

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

SUPERANNUATION TRUST DEED

FOR

BERRY FAMILY SUPERANNUATION FUND



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"Employer-Sponsored Member" means a Member who is an employee of a contributing employer.

"Employment" means gainful employment, part-time employment and full-time employment and includes the services of an independent contractor and all senses of the word employ include the same meaning.

"Financial Year" means the accounting period selected by the Trustees for the Fund. It must not exceed twelve months and may at times be less than twelve months.

"Full-time", in relation to being gainfully employed, means gainfully employed for at least 30 hours each week or otherwise as may be provided by the SIS Act.

"Gainfully employed" means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

"Guarantee Act" means the Superannuation Guarantee (Administration) Act 1992.

"Mandated Employer Contributions" has the meaning in the SIS Act.

"Member" means an Eligible Person who has been admitted to the Fund and where the context so requires or permits includes a Past Member, a former Member and a Pensioner.

"Member's Benefit" in respect of a Member is the net amount standing to the Member's credit in that Member's accounts including the employer's contribution account (if any), the Member's contribution account and the vested employer's contribution account (if any) plus the realisable value (if any) at that time of any policy of insurance owned by the Trustees on the life of that Member or paid for out of that Member's employer's contribution account (if any), Member's contribution account or vested employer's contribution account (if any) or other Member's account.

"Member Financed Benefits" has the meaning in the SIS Act.

"Old-Age Pensions" has the same meaning as in paragraph 51(xxiii) of the Constitution.

"Part-time", in relation to being gainfully employed, means gainfully employed for at least 10 hours, and less than 30 hours, each week or otherwise as may be provided by the SIS Act.

"Past Member" means a former Member who still has a right to receive a benefit from the Fund.

"Pension Benefit Account" means an account that provides a retirement benefit.

"Pensioner" means a retired Member, Past Member or the Dependent of a deceased Member, Past Member or Pensioner who is in receipt of or who is entitled to a pension.

"Personal Representative" or **"Legal Personal Representative"** means in relation to a Member a person who satisfies the Trustees that such person is entitled to represent the Member and to give valid receipts and discharges on the Member's behalf and in relation to a deceased Member the person who has been granted probate of a will or letters of administration of an estate of that Member.

"Preserved Portion" means the portion of an account or a benefit that is preserved for the benefit of a Member under the Superannuation Conditions, this Deed or other agreement.

"Primary Beneficiary" has the meaning in the SIS Act.

"Regulated Superannuation Fund" has the meaning in the SIS Act.

"Reserve Account" means the account referred to in paragraph 18.1(d).

"Retire" means to cease to be engaged in the employment in which the Member is for the time being engaged and **"Retirement"** has a corresponding meaning.

"Retirement Date" and **"Retiring Age"** both mean the sixty-fifth birthday or such other date as the Trustees determine, not being inconsistent with the Superannuation Conditions.

"Reversionary Beneficiary" has the meaning in the SIS Act.

"Rules" means the Rules set out in the Schedule to the governing rules and includes any additions, variations and modifications thereto.

"Segregated Current Pension Assets" has the meaning given from time to time by the Tax Act.

"SIS Act" means the Superannuation Industry (Supervision) Act 1993 as amended from time to time and regulations from time to time made thereunder.

"SIS Regulations" mean the regulations made under the SIS Act as amended from time to time.

"Spouse" in relation to a person, includes another person, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person.

"Standard" means a standard prescribed by the SIS Act.

"Standard Employer-Sponsor" has the meaning in the SIS Act.

"Standard Employer-Sponsored Fund" has the meaning in the SIS Act.

"Superannuation Conditions" subject to 2.4 means any provision which may be applicable to the Fund under the Act, the Tax Act or other laws or rulings of the Commissioner which must or may be met for the Fund to be treated with the most concessional taxation treatment available or to be treated in any manner which, in the opinion of the Trustees, is concessional and includes conditions which must be met for the Fund to become or remain a self managed superannuation fund.

"Tax Act" means Income Tax Assessment Act 1936 or 1997 as may be applicable.

"Trustees" means the Trustees or the Trustee for the time being of the Fund and "Trustee" has the same meaning.

"Vested Portion" means the portion of an account or benefit that is vested for the benefit of a Member including any such portion which is preserved for the benefit of a Member and any such portion which has been transferred in respect of a Member to the Fund from another superannuation fund as a vested benefit.

2.2 Headings:

The headings in this Deed and the Rules are for convenience and reference only and are not to affect its interpretation.

2.3 Interpretation:

(a) Any word or expression which is defined in the Act has in this Deed the meaning ascribed to it by the Act and to the extent that a meaning ascribed to a word or expression within this Deed is inconsistent with the meaning ascribed to it by the Act the meaning ascribed by the Act prevails unless the contrary intention appears provided that where more than one meaning may be ascribed then the Trustees may determine which of those meanings applies.

(b) This Deed will be read and construed on the basis that the provisions of the SIS Act are incorporated to the extent that they impose requirements on the Trustees or are required by that Act to be so incorporated, but this Deed will not be so read or construed and no provision or regulation will be so incorporated if to do so would constitute a breach of the power granted by this Deed to vary, add to or rescind its provisions. To the extent not prohibited by the SIS Act, the Trustees may however by resolution determine that a provision of the SIS Act does not apply, either generally to the Fund or in respect of any particular application and the Deed must be construed accordingly.

2.4 Inconsistencies with the Superannuation Conditions:

Where it appears to the Trustees that there is any inconsistency or difference between:-

- (a) any provision of any applicable legislation or other laws and another provision or provisions;
- (b) the rulings of the Commissioner and other rulings of the Commissioner;
- (c) the Acts or laws referred to in (a) and the rulings referred to in (b);
- (d) the Rules and this Deed,

then the Trustees may determine, either generally or in respect of any particular application, in their absolute discretion, which provision or ruling applies and the Deed must be construed accordingly and subject to such determination and to the Act, if there is any inconsistency between the Rules and the Deed the Deed shall prevail.

2.5 Proper Law:

This Deed and the Rules are governed and construed and take effect in accordance with the laws of the State or Territory of residence of the Trustee (however Section 35(b) of the South Australian Trustees Act 1936 does not apply to this Deed). Any person having or claiming any interest under this Deed must submit to the jurisdiction of the Courts of that State or Territory.

2.6 Saving Provision:

To the extent any provision of this deed would be void or invalid, but for this paragraph ("an invalid provision"):

- (a) where a reading down or limitation of the operation of the invalid provision would remove the voidness or invalidity, that must be done in constructing the Deed;
- (b) where it is not possible to apply paragraph (a), the invalid provision is severed from the Deed;
- (c) in any event, an invalid provision does not affect the continued operation of the remainder of the Deed.

Sole Purpose Test

3.1 Core Purposes:

The Trustees must ensure that the Fund is maintained solely for one or more of the core purposes or both one or more of the core purposes and for one or more of the ancillary purposes provided in the Act.

3.2 Sole Purpose:

Despite any other provision of this Deed, the Trustee must be a constitutional corporation unless the Trustees are individuals and in that event and despite any other provision of this Deed the sole or primary purpose of the fund is the provision of old-age pensions.

Constitution of Fund

4.1 Trusts:

All assets of the Fund are vested in the Trustees who stands possessed of the same upon trust to apply the same in the manner and for the objects and purposes of the Fund as set forth in this Deed and any amendment.

4.2 Perpetuities:

If the Deed is or becomes subject to a rule against perpetuities the Trustees must not later than the specified date dissolve the Fund and pay to or secure for the Members or their Dependents or Personal Representatives such amounts as the Trustees may subject to this Deed determine notwithstanding that Members are then in the service of the Employer. For the purposes of this paragraph the "specified date" is that date which by the rule to which this Deed is or becomes subject is the last date limited for the vesting of the whole of the Fund without infringement of the rule and where that date is to be calculated by reference to a life in being the life is that of the last survivor of all the lineal descendants of His Late Majesty King George VI who are living at the date of execution of this Deed.

Notice of Election

5. **Trustees to give notice to become a regulated fund:**
The Trustees must give to the Commissioner within the period provided by the Superannuation Conditions a written notice in the approved form and signed in the manner required by the SIS Act electing that the Act is to apply in relation to the Fund.

Statutory Covenants

6. **Statutory Covenants:**
The purpose of this paragraph is explanatory only. The effect of Section 52 of the SIS Act is that the Trustees covenant as follows in accordance with the SIS Act:-
- (a) to act honestly in all matters concerning the Fund;
 - (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
 - (c) to ensure that the Trustees' duties and powers are performed and exercised in the best interests of the beneficiaries;
 - (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:-
 - (i) that are held by the Trustees personally; or
 - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the Fund;
 - (e) not to enter into any contract, or do anything else, that would prevent from, or hinder the Trustees in, properly performing or exercising the Trustees' functions and powers; this does not prevent the Trustees from engaging or authorising persons to do acts or things on behalf of the Trustees.
 - (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
 - (i) the risk involved in making, holding and realising, and the likely return from the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities;

- (g) if there are any reserves of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary access to any information or documents prescribed under the SIS Act.
- (i) to observe such covenants as are prescribed to be included in the governing rules of the Fund prescribed by the Act.

Statutory Requirements

7. **Self Managed Superannuation Fund:**
Subject to paragraph 3.2 and despite any other provision of this Deed, the Trustees are empowered to do all things necessary to be done by them to ensure that the Fund satisfies the conditions applicable to self managed superannuation funds regulated in accordance with the Act.

Alterations to the Deed

- 8.1 **Methods to alter Deed:**
Subject to this paragraph 8 and the Superannuation Conditions this Deed and the Rules may be amended:
- (a) by deed executed by the Trustees and subject to compliance with the Superannuation Conditions, with the consent of a two thirds majority of Members; or
 - (b) by oral resolution of the Trustees and subject to compliance with the Superannuation Conditions, with the consent of a two thirds majority of Members.
 - (c) and in any event if there is a Principal Employer its written consent must be obtained to any amendment unless this requirement is inconsistent with the SIS Act or the Superannuation Conditions.
- 8.2 **Effective Date:**
An amendment under this paragraph takes effect from the date (prospective or retrospective) specified in the resolution or if not specified on the date on which the resolution is made.
- 8.3 **Prohibition:**
If the Act prohibits it, this Deed must not be amended in such a way that:
- (a) a person other than a constitutional corporation would be eligible to be appointed as Trustee unless the, Deed or any amending deed, provides, and will continue to provide after the amendment is made, that the Fund has, as its sole or primary purpose, the provision of old-age pensions; or
 - (b) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the Deed or any amending deed provides, and will continue to provide after the amendment is made, that the Trustee must be a constitutional corporation.

- 8.4 **Notice to be given to Members following alteration:**
The Trustees must give to each Member such information or notice in respect of the amendments as may be required by the Superannuation Conditions.

Trustees

- 9.1 **Written consent of Trustee required:**
A person is not eligible for appointment as a Trustee, or, if the Trustee is a corporate Trustee, as a director of that corporate Trustee, unless the person has consented in writing to the appointment.
- 9.2 **Consent of new Members to Trustees:**
A person joining the Fund as a Member consents, as a condition of joining the Fund, to the Trustees, at the date of the Member so joining, continuing to act as Trustees and to being appointed as a Trustee or if the Trustee is a body corporate, to being appointed as a director of that body corporate (unless that Member is under a legal disability or otherwise not entitled to become a Trustee under the SIS Act.)
- 9.3 **Chairperson:**
The Chairperson of any meeting of the Trustees or of the body corporate sole Trustee does not have any second or casting vote.
- 9.4 **Number of Trustees:**
The number of Trustees must be such number as does not exceed the maximum number and is not less than the minimum number permitted by the SIS Act necessary for the fund to satisfy the provisions applicable to self managed superannuation funds.
- 9.5 **Meetings of Members:**
The Trustees may establish procedures and policies for the regulation of meetings of Members.
- 9.6 **Decisions of Trustees:**
If required by the Superannuation Conditions, a decision of:
- (a) the individual Trustees of the Fund; or
 - (b) the Board of Directors of the Corporate Trustee of the Fund;
- must be taken not to have been made, or to be of no effect, if fewer than two thirds of the total number of the Trustees or Directors, as the case requires, voted for it. Otherwise a majority vote is sufficient.
- 9.7 **Basic Equal Representation Rule:**
Compliance with Rule: The Fund must, if required by the Superannuation Conditions, comply with the basic equal representation rule.
- 9.8 **Vacancy in Office of Trustee:**
- (a) The office of a Trustee or of a director of a body corporate sole Trustee ipso facto, becomes vacant if the Superannuation Conditions require it or upon the Trustee's or director's:

- (i) death;
 - (ii) mental incapacity;
 - (iii) retirement by written notice to the Members and any other Trustee;
 - (iv) becoming a disqualified person within the meaning of the Act;
 - (v) suspension or removal under the Act;
 - (vi) tenure of the Trustee's position expires;
 - (vii) continuance in office would result in the fund no longer satisfying the conditions of the SIS Act applicable to self managed superannuation funds.
- (b) Pending any appointment of a Trustee hereunder, where a Member has died the deceased Member's legal personal representative may with the consent of any other Members, act as Trustee in place of the deceased Member/Trustee (or director of a corporate trustee) in any period commencing on the Member's death and ending on the date the Member's benefits become payable.
 - (c) Pending any appointment of a Trustee hereunder, where a Member is under a legal disability the Member's legal personal representative may with the consent of any other Members, act as Trustee in place of that Member/Trustee (or director of a corporate trustee) in any period when the Member is under a legal liability or the legal personal representative has an enduring power of attorney from that Member and ending on the date the Member's benefits become payable.
 - (d) The parent or guardian of a Member who is under 18 and who does not have a legal personal representative may be appointed as a Trustee.
 - (e) Sub-paragraphs (c) and (d) are subject to the SIS Act.

9.9 Members to fill vacancy:

Any vacancy in Trustees or board of a corporate trustee must be filled within 90 days after it occurred where the Superannuation Conditions require it, or such other time as permitted under the Superannuation Conditions. Any vacancy may, subject to the Superannuation Conditions (and if required by the Superannuation Conditions with the consent of the Trustees), be filled by a resolution of a two-thirds majority of Members and may also be effected by Deed signed by or on behalf of the Members and signed by the new Trustee.

9.10 (a) Members may remove Trustees:

Subject to the Superannuation Conditions and if required by them, with the Trustees' consent, the Trustee or, where there is more than one, a Trustee, may be removed by a two-thirds majority of the Members and such removal is effective upon the passing of a resolution to that effect in accordance with this Deed.

- (b) **Members may replace Trustees:**
At the time of making a resolution under sub-paragraph (a) above the Members may (with the written consent of the appointee or appointees) by resolution made and effected in like manner appoint a Trustee or Trustees to replace the person or persons so removed.

- 9.11 **Self Managed Superannuation Fund Conditions:**
Any appointment or removal of a Trustee(s) or a director of a body corporate Trustee must be made in such manner as will satisfy the provisions of the SIS Act applicable to self managed superannuation funds.
- 9.12 **Additional Trustees:**
Additional Trustees may be appointed, subject to the Superannuation Conditions, by a resolution of a 2/3rds majority of members or by Deed signed by or on behalf of the Trustees and the Members.
- 9.13 **Principal Employer:**
If the Fund has at the relevant time a Principal Employer then its consent must be obtained to any appointment or removal of Trustees unless this requirement is inconsistent with the SIS Act or the Superannuation Conditions.

Liability of Trustee and Directors

- 10.1 **Liability of Trustee and Directors:**
Subject to the Act, the Trustees and each Director of a corporate trustee, will not be liable for any acts or omissions other than those that are:-
- (a) dishonest; or
- (b) attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a Trustee.
- 10.2 **Indemnity:**
Subject to the SIS Act, the Trustees and each of the Directors of a corporate Trustee, will be indemnified out of the Fund against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund other than in the circumstances referred to in paragraph 10.1 and will have a lien on the Fund for this indemnity. The Trustees and the Directors of a corporate Trustee will not be indemnified out of the Fund for any penalty imposed on them under the SIS Act.

Approval of Members and Employers Generally

11. (a) **Approval of Members/Associated Employers generally:**
Subject to the Superannuation Conditions where under the terms of this Deed there is required in relation to the exercise by the Trustees of any power or authority or there is otherwise required the resolution, consent, approval or agreement (herein referred to as "resolution") of the Members or Associated Employer(s) generally the passing or rejection of that resolution must be determined in accordance with the succeeding provisions of this sub-paragraph unless all Members or Associated Employers of the Fund at the time of signature have signified their consent in writing otherwise.

- (b) **Written notice to Members/Associated Employers:**
The Trustees of their own motion or upon written requisition by not fewer than ten percent of the Members/Associated Employers must give written notice by pre-paid ordinary mail to each Member/Associated Employer:-
- (i) specifying the matter in respect of which resolution is sought;
 - (ii) setting out a comprehensible explanation of the reasons for which the resolution is sought;
 - (iii) specifying the effect of the provisions of this sub-paragraph in relation to the determination of the resolution;
 - (iv) containing provision for the Members/Associated Employers indication of the passing or rejection of the resolution;
 - (v) containing a stamped addressed envelope to the Trustees.
- (c) **Trustee meeting to table responses:**
- (i) Upon the date which is fifteen (15) clear ordinary business days from the date upon which the notices under sub-paragraph (b) were posted to the Members/Associated Employers the Trustees must at a duly convened meeting of the Trustees table the responses of the Members/Associated Employers received by the Trustees and in the event that the requisite majority of responses indicates the passing of the resolution it must be passed and in the event that the requisite majority of such responses indicates the rejection of the resolution it must be rejected.
 - (ii) Any Member/Associated Employer is entitled to attend as an observer a meeting of the Trustees under this sub-paragraph.
- (d) The Trustees must retain the responses with the Minutes of the Meeting at which they were tabled.
- (e) **Requisite majority:**
In the provisions of this sub-paragraph the expression "requisite majority" means:-
- (i) in the case where a two-thirds majority is required - two-thirds or more of the responses;
 - (ii) in any other case - one-half or more of the responses.
- (f) **Notification to Members/Associated Employers:**
The Trustees must within fourteen (14) days of any meeting held under the provisions of this sub-paragraph notify all Members/Associated Employers of the result thereof.
- (g) **Strict compliance not essential:**
Any resolution made under this paragraph is not invalidated by reason of any or want of strict compliance with these provisions unless it is shown that there has or may be caused thereby some substantial and irremediable injustice.

Trustees not to be Subject to Direction

12.1 Directions:

If the Superannuation Conditions so require, the Trustees, despite anything in this Deed to the contrary, must not be subject, in the exercise of any of the Trustees' powers under the Deed, to direction by any other person.

12.2 Direction taken to be a request:

If any provision in this Deed is inconsistent with the preceding sub-paragraph then, despite such provisions, the Trustees must treat the direction as a request and the Trustees are not bound by such provision or request.

Investments

13.1 Investment Strategy:

The Trustees must formulate and give effect to an investment strategy in accordance with the Superannuation Conditions.

13.2 Loans:

The Trustees may not lend money to Members unless the Superannuation Conditions permit loans to Members.

13.3 Acquisition of assets from Members:

The Trustees must not intentionally acquire an asset from:

- (a) a Member of the Fund; or
- (b) a relative of a Member of the Fund.

unless the Superannuation Conditions permit.

13.4 Borrowing:

The Trustees may borrow money or maintain an existing borrowing of money if the Superannuation Conditions permit.

13.5 In-house assets:

The Trustees must take all reasonable steps to ensure that the in-house assets rules applicable to the fund, if any, are complied with and may only invest in in-house assets if permitted by the Superannuation Conditions. Subject to those conditions the Trustees may continue to hold any existing in-house asset.

13.6 Arms' length dealing required:

The Trustees must not, if prohibited by the Superannuation Conditions, make investments unless the Trustees and the other party to the relevant transaction are dealing with each other at arms' length in respect of the transaction.

13.7 Power to invest as if natural persons:

- (a) Subject to applicable mandatory laws limiting Trustee investments, the Trustees may make any investment that a natural person may make. The Trustees have power to vary or transpose any of the investments so made.
- (b) All investments by the Trustees are subject to compliance with the Superannuation Conditions.

13.8 Other investment powers:

Without limiting the generality of the preceding sub-paragraph but subject to the limitation in it and subject to the Superannuation Conditions, the Trustees may invest in: -

- (a) any investment authorised by the laws of Australia or of any of its States or Territories for the investment of trust funds;
- (b) the purchase of or subscription for preference or other shares or stock or preference or other share or stock options in any company registered in Australia or in any other country;
- (c) the purchase of units or sub units of property or other investment trusts or other common fund;
- (d) deposits with any bank, life insurance company or building society or on loan to any company, organisation or person not being a Member;
- (e) policies of insurance, assurance, endowment, deposit administration or investment;
- (f) the purchase of annuities and deferred annuities from a life insurance company or other organisation;
- (g) the purchase of any real estate in Australia;
- (h) deposits with or loans to an Employer;
- (i) any other investment whether or not similar to any of the above which the Trustees consider to be appropriate.

13.9 Nominees for Trustees:

Any investment may be held in such names including the name of a nominee or custodian (whether an individual or corporation) as the Trustees from time to time determine to the extent not prohibited by the Superannuation Conditions.

13.10 Continuation of loans to Members:

The Trustees may continue any loans transferred in respect of a Member from another superannuation fund under conditions that will not cause the Fund to fail to satisfy the Superannuation Conditions.

Investment Choice

14.1 No obligation:

- (a) The Trustees are not obliged to provide investment choice to Members or Beneficiaries of the Fund;
- (b) The Trustees may however in their absolute discretion determine to provide investment choice subject to the Superannuation Conditions either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund.

14.2 Investment Strategy:

- (a) Where the Trustees determine to provide investment choice, they must establish an investment strategy for each of the investment choices available to Members and Beneficiaries and where appropriate must allocate or designate particular assets of the Fund to be held in accordance with that strategy they must notify Members and Beneficiaries of the investment objectives of each of those strategies and provide any other information required for this purpose by the Superannuation Conditions to enable Members and Beneficiaries to make an informed decision regarding the effect of and risks associated with, each of those investment strategies;
- (b) The notification provided must include the various directions that a Member or a Beneficiary can give to the Trustees under paragraph 14.6 and the circumstances in which any such directions can be given or altered.

14.3 Trustees must monitor:

The Trustees must monitor each of the investment strategies established under paragraph 14.2 and the assets held in accordance with each strategy in order to ensure that each of those investment strategies is appropriate at all times in respect of Members or Beneficiaries or classes of Members or Beneficiaries to whom each of those strategies is available.

14.4 Earning rate:

The Trustees must determine a fund earning rate and allocate the earnings of the Fund to each Member's Account in accordance with the investment strategy applicable to the Member or Beneficiary as the Trustees determine or if the Superannuation Conditions or the SIS Act require it, in proportion to the amount standing to the credit of the Member's or Beneficiary's Account at the beginning of the fund year in respect of which the allocation is being made, appropriate adjustment being made for amounts (if any) credited or, debited to those Accounts during that year.

14.5 Selection and direction:

- (a) A Member or Beneficiary of the Fund, may, where the Trustees have determined to offer investment choice in accordance with paragraph 14.1, select one or more of the investment strategies formulated by the Trustees under paragraph 14.2 and direct the Trustees to invest part or the whole of the monies held in respect of that person in accordance with the strategy or strategies selected by that person under this paragraph.
- (b) Any directions by the Member or Beneficiary must only be given in accordance with the Superannuation Conditions and the Trustees must ensure that the Member or Beneficiary is provided with such information as required by the Superannuation Conditions in order to enable the Member or Beneficiary to make an informed decision.

14.6 Member document:

- (a) A Member or Beneficiary who wishes to select one or more investment strategies pursuant to paragraph 14.2 must give to the Trustees such documents as the Trustees require and must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary.

- (b) The Trustees are not bound to act on any such document if it breaches any of the requirements of the Superannuation Conditions.

14.7 Asset specific investments:

- (a) Except to the extent permitted by the Superannuation Conditions, the Trustees are not bound to make a particular investment in respect of a Member or Beneficiary of the Fund.
- (b) Where a Member or Beneficiary wishes to select particular investments, (whether those investments comprise one or more assets), a request to the Trustees must be made for an additional investment strategy or strategies for those particular investments ("asset specified investment strategy") to be formulated by the Trustees and for that strategy or those strategies to be made available to that Member or Beneficiary in accordance with paragraph 14.2.
- (c) The Trustees may in their absolute discretion approve or reject any requests made under this paragraph.

14.8 Advice to Members:

The Trustees must, if required by the SIS Act, advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustees in respect of those Members or Beneficiaries or classes of Members or Beneficiaries who decline, or otherwise do not select an investment strategy.

Powers of Trustees

15.1 Discretion powers of Trustees:

Subject to the Superannuation Conditions, the Trustees in the exercise of the authorities, powers and discretions hereby vested in them have an absolute and uncontrolled discretion and may exercise or enforce or delegate (by power of attorney or otherwise) all or any of the authorities, powers or discretions from time to time or may refrain from exercising all or any of such authorities, powers or discretions from time to time and their decision as to the interpretation and effect of this Deed is final and binding on all parties.

15.2 Trustees actions subject to Superannuation Conditions:

The Trustees may only act in a manner not prohibited by the Superannuation Conditions.

15.3 Additional powers:

Subject to the Superannuation Conditions, the Trustees also have the following powers -

- (a) to insure or re-insure any risks contingencies or liabilities of the Fund;
- (b) to open and operate a bank account at any bank and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (c) to institute or defend or otherwise deal with any legal proceedings in respect of the Fund;

- (d) to enter into any contract and do all such acts matters and things as the Trustees may consider necessary or expedient for any matter or purpose in respect of the Fund or this Deed;
- (e) to engage the services of any company, person or firm as the Trustees may consider necessary for the proper administration and management of the Fund or to obtain expert advice;
- (f) to appoint an Auditor of the Fund from time to time at such remuneration and on such other conditions as the Trustees think fit; and
- (g) to deduct and pay from the Fund the amounts of administration and other costs including any tax or duty payable by the Trustees in connection with the Fund and to debit any of the accounts of the Fund (including an account representing Member Financed Benefits) with such amounts in such manner as the Trustees may determine and which must not cause the Fund to fail to comply with the Superannuation Conditions;
- (h) to deduct from any benefit or other payment hereunder any tax or duty payable whether from or in respect of it and whether payable by the person entitled thereto or the Fund and must then pay that tax or duty to the relevant authority and the person is be entitled to receive only the net benefit or payment after the deduction has been made;
- (i) such other powers as are appropriate to the fulfilment of the purposes of the Fund and its proper and efficient management and its compliance with an exercise of powers authorities and discretions available under the Superannuation Conditions.

Notification of significant adverse effects

16. Trustees to give notice of significant adverse effect:

If the Trustees become aware of the occurrence of an event having a significant adverse effect on the financial position of the Fund, they must give such notice as may be required by the Superannuation Conditions.

Insurance

17.1 Life insurance:

The Trustees have power from time to time to effect policies of insurance upon the life of any Member to secure payment upon death of the Member or the happening of any other contingency in respect of that Member of such amount as the Trustees in their absolute discretion think fit and to renew any such policies for such period as the Trustees may think fit and the Trustees have power to accept an assignment of any policies of insurance effected in respect of a Member.

17.2 Annuities:

The Trustees have power from time to time to effect annuity or deferred annuity policies upon the life of any Member or any of the Member's Dependents of such amount as the Trustees determine and the Trustees have power to accept an assignment of such annuity or deferred annuity policies effected in respect of a Member.

17.3 Powers:

Policies must be issued in the names of or assigned to the Trustees and must be held by the Trustees upon and subject to the provisions of this Deed and the Trustees may enforce surrender sell or otherwise deal with any such policies as they in their absolute discretion think fit provided that the Trustees may also arrange for annuity or deferred annuity policies to be issued in the name of a beneficiary.

17.4 Evidence to be provided by Member for insurance:

A Member must provide any evidence that may be required from such Member in order to secure cover under any insurance policy and the Trustees are not bound to seek completion of such policy if evidence satisfactory to the insurance company is not provided.

Accounts

18.1 Trustees to keep accounting records:

The Trustees may:

- (a) keep such accounting records as correctly record and explain the transactions and the financial position of the Fund.
- (b) keep its accounting records so as to enable the preparation of the accounts and statements in accordance with the Superannuation Conditions.
- (c) keep its accounting records so as to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Superannuation Conditions.
- (d) a reserve account to which may be credited or debited such amounts as the Trustees determine from time to time subject to the Superannuation Conditions.

18.2 Balance sheet:

The Trustees must as soon as practicable after the expiration of each Financial Year cause to be drawn up such:

- (a) balance sheets and statements of financial position;
- (b) operating statements;
- (c) other financial accounts and statements as are required by the Superannuation Conditions; and/or
- (d) such other statements as the Trustees think fit.

18.3 Accounts and statements to be prepared:

The Trustees may prepare such accounts and statements additional to those described in this paragraph as are required by the Superannuation Conditions or otherwise, as they think fit.

18.4 Audit:

If required by the Superannuation Conditions, the Trustees must ensure that the accounts and statements of the Fund are audited.

18.5 Maintenance of reserves:

The Trustees may, if they consider it desirable to do so, maintain reserves of the Fund.

18.6 Records to be kept by Trustees:

The Trustees must keep such minutes, records and reports as they consider appropriate for the proper administration of the Fund and such further records, minutes and reports as may be required by the Superannuation Conditions.

Payments to Contributors

19. Payments to Associated Employer:

The Trustees may pay an amount or permit an amount to be paid out or transferred in specie to an Associated Employer or Principal Employer only if not prohibited by the Superannuation Conditions.

Rollover

20. Trustees may pay rollovers:

The Trustees may pay benefits to an eligible rollover fund or other fund as permitted by the Superannuation Conditions.

Member Accounts

21.1 Trustees to keep Member and employer accounts:

Subject to complying with the Superannuation Conditions, the Trustees may keep such accounts in respect of Member and employer contributions (if any) as they think fit including accounts in respect of segregated current pension assets.

21.2 Power to retain prior categories of membership and vesting:

(a) Where under any prior governing rules of this Fund or under any fund from which a benefit has been transferred, provision was made for categories of membership or for vesting of contributions, the Trustees may, in their absolute discretion continue to apply or adopt those provisions or provisions similar thereto as the Trustees may reasonably determine.

(b) The Trustees may treat that benefit so transferred in that manner despite the provisions of this Deed, it being the intention of this provision to give the Trustees the power to retain and continue to treat that benefit in a similar manner to its treatment under those prior or other governing rules.

(c) This provision is subject to compliance with the Superannuation Conditions.

21.3 Accounts may be kept:

The Trustees may cause to be kept in respect of each Member a Member Account which may contain such particulars as the Trustees determine.

21.4 Details of accounts:

Each Member Account may include -

(a) An Employer Contribution Account showing -

- (i) contributions by any Associated Employer to that account;
 - (ii) sums which the Trustees determine to be credited or debited to the account in order to provide the benefits payable to or in respect of the Member in accordance with the Deed and Rules;
 - (iii) the portion of the account that is currently irrevocably vested for the Member (the Vested Portion); and
 - (iv) the portion of the account that is preserved and the conditions of such preservation (the Preserved Portion);
- (b) A Member Contribution Account showing -
- (i) contributions by the Member to that account;
 - (ii) sums which the Trustees determine are properly to be credited or debited to the account in order to provide the benefits payable to or in respect of the Member in accordance with the Deed and Rules;
 - (iii) the portion of the account that is currently irrevocably vested for the Member (the Vested Portion); and
 - (iv) the portion of the account that is preserved and the conditions of such preservation (the Preserved Portion); and
- (c) Any such Account may, subject to the Superannuation Conditions, be debited or credited and such other entries may be made or particulars recorded as the Trustees deem to be appropriate including provisions for reserves.

Segregated Current Pension Assets

- 21.5 The Trustees may in accordance with the Tax Act, transfer and segregate any of the assets of the fund for the sole purpose of discharging the current pension liabilities of the fund out of those assets.
- 21.6 The transfer values and annual valuations of the segregated current pension assets must be determined in accordance with the Tax Act.
- 21.7 The Trustees may, in accordance with the Tax Act, re-transfer assets segregated in order to meet the requirements of the Tax Act applicable to the segregated current pension assets.
- 21.8 The Trustees may do or cause all such things to be done as may be necessary for the Trustees to comply with the provisions of the Tax Act necessary to transfer contributions to a life insurance company or pooled superannuation trust to permit taxation of those contributions in the hands of such company or trust in accordance with the Tax Act.
- 21.9 The Trustees may create such Pension Benefit accounts in respect of pensions payable under this Deed as the Trustees determine.

Valuation of the Fund and Allocation of Profits or Loss

22.1 Valuation:

The Trustees must at the end of each Financial Year and may at any time value the assets and liabilities of the Fund and any surplus or deficiency including unrealised gains or losses revealed by such valuation must be separately credited or debited to the profit and loss account of the Fund. For the purpose of effecting a valuation the Trustees have an absolute discretion in selecting the valuation basis for any asset or liability provided that such basis must not be one which causes the Fund to fail to satisfy the Superannuation Conditions.

22.2 Profit or loss distribution:

The Trustees may in their absolute discretion determine the amount of profit or loss of the Fund that must be credited or debited to and amongst the Member Accounts and any other accounts that the Trustees nominate in such proportions and such manner as the Trustees decide and may set formulae or interest rates for this purpose provided that the Trustees must in the exercise of their discretions under this paragraph act in a manner that is in accordance with the Superannuation Conditions. If the Trustees maintain reserves the Trustees may first determine what amount of the profit or loss is to be allocated to the reserve accounts, and the balance (if any) credited or debited in accordance with this Deed.

22.3 Other debits:

Subject to the Tax Act and the Superannuation Conditions, the Trustees may debit any accounts of the Fund in respect of taxation liabilities or any other outgoings in such manner as the Trustees determine.

Contributions

23.1 Employer contributions:

Each Associated Employer, if any, and Principal Employer, if any, must contribute to the Fund pursuant to an arrangement between such employer and the Trustees in respect of the employer's employee who is a Member of the Fund.

23.2 Employer sponsors:

The arrangement referred to in the preceding paragraph is that the Employer must pay or cause to be paid into the Fund from time to time on a basis agreed with the Trustees contributions or other monies as may be required in accordance with the Rules and subject to compliance with the Superannuation Conditions provided however that the Trustees may refuse to accept any contributions.

23.3 Member contributions:

Subject to the Superannuation Conditions and this Deed, each Member may contribute to the Fund (whether in specie or otherwise, subject to the Superannuation Conditions) such amount or otherwise as is agreed between the Member and the Trustees.

23.4 Acceptance of contributions:

The Trustees may accept any contribution unless the Superannuation Conditions do not permit it.

23.5 Conditions for accepting contributions:

Subject to sub-paragraphs 23.4 and 23.9 the Trustees may accept contributions that are made in respect of a Member who is under age 65 only if:

- (a) the contributions are mandated employer contributions; or
- (b) the contributions are not mandated employer contributions and the Member:
 - (i) has, at any time in the period of 2 years immediately preceding the date of acceptance, engaged in full-time or part-time gainful employment; or
 - (ii) ceased full-time or part-time gainful employment because of ill-health (whether physical or mental) that, at the date of acceptance, prevents the Member from engaging in employment of the kind that the Member engaged in at the onset of the ill-health; or
 - (iii) is on authorised leave from his or her employer, and:
 - (A) the leave is for the purposes of raising children of whom the Member is a parent, or for whom he or she has assumed the responsibility of a parent; and
 - (B) he or she has been on that leave for less than 7 years consecutively; and
 - (C) he or she has a statutory or contractual right to resume employment at the end of the leave; and
 - (D) either:
 - (I) he or she was a Member of the fund immediately before going on the leave; or
 - (II) the fund is a fund of which the employer is a standard employer-sponsor; or
- (c) the contributions are eligible spouse contributions.

23.6 Authorised Leave:

For the purposes of sub-paragraph 23.5(b)(iii) above "authorised leave", in relation to a Member, means leave that is:

- (a) approved by the Member's employer, if any; or
- (b) authorised by:
 - (i) a law of the Commonwealth, a State or a Territory; or
 - (ii) an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the Commonwealth, a State or a Territory.

23.7 Contributions by Members aged 65-70:

Subject to 23.4 and 23.9, the Trustees may accept contributions that are made in respect of a Member who has reached age 65 but not age 70 only if:

- (a) the contributions are mandated employer contributions; or
- (b) the Member is gainfully employed on a part-time or full-time basis.

23.8 Contributions by Members aged over 70:

Subject to sub-paragraphs 23.4 and 23.9, the Trustees may accept contributions that are made in respect of a Member who has reached age 70 only if the contributions are mandated employer contributions.

23.9 Contributions made after relevant period:

The Trustees may accept contributions in respect of a Member if the Trustees are reasonably satisfied that the contribution is in respect of a period during which, under paragraph 23.5, 23.7 or 23.8 the fund may accept the contribution in respect of that Member, even though the contribution is actually made after that period.

23.10 E.T.P.:

The Trustees may receive such eligible termination payments as the Trustees accept from time to time provided that such payment would not result in the fund:-

- (i) no longer complying with the conditions applicable to self managed superannuation funds; or
- (ii) no longer complying with the Superannuation Conditions

and further provided that the Trustees may in any event refuse to accept such payment or contribution.

23.11 Entries & Membership:

Subject to the Superannuation Conditions, in respect of any receipt:-

- (a) the Trustees may make such relevant entries in the accounts of the fund as they deem appropriate; and
- (b) despite other provisions of this Deed may admit to membership of the fund as necessary in the Trustees' opinion such persons as may be entitled to such contributions or eligible termination payments.

23.12 (a) Contributions in Cash or Assets:

Any contribution made by a Member or an Associated Employer must be made to the Trustees within the period in respect of which it is paid either in cash or by transfer of an asset or assets provided that the assets transferred must be investments permitted by this Deed. Any such transfer of an asset must be made upon the terms and conditions required by the Superannuation Conditions, and must not be made if the Trustees or an agent or delegate of the Trustees is prohibited by the Superannuation Conditions from acquiring the asset.

- (b) **No Obligation to Contribute:**
In the absence of any agreement to the contrary neither a Member nor an Employer are under any obligation to make a contribution to the Fund and a Member may remain a Member of the Fund notwithstanding a contribution is not made in respect of that Member in respect of any year.
- (c) **Ineligible Contributions:**
If the Trustees at any time ascertain that any contribution has been accepted in breach of the provision of paragraph 23, the Trustees must refund such contribution within any time period which may be required by the Act, less any:
- (i) charge which an insurer may have made in respect of any extra cover which it has provided in relation to those contributions; and
 - (ii) reasonable administration charges, and reduce the Benefits held for the Member in the Fund to those which would have been held if such contribution had not been received.

Benefits

- 24.1 **Maximum Benefits:**
Unless the Trustees, otherwise and subject to the Superannuation Conditions unanimously resolve the liability (if any) of the Trustees to make payments to or for any Member, Dependent, Personal Representative or Beneficiary must not in any event exceed the lesser of:-
- (a) the benefits provided under the Deed in respect of such Member, Dependent, Personal Representative or Beneficiary; and
 - (b) the total balances of the relevant Member Accounts and any insurance proceeds received by the Trustees in respect of the Member.
- 24.2 **Additions:**
Despite any provision in the Deed and subject to the Superannuation Conditions, the Trustees, may from time to time or at any time commence to provide or add to:-
- (a) the vesting in or for Members within any Employer Contribution Accounts held for their benefit; or
 - (b) any death, ill health or disability insurance policies upon the life of any Member.
- 24.3 **Vesting:**
There vests in each Member:
- (a) the amounts required to be vested by the Superannuation Conditions;
 - (b) the amounts, if any, already vested in that Member pursuant to any rules of the Fund applicable prior to the date of this Deed;

- (c) any amount not otherwise vested which the Trustees with the consent of the Member's Employer (if any) agree is to be vested including any benefits or amounts transferred to the Fund as a vested benefit from another superannuation fund.

24.4 Application of benefits:

The benefits payable to or in respect of Members, Dependents and Personal Representatives in accordance with the Deed must be paid or applied to or for the benefit of such one or more of those Beneficiaries in the form of lump sums, pensions or annuities as provided in the Rules and in such manner as the Trustees may in their absolute discretion decide provided that such payments do not cause the Fund to fail to satisfy the Superannuation Conditions, nor conflict with paragraph 3.2 and is subject to any valid notice given to the Trustees by a Member pursuant to paragraph 24.6.

24.5 Members request:

Subject to the Superannuation Conditions and paragraph 3.2 and despite the Rules, when a benefit is payable as a pension the Member may by written notice to the Trustees request payment of such benefit as an immediate or deferred lump sum and while the Trustees will take due consideration of a request the Trustees decision with respect to the form of any benefit payment will be final. If the Trustees at the relevant time are individuals then the Trustees must comply with the Member's request despite this paragraph 24.5 and despite the Rules.

24.6 Binding Nominations:

- (a) Subject to the Superannuation Conditions, the Trustees consent to the ability of a Member to make a binding nomination to pay benefits to a designated dependant and the Trustees agree to give effect to such notice.
- (b) The purpose of the following sub-paragraph is explanatory and it applies subject to the provisions of the SIS Act. If the Trustees are unable to lawfully act upon the Member's notice referred to below then the Trustees may pay the relevant benefit to the Member's legal personal representative or to the Member's dependants or any one or more of them and in such proportions as the Trustees in their absolute discretion determine, not being inconsistent with the SIS Act.
- (c) Subject to sub-paragraph 24.6(i) a Member may require the Trustees to provide any benefits in respect of that Member, on or after the death of that member, to the legal personal representative or a dependant of the Member if the Trustees give the Member information under sub-paragraph 24.6(d).
- (d) The Trustees must give to the Member information that the Trustees reasonably believe the Member reasonably needs for the purpose of understanding the right of that Member to require the Trustees to provide the benefits.
- (e) Subject to sub-paragraph 24.6(i) the Trustees must pay a benefit in respect of the member, on or after the death of that member, to the person or persons mentioned in a notice given to the Trustees by that Member if:

- (i) the person, or each of the persons, mentioned in the notice is the legal personal representative or a dependant of that member; and
 - (ii) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the notice; and
 - (iii) the notice is in accordance with sub-paragraph 24.6(g); and
 - (iv) the notice is in effect.
- (f) A Member who gives notice under sub-paragraph 24.6(e), may:-
- (i) confirm the notice by giving to the Trustees a written notice, signed and dated by the Member to that effect; or
 - (ii) amend or revoke the notice by giving to the Trustees notice, in accordance with sub-paragraph 24.6(g) of the amendment or revocation.
- (g) For the purposes of sub-paragraphs 24.6(e)(iii) and 24.6(f)(ii), the notice:-
- (i) must be in writing; and
 - (ii) must be signed and dated by the Member in the presence of 2 witnesses, being persons:-
 - i. each of whom has turned 18; and
 - ii. neither of whom is a person mentioned in the notice; and
 - (iii) must contain a declaration signed and dated by the witnesses stating that the notice was signed by the Member in their presence.
- (h) Unless sooner revoked by the member, a notice under sub-paragraph 24.6(e) ceases to have effect at the end of the period of 3 years after the day it was first signed or last confirmed or amended by the members.
- (i) If an item of information given by a Member in a notice under sub-paragraph 24.6(e) is not sufficiently clear to allow the Trustees to pay the benefit, the Trustees must seek from the Member a written statement to clarify the item as soon as practicable after the Trustees receive the notice.

24.7 Preserved Benefits:

- (a) Any benefit which is subject to preservation or has been preserved under the Superannuation Conditions, an agreement made by the Trustees or this Deed and the Rules, must not be paid to or in respect of the Member at a date earlier than allowed from time to time under the Superannuation Conditions.

- (b) The Trustees may transfer any preserved benefit to another superannuation fund nominated by the Member, an approved deposit fund nominated by the Member, a deferred annuity nominated by the Member or such other superannuation entity as the Superannuation Conditions allow.
- (c) If the Fund holds benefits that were not the subject of preservation prior to the date of or the date of adoption or application of this Deed then nothing in this Deed operates in a way that has the effect of preserving those benefits unless the Superannuation Conditions require it.

24.8 Member otherwise has no interest:

Except as provided in this Deed and subject to the Superannuation Conditions, a Member, Dependant or Personal Representative have no right to or interest in the Fund.

24.9 Trustees to determine amount to pay benefits:

Upon the happening of an event as the result of which there arises an absolute or contingent right to the payment of a benefit in accordance with this Deed to or in respect of a Member, Dependant or Personal Representative either immediately or at some future date the Trustees must determine the amount required to meet that liability and any balance of the Member Accounts in excess of that amount must be transferred to the Forfeited Benefits Account.

24.10 Member to provide evidence of entitlement:

The payment or any benefit must be subject to the person claiming the same producing such evidence, doing such acts and executing such documents as the Trustees may reasonably require and the Trustees may postpone the payment of any benefit until the requirements of this paragraph have been met.

24.11 Trustees may transfer assets in specie:

Subject to the Superannuation Conditions, the Trustees may, with the agreement of the Member or Beneficiary to whom a benefit is payable, transfer investments of the Fund of equivalent value to such benefit in lieu of payment of the same in money. The Trustees may take into account such associated costs, taxes or other expenses of such transfer as they think fit and make adjustments accordingly.

24.12 Unclaimed monies:

If the Trustees cannot find a person entitled to a benefit then that benefit or part of that benefit may be paid or otherwise dealt with by the Trustees in such manner as the Superannuation Conditions permit.

24.13 Unpaid benefits:

In the circumstances prescribed by the Superannuation Conditions the Trustees may pay an unpaid benefit to an eligible rollover fund, or to the Commissioner or other body prescribed by the Superannuation Conditions.

Forfeited Benefits Account

25.1 Forfeited benefits account to be kept:

The Trustees must keep an account for the receipt of amounts forfeited from Member Accounts and any other credit balances that cannot be otherwise allocated under the provisions of the Deed. The account is to be known as the Forfeited Benefits Account.

25.2 Application of forfeited benefits:

The Trustees may in their absolute discretion apply amounts held in the Forfeited Benefits Account in the manner and to the purposes permitted by the Superannuation Conditions and, if permitted, these may include:

- (a) welfare benefits to assist in events of financial hardship, sickness, accident or other misfortune causing hardship;
- (b) supplementary benefits for retired Members;
- (c) additional benefits for current Members on an equal basis, or on a pro rata basis among all Members or, among Members on the basis of economic needs;
- (d) payment of administrative expenses of the Fund;
- (e) payment of a Member's own contribution to relieve hardship;
- (f) payment to an Employer in recompense for loss or damage as the consequence of employee misconduct;
- (g) payment to an Employer in the form of assessable income.

Provided that the Trustees, if the Superannuation Conditions require it, may not apply any amount so held which is attributable to the contributions of an Employer to the provision of any benefit or advantage for any Member who is not its Employee without the consent of that Employer and where the Trustees have given notice of not less than twenty one (21) days to an Employer of the Trustees intention to so apply any amount and the Employer has not responded the Employer is deemed to have consented to that application.

25.3 Equalisation Account:

- (a) The Trustee may at any time establish an Equalisation Account of the Fund and may transfer to the credit of that account any forfeited benefits or any amounts from an income account in the Fund.
- (b) Any monies held in the Equalisation Account do not form part of any Member Account and any income derived by the Fund on the monies held in the Equalisation Account is to be credited to the Equalisation Account.
- (c) The Equalisation Account is to be used by the Trustee in accordance with any applicable investment strategy relating to reserves to stabilise the investment earnings of the Fund and to provide for such contingencies as the Trustees consider appropriate.
- (d) This Rule 25.3 is subject to the Superannuation Conditions.

Benefits charged with payments due to Employer

- 26.1 The following provisions are subject to the Superannuation Conditions and apply to the extent to which they are not inconsistent with it.

26.2 Charge:

Subject to the Superannuation Conditions, the benefit payable in respect of a Member is to be charged with the payment to the Associated Employer of that Member of -

- (a) all amounts owing by him or her to that Employer;
- (b) any loss incurred by that Employer in consequence of the Member's fraud, dishonesty or misconduct; and
- (c) the costs of all proceedings civil or criminal incurred by that Employer in recovering any amount owing by him or her to that Employer or in respect of the Member's fraud, dishonesty or misconduct.

26.3 Evidence:

A statement in writing signed by that Employer or by the directors (if a company) or by two partners (if a firm) of that Employer stating the amount charged and requesting that the same be paid to that Employer is sufficient authority to the Trustees to pay such amount to that Employer.

26.4 Lien:

Despite any other provision contained in this Deed to the contrary, though subject to the Superannuation Conditions, the Trustees have at the date of payment of a benefit to a Member a lien over that benefit in respect of:-

- (a) all amounts owed by the Member to the Fund; and
- (b) any loss or expense incurred by the Trustees in consequence of the Member's fraud, dishonesty, misappropriation or other misconduct in respect of the Fund including the costs to the Trustees of recovering the same where the loss, expense or costs have been quantified and constituted a debt owing by the Member to the Trustees in their capacity as Trustees.

26.5 Certificate:

A certificate signed by the Trustees stating the amount of the lien over the Member's benefit claimed by the Trustees is prima facie evidence in the hands of the Trustees against all claimants of the amount owing to the Fund under the preceding sub-paragraph and is sufficient authority to the Trustees to retain in the Fund out of the amount of benefit to which the Member would otherwise be entitled the amount of such lien and the balance, if any, of the benefit which is not so retained in the Fund must be paid to or in respect of the Member.

Application of Benefits in Certain Cases

27.1 Member's insanity and other events:

This provision applies separately to vested and non-vested benefits and only if the Superannuation Conditions do not prohibit it. If a Beneficiary in the Trustee's opinion:-

- (a) who assigns or charges or attempts to assign or charge any benefit;
- (b) whose interest in any benefit, whether by the Member's or Beneficiary's own act, operation of law, an order of any Court or otherwise becomes payable to or vested in any other person, company, government or other public authority;

- (c) who is insolvent or who commits or has committed an act of bankruptcy;
- (d) who for any reason is unable personally to receive or enjoy the whole or any portion of a benefit or who, in the opinion of the Trustees is incapable of managing the person's affairs; or
- (e) who in the opinion of the Trustees commits any fraud or is guilty of dishonesty or defalcation,

the Member ceases to be presently or presumptively entitled to his or her benefit or such part of that benefit as the Trustees in their absolute discretion determine provided however that this sub-paragraph only applies to the extent that it is not limited by or inoperative under the Act or the Bankruptcy Act provided further that the Trustees will only recognise an assignment or charge of a benefit where it is acceptable under the Act.

27.2 Payments:

In any of the events mentioned in the preceding sub-paragraph and if the Superannuation Conditions do not prohibit it, the Trustees may pay to the Dependent of the Member:

- (a) the whole or such part of the benefit, or
- (b) any vested benefit

as the Trustees, in their absolute discretion, determine and may apply the balance of such benefits then remaining in the hands of the Trustees for the maintenance and support of such Member or Dependent as the Trustees in their absolute discretion may determine provided that any such payment or application by the Trustees for the maintenance and support of a Member while such Member continues to be employed is to be made only for the purposes of and in such circumstances as warrant the relief of hardship as may be permitted by the Superannuation Conditions. Any amounts not applied under this paragraph may be transferred to the Forfeited Benefits Account by the Trustees.

27.3 Discharge:

The payment or application of any monies pursuant to the preceding sub-paragraph is a complete discharge to the Trustees therefor.

Transfer of Benefits

28.1 Trustees to make arrangements with prior employer and Trustee:

- (a) Subject to the Superannuation Conditions the Trustees may at the request of an Employee or Member and with the consent of his or her Employer, if any, make such arrangements as they think proper with that previous employer or the trustee of any other superannuation fund or entity for the payment or transfer to the Fund of monies or assets and other rights and benefits of and arising in relation to the membership by such person in such other superannuation fund or entity.

- (b) The Trustees may make arrangements about any matter in relation to such payment or transfer which in their opinion is necessary and may also make such arrangements as are necessary to enable such Employee to be admitted to membership of the Fund, if that person is not a Member.
 - (c) A payment or transfer may be made to the Trustees of a successor fund without the consent of the relevant Member if permitted by the SIS Act.
- 28.2 The Trustees must hold any monies or assets so paid or transferred to them from another superannuation fund according to the terms and conditions of this Deed subject to paragraph 21.2.
- 28.3 **Application of transferred amounts:**
On any such payment or transfer of monies or assets -
- (a) the amount of the entitlement of the Member concerned is to be credited to his or her Member Account in the manner resolved between the Member, the Trustees and the Trustees of the Fund from which the Member is transferring provided that any such monies or assets which represent a benefit which has vested in the Member is to be credited to his or her account as a vested benefit;
 - (b) the amount which by the terms and rules of such other superannuation fund is required to be preserved is to be identified and held by the Trustees as a Preserved Portion under this Deed.
 - (c) except to the extent required by the Superannuation Conditions, the money or assets so transferred must not be subject to preservation. Where the Fund holds benefits that were not the subject of preservation in a prior Fund then nothing in this Deed is to have the effect of preserving those benefits unless the Superannuation Conditions require it.
- 28.4 **Application of benefits on Member leaving Fund:**
The money and assets comprising any benefit payable to a Member on leaving the Fund may with the approval of such Member be paid or transferred to or invested in (as the case may be):-
- (a) another superannuation fund nominated by the Member of which such Member is or intends to become a Member and which satisfies the Superannuation Fund Conditions; or
 - (b) an approved deposit fund nominated by the Member which satisfies the Approved Deposit Fund Conditions set out in the Superannuation Conditions; or
 - (c) a deferred annuity nominated by the Member which does not pay benefits except in circumstances in which by the Superannuation Conditions or by this Deed benefits are payable to that person;
 - (d) such other superannuation entity as the Superannuation Conditions permit.

The receipt of the Trustee of that other fund or scheme or the corporation issuing the policy is a complete discharge to the Trustees in respect of any money or assets so paid or transferred.

28.5 Application of preserved benefits:

The money and assets comprising any Preserved Portion of a benefit payable to a Member at a date after his or her leaving the Fund may be:

- (a) retained in the Fund; or
- (b) transferred to a superannuation entity provided that such transfer is not inconsistent with the Superannuation Conditions.

The receipt of the Trustees of that other fund or scheme or the corporation issuing the policy is a complete discharge to the Trustees in respect of any money or assets so paid or transferred.

Disclosure of Information

29. The Trustees must provide such information, reports or otherwise to such persons, superannuation entities or otherwise as may be necessary to comply with the Superannuation Conditions.

Notices

30. Notices may be given by the Trustees to Members and Dependents either personally or by sending the same by pre-paid letter posted to the address last known to the Trustees or the address last known to the Employer.

Principal and Associated Employers

31.1 Approval of Associated Employers:

Subject to the Superannuation Conditions the Trustees with the approval of the Principal Employer, if any, may permit any company, person or firm as an Associated Employer to contribute to the Fund. Unless inconsistent with the Superannuation Conditions, an Associated Employer is deemed to be bound by the Deed and the Rules on such payment of a contribution. The Trustees may require the Associated Employer to make application to join in a form approved by the Trustees.

31.2 Cessation:

Subject to the Superannuation Conditions an Employer ceases to be an Associated Employer on:-

- (a) The Employer ceasing to be an Employer of any Member; or
- (b) The Employer determining to cease contributing to the Fund; or
- (c) The Employer's becoming bankrupt or being placed into liquidation or receivership or ceasing to carry on a business.
- (d) The Employer giving written notice of ceasing to be an Associated Employer to the Trustees and to each Member who is employed by that Employer.

- (e) The Trustees giving written notice of cessation to the Associated Employer.
- 31.3 A Member who is an employee of an Employer that has ceased to be an Associated Employer does not by reason of that event cease to be a Member.
- 31.4 **Appointment and cessation of Principal Employer:**
 - (a) Subject to the Superannuation Conditions, a Principal Employer of the Fund may cease to occupy that role by giving written notice to the Trustees of that fact and that cessation takes effect from the date that notice is so given.
 - (b) Another entity may become the Principal Employer by written agreement of the Trustees and the Members with the consent of any then current Principal Employer.

Employers Rights Not Restricted

- 32.1 **Employer's rights unaffected:**

Nothing herein contained in any way restrict the rights of an Employer to determine the employment of a Member (or remove from office any director who is a Member) at any time and the fact that such Member is a Member is not to be taken as a guarantee of their employment, or continuance in office.
- 32.2 **Damages:**

The benefits to which a Member might claim to be entitled hereunder are to be disregarded in assessing damages in any action which may be instituted by such Member against the Employer in respect of their dismissal.
- 32.3 **Workers compensation:**

Nothing contained in this Deed is to affect the right of a Member or their Personal Representative or other person to claim damages or compensation at Common Law or under Workers' Compensation Acts or any other Statute in force governing compensation to a Member injured or dying from any accident arising out of and in the course of their employment with the Employer and any benefits payable hereunder are not to be reduced by reason of any payment that may be made in respect of such damages or compensation.

Winding up of Fund

- 33.1 **Winding up:**

Subject to the Superannuation Conditions and if so required, with the Trustees' consent, the Fund is to be wound up by the Trustees as at a date determined by them on the occurrence of any of the following events:-

 - (a) if there are no assets of the Fund; or
 - (b) if there are no Beneficiaries of the Fund and no Associated Employers and no Principal Employers; or
 - (c) if in respect of each Associated Employer and Principal Employer, if any, an order is made or a resolution is passed for the winding up of such Employers and there are no Beneficiaries.

- (d) if the Trustees (with the consent of the Principal Employer, if any,) resolve to wind up the Fund.
- (e) if the Fund has a Principal Employer who is the only contributing employer and gives written notice requesting that the Fund be wound up to the Trustees and each Member.

33.2 Priorities:

Subject to the Superannuation Conditions and if so required, with the Trustees' approval, the assets of the Fund on its winding up are to be applied in the following order of priority and for the following purposes to the extent to which those assets will allow:-

- (a) firstly, in the payment of liabilities in respect of the administration and other costs associated with the winding-up proceedings;
- (b) secondly, in the discharge of all liabilities other than liabilities in respect of benefits payable to or in respect of Beneficiaries;
- (c) thirdly, in securing the minimum guaranteed benefits of members;
- (d) fourthly, in securing for each Member the amounts standing to the credit of -
 - (i) their Member Contribution Accounts;
 - (ii) the Vested Portion of their Employer Contribution Accounts; and
 - (iii) any Preserved Portion of their Member Accounts in excess of the amount secured under (i) and (ii) above; and
- (e) lastly, in the distribution of any remaining balance to such of the Beneficiaries, and to any of the Employers in such proportions as in the opinion of the Trustees is appropriate in the circumstances and in accordance with the Superannuation Conditions.

33.3 Subject to vesting and preservation:

Subject to the Superannuation Conditions and in so far as it is within the power of the Trustees to so do, in dealing with the benefit of any Member in a winding up of the Fund the Trustees must observe all the provisions of this Deed relating to the vesting, transfer, payment and preservation of benefits and must not act otherwise than as permitted by those provisions.

Complaints

34. Establishment of complaints procedure:

If required by the Superannuation Conditions, the Trustees will establish such reasonable procedures under which enquiries and complaints may be dealt with.

Schedule
The Rules
Interpretation

1.1 Matters covered by Rules:

These Rules relate to the following matters concerning the Fund:-

- (a) membership of the Fund;
- (b) the kinds of benefit provided by the Fund;
- (c) the circumstances of payment of benefits;

1.2 Superannuation Conditions:

These Rules are subject to the SIS Act.

Membership

2.1 Eligibility:

Any Eligible Person may make application in writing to the Trustees in a form approved by the Trustees from time to time to join the Fund however if a proposed Member is employed by a Principal Employer then the Principal Employer's consent to membership must be obtained by the Trustees before admission of a Member, subject to the Act and the Superannuation Conditions.

2.2 Trustees may refuse:

The Trustees may accept or refuse any application for membership in the Trustees absolute discretion and is not required to assign any reason for any refusal.

2.3 Trustees to give notice:

A person becomes a Member when the Trustees give notice in writing to that person that such application has been approved and accepted, however notice to the members named in the reference schedule is not required.

2.4 Member bound by Deed:

A person upon becoming a Member is deemed to have consented to and to be bound by the provisions of the Deed and Rules.

2.5 Cessation of membership:

Subject to the Superannuation Conditions a person ceases to be a Member on the happening of the first of the following:-

- (a) death;
- (b) when the total of all amounts payable under this Deed and Rules in respect of the Member's membership has been paid;
- (c) when under this Deed and Rules any benefit payable to the Member or any person on the Member's account ceases to be payable; or
- (d) when the Trustees so resolve, subject however to the Superannuation Conditions and the SIS Act.

Payment of Benefits

3.1. Payment on retirement or at age 65 - employer sponsored Member

Subject to the provisions of these rules and to the Superannuation Conditions:-

- (a) the amount of the Member's Benefit will be paid or commence to be paid to an employer sponsored Member who, having attained the retiring age, ceases to be an employee.
- (b) An employer sponsored Member's Benefit will also be paid or commence to be paid to a Member on attaining age 65 if the Member continues to be employed by the employer after attaining age 65 but the number of hours worked are insufficient for the Member to be considered to be employed on a part-time basis.
- (c) Despite sub-rules 3.3 and 3.4, a Member's Benefit will be paid or commence to be paid to an employer sponsored Member who, having attained age 65, continues in employment but requests payment of the benefit.
- (d) To the extent only permitted by the Act, the Member's benefit may be paid to a Member who has not reached the Member's preservation age if the Trustees so determine.

3.2 Payment on retirement or at age 65 - non-employer sponsored member

Subject to the provisions of these rules and to the Superannuation Conditions:-

- (a) the amount of the Member's Benefit will be paid or commence to be paid to a non-employer sponsored Member who retires from the workforce and attains the age prescribed by the Act as being the preservation age for that member, or who retires from any gainful employment after attaining the age of 65 or such other age permitted by the Act.
- (b) The Member's Benefit will also be paid or commence to be paid to a non-employer sponsored Member on attaining age 65 if the Member continues to be gainfully occupied after that age but the number of hours worked are insufficient for the Member to be considered to be gainfully occupied on a part-time basis.
- (c) Despite rules 3.3 and 3.4, the member's benefits will be paid or commence to be paid to a non-employer sponsored Member who, having attained age 65, continues to be gainfully occupied but requests payment of the benefit.
- (d) To the extent only permitted by the Act, the Member's benefit may be paid to a Member who has not reached the Member's preservation age if the Trustees so determine.

3.3 Continuation of employment on a part-time basis after age 65

If the Member is and continues to be gainfully occupied on a part-time basis after attaining age 65, the Member's Benefit will be paid or commence to be paid to the Member when the Member requests payment, or when the Member

attains age 70, or if the number of hours that the Member works reduces below the level required to be gainfully occupied on a part-time basis, whichever occurs first.

3.4 Continuation of employment on a full-time basis after age 65

If the Member is and continues to be gainfully occupied on a full-time basis after attaining age 65, the member's benefit will be paid or commence to be paid to the Member when the Member requests payment, or on the Member ceasing to be gainfully occupied on a full-time basis. If the member, after age 65, becomes gainfully occupied on a part-time basis after having ceased to be gainfully occupied on a full-time basis, sub-rule 3.3 applies.

3.5 Payment of benefit by pension

The benefit payable under this Rule 3 may, in the discretion of the Trustees, be paid by way of a pension in accordance with rule 13. However, the benefit will (subject to any permitted commutations by members and beneficiaries to lump sums) be paid by way of a pension that is an old-age pension if the Trustee is not, at the time the benefit becomes payable, a constitutional corporation.

3.6 Conditions of Commutation

Subject to the Superannuation Conditions and to paragraph 3.2 of the Deed, on the written application of a Pensioner or Reversionary Beneficiary, the Trustees must commute to a lump sum benefit the whole or any part of a pension payable from the Fund to such Pensioner or Reversionary Beneficiary as applicable provided that:-

- (a) the commutation of the pension is permitted by the Act;
- (b) the amount of the commuted benefit including the value of any remaining pension payable is subject to the provisions of paragraph 24 of the Deed;
- (c) the amount of the commuted benefit is to be determined by the Trustees.

3.7 Payment of Lump Sum Benefit:

The Trustees may pay the amount of the lump sum benefit in respect of the pension being commuted under sub-rule 6 to the Pensioner or the Reversionary Beneficiary who applied for the commutation but subject to paragraph 3.2 of the Deed and to any other applicable provisions of this Deed and to the Superannuation Conditions.

3.8 Adjustment of Pension following Commutation:

Following the commutation of a part of a pension under sub-rule 6, the Trustees must reduce the total amount of the instalments of any pension payable to the Pensioner by such amount as the Trustees consider appropriate and subject to the Superannuation Conditions.

Benefit Payable on Death

4.1 Benefit payable on death:

- (a) If a Member dies before payment or commencement of payment of a benefit under rule 3, the amount of the Member's Benefit will be held by the Trustees on trust for the benefit of one or more of the member's dependants in the shares and proportions as the Trustees, in their absolute discretion, determine.

(b) The Trustees will take account of any nomination of beneficiaries made by the member, but will not be bound by it unless it is a binding nomination under paragraph 24 of the Deed and subject to that paragraph 24, in the discretion of the Trustees, the benefit payable will be paid by lump sum or pension or a combination of both.

4.2 Payment to legal personal representative:

If the Trustees are unable to establish within 6 months after the member's death that there are any dependants, the member's benefit will be paid to the member's legal personal representative.

4.3 Payment other than to dependant or legal personal representative:

If, after making inquiries that the Trustees regard as reasonable, the Trustees are unable to establish that there are any dependants of a legal personal representative of the deceased member, the Trustees may, if permitted by the Act, pay the benefit to a person or persons selected by the Trustees.

4.4 Forfeited benefits:

Subject to sub-rule 4.3, if a grant of probate or letters of administration is not made in respect of the estate of the Member within 3 years after the member's death (or any longer period the Trustees determine), the benefit payable under this Deed will be treated as a forfeited benefit, and will be applied in the manner provided for in the Act or, in the absence of any provision, will be applied by the Trustees as a forfeited benefit.

Benefit Payable on Disablement

5.1. Benefit payable on disablement:

Subject to the provisions of these rules, if, before a benefit is paid or commences to be paid under rule 3, the employment of an employer sponsored Member is terminated as a result of the Member being permanently disabled or if a non-employer sponsored Member becomes permanently disabled, the Member's Benefit will be paid to the Member or, if the Member is unable to manage his or her own affairs, to any of the member's dependants, and in any proportions as the Trustees, in their absolute discretion, determine.

5.2 Proceeds of temporary disablement insurance policy:

Subject to the Superannuation Conditions and paragraph 24 of the Deed, if, before a benefit becomes payable under sub-rule 5.1, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, the proceeds of the policy will be paid to the Member or, if the Member is unable to manage his or her own affairs, to any of the member's dependants, and in any proportions, as the Trustees, in their absolute discretion, determine.

6. Benefit payable on dismissal

If an employer sponsored Member is dismissed from the employment of the Principal Employer for misconduct involving fraud or dishonesty, the benefit payable to that Member, subject to the provisions of these rules, will be the amount of the Member's contribution account (if any) plus the amount of the member's vested employer's contribution account (if any) plus any other vested benefit plus the additional part (if any) of the employer's contribution account which the Trustees, in their absolute discretion, determine. Any preserved benefit will be paid on the terms and conditions set out in rule 8 in relation to that benefit.

7. Benefit payable to an employer sponsored member on termination of employment before retiring age:

Subject to the Superannuation Conditions, if the employment by the employer of an employer sponsored Member is terminated before the retiring age otherwise than in the circumstances referred to in rules 4, 5 or 6:

- (a) the amount of the member's contribution account; plus
- (b) that part (if any) of the amount of the member's employer's contribution determined by the Trustees; plus
- (c) such part (if any) of the amount of the member's employer's contribution account which the Trustees, in their absolute discretion, determine, (with the balance of that account to be applied as a forfeited benefit); plus
- (d) the amount of the member's vested employer's contribution account; plus
- (e) any other vested benefit not otherwise payable under this Deed, will, if the Member has attained the age prescribed on the Act as being the preservation age for that Member and is retiring from the workforce, be paid to the member. If the Member has not attained the age prescribed in the Act as being the preservation age for that Member or, having attained that age, has not retired from the workforce, the Trustees will pay or commence to pay the Member only that part of the benefit payable which is not a preserved benefit.

8. Payment of preserved benefit:

Subject to the Superannuation Conditions, if any part of the benefit payable under rules 6 or 7 is a preserved benefit and if the Member has not attained the age prescribed in the Act as being the preservation age for that Member or, having attained that age, has not retired from the workforce, the Trustees will either:

- (a) retain the member's preserved benefit in the fund and pay the benefit plus earnings on it to the Member after the Member retires from the workforce and attains the age prescribed by the Act as being the preservation age for that member) and requests that the benefit be paid to him or her. The Trustees must pay or commence to pay the preserved benefit no later than the attainment by the Member of the age of 65 years or on the termination of gainful employment of the Member after attaining age 60, or in any other circumstances permitted under the Act; or must pay those benefits in accordance with rules 4 or 5 if the Member dies or becomes permanently disabled, or will pay the benefit to the Member if the Trustees are satisfied that the Member is leaving Australia to reside permanently overseas;
- (b) if the Member requests that their preserved benefit be transferred to another superannuation fund or to an approved deposit fund, transfer the benefit in accordance with paragraph 28 of the Deed;
- (c) in its discretion, pay the preserved benefit to the Member by a non-commutable pension or annuity for the life of the member; or

- (d) if the Member so requests, apply the preserved benefit to purchase a deferred annuity to be held by the Trustees until the Member attains the age prescribed in the Act as being the preservation age for that member; and
 - (i) under which the first annuity payment is not to be made until on or after the Member attains the age prescribed in the Act as being the preservation age for that Member provided that payment of the annuity instalments will commence no later than the attainment by the Member of the age of 65 years or in any other circumstances as are permitted by the Act; and
 - (ii) which cannot be surrendered or assigned (except to make a payment in accordance with paragraph 28 of the Deed) until the Member attains the age prescribed in the Act as being the preservation age for that member; and
 - (iii) which cannot be mortgaged or encumbered in any manner.

If the amount of the member's preserved benefit does not exceed the amount that is prescribed under the Act, it will be paid to the Member on termination of his or her employment and paragraphs (a), (b), (c) and (d) of this rule 8 will not apply to the benefit.

9. Deferment of payment of benefit

Subject to the Superannuation Conditions, the payment of any benefit payable under rules 6 or 7 which is not a preserved benefit or payable under rules 3.1 or 5.1 may, at the request of the Member and with the consent of the Trustees, be deferred until the Member requests payment of the benefit. However, the deferred benefit will be paid to the Member in accordance with rules 4 or 5 if the Member dies, or becomes permanently disabled, or attains age 65, or in accordance with rules 3.3 or 3.4, or in accordance with the requirements of the Act. Earnings of the fund will be allocated to the deferred benefit in accordance with the Deed.

10. Payment of benefits to minors

Subject to the Superannuation Conditions, where a person to whom benefits are payable is a minor, the Trustees may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid will be a complete discharge to the Trustees in respect of that benefit.

11. Deduction of income tax

The Trustees may deduct from any benefit payable the amount of any tax that is calculated by the Trustee to be payable in respect of that benefit and will remit any amount deducted as may be required by Law.

Mode of Payment of Benefits

12. Lump sum or pension

The benefits payable under rules 3, 5, 6 or 7 will be paid in a lump sum or by way of pension, in the discretion of the trustee, unless any part of the benefit is required by the Act to be paid by way of lump sum or pension. A benefit that becomes payable under rule 3 will (subject to any permitted commutations by members and beneficiaries to lump sums) be paid by way of a pension that is an old-age pension if the Trustee is not, at the time the benefit becomes payable, a constitutional corporation.

Pension Conditions

13.1 **Trustee's discretion**

Subject to rule 12, where a benefit is payable under rules 3,5, 6 or 7 by way of pension, the Trustees will, in their absolute discretion, determine the amount of the pension and the manner in which and the period for which it is paid. The pension must be paid at least annually. The annual amount of the pension cannot be greater than any maximum nor less than any minimum amount stated in the Act. The pension must be paid on a basis that complies with the requirements of the Act.

13.2 **Cessation of payments**

When the member's benefit is reduced to nil, the pension payable under these rules ceases to be payable and the person who was receiving the pension ceases to be entitled to any further benefits and, if a member, ceases to be a member.

13.3 **Commutation of pension**

The recipient of a pension under these rules may commute the whole or part of a pension to a lump sum payment, by applying in writing to the trustee. The commutation must comply with the requirements of the Act.

13.4 **Benefit payable to spouse on death of member**

(a) If a Member to whom a pension is being paid and who is survived by a spouse dies, the Trustees may determine to pay to the spouse until the spouse's death or, until the member's benefit is reduced to nil (if that occurs before the spouse's death) a pension of the amount as the deceased member's spouse and the Trustees agree on from time to time or, if there is no agreement, of any amount and on terms and conditions as the Trustees determine. If however the pension has to be paid on some other basis for the fund to comply with the Act, it must be paid on that basis. The annual amount of the pension will not be greater than any maximum nor less than any minimum amount stated in the Act.

(b) A pension payable to a member's spouse pursuant to this sub-rule 4 will commence on the date of the member's death.

13.5 **Payment to member's dependants**

(a) If a Member in receipt of a pension who does not have a spouse, or to whose spouse a pension is not paid under sub-rule 4 dies, or if a member's spouse to whom a pension was payable under sub-rule 4 dies, the balance of the member's benefit (if any) will be paid in a lump sum to such of the member's dependants as the Trustees, in their absolute discretion, determine.

(b) If payment of part or all of the benefit does not comply with the requirements of the Act, the proportion of the benefit that does not so comply will be treated as a forfeited benefit and will be applied in the manner stated in paragraph (d) of this rule.

(c) If the Trustees are unable to establish within 6 months of the death of a Member or the member's spouse (if a pension was being paid to the member's spouse) that there are any dependants, the benefit payable under this sub-rule 5 will be paid to the member's or the member's spouse's legal personal representative in the discretion of the Trustees,

but, if a grant of probate or letters of administration in respect of the estate of the deceased Member or the deceased member's spouse is not made within 3 years of his or her death (or any longer period as the Trustees determine), the benefit payable under this rule will be treated as a forfeited benefit and applied in the manner stated in paragraph (d) of this rule.

- (d) A forfeited benefit will be applied in the manner provided for in the Act or, if there is no provision, will be applied by the Trustees in as a forfeited benefit.

13.6 No assignment or encumbrance

- (a) Pensions payable from the fund cannot be assigned or otherwise transferred by the person receiving the pension (except to the extent provided for in sub-rule 4) and cannot be mortgaged or encumbered in any manner.
- (b) Neither the capital value (if any) of any pension payable from the fund nor any income from it, may be used as a security for a borrowing.

13.7 Annuities

The Trustees may, in their absolute discretion (including where an old-age pension is required to be paid), provide pensions payable under these rules by applying a member's benefit to the purchase of an annuity that meets the requirements of the Act.

13.8 Imputation credits

Subject to the Superannuation Conditions, the Trustees may, in their absolute discretion, debit amounts to the accounts of members to whom current pensions are not being paid and credit corresponding amounts to the accounts of members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

14. Benefit payable on the grounds of financial hardship

Subject to the Superannuation Conditions, the Trustees may, in their absolute discretion, pay part or all of the member's benefit to a Member who is not entitled to be paid a benefit under the balance of these rules, if the Trustees are satisfied that the Member would suffer financial hardship if part or the whole of his or her benefit is not paid to the member. If the Act so requires, payment must first be approved by the Commissioner.

15. Benefit payable in other circumstances

The Trustees may, but only if consistent with the SIS Act as it applies to the Fund, pay part or all of a member's benefit to a member, or such other person as may be entitled to that benefit, despite these rules.

Complying Pensions

16.1 Statutory Provisions:

- (a) The following provisions are included to comply with the SIS Act. The Trustees may by resolution determine to pay the following types of pensions however they are subject to the Superannuation Conditions.

- (b) The Trustees are not bound to pay the pensions referred to in this Rule however if they do so resolve then the Trustees must comply with the applicable provisions and those provisions apply despite the provisions of any other Rule unless the Trustees otherwise determine.
- (c) To the extent that the provisions in this Rule are inconsistent with the SIS Act, they are varied and are deemed to be included in these Rules.

16.2 **Lifetime Pensions:**

- (a) The pension must be paid at least annually throughout the life of the primary beneficiary and if there is a reversionary beneficiary:-
 - (i) throughout the reversionary beneficiary's life; or
 - (ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the pension - at least until his or her 16th birthday; or
 - (iii) if the person referred to in sub-paragraph (ii) is a full-time student at age 16 - at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner).
- (b) The size of payments of benefits is fixed by the Trustees and may be varied by them as may be provided in this Deed or in a manner not inconsistent with the provisions of the SIS Act applicable to such pensions.
- (c) The sum payable as a benefit in each year may be altered if there is a charge in the Consumer Price Index but only in accordance with the provisions of the SIS Act applicable to such pensions.
- (d) The pension must not have a residual value.
- (e) The recipient may commute the whole or part of the pension to a lump sum payment by applying in writing to the Trustees however the pension cannot be commuted except:-
 - (i) within six months after the commencement day of the pension; or
 - (ii) within ten years after the commencement day of the pension, to the benefit of a reversionary beneficiary on the death of the primary beneficiary; or
 - (iii) if the eligible termination payment resulting from commutation is transferred directly to the purchase of another lifetime pension or annuity, life expectancy pension or annuity in accordance with the provisions of the SIS Act applicable to such pensions; or
 - (iv) to pay superannuation contributions surcharge.
- (f) If the pension reverts or is commuted, it may not have a reversionary component greater than the benefit that was payable before the reversion or commutation.

- (g) The pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary.
- (h) Neither the capital value of the pension nor the income from it may be used as security for a borrowing.

16.3 Allocated Pensions:

- (a) The pension must be paid at least annually.
- (b) The pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary.
- (c) Neither the capital value of the pension nor the income from it may be used as security for a borrowing.
- (d) Payments in a year (except a commutation) are not larger or smaller in total than the maximum or minimum limits calculated in accordance with the SIS Act.
- (e) The minimum standard prescribed by the SIS Act need not be met:-
 - (i) In the final year in which pension payments end; or
 - (ii) If the commencement date of the commencement occurs after 1 April in a financial year and there is no payment in that financial year.

16.4 Defined Pensions:

- (a) Defined pensions may be paid that comply with Rules 16.2(f), (g) and (h).
- (b) Except in relation to payments, by way of commutation, for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the CPI in the preceding three years; and
- (c) The recipient of a pension may commute the whole or part of the pension to a lump sum payment by applying in writing to the Trustees however the lump sum cannot exceed (except if conversion is in relation to a commutation to pay superannuation contributions surcharge) a sum that is not greater than the sum determined by applying the appropriate pension valuation factor applicable in accordance with the provisions of the SIS Act to the pension as if the commencement day were the day on which the commutation occurs.
- (d) The size of the payments of benefit in a year is fixed by the Trustees, allowing for variation in accordance with this Deed and rules, and such payments are made at least annually.

16.5 Life Expectancy Pensions:

- (a) The primary beneficiary became entitled to be paid the pension on or after the day when the primary beneficiary became of pension age and the commencement day is the day when the primary beneficiary becomes entitled to the pension;

- (b) The pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary if the life expectancy of the primary beneficiary on the commencement date is:-
- (i) less than fifteen years - throughout a period equal to the primary beneficiaries life expectancy; or
 - (ii) fifteen years or more - throughout a period that is not less than fifteen years but not more than the primary beneficiary's life expectancy.

In either case, rounded up at the primary beneficiary's option on or before the day when the primary beneficiary becomes entitled to the pension, to the next whole number, if the life expectancy is not a whole number.

- (c) The total amount of the payment or payments to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed by the Trustees and that payment, or the first of those payments, relates to the period commencing on the day when the primary beneficiary became entitled to the pension; and the total of those payments in each year is fixed by the Trustees, allowing for variation only in accordance with the indexation limit prescribed by the SIS Act as applicable to such payments.
- (d) The total amount of the payment to be made in a year may be varied only to allow commutation to pay a superannuation contribution surcharge; and
- (e) The pension may not have a residual capital value; and
- (f) The pension cannot be commuted except:-
- (i) within six months after the commencement day of the pension; or
 - (ii) by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or
 - (iii) by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; or
 - (iv) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit or under a contract that meets the applicable standards in accordance with the SIS Act; or
 - (v) to pay a superannuation contributions surcharge; and if the pension reverts, it does not have a reversionary component greater than the benefit that was payable before the reversion; and

- (vi) if the pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and
- (vii) the pension cannot be transferred to a person except:-
 - (A) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary;
 - (B) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and
- (viii) The capital value of the pension, and the income from it, cannot be used as security for a borrowing.

Reference Schedule

1. Name of Fund:-

BERRY FAMILY SUPERANNUATION FUND

2. Parties:-

(a) Trustee(s):-

Cowra Tyre & Brake Centre Pty Limited
(A.C.N. 068 472 211)
133 Fitzroy Street
Cowra NSW 2794

(b) Initial Member(s):-

BERRY Graham John
12 Dawson Drive
Cowra NSW 2794

BERRY Patricia Edith
12 Dawson Drive
Cowra NSW 2794

(c) Principal Employer (if any):-

Executed as a deed on the date appearing on page 1.

Executed for and on behalf of
Cowra Tyre & Brake Centre Pty Limited

A.C.N. 068 472 211
by authority of the director(s)
in the presence of:

.....*Patricia Berry*.....
Director

.....*G Berry*..... 10/8/01
Secretary

.....
OR Sole Director and Secretary

Signed Sealed and Delivered by
BERRY Graham John
in the presence of:

G Berry 10/8/01

Signed Sealed and Delivered by
BERRY Patricia Edith
in the presence of:

Patricia Berry 10/8/01

