated thereunder and any Act which imports whether partly or totally the relevant provisions of the Act as enacted or as amended.

"The Age" means the minimum retirement age at which the Act provides for benefits to be payable without attracting restrictions for early retirement and where such age is specified in relation to a benefit or a Member as an age other than 55 the applicable age shall be deemed to be substituted wherever the expression is used.

"Amend" includes alter, delete, extend, substitute for and modify and "Amendment" has a corresponding meaning.

"Annual Review Date" means the Date of Commencement and the first day of July each year subsequent thereto or such other date as determined by the Trustee to be applicable generally or in the case of any particular Member.

"Auditor" means an Approved Auditor.

"Award" means an industrial award or registered industrial agreement, the Superannuation Guarantee (Administration) Act 1992 or the provisions of any legislation regulations agreement or order, pursuant to which an Employer of an Employee is required to make contributions to a superannuation fund for the benefit of that Employee and may include an agreement which in the opinion of the Trustee is similar to or in substitution for an Award.

"Award Account" means an account, established in respect of a Member and maintained in accordance with the applicable requirements of the Act relating to Award contributions.

"Award Balance" in relation to a member means the aggregate of the Award Accounts (if any) in respect of that Member.

"Award Contributions" means contributions paid to the Fund and required to be made by an Employer under Superannuation Guarantee Legislation or an Award applying to the Member and the Employer and includes similar contributions paid to another superannuation fund, Approved Deposit Fund or roll-over fund from which an agreed sum or agreed assets are transferred to the Fund.

"Category" means the category of membership, if any, nominated as applicable to a particular member or group of Members.

"Commissioner" means the Australian Prudential Regulation Authority or such other regulatory body as shall from time to time have responsibility for the administration of superannuation funds and includes the Commissioner of Taxation or the Australian Prudential Regulation Authority where appropriate.

"Date of Commencement" means the date of commencement of the Fund as set out in Schedule A.

"Death Benefit" means the Death Benefit set out in Schedule B in respect of the Member, or Category of Member as the case may be.

"Defined Benefit" means a benefit which in the opinion of the Trustee is defined in terms of either or both salary or service (as an Employee or a Member),

"Defined Benefit Member" means a Member in respect of whom the Fund provides for a Defined Benefit.

"Early Retirement Date" means

- (a) where paragraph (b) does not apply, the Member attaining The Age; or
- (b) where the Employer and the Member, or if there is no Employer-sponsor in respect of the Member, the Trustee and the Member, agree in writing any date before the Member attains The Age.

"Eligibility Criteria" means the requirements for eligibility for membership set out in Schedule B of this Deed.

"Employee" means a person to whom a wage, salary or remuneration is paid by an Employer and shall include every director of an Employer and any person in respect of whom a Compulsory Superannuation Benefit or Award Contribution has to be provided.

"Employer" means the Employer from time to time in relation to any Member or former Member and refers to the relevant Employer by whom that person is or was employed, or any person obliged to make a contribution in respect of the Member by the Superannuation Guarantee legislation.

"Employer Account" means an account, established in respect of a Member and to which Employer contributions other than award contributions are credited.

"Employer Contributions" means contributions made by an Employer, other than Award Contributions.

"Employer Funded Balance" in relation to a particular Member means

- (a) where the Member is an Accumulation Member, the aggregate of the balances of all the Employer Accounts in respect of that Member, and
- (b) where the Member is a Defined Benefit Member, the Member's equitable share of the Fund Account as determined by the Actuary less that proportion which is fully vested in the Member.

"Employer-sponsor" means an employer that has agreed to or is obliged to contribute in respect of a member.

"Excluded Fund" means a fund with less than five members that is a complying fund either as a Self Managed Superannuation Fund or an APRA Supervised Entity.

"Flagged Interest" means the interest in the entitlement of a Member which in specified circumstances may be held for the benefit of another named person, whether a member or not, pursuant to a Court Order or formal agreement.

"Fund" means the superannuation fund hereby established and the investments and income from time to time of all the accounts created within the Fund;

"Fund Account" means the account, if any, established in respect of the Fund for reserves or for funding defined benefits.

"Fund Service" means in relation to a Member as at a particular date the period commencing on the date the Member was most recently admitted as a Member of the Fund, or a Category of the Fund as the case may be, and ending on the particular date, increased by further periods (if any) that the Trustee in its absolute discretion may determine and at the absolute discretion of the Trustee may exclude any period during which contributions by and in respect of the Member are cancelled or deferred.

"Investment Instruction" means an instruction to the Trustee

(a) by a Member or Members, or

(b) if the instruction relates only to the Member's contributions, by the relevant Member or Members

that the Trustee invest separately in respect of certain Members, or Categories of Members.

"Investment Manager" means such corporate investment manager or such combination of corporate investment managers as the Trustee in its absolute discretion shall determine.

"Legislation" means the Superannuation Entities (Taxation) Act 1987 and includes the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Consequential Amendments Act 1993, the Superannuation (Resolution of Complaints) Act 1993, the Superannuation (Financial Assistance Funding) Levy Act 1993, the Superannuation (Rolled -Over Benefits ) Levy Act 1993, the Superannuation Supervisory Levy Amendment Act 1993, the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Supervisory Levy Act 1991 and the Income Tax Assessment Act (all as amended from time to time and including the Regulations made in relation to each of them) and includes the Act and any Acts and regulations which govern the conduct of superannuation funds and which import or affect whether partly or totally the relevant provisions of the said Acts as enacted or as amended. Words defined in the Legislation shall have the same meanings in this trust deed as in the relevant Act unless the context otherwise requires.

"Member" means a person who has been accepted by the Trustee as a Member of the Fund and has not ceased to be a Member, and where appropriate includes a former Member.

"Member Account" means an account, if any, established in respect of a Member's contributions.

"Member Contribution" means contributions (if any) made by the Member or an acceptable contribution in respect of the Member.

"Member Funded Balance" in relation to a particular Member means the aggregate of the Member Accounts (if any) in respect of that Member.

"Normal Retirement Date" means in respect of a Member

(a) where paragraph (b) does not apply - the Member's 65th birthday; and

(b) where the Member and the Trustee agree in writing that the Normal Retirement Date of the Member shall be a date other than the Member's 65th birthday, the date so agreed or the Early Retirement Date of the Member (whichever is the later).

"Past Service" means in relation to a Member the period or periods during which the Member has been a Member of the Fund, increased by such further period (if any) as the Trustee in its absolute discretion determines, but excluding any period of membership which is taken into account for the purposes of determining Fund service.

"Policy" means a policy of life, disability or accident insurance, relating either to an individual Member or to more than one Member, effected with the Underwriter in accordance with this Deed to provide any or all of the benefits under the Fund.

"Preservation Requirement" means a requirement under the Act or laid down by the Commissioner with respect to the preservation of certain superannuation benefits until the Member becomes entitled to a benefit or attains a specified age, or any restriction imposed by the Legislation on the payment of a benefit.

"Qualified Person" means a person who is not prohibited by Legislation from becoming a member and is not a person whose membership might disqualify the Fund from being a complying fund.

"Resignation Benefit" means the Resignation Benefit set out in Schedule B in respect of the Member, or Category of Member as the case may be.

"Retirement Benefit" means the Retirement Benefit set out in Schedule B in respect of the Member, or Category of Member as the case may be.

"Rules" means the rules and regulations (as amended from time to time) which govern the administration of the Fund.

"Salary" in relation to any Member means the yearly rate of remuneration of that Member (expressed in whole dollars)

"Temporary Substantial Disablement" means disablement to a similar degree as Total and Permanent Disablement, but which is not considered likely to be of a permanent nature.

"Total and Permanent Disablement" means, in respect of a Member, disablement to such an extent that, in the opinion of an independent medical practitioner appointed by the Trustee, the Member is unlikely ever to work again in a position which before the disablement was reasonably appropriate for a person with the Member's qualifications education training or experience, PROVIDED HOWEVER THAT where the Trustee has effected a Policy to provide a total and permanent disability benefit for the Member, the expression 'Total and Permanent Disablement' shall have the same meaning as is defined in such Policy;

"Total and Permanent Disability Benefit" means the Total and Permanent Disability Benefit set out in Schedule B in respect of the Member, or Category of Member as the case may be.

"Trust Deed" or "Deed" means this Declaration of Trust as amended from time to time together with the Rules and Schedules incorporated with it;

"Trustee" or "Trustees" means the Trustee or Trustees of the Fund for the time being, whether original additional or substituted;

"Underwriter" means a company conducting life assurance business in Australia and registered for that purpose in accordance with the Life Insurance Act 1945 including any amendment thereto or re-enactment thereof and with whom the Trustee has effected, or has applied to effect, a Policy pursuant to this Deed.

Words denoting any gender include the other genders, the singular includes the plural, and vice versa. Words defined in the Act shall have the same meanings as in the Act unless the context otherwise requires. Any headings are for ease of reference only and shall not affect the interpretation of the actual provisions.

Reference to a section of the Legislation shall be deemed to refer to the section as amended or any section replacing the same.

#### AMENDMENT

2 The Trustee may amend the provisions applying to the Fund from time to time by deed or resolution in writing (a copy of which shall thereafter be annexed to this deed) provided that:

- (a) the amendment shall not reduce the accrued benefits of a Member or the benefit calculated by reference to the Member's period of membership before the date of the amendment unless with the consent of the Members affected or with the written approval of the Commissioner.
- (b) Any amendment affecting the rights or benefits of the Members shall be advised to them as soon as practicable after the date of the amendment.
- (c) Section 35B of the Trustee Act of South Australia does not apply to this deed.

- (d) While the Fund is a regulated superannuation fund it shall not be amended otherwise than as permitted by the Act.
- (e) Unless the Fund is an excluded fund:
  - i. the Trustee has consented to the amendment; or
  - ii. if the Fund is an employer sponsored fund:
    - A. the amendment relates to contributions that an employer sponsor will after the amendment be required or permitted to pay to the Fund; or
    - B. the amendment relates solely to the termination of the Fund; or
    - C. the circumstances in which the amendment was made are covered by regulations made for the purpose of Section 60(1)(b)(iii) of the Act.

**RIGHTS OF EMPLOYER**

3 The provisions of the Fund shall not affect the relationship of Employer and Employee in respect of remuneration, terms of employment or dismissal or otherwise and the effect of any incidence of employment upon the benefits under the Fund in respect of any employee shall not be grounds for claiming or increasing damages in any action against any employer for termination of employment or otherwise.

**DEEMED INCLUSION OF STANDARDS**

4 The parties hereto intend the provisions governing the Fund to conform with the requirements of the Act and the standards and requirements prescribed by the relevant laws and regulations and such standards and requirements as in force from time to time are deemed to be included as if incorporated herein and if inconsistent with any specific provisions of this Deed the said laws standards regulations and requirements shall take precedence and be observed by the Trustee. Where this deed provides for a restriction or prohibition to comply with the Act and the Act states that certain situations which would otherwise be prohibited or restricted are unaffected or may continue to a specified extent then any such situation in respect of the Fund shall likewise be unaffected or may continue to the same extent as provided in the Act.

**COMPANY TRUSTEE OR OLD-AGE PENSION PURPOSE**

- 5 (1) When the Trustee is one or more natural persons the Fund shall be administered so that its sole or primary purpose is the provision of old-age pensions. When the Trustee is a Constitutional Corporation the Fund shall be maintained solely for one or more of the core purposes set out in Section 62(1)(a) of the Act or for one or more of the said core purposes and one or more of the ancillary purposes set out in Section 62(1)(b) of the Act.
- (2) The Trustee shall keep proper records of all meetings and resolutions affecting the Fund.

**THE TRUSTEE**

- 6 (a) (1) The office of Trustee shall ipso facto be determined and vacated if such Trustee is or becomes a disqualified person.
- (2) The Trustee may resign at any time by giving written notice of such resignation to the Members and such resignation shall take effect on the date specified in the notice.
- (3) A majority of Members may remove a Trustee from time to time and may appoint an appropriately qualified new Trustee
- (4) The appointment of new Trustees shall be made from time to time to ensure that the Fund continues to comply with the relevant provisions applying to it.

**TRUSTEE'S INDEMNITY**

(b) The Trustee shall be entitled to be indemnified out of the Assets for the time being comprising the Fund in respect of any liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts authorities powers and discretions hereof by virtue of being Trustee hereof but the Trustee shall not in any circumstances be entitled to indemnity reimbursement or recompense

- (a) from a Member of the Fund; or
- (b) from an Employer.

#### **DIRECTIONS TO TRUSTEE**

7 At any time when the Fund is not an Excluded Fund the Trustee shall not be subject to direction otherwise than in those cases where subsection (1) of Section 58 of the Act is expressed not to apply.

#### **RECORDS TO BE KEPT BY TRUSTEE OR CUSTODIAN**

- 8 (a) The Trustee may retain the services of a suitably qualified Investment Manager or Custodian and may assign such duties as the Act permits to be done on behalf of the Trustee and it thinks fit to such Investment Manager or Custodian and to the extent that such duties are assigned the references to such duties being the responsibility of the Trustee shall where appropriate also apply to the relevant person to which the duty concerned may have been assigned.
- (b) The Trustee shall keep records showing in respect of each Member
1. The name and address of the Member
  2. The dates of commencing and ceasing to be an Employee and of Membership of the Fund
  3. Details of transfers into and out of the Fund and of relevant service periods.
  4. A Member Account, an Award Account, and an Employer Account
  5. Such other particulars as the Trustee Considers necessary or desirable, including Flagged Interests, Binding Nominations, and Investment Directions, where applicable.
- (c) Where the Fund provides for Defined Benefits, or the Trustee determines that it is appropriate to provide a reserve to even out fluctuations or for greater security, the Trustee shall also keep a Fund Account for those parts of the Fund that for the time being are not allocated to any Member.
- (d) The Trustee shall credit
1. The Member account with the Member's contributions
  2. The Employer Account with Employer contributions other than Award contributions
  3. The Award Account with Award contributions
- in respect of the Member, and also credit the accounts with the appropriate parts of
4. Amounts transferred into the Fund
  5. The proceeds of any Policy attributable to premiums paid from the account
  6. The earnings of the Fund
  7. Any other amounts the Trustee thinks suitable.
- (e) The Trustee shall similarly credit the Fund Account with similar items in respect of the benefits of Defined Benefit Members, and with amounts set aside for reserves.
- (f) The relevant accounts shall be debited by the Trustee
1. With benefits paid out of the account concerned
  2. With amounts transferred out or from reserves to Members' Accounts.
  3. With premiums paid on Policies in respect of the Member
  4. With expenses and taxes or other amounts paid in respect of the account or of the Member
  5. With a share of the losses incurred by the Fund.
- (g) The Trustee shall keep such further records as may be necessary to maintain the information required to administer the Fund in such a way that the necessary information is available to provide the details for all necessary or required reports, returns and other documents or provision of information as may be proper for the Fund. The Trustee may hold any investment for a particular member or category of members and shall record which investments are held for whom. In respect of such investments earnings shall be credited and taxes and expenses payable shall be debited to the relevant members' accounts.

#### **AUDITOR - ACCOUNTS - ACTUARY**

- 9 (a) If required by the Commissioner the Trustee shall appoint an Auditor to report upon matters relating to the Fund. The Trustee shall make available all information and records relating to the Fund that may be required by the Auditor. The Trustee may dismiss the Auditor on 30 days notice and may appoint a new Auditor.

- (b) The Trustee shall prepare accounts for the Fund for each Financial Year and shall furnish all income tax returns, audit reports and other information required by law or by the Commissioner.
- (c) Where the Fund has Defined Benefit Members or it is otherwise appropriate, the Trustee shall appoint an Actuary to report on the state of the Fund as requested by the Trustee or as required by the Act.

**TRUSTEE AUTHORISED TO ELECT THAT FUND BE REGULATED**

- 10 The Fund shall be vested in the Trustee and the Trustee is specifically authorised
  - (a) To give the Commissioner a written notice in the approved form electing that the Act is to apply in relation to the Fund, or to make any other election which the Trustee considers appropriate.
  - (b) To maintain the Fund as a complying superannuation fund under the Act.
  - (c) To commence carry on and defend, settle compromise or submit to arbitration any proceedings claims matters or things relating to this Deed, to the rights of Members former members or beneficiaries under the Fund or any other persons making any claim upon the Fund.
  - (d) To insure any risks contingencies or liabilities of the Fund.
  - (e) To retain the services of professional or other advisers in respect of the operation of the Fund and to pay out all expenses taxes duties costs and outgoings properly payable out of the Fund.
  - (f) To charge such fees for its services as the Trustee considers reasonable.
  - (g) To do all such other acts as the Trustee may consider necessary or expedient for the proper administration and preservation of the Fund.

**ELIGIBILITY FOR MEMBERSHIP**

- 11 (a) On making written application in the form set out in Schedule C or in such other form as the Trustee shall accept, an Employee or other person who is eligible for membership in terms of the Eligibility Criteria shall, become a Member (either as an Accumulation Member or a Defined Benefit Member or both) of the Fund, or of a Category of the Fund as the case may be, from such date as the Trustee shall determine.
- (b) Where a Member is a Member of more than one Category of the Fund, or is both an Accumulation Member and a Defined Benefit Member, the following rules shall apply in addition to the other provisions of this Deed:-
  - (1) the Trustee shall ensure that contributions, whether Member Employer or Award, made in respect of one particular Category of membership are recorded separately from those made in respect of any other Category or Categories;
  - (2) for the purposes of determining benefits
    - (i) the terms Award Balance, Employer Funded Balance and Member Funded Balance shall relate to Accounts held in respect of a particular Category of membership only;
    - (ii) the total benefit payable in respect of a Member shall be the aggregate of the benefits payable in accordance with the provisions of this Deed in respect of each particular Category of membership.
- (c) Each Member shall provide all such information as may be requested by the Trustee for the purposes of the Fund.
- (d) The Trustee may waive any or all of the Eligibility Criteria to admit to membership of the Fund, or of a Category of the Fund, a person who would not otherwise be eligible for such membership.
- (e) A Member shall cease to be a Member when:
  - (1) the Member dies; or
  - (2) the total sum payable to the Member has been paid; or
  - (3) any benefits payable to or on behalf of the Member from the Fund cease to be payable; or
  - (4) the total amount of the Member Funded Balance, Employer Funded Balance and Award Balance in respect of the Member has been transferred out of the Fund.

(f) If the Fund is or becomes a public offer superannuation fund the provisions of this clause are subject to the Trustee being an Approved Trustee and providing the proposed new member with the appropriate information as required by the Legislation, unless the Trustee is exempted from the relevant requirements.

#### **EMPLOYER CONTRIBUTIONS**

- 12 (a) Each Employer shall contribute to the Fund:-
- (1) in respect of each of its Employees who are Accumulation Members, at the rate set out in Schedule B for the Member or Category of Member as the case may be, and
  - (2) in respect of Employees who are Defined Benefit Members, at the rate determined by the Actuary.
- (b) An Employer may pay an additional contribution in respect of any particular Member to provide such benefits additional to those otherwise payable under the Fund as the Employer may decide and the Trustee shall advise the Member.
- (c) Notwithstanding anything contained herein no contribution shall be accepted by the Trustee if the acceptance of that contribution would endanger the taxation concessions available to the Fund, unless all the Members have agreed in writing to the Fund accepting a contribution which might cause the Fund to become non-complying. Any payment made as a contribution which is not acceptable shall be returned or refunded without delay.

#### **MEMBER CONTRIBUTIONS**

- 13 (a) On and from the date on which an Employee becomes a Member, the Member while an Employee shall:
- (1) be liable to pay to the Trustee Member Contributions at the rate (if any) set out in Schedule B;
  - (2) arrange where possible for the Employer to make deductions from the Member's Salary in respect of the Member's Contributions and for the amounts so deducted to be paid to the Trustee ;
  - (3) arrange to pay to the Trustee any contributions or the balance of contributions not so deducted from the Member's Salary.
- (b) With the consent of the Trustee, other contributions to the Fund may be made in respect of a Member as well as any which the Member is required to make. Such contributions may be increased with the consent of the Trustee or reduced, suspended or terminated at any time by notice in writing to the Trustee.
- (c) The Trustee shall not accept any contribution from either the Member or from an Employer or any other person in respect of a Member if the contribution would be in excess of the permitted level of funding which applies to the circumstances of the Member at the time, or if the contribution is otherwise not acceptable because of a provision of the Legislation, unless all the Members have agreed in writing to the Fund accepting a contribution which might cause the Fund to become non-complying.

#### **TRANSFERS IN AND OUT**

- 14 (a) The Trustee may make or carry into effect an arrangement with the trustees of another complying superannuation fund, Approved Deposit Fund or roll-over fund and/or any person who is a member or former member of such other fund whereby an agreed sum or agreed assets shall be paid into or transferred to the Fund and such person shall become a Member subject to completion of the appropriate formalities, and shall be granted such rights and benefits additional to or in lieu of those otherwise provided under the Deed as the Trustee shall determine PROVIDED ALWAYS THAT:
- (i) where an amount transferred into the Fund is subject to a Preservation Requirement, the Trustee shall ensure that such amount is identified as subject to the Preservation Requirements, and credited
    - (A) to an Award Account to the extent to which it relates to Award Contributions, and

(B) to the extent to which it does not relate to Award Contributions, to a Member or Employer Account or the Fund Account or such Accounts as the case requires

(ii) where an amount transferred into the Fund, other than an amount to which paragraph (a)(i) of this Clause applies, is in terms of the Act required to be vested in the Member, the Trustee shall ensure that such amount is credited to a Member Account.

(b) Subject to Clause 26, the Trustee may, at the request of a Member or Employer and subject to such conditions and indemnities as the Trustee may require pay or transfer or cause to be paid or transferred to the trustee of any other complying superannuation fund. Approved Deposit Fund or roll-over fund any amount not greater than the Member's credit in the Fund (or in the case of a request by the Employer the credit in the Fund of those Members referred to in that request) at the time such payment is made and the receipt by or on behalf of the trustee of such other fund shall be sufficient discharge to the Trustee in respect of the trusts of the Fund and the Trustee shall not in any way be responsible for the payment or disposal by the trustee of the other fund of the amounts so paid or transferred.

(c) If an Employer arranges to sell or otherwise transfer any part of its operations to an employer who is not participating in the Fund and pursuant to this arrangement any Member ceases to be in the employ of the Employer and enters the Employment of the said employer the Trustee may with the written consent of such Member and subject to such conditions as the Trustee may decide and in lieu of paying the benefit which would otherwise be payable under the Fund may assign any policy on the Member's life pay or transfer to a superannuation fund established for the benefit of any employees of the said employer an amount not greater than the Member's credit in the Fund to be applied by the trustees of the said fund for the benefit of that Member.

(d) Upon the whole of a Member's benefit being transferred, including any Policy on the Member's life being assigned, (as the case may be) pursuant to subclauses (b) or (c) such Member shall have no further or other entitlement to a benefit under the Fund.

#### INVESTMENTS

15 The Trustee shall formulate and give effect to an investment strategy in accordance with the Act and invest the assets of the Fund in accordance with the investment strategy in the permitted forms of investment which for the purposes of this Fund are:

- (a) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- (b) any first mortgage on freehold property situated in Australia or elsewhere even though the amount of the loan may exceed two-thirds of the value of the property and whether or not a report or valuation has been obtained on the value of the property;
- (c) on deposit with or on loan to any bank, building society, credit co-operative or other financial institution on the normal terms and conditions of their borrowings;
- (d) on deposit with or on loan to any person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly therefrom, provided that the proportion of the Fund so invested shall not be so great as to cause the Commissioner to regard the Fund as failing to comply with the Commissioner's requirements.
- (e) the purchase or acquisition in any way of shares or stock (of any class or description) or of any type of bond, mortgage, debenture, note, option or other like security in or of any building society or company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock are fully paid or not and whether registered or unregistered;
- (f) any Policy or annuity whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or howsoever arising;
- (g) the purchase or acquisition of any real or personal property and the improvement or extension thereof;

- (h) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (i) the discounting of loans, mortgages, contracts, hire purchase agreements or leases;
- (j) any other investment whether or not similar to any of the foregoing which the Trustee considers to be appropriate.

Provided that no form of investment which is considered an in-house asset or is otherwise restricted or limited by the Act shall be obtained or retained to an extent greater than permitted by the Act.

#### **INSURANCE POLICY CONDITIONS**

- 16 (a) For the purposes of effecting, increasing or otherwise varying any Policy, the Trustee may from time to time require any Member or person who has applied to become a Member to
- (i) be medically examined, or
  - (ii) submit other evidence of health habits or pastimes, or
  - (iii) provide proof of age to the satisfaction of the Underwriter, or
  - (iv) take such other steps as may be required by the Trustee or an Underwriter for the purposes of insurance.
- (b) If after an application to become a Member has been accepted any statement made or evidence submitted to the Trustee pursuant to this subclause in respect of that application is found to contain any mis-statement error mistake or suppression the Trustee may make such adjustments as it in its absolute discretion considers appropriate to the benefits to be provided by the Fund for that Member and/or the contributions (if any) to be paid to the Fund by that Member.
- (c) If any person who has applied to become a Member refuses to undergo such medical examination or to undertake any other step which may reasonably be required for the aforesaid purposes or does or omits to do anything and that would or might vitiate the Policy or result in the Policy monies or any part thereof not becoming payable the Trustee may adjust the benefits to be provided by the Fund for or in respect of that Member or person in such manner as the Trustee considers appropriate.
- (d) In any case where the Trustee applies or has applied to an Underwriter for insurance of any part of the benefit of a Member the benefit of the Member shall be reduced by the amount of any such insurance or part thereof which the Underwriter refuses or refuses to grant on terms acceptable to the Trustee or by the amount of any such insurance or part thereof which having been effected the Underwriter declares void or otherwise restricts for any reason.

#### **BORROWING PROHIBITION**

- 17 The Trustee shall not borrow or maintain an existing borrowing except in the circumstances and to the extent permitted by the Act.

#### **ASSETS NOT TO BE ACQUIRED FROM MEMBERS**

- 18 The Trustee or any other person acting on behalf of the Fund shall not intentionally acquire any asset from a Member or a relative or associate of a Member, except in the circumstances permitted under the Act.

#### **NO LOANS TO MEMBERS**

- 19 The Trustee or any other person acting on behalf of the Trustee shall not lend money of the Fund or give any other financial assistance from the resources of the Fund to a Member or a relative of a Member, except as permitted by the Act.

#### **TRUSTEE'S COVENANTS**

- 20 The Trustee covenants:
- a. To act honestly in all matters concerning the Fund