

BY

TERRENCE RODERICK CUBIT  
AND  
JUDITH ANN CUBIT

"the Trustee"

**DEED OF VARIATION OF SUPERANNUATION TRUST**  
**DEED**

**THE CUBIT SUPERANNUATION FUND**

Authored by Lawyers  
for  
Allens Australia Pty Ltd



**THIS DEED OF VARIATION OF SUPERANNUATION TRUST DEED** is made on the date specified in Part 1 of the Schedule, effective as at the date specified in Part 2 of the Schedule ("**the Effective Date**").

**BY:** The parties specified in Part 3 of the Schedule ("**the Trustee**")

**BACKGROUND:**

- A. The Superannuation Fund described in Part 4 of the Schedule ("**the Fund**") was established by the Deed ("**the Original Deed**") dated the date described in Part 5 of the Schedule and last amended by Deed of Amendment dated the date in Part 6 of the Schedule (if applicable) ("**the Operative Deed**"). If the date in Part 6 of the Schedule is "Not Applicable" or the same date as the Original Deed, the Original Deed is the Operative Deed.
- B. The Trustee is the current Trustee of the Fund.
- C. The Members described in Part 7 of the Schedule are the current members of the Fund.
- D. Under the provisions of the Operative Deed set out in Part 8 of the schedule, the Trustee has the power to vary any provisions of the Deed.
- E. If a Consentor is noted in Part 9 of the Schedule, the Consentor must consent to this variation.
- F. The Trustee wishes to vary the Operative Deed.

**OPERATIVE PARTS:**

With effect from the Effective Date:

- 1. All the provisions of the Operative Deed, including any provisions inserted by variation prior to this Deed, are, as from the Effective Date, repealed.
- 2. Subject to Clause 8, the provisions of the Governing Rules annexed hereto ("**the Governing Rules**") shall, from the Effective Date, replace, in its entirety, the repealed provisions of the Operative Deed.
- 3. The Fund, established by virtue of the Operative Deed, shall be deemed to continue but under the trusts as constituted by this Deed.
- 4. Where the variation powers in the Operative Deed empower the Trustee, with the consent of another, to vary the Operative Deed, the execution of this Deed by the party whose consent is required shall comprise that consent.
- 5. Where Part 9 of the Schedule, "Consentor" is completed by the insertion of the words "Not Applicable", this Deed shall be deemed to be a deed by the Trustee only, and the references to the Consentor and to matters relating to the Consentor shall be deemed to be omitted.

6. Where the Consensor and the Trustee are the same person or entity, the execution of this Deed once by a party shall be deemed to be an execution in both capacities.
7. When a person executes this Deed, that person shall be deemed to have received written notice of the variations to the Original Deed.

## 8. LIMITED VARIATIONS

8.1 To the extent that any one or more of the provisions of this Deed are not able, allowed or required to take effect pursuant to a provision of the *Superannuation Industry Supervision Act 1993* as amended or regulation made for the purposes of that statutory enactment, the provision is amended by deletion to the extent that:

- 8.1.1 it is necessary to remove that or those restrictions beyond the validity of the amendments, or any part of them made pursuant to this Deed; and
- 8.1.2 the deletion of part or all of the provision does not result in a re-settlement of the Fund; and
- 8.1.3 amendments made by this Deed are deemed to have occurred after the deletion referred to in this Rule.

8.2 The variation to the Operative Deed shall not take effect, to the extent that any one (1) or more of the provisions of this Deed and Governing Rules are not able, allowed or required to take effect pursuant to the provision of the *Superannuation Industry (Supervision) Act 1993* or any regulations made for the purposes of that statutory enactment; and

8.3 the provisions in the Operative Deed ("**preserved provisions**") that:

- 8.3.1 provide for the payment of Defined Benefit Pension;
- 8.3.2 specify a perpetuity period;
- 8.3.3 provide for loans to Members;
- 8.3.4 provide a limitation or restriction that cannot be varied or deleted; or
- 8.3.5 are currently utilised by the Trustee to provide for:
  - 8.3.5.1 categories of membership; or
  - 8.3.5.2 vesting benefits;

are preserved and deemed to form part of this Deed and the Governing Rules. Such preserved provision shall prevail over the Governing Rules to the extent of any inconsistencies.

8.4 A Binding Nomination made by a Member under (and in accordance with) the provisions of the Operative Deed continues to be effective despite this Deed of Variation (but can be amended, revoked and updated in accordance with the Governing Rules).

9. **DEFINITIONS AND INTERPRETATION**

- 9.1 The terms used in this Deed shall (unless defined in this Deed) have the same meaning given to them in the Governing Rules.
- 9.2 This Deed shall be interpreted in the same manner as the Governing Rules.

**THE SCHEDULE**

**PART 1:**

**Date of this Deed:**

23 June 2011

**PART 2:**

**Effective Date:**

30 June 2010

**PART 3:**

**The Trustee:**

Terrence Roderick Cubit  
Judith Ann Cubit

**PART 4:**

**The Fund:**

The Cubit Superannuation Fund

**PART 5:**

**Date of Original Deed:**

25 May 2006

**PART 6:**

**Date of Operative Deed:**

Not Applicable

**PART 7:**

**The Members:**

Terrence Roderick Cubit  
Judith Ann Cubit

**PART 8:**

**Clause Enabling Variation:**

Clause 23.1

**PART 9:**

**The Consentor (if applicable):**

Not Applicable

**EXECUTED AND DELIVERED AS A DEED:**

**SIGNED SEALED AND DELIVERED** by )  
Terrence Roderick Cubit in the presence of: )



Witness:

*Linda Cubit*  
Linda Cubit

**SIGNED SEALED AND DELIVERED** by Judith )  
Ann Cubit in the presence of: )



Witness:

*Linda Cubit*  
Linda Cubit

## GOVERNING RULES

### 1. INTERPRETATION

1.1 In these Governing Rules, the following terms shall have the following meanings (unless the context or the Act otherwise requires):

1.1.1 "**Act**" means the following:

1.1.1.1 *Tax Laws Amendment (Simplified Superannuation) Act 2007 (Cth);*

1.1.1.2 *the Superannuation Industry (Supervision) Act 1993 (Cth);*

1.1.1.3 *the Superannuation (Financial Assistance Funding) Levy Act 1993 (Cth);*

1.1.1.4 *the Superannuation (Resolution of Complaints) Act 1993 (Cth);*

1.1.1.5 *the Superannuation (Rolled-Over Benefits) Levy Act 1993 (Cth);*

1.1.1.6 *the Superannuation Industry (Supervision) Consequential Amendments Act 1993 (Cth);*

1.1.1.7 *the Superannuation Supervisory Levy Amendment Act 1993 (Cth);*

1.1.1.8 *the Occupational Superannuation Standards Amendment Act 1993 (Cth);*

1.1.1.9 and any regulations made under the above Acts;

1.1.1.10 and all other requirements whether legislative or administrative including:

1.1.1.10.1 any administrative guidelines issued by the Authority; or

1.1.1.10.2 statements by government advising changes and any proposed changes to the SIS Legislation;

with which the Fund must comply or in the opinion of the Trustees ought to comply in order to be a Complying Superannuation Fund or not to be in contravention or breach of the SIS Legislation.

1.1.2 "**Actuary**" means a person who is qualified to make an actuarial investigation of the Fund in accordance with the requirements of the Act and is appointed by the Trustee as Actuary for the Fund.

1.1.3 "**Approved Fund**" means a Superannuation Fund, Approved Deposit Fund, Eligible Rollover Fund, Retirement Savings Account or other Approved Fund including a Pension Fund or annuity arrangement which can accept a transfer from the Fund of a Member's Benefit or which may transfer a Member's Benefit to the Fund without breach of the Act.

1.1.4 "**Auditor**" means a person who satisfies the requirements of the Act and the Authority to be an Auditor of the Fund.



- 1.1.5 **"Authority"** means the **"Regulator"** as that term is defined in the Act for the particular matter, or any person or body who is appointed by an Act of Parliament to supervise the conduct of the Fund.
- 1.1.6 **"Benefit"** means any amount paid or payable by the Fund and/or in respect of a Member.
- 1.1.7 **"Binding Nomination"** means a direction signed and dated by a Member in the presence of two (2) adult witnesses with a binding written nomination as to the payment of Benefits on a Member's death to the Member's estate or person so permitted under the Relevant Requirements. Such a binding nomination may relate to the type, amount and proportions of different components of the Benefit to be paid upon a Member's death. A Member may vary any such binding nomination at any time in writing prior to the Member's death, subject to the Relevant Requirements.
- 1.1.8 **"Complying Pensions Account"** means an account established pursuant to Rule 14 in which is recorded that part of the Member's Benefit to be used to pay a Pension to the Member or a Reversionary Beneficiary.
- 1.1.9 **"Compulsory Benefit Age"** means upon the death of a Member or the age at which, under the Act, benefits are required to be paid to a Member.
- 1.1.10 **"Constitutional Corporation"** has the meaning attributed to it in the Act.
- 1.1.11 **"Dependant"** means the wife, husband, widow, widower, children of a Member and any other persons who in the opinion of the Trustees are (or were at the relevant time) wholly or partially financially dependent or inter-dependent upon the Member for all or any part of their maintenance or had a legal right to look to the Member for support. For the purpose of this definition, Member includes a Member who has died.
- 1.1.12 **"Eligible Person"** means a person who can contribute to and participate in a Superannuation Fund under the Relevant Requirements (including a Member's spouse, a non-Member's spouse and any other person as decided by the Trustee).
- 1.1.13 **"Eligible Rollover Fund"** has the meaning given by the Act.
- 1.1.14 **"Employee"** means any person who is or has been in employment, whether full-time or part-time, casual or permanent, and includes, in the case of an incorporated Employer, the directors of the Employer.
- 1.1.15 **"Employer"** means an Employer under the Act.
- 1.1.16 **"Employer Contributions"** means contributions to the Fund in respect of a Member by the Employer or any previous Employer of the Member.
- 1.1.17 **"Expenses"** means all direct and indirect costs of the establishment, operation and termination of the Fund, including any tax, insurance costs and any fees or charges imposed on or paid by the Trustee in connection with the Fund.
- 1.1.18 **"Family Law Act"** means the *Family Law Act* 1975 (Cth), as amended from time to time.

- 1.1.19 **"Fixed Term Pensions Account"** means an account established pursuant to Rule 14 in which is recorded that part of the Member's Benefit to be used to pay a Fixed Term Pension to the Member or a Reversionary Beneficiary.
- 1.1.20 **"Flexi Pensions Account"** means an account established pursuant to Rule 14 in which is recorded that part of the Member's Benefit to be used to pay a Flexi Pension to the Member or a Reversionary Beneficiary.
- 1.1.21 **"Family Law Act"** means the *Family Law Act 1975* (Cth).
- 1.1.22 **"Family Law Legislation"** means:
- 1.1.22.1 the *Family Law Act* and the Regulations made under the *Family Law Act*; and
- 1.1.22.2 any other legislation, including the Act, that imposes legal requirements regarding the dealing with the interests of a Beneficiary of a Superannuation Fund in connection with a marital relationship, including on the breakdown of such a relationship and associated matters.
- 1.1.23 **"Fund Accounts"** means the accounts prepared pursuant to Rule 14.
- 1.1.24 **"Gainful Employment"** has the meaning given by the Act and includes full-time and part-time employment.
- 1.1.25 **"Guarantee Act"** means the *Superannuation Guarantee Charge Act 1992* (Cth), as amended from time to time.
- 1.1.26 **"Legal Personal Representative"** means:
- 1.1.26.1 the Executor of the Will or Administrator of the Estate of a deceased person;
- 1.1.26.2 the Trustee of the Estate of a person under a legal disability;
- 1.1.26.3 a person who holds an Enduring Power of Attorney granted by a person; or
- 1.1.26.4 any other person falling within the definition of **"Legal Personal Representative"** in Section 10(1) of SISA;
- authorised by Section 17A(3) of SISA to be a Trustee of a Self-Managed Superannuation Fund.
- 1.1.27 **"Lifetime Pensions Account"** means an account established pursuant to Rule 14 in which is recorded that part of the Member's Benefit to be used to pay a Lifetime Pension to the Member or a Reversionary Beneficiary.
- 1.1.28 **"Lump Sum Benefit"** means a Member's Benefit or any part of it paid or provided other than as Pension Benefits.
- 1.1.29 **"Member"** means a person who has been accepted by the Trustee as a member of the Fund whether or not that person is or has been an Employee and whether or not that person is or has been self-employed. A person ceases to be a Member when the whole of that person's benefit entitlement under the Deed has been paid and, where so determined by the

Trustee, shall include a duly appointed attorney of the Member, the Legal Personal Representative of a Member or of a deceased Member.

- 1.1.30 **"Member's Accounts"** means the accounts prepared pursuant to Rules 14.1.2 and 14.2.
- 1.1.31 **"Member's Additional Benefit"** means the amount by which Member's Benefit exceeds the Member's Minimum Benefit.
- 1.1.32 **"Member's Benefit"** in respect of a Member is the net amount standing to his credit in the Member's Account other than any Pensions Account plus the capital value of any Pension payable to the Member determined in accordance with the Act, plus the value (if any) at that time of any policy of insurance owned by the Trustee and paid for out of that Member's Account and includes any amount paid or payable, whether subject to any contingency or otherwise, by the Trustee out of the Fund pursuant to the Deed to or in respect of the Member.
- 1.1.33 **"Member's Minimum Benefit"** means the minimum benefits of the Member for the purposes of Part 5 of the SIS Regulations.
- 1.1.34 **"Member Spouse"** has, in relation to and interest in the Fund, the same meaning as in the *Family Law Act*.
- 1.1.35 **"Non-Member Contributions"** means contributions to the Fund in respect of a Member by any person other than the Member.
- 1.1.36 **"Non-Member Spouse"** has, in relation to an interest in the Fund, the same meaning as that term under the *Family Law Act*.
- 1.1.37 **"Non-Vested Employer's Contribution Account"** means an account established pursuant to Rule 14 in which is recorded the Employer Contributions and any credits and debits attributable to those contributions which are not Vested Benefits.
- 1.1.38 **"Old Age Pensions"** has the same meaning as in SISA.
- 1.1.39 **"Participating Employer"** means an Employer from whom the Trustee accepts contributions to the Fund.
- 1.1.40 **"Payment Event"** means the time at which any Member's Benefit is paid or is commenced to be paid to a Member.
- 1.1.41 **"Payment Flag"** has the same meaning as in the *Family Law Act*.
- 1.1.42 **"Payment Split"** has the same meaning as in the *Family Law Act*.
- 1.1.43 **"Pension"** means an arrangement for the payment of Pension Benefits.
- 1.1.44 **"Pension Age"** has the meaning it has for the purposes of Section 9B of the *Social Security Act 1991*.
- 1.1.45 **"Pension Benefits"** means any annuity or pension, as those terms are determined by the Trustee, and which are not prohibited by the Act. The Trustee, subject to the Act, may determine from time to time the title and conditions of various Pension Benefits. Until otherwise determined by the

Trustee the characteristics of Pensions and income streams shall be as set out, respectively, in Schedule 1.

1.1.46 **"Pensions Account"** means the Complying Pensions Account, Flexi Pensions Account, Fixed Term Pensions Account or Lifetime Pensions Account as the case may be.

1.1.47 **"Permanently Disabled"** and **"Permanent Disablement"** means:

1.1.47.1 in relation to a Member that has ceased gainful employment, such disablement (whether physical or mental) as, in the opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainful employment, for which the Member is reasonably qualified by training, education or experience; or

1.1.47.2 where any part of the benefit payable on permanent disablement is insured, the definition of permanent disablement or permanent and total disablement contained in the policy document evidencing the contract of insurance,

provided that, for the purposes of payment of a Preserved Benefit, the Trustee shall only regard a Member as being permanently disabled or incapacitated in the circumstances provided for in the Act in relation to the payment of such a benefit.

1.1.48 **"Permitted Contributor"** includes:

1.1.48.1 a Member;

1.1.48.2 an Employer;

1.1.48.3 an associate of a Member or Employer;

1.1.48.4 any person, corporation, trust, institution, agency, Government, Government agency or other entity including a spouse, eligible spouse, the Federal Government, the Federal Government Co-Contributions, Employer, Member and any other person in any capacity; and

1.1.48.5 other persons permitted to make contributions to the Fund under the Relevant Requirements.

1.1.49 **"Preservation Age"** means the age before which benefits are prohibited from being paid to the relevant Member by the Act.

1.1.50 **"Preserved Benefit"** means any benefit which is required by the Act to be preserved for the Member in the Fund or in another fund until he has retired from the workforce and attained the Preservation Age or until the Member's earlier death or Permanent Disablement or payment of the benefit in such other circumstances as are permitted by the Act.

1.1.51 **"Relevant Beneficiary"** means the person to whom a benefit is payable being the Member or the Reversionary Beneficiary, as the case may be.

1.1.52 **"Relevant Requirements"** means the Act and any other laws or legislation, or the requirements of the Authority or any other competent authority which must be satisfied so that:

- 1.1.52.1 the Fund obtains concessional tax treatment;
- 1.1.52.2 the Fund remains a regulated Superannuation Fund;
- 1.1.52.3 the Employer or Member retains any entitlement to a tax deduction unless they choose not to claim a tax deduction;
- 1.1.52.4 no dealing with or concerning the Fund gives rise to a fringe benefit which is taxable to an Employer unless the Employer chooses to incur a fringe benefits tax ("**FBT**") liability - the Trustee does not receive any non-cash Employer contributions (such as shares and property transferred in specie) unless the Employer has first paid any FBT liability;
- 1.1.52.5 a Pension Benefit is an Asset-Test Exempt Pension;
- 1.1.52.6 no penalty is imposed on the Trustee or directors of the Trustee under or by virtue of the Relevant Requirements.
- 1.1.53 "**Reserve Account**" has the meaning attributed to it in Rule 14.1.3.
- 1.1.54 "**Retirement Age**" means:
  - 1.1.54.1 age sixty-five (65); or
  - 1.1.54.2 if the Act stipulates another age at which benefits can generally be paid from a regulated Superannuation Fund, whether or not a Member has ceased Gainful Employment, that age.
- 1.1.55 "**Reversionary Beneficiary**" means a person who succeeds a Relevant Beneficiary to the entitlement to the Pension of the Relevant Beneficiary.
- 1.1.56 "**Rules**" means the provisions of these Governing Rules including any alteration, addition to, or variation of the provisions made from time to time.
- 1.1.57 "**Self-Employed Member**" refers to a Member who is self-employed in a business, trade, profession, vocation, calling or occupation for at least ten (10) hours a week or such other number of hours as are prescribed under the Act.
- 1.1.58 "**Service**" means period of Gainful Employment by the Member.
- 1.1.59 "**SIS Act**" means the *Superannuation Industry (Supervision) Act 1993* (Cth).
- 1.1.60 "**SIS Legislation**" means the SIS Act and SIS Regulations.
- 1.1.61 "**SIS Regulations**" means the *Superannuation Industry (Supervision) Regulations 1994* as amended.
- 1.1.62 "**Social Security Act**" means the *Social Security Act 1991* (Cth) and the *Veterans' Entitlement Act 1986* (Cth) and all other requirements with which a payment made from the Fund must comply to be treated as an Asset-Test Exempt Income Stream for the Purposes of that Act.

- 1.1.63 **"Special Treatment Account"** means an account established pursuant to Rule 14 in which is recorded the part of the Member's Benefit subject to a special requirement or concession in the Act, including, but not limited to, preservation.
- 1.1.64 **"Specific Investment"** means an investment made by the Trustee for a Member pursuant to Rule 7.4.
- 1.1.65 **"Spouse"**, in relation to a person, include:
  - 1.1.65.1 another person who, whether or not legally married to the person, lives with them on a genuine domestic basis as their husband or wife; and
  - 1.1.65.2 any other person who is a spouse for the purposes of the Act.
- 1.1.66 **"Successor Fund"** has the meaning given by the Act.
- 1.1.67 **"Sub-Fund"** means a separate Fund and Trust constituted under Rule 2.5.
- 1.1.68 **"Superannuation Agreement"** means an Agreement between a Member and the Member's spouse pursuant to the provisions of the *Family Law Act*.
- 1.1.69 **"Superannuation Contributions Surcharge"** has the meaning that it has in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (Cth).
- 1.1.70 **"Tax Act"** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) (as amended) as appropriate and the regulations made under the relevant Act.
- 1.1.71 **"Trustee"** means the Trustee for the time being of the Fund, whether original, additional or substituted.
- 1.1.72 **"Vested Benefit"** means any part of a Member's Benefit arising from contributions to the Fund, or to a previous superannuation fund, which is required by the Act to be vested in or payable to the Member on termination of the Member's employment (subject to any preservation requirements).
- 1.1.73 **"Vested Benefits Account"** means an account established pursuant to Rule 14 in which is recorded the Vested Benefits of the Member.
- 1.1.74 **"Voluntary Benefit Age"** means the age specified in the Act as the Preservation Age or equivalent age for the relevant Member.
- 1.2 A reference to any person or body shall include references to its respective successors, assigns, executors and administrators.
- 1.3 References to any provision of the Deed, law, regulation, temporary modification order, ruling, circular or guideline are references to those items as amended, consolidated, supplemented or replaced from time to time.
- 1.4 Words importing one gender include other genders and words importing the singular number include the plural and vice versa.
- 1.5 The table of contents shall not be taken into account when interpreting the Deed.

- 1.6 Where any question or dispute arises in respect of the Fund or in respect of interpretation of the Deed, the Trustee's decision shall be final and binding.
- 1.7 Terms used in the Deed which are defined in the Act shall have the same meaning as in the Act unless inconsistent with the context of the Deed (but subject to Rule 1.8).
- 1.8 The Act overrides the provisions of this Deed and, in the event of conflict between the Act and this Deed, the provisions of the Act shall prevail.

## **2. THE FUND**

### **2.1 Fund Composition**

The Fund shall comprise all assets (including money, contributions and co-contributions and other payments and transfers to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to the Deed.

### **2.2 Purpose of the Fund**

The Trustee shall hold the Fund upon trust for the Members for the primary purpose of provision of retirement and death benefits to Members and their dependants.

### **2.3 Applicable Law**

The Deed shall be governed and construed in accordance with the laws of the State or Territory in which the Trustee resides and the Commonwealth of Australia. If the Trustees are individuals, the applicable law shall be that of the State or Territory in which the member with the largest Member Balance resides.

### **2.4 Commencement**

The Fund shall commence when the first Member becomes a member of the Fund.

### **2.5 Sub-Funds**

The Trustee may determine to constitute separate Trust Funds ("a **Sub-Fund**") the terms and conditions of each of which shall be:

- 2.5.1 The Trustee shall specify the Members of the Fund who are to be Members of the Sub-Fund.
- 2.5.2 The Trustee may specify the name of the Sub-Fund.
- 2.5.3 The Trustee shall determine the amounts and assets to be paid or transferred to the Sub-Fund. Any such payments or transfers shall, unless otherwise determined by the Trustee, be effected by, in the books of account and records of the Fund, the Trustee establishing separate records and accounts for the Sub-Fund and recording the payment or transfer as having been made from the Fund to the Sub-Fund.
- 2.5.4 The Trustee shall be the Trustee of the Sub-Fund.
- 2.5.5 Except to the extent otherwise determined by the Trustee at the constitution of the Sub-Fund, the provisions of this Deed shall, with all necessary

modifications, apply to each Sub-Fund as if that Sub-Fund were established by a separate Deed with like provisions.

2.5.6 In the event of a question as to what, if any, modifications are necessary under Rule 2.5.5, the Trustee shall determine the question.

2.5.7 For the purposes of clarification and without limiting the earlier paragraphs of this Rule 2.5:

2.5.7.1 Each Sub-Fund and the trusts comprising it constitutes a Trust Fund and Trust separate and distinct from the trusts established by this Deed and from the Fund and from each other Sub-Fund and the trusts comprising each other Sub-Fund.

2.5.7.2 This Deed shall be the constituent document for the Sub-Fund.

2.5.7.3 Upon a determination under Rule 2.5.3, the money and assets the subject of such determination shall be deemed to be held upon the trusts of the separate Sub-Fund and freed from the trusts of the Fund.

2.5.8 Any Sub-Fund established pursuant to this Rule 2.5 is not intended to be a Sub-Fund for the purposes of Part 5 of the *Superannuation Industry (Supervision) Regulations*.

### 3. THE TRUSTEE

#### 3.1 Ceasing to Act as Trustee

A Trustee shall cease to be a Trustee if:

3.1.1 the Trustee resigns his office;

3.1.2 the Trustee dies;

3.1.3 the Trustee becomes bankrupt or has, within the preceding three (3) years, made an assignment to or an arrangement or composition with his creditors under Part X of the *Bankruptcy Act 1966* (Cth) or any replacement legislation;

3.1.4 the Trustee is found to be of unsound mind or a person whose personal estate becomes liable to have his affairs dealt with in any way under the laws relating to mental health;

3.1.5 the Trustee is disqualified from being a Trustee of any Superannuation Fund by the operation of the Act; or

3.1.6 in the case of the Trustee being a company, a Resolution is passed or a Petition is presented for its winding up or liquidation or a Receiver or Administrator of its assets is appointed.

#### 3.2 Trustee as a Member

No director, officer or employee of the Employer or of the Trustee shall by virtue of his office or by virtue of powers being delegated by the Trustee to him be disqualified from being a Member of the Fund or from exercising any rights or deriving any Benefits as a Member. A Trustee or a director of a body corporate



which is appointed as the Trustee who is or is about to become a Member may be counted in a quorum and vote at any meeting of the Trustee or of the directors of the Trustee when the Trustee or the directors are exercising powers pursuant to the Deed and may execute any document as Trustee or may attest the application of the common seal of the Trustee notwithstanding that he is interested in the matter by virtue of his membership of the Fund.

### **3.3 Retirement of Trustee**

Any Trustee may retire upon giving written notice to the Members and may (but, is not required to) at the same time appoint a Trustee as a successor, subject to the Relevant Requirements.

### **3.4 Death of Trustee Member**

Where the Trustee of the Fund is also a Member of the Fund or is the Legal Personal Representative of a Member, and that Trustee dies, the next Legal Personal Representative of that Member shall automatically become a Trustee of the Fund.

### **3.5 Members may Remove a Trustee or Trustees**

Members who, between them, hold over fifty per cent (50%) of the weighted value of all Member's Benefits, may remove any Trustee from office and may appoint any replacement Trustee or additional Trustee, subject to the Relevant Requirements.

### **3.6 Member Representation**

The Trustee must comply with the Relevant Requirements in relation to representation of Members at the Trustee level.

### **3.7 Eligible Persons**

3.8

3.9 A person who is not a Member may be appointed as a Trustee or a Director of a Body Corporate which is a Trustee if their appointment would not cause the Fund to fail to satisfy Sections 17A of the SIS Act.

3.10

### **3.11 Enduring Power of Attorney**

3.11.1 For the avoidance of doubt, a person who holds an Enduring Power of Attorney on behalf of a Member may, at any time, be appointed as Trustee or as director of the Corporate Trustee in the place of that Member.

3.11.2 If a Trustee shall cease to be Trustee of the Fund pursuant to Rule 3.1.4, that Member's Legal Personal Representative shall be entitled to be appointed as Trustee in the incapacitated Member's stead.

3.11.3 For the avoidance of doubt, it is permissible for the Fund to have one individual trustee.

#### **4. MEMBERS**

##### **4.1 Application**

Persons who wish to become Members may apply for membership in forms nominated by the Trustee from time to time. Upon acceptance of the application by the Trustee, the applicant is bound by the Deed.

##### **4.2 Applicants' Information**

All applicants shall provide to the Trustee such information as the Trustee may require, including proof of correct age and Tax File Number.

##### **4.3 Deemed Membership**

4.3.1 The Trustee may accept a non-member spouse as a Member where that person becomes entitled to become a Member by virtue of a Family Court Order or Superannuation Agreement between the Member and the Non-Member Spouse.

4.3.2 The Trustee shall, as soon as practicable, advise the Member in writing that he has been accepted as a Member and provide to the Member such other information, consents and authorities as is required by the Act.

##### **4.4 Removal of Members**

4.5

4.6 Subject to Rule 11.3, the Trustee will, upon resolution passed by over fifty per cent (50%) of all Members based on the weighted value of each Member's Benefit, remove a Member from the Fund.

#### **5. CONTRIBUTIONS BY EMPLOYERS AND OTHER PERSONS**

##### **5.1 Non-Member Contributions**

5.1.1 Subject to Rule 5.4, and the Relevant Requirements any Permitted Contributor, may contribute to the Fund in respect of each Member such amount in cash, or other contributions listed in Rule 6.6 as the contributor, in the contributor's absolute and uncontrolled discretion, determines.

5.1.2 Non-Member Contributions shall be credited to the Member's Accounts or the Non-Vested Employer's Contribution Accounts as is appropriate.

5.1.3 This Rule does not apply to contributions made by Members for themselves.

##### **5.2 Trustee to be Advised**

The Employer, or any other person contributing, shall advise the Trustee of which Members the contribution is in respect of, and whether the contributions are made (if such be the case):

5.2.1 pursuant to an Industrial Award or Agreement; and/or

5.2.2 in lieu of the Employer paying the Superannuation Guarantee Charge pursuant to the *Guarantee Act*.

### **5.3 Deemed Payments**

Any payment of contributions by an Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

### **5.4 Refusal to Accept**

The Trustee may refuse to accept any contribution to the Fund or any payment of money or transfer of property to the Fund.

### **5.5 Bound by Deed**

Upon a contribution by an Employer being accepted by the Trustee, the Employer shall be bound by this Deed.

### **5.6 Retirement Exemption**

The Trustee may accept any contributions, which is the payment of a retirement exemption Subdivision 152D of the *Income Tax Assessment Act* 1997 up to the amount permitted by the Relevant Requirements.

### **5.7 Shortfall Component**

Without limiting this Rule 5, the Trustee may accept a Shortfall Component as defined in the Guarantee Act.

### **5.8 Defective Contributions**

5.8.1 Notwithstanding any other provisions of these Rules, the Trustee shall not accept contributions by or in respect of a Member if receipt of the contributions would be inconsistent with the Act;

5.8.2 If the Trustee finds after accepting contributions that it should not have done so, it will, if the Act permits, repay an appropriate amount in accordance with the Act to the person making the contributions. That amount must be calculated on a fair and reasonable basis after allowing full reasonable administrative charges incurred in relation to the contribution as allowed by the Act;

5.8.3 If an amount is initially recorded as having been contributed or transferred to the Fund but that amount is not actually received (for example, where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made;

5.8.4 The Trustee must not accept any Member contributions if the Member has not quoted (for superannuation purposes) his or her Tax File Number to the Fund.

### **5.9 Payment Splits**

5.9.1 A Member may, in a financial year, apply to the Trustee to roll over, transfer or allot an amount of benefits, for the benefit of the Member's spouse, that is equal to an amount of the splittable contributions made by, for or on behalf of the Member in:

- 5.9.1.1 the last financial year that ended before the application; or
  - 5.9.1.2 the financial year in which the application is made - where the Member's entire benefit is to be rolled over or transferred in that year.
- 5.9.2 However, the application is taken to be invalid:
- 5.9.2.1 if in the financial year in which it is made:
    - 5.9.2.1.1 the Member has already made an application in respect of a relevant financial year; and
    - 5.9.2.1.2 the Trustee:
      - 5.9.2.1.2.1. is considering the application; or
      - 5.9.2.1.2.2. has given effect to that application; or
  - 5.9.2.2 if the amount of benefits to which the application relates exceeds the maximum splittable amount allowed under the Act; or
  - 5.9.2.3 subject to Rule 5.9.3, if:
    - 5.9.2.3.1 the Member's spouse is aged sixty-five (65) years or more; or
    - 5.9.2.3.2 both:
      - 5.9.2.3.2.1. the Member's spouse is aged between the relevant Preservation Age and sixty-five (65) years; and
      - 5.9.2.3.2.2. the Member's spouse satisfies Item 101 Conditions of Release, set out in Schedule 1 of the SIS Regulations at the time of the application;
- 5.9.3 Despite Rule 5.9.2.3, an application is not taken to be invalid under that Paragraph if the Application includes a statement by the Member's spouse to that effect that the spouse:
- 5.9.3.1 is aged less than the relevant Preservation Age; and
  - 5.9.3.2 both:
    - 5.9.3.2.1 is aged between the relevant Preservation Age and sixty-five (65) years; and
    - 5.9.3.2.2 does not satisfy Item 101 conditions of release, set out in Schedule 1 of the SIS Regulations.
- 5.9.4 The applicant must specify, in the application, the amount of the benefit from the following:
- 5.9.4.1 the Member's taxed splittable contributions;

5.9.4.2 the Member's untaxed splittable contributions;

that the Member seeks to split for the benefit of the Member's spouse.

5.9.5 A Trustee may accept an application made under Rule 5.9.1 if all of the following conditions are satisfied:

5.9.5.1 the application complies with Rules 5.9.1 to 5.9.4;

5.9.5.2 the Trustee has no reason to believe that the statement mentioned in Rule 5.9.3 is untrue;

5.9.5.3 the amount to which the application relates is not more than the maximum splittable amount for the relevant financial year.

5.9.6 If a Trustee accepts an application in accordance with Rules 5.9.1 to 5.9.4 then it must as soon as practicable, and in any case within ninety (90) days after receiving the application, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.

5.9.7 If the application requests a split of untaxed splittable contributions, the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the un-deducted contributions that would form part of the Eligible Termination Payment that would be payable if the Member withdrew the Member's entire benefits at the time of the Trustee giving effect to the application.

5.9.8 If the application requests a split of taxed splittable contributions the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the taxed element of the post-June 1983 component that would form part of the Eligible Termination Payment that would be payable if the Member withdrew the Member's entire benefits at the time of the Trustee giving effect to the application.

5.9.9 If a Trustee accepts an application made under Rules 5.9.1 to 5.9.4, the applicant's spouse is a receiving spouse.

5.9.10 The Trustee is not bound to accept a contributions splitting application and may reject any such application for any reason.

5.9.11 This arrangement cannot be used to transfer benefits out of the Member's superannuation interest that is subject to a Payment Split or on which a Payment Flag under the Family Law legislation is operating.

5.9.12 For this purpose, the Trustee has power to create such accounts in respect of such other person and to treat them as admitted to membership and do such other acts, matters and things as may be necessary to give effect to the division and as is consistent with the Act.

## **6. CONTRIBUTIONS BY MEMBERS**

### **6.1 Member Contributions**

6.1.1 Subject to Rule 5.4, each Member may contribute to the Fund such amount in cash or in kind as he or she, in his or her absolute and uncontrolled discretion, determines.

- 6.1.2 The Employer may, if authorised by the Member, deduct such contributions from the Member's salary and remit them to the Trustee within twenty-eight (28) days of the end of the calendar month in which they were deducted. At the time of paying the Members' contribution to the Trustee, the Employer shall advise the Trustee of the amount of the contribution in respect of each Member.

**6.2 Deemed Payment**

Any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

**6.3 Payment on Behalf of a Member**

The Employer may pay, on behalf of a Member, contributions that are payable by the Member and any contributions so paid by the Employer shall, if the Trustee is so advised, be deemed to be contributions made by the Member.

**6.4 No Enquiry**

The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to Rule 6.1 from the Member's salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice.

**6.5 Retirement Exemption**

The Trustee may accept any contributions, which is the payment of a retirement, exemption subdivision 152D of the *Income Tax Assessment Act 1997*.

**6.6 Form of Contributions**

Subject to this Deed and the Relevant Requirements, a Member or Permitted Person may make contributions by way of:

- 6.6.1 money; or
- 6.6.2 securities listed on a Stock Exchange in Australia; or
- 6.6.3 other property in kind; or
- 6.6.4 payment of Fund expenses or liabilities.

**7. INVESTMENTS AND POWERS**

**7.1 General**

The Trustee shall have the powers set out in Schedule 2, but subject to Rule 7.2.

**7.2 Restriction**

Without limiting Rule 7.1, the exercise of those powers is subject to the restrictions and requirements of the Act.

### **7.3 Exercise of Powers and Discretions**

The Trustees, in the exercise of the trusts, authorities, powers and discretions conferred upon them by the Deed, shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of the Trustee's trusts, authorities, powers and discretions from time to time or may refrain from exercising all or any of the same from time to time or at all, and may do so by written or oral Resolution or by writing. In the case of a corporate Trustee, the resolution may be a Resolution of its directors. Where Members may exercise a power, they may do so by written or oral resolution or by writing. Except as required by the Act, the Trustee shall not be bound to assign any reasons for any decisions (including the exercises of trusts, authorities, powers and discretions) made by the Trustee.

### **7.4 Specific Investments**

7.4.1 The Trustee may, at the request of a Member, treat any asset of the Fund selected by a Member as an investment specifically for the Member ("**Specific Investment**").

7.4.2 The profit or loss arising from the Specific Investment shall be debited or credited to the particular Member's Account.

7.4.3 For the purpose of applying Rule 16.1, the balance of the particular Member's Account shall be reduced by the amount of the Specific Investment.

### **7.5 Delegation of Powers**

The Trustee may delegate the exercise of all or any of its powers, duties and discretions to any person or company and terminate a delegation in such manner and term as they see fit, including the appointment of delegates as its attorneys either in a general or limited capacity. The Trustee may appoint an attorney to act in any capacity as Trustee for the Fund.

### **7.6 Conflict of Interest**

The Trustee may exercise or concur in exercising all the powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as Trustee of any other settlement or in his personal capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any unit trust or beneficiary of any discretionary trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

## **8. INSURANCE AND ANNUITIES**

### **8.1 Investment in Life Policies and Annuities**

8.1.1 The Trustee may, in its absolute discretion, invest or apply the whole or any part of the Fund in the payment of premiums of a policy or policies of life, disability, trauma or accident insurance in which the Trustee has a legal or equitable interest, or in payment of the consideration for an annuity.

8.1.2 The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee determines. The Trustee has the power to accept an assignment of a policy of life, disability or accident insurance or of any annuity on such terms as the Trustee, in its absolute discretion, determines.

8.1.3 The Trustee has the power to continue such policies or annuities for such periods as the Trustee determines and to discontinue or surrender such policies or annuities.

## **8.2 Payment of Premiums and Application of Proceeds**

Subject to Rule 8.3, the premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the credit of the Members' Accounts in such proportions as determined by the Trustee and the proceeds of such policies shall be credited to the Members' Accounts in the same proportions as premiums for such policies were paid from those accounts except that unless otherwise determined by the Trustee, the purpose of the policies shall be to provide funds to the Trustee to meet the relevant Member's Benefit upon death or Permanent Disability of the Member.

## **8.3 Insurance and Reserve Account**

The Trustee may determine that policies be held for the benefit of a Reserve Account, in which event the premiums and other considerations shall be paid from, and the proceeds shall be paid to, the relevant Reserve Account.

# **9. FORFEITURE OF BENEFITS**

## **9.1 Forfeiture Generally**

Subject to Rule 9.2, a Member shall cease to be presently or presumptively or contingently entitled to the Member's Additional Benefit and the Member's Additional Benefit shall be forfeited if (unless and to the extent that the Trustee otherwise decides):

- 9.1.1 the Member has attempted to assign, alienate, charge or encumber all or part of his Member's Benefit (other than by a testamentary disposition or devolution);
- 9.1.2 the Member is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health;
- 9.1.3 the Member's whereabouts cannot be traced by the Trustee for a period of three (3) years after making reasonable enquiries;
- 9.1.4 the Member is convicted of an offence involving fraud against the Participating Employer;
- 9.1.5 the Member has relinquished or renounced the Member's Benefit but only to the extent of the relinquishment or the renunciation (which may take place in whole or in part);
- 9.1.6 to the extent of the balance standing to the credit of a Pensions Account, no further payments of the Pension (other than an Allocated Pension) are required to be made in accordance with the terms of the Pension; or



9.1.7 the forfeiture provisions of Rule 12.8 apply.

**9.2 Mental Incapacity**

When exercising the discretion under Rule 9.1.2, the Trustee shall not exercise the discretion to an extent that will diminish the availability of the Member's Benefit for the proper maintenance and support of the Member.

**9.3 Dependant**

Rule 9.1 applies to a Dependant.

**10. APPLICATION OF FORFEITED BENEFITS**

**10.1 Credit to Reserve Account**

Except to the extent otherwise determined by the Trustee and subject to the Relevant Requirements, the amount of any forfeited benefit shall be credited to the Reserve Account. Such amount as is not credited to the Reserve Account shall be applied at the Trustee's discretion.

**11. TRANSFER BENEFITS TO AND FROM OTHER FUNDS**

**11.1 Transfer from Another Fund**

Where a Member requests that an amount standing to his credit, or a policy of insurance, in another Superannuation Fund or in an Approved Deposit Fund be transferred to the Fund, the Trustee may accept the transfer of such amount, asset or policy to the credit of the Member's Account.

**11.2 Transfer from Another Fund: Preserved Benefits**

If any part of the amount or the value of the policy which is transferred is a Preserved Benefit, the benefit and accretions shall not be paid prior to the Member retiring from the workforce and attaining the Voluntary Benefit Age, except in such circumstances permitted under the Act such as upon the Member's death or Permanent Disablement.

**11.3 Transfer to Another Fund**

Subject to Rule 11.4, the Trustee may, upon the request of a Member, transfer the whole or part of the Member's Benefit to the Trustee of an Approved Fund in respect of which the Trustee has no reason to believe does not comply with the Act. The Trustee may, without the request of a Member, transfer the whole of the Member's Benefit to a Successor Fund to the Fund where the Trustee is satisfied that the Successor Fund complies with the Act. The receipt of the Trustee of such other or Successor Fund shall be a complete discharge to the Trustee in respect of any liability to that Member (and persons claiming through him) in relation to the part of the benefit so transferred.

**11.4 Transfer to Another Fund: Preserved Benefits**

A transfer of any Preserved Benefit pursuant to Rule 11.3 shall not be made where the Trustee has reason to believe that the transferee Fund does not or will not comply with the Act.

### **11.5 Transfer to Eligible Rollover Fund**

Where a period of ninety (90) days has elapsed since a Member's Benefit became payable under the Rules and the Member's Benefit has not been paid, the Trustee may pay the Member's Benefit to an Eligible Rollover Fund.

### **11.6 Transfer in Specie**

The Trustee may, in its absolute discretion, transfer a Member's Benefit in accordance with Rules 11.3 or 11.5 by paying the amount of the Member's Benefit, or transferring assets of the Fund equal in value to the Member's Benefit, to the Trustee of the other Fund.

## **12. BENEFITS**

### **12.1 Voluntary Benefit Age**

The amount of the Member's Benefit may be paid or commenced to be paid to the Member when:

12.1.1 the Member reaches the Voluntary Benefit Age; or

12.1.2 at any age and whether working full time or part time as permitted by the Act; or

12.1.3 on death before the Member's Voluntary Benefit Age; or

12.1.4 in such other circumstances as are permitted or required by the Relevant Requirements.

### **12.2 Compliance with Act**

The Trustee must pay any Members Benefits when required by the Act.

### **12.3 Benefit Preference**

To the extent permitted by the Act a Member may express a preference to the Trustee to receive the Member's Benefit by way of Lump Sum Benefits or Pension Benefits or a mixture of both or in any other manner permitted by the Act.

### **12.4 Provision of Benefit**

For clarification, it is recorded that, to the extent permitted by the Act, and having regard to the Member's preference but without being bound by it and without having to assign any reasons for its decision, the Trustee may in its absolute discretion provide a Member's Benefit as a Lump Sum Benefit or as a Pension Benefit or as a mixture of both or in any other manner permitted by the Act.

### **12.5 Form of Benefit**

Member's Benefits may be paid either in money or in any other form of property.

### **12.6 Debt Set-Off**

Where a Member owes money to the Trustee or to a Participating Employer, if a part of the Member's Benefit may be cashed, the Trustee may pay that part of the

Member's Benefit as does not exceed the debt to the creditor in payment of the Member's Benefit.

#### **12.7 Binding Death Nominations**

The Members may provide the Trustee with a Binding Nomination.

#### **12.8 Dependants**

Where a Member has died:

12.8.1 The Trustee must pay the Benefit in accordance with any Binding Nomination for Benefits; or

12.8.2 Where there is no Binding Nomination then:

12.8.2.1 The Trustee may pay the Member's Benefit or various parts of it to such Dependants as determined by the Trustee. In making such a determination, the Trustee shall have regard to, but shall not be bound by the most recent direction or wish expressed by the Member, unless the Trustee has in writing accepted that direction or wish before the death of the Member and Sections 58 and 59 of SISA do not apply to the Fund, in which event the Trustee shall be bound by it unless changed by the Member;

12.8.2.2 The Trustee may (but subject to a binding direction as above) pay a Member's Benefit or part of it, to the Member's Legal Personal Representative; or

12.8.2.3 Where a Member has no Dependants or Legal Personal Representative, or effective Will, the Member's Benefit shall be forfeited and credited to the Reserve Account unless the Trustee determines to pay it in specific proportions to the next of kin of the Member.

#### **12.9 The Member Mentally Unable to Conduct His Affairs**

Where a Member is, in the opinion of the Trustee, mentally unable to conduct his affairs, the Trustee may pay the Member's Benefit in the same manner as under Rule 12.8.

#### **12.10 Payment to Minors**

Where a person to whom benefits are payable is a minor, the Trustee 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 shall be a complete discharge to the Trustee in respect of such benefit.

#### **12.11 Preserved Benefits**

For the sake of completeness, it is declared that the Trustee shall comply with the Act in respect of Preserved Benefits but that otherwise payment of the Preserved Benefits are governed by these Rules.

## 12.12 **Income Tax**

The Trustee may deduct from any benefit payable the amount of any Income Tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.

12.13

## 12.14 **Family Law**

12.15

12.15.1 Notwithstanding any other provisions of these Rules, the Trustee will vary the interest of a Beneficiary in the Fund to take account of a Payment Split and any other Family Law Requirement. Without limiting this Rule 12.15.1 to the extent relevant:

12.15.1.1 the value of a Member's Account will be adjusted accordingly; and

12.15.1.2 the amount of a benefit payable from the Fund in respect of a Beneficiary (whether in the form of a lump sum or a pension) will be adjusted accordingly.

12.15.2 Subject to Rule 12.15.3 and the Family Law Requirements, if the interest of a Beneficiary (Affected Beneficiary) in the Fund becomes subject to a Payment Split:

12.15.2.1 the Non-Member Spouse is not entitled to become a Member;

12.15.2.2 the Trustee may admit the Non-Member Spouse as a Member it is so resolves and the Affected Beneficiary agrees; and

12.15.2.3 either the Affected Beneficiary or the Non-Member Spouse may request the Trustee to have the Transferable Benefits of the Non-Member Spouse transferred to another Benefit Arrangement in accordance with Rule 12.2.

If the Affected Beneficiary is incapable of giving agreement under Rule 12.15.2.2 for any reason, the Trustee may admit the Non-Member Spouse as a Member if it so resolves.

12.15.3 Subject to the Family Law Requirements, if a Non-Member Spouse was a Member immediately prior to the Payment Split taking effect, nothing in Rule 12.15.2 is to be taken as:

12.15.3.1 affecting the membership status of the Non-Member Spouse in relation to the entitlements of the Non-Member Spouse immediately prior to the Payment Split; or

12.15.3.2 enabling an Affected Beneficiary to request transfer of benefits other than Transferable Benefits of the Non-Member Spouse in accordance with Rule 12.15.2.3.

12.15.4 Without limiting any other power it has under these Rules, the Trustee has power to do anything necessary or convenient to comply with the Family Law Requirements, including without limitation:

- 12.15.4.1 power to provide information about Member's entitlements and Payment Splits to relevant parties;
- 12.15.4.2 power to give effect to Payment Flags and any relevant lawful agreement or order of a court of competent jurisdiction in relation thereto;
- 12.15.4.3 power to give effect to Payment Splits within any required time period;
- 12.15.4.4 power to transfer Transferable Benefits within any time period set by the Family Law Legislation;
- 12.15.4.5 power to charge fees; and
- 12.15.4.6 power to recognise interests created under the Family Law Requirements.

#### **12.16 Repayment**

If a Benefit is paid to a Member and the Trustee subsequently determines that the Benefit should not have been paid the Member shall, upon demand by the Trustee, repay to the Trustee the full amount of the Benefit.

### **13. MEMBER'S RIGHTS**

- 13.1 A Member shall have no right to or interest in his Member's Benefit except as provided in these Governing Rules.
- 13.2 For the avoidance of doubt, the nature of a Member's Benefit pursuant to the provisions of the Deed is:
  - 13.2.1 the right to have the Fund administered according to the Deed.
  - 13.2.2 the Member's Benefit under the Fund does not entitle the Member to any particular asset comprising, or to any particular part of, the Fund.
  - 13.2.3 a Member does not have any proprietary, beneficial, caveatable or other interest in any asset forming part of the Trust Fund.
  - 13.2.4 the Member does not have any proprietary, beneficial or other interest in the Fund.
  - 13.2.5 the Member is not entitled, with all other Members, to the beneficial interest in the Fund as an entirety.
  - 13.2.6 the Member's interest in the Fund is limited to the monetary benefits payable from the Fund at the times and subject to the conditions stipulated in the Deed.
- 13.3 The rights of the Members and their Dependants to receive the benefits payable under this Trust Deed shall be fully secured within the meaning of the Act.
- 13.4 The Trustee shall provide to the Members and prospective Members, or cause the Members or prospective Members to be provided with, such statements, notices, documents and information concerning the administration of the Fund as is required

by the Act, including prescribed information on request and information concerning significant events.

- 13.5 If the Trustee causes someone else to provide a Member with such a statement, notice, document or with such information, the Trustee shall, if required by the Act, obtain from that person a written declaration stating that the person has provided the statement, notice, document or information, as the case may be, to the Member.

#### 14. RECORDS ACCOUNTS AND AUDITING

##### 14.1 Records

The Trustee shall keep such accounts and records as correctly record and explain the transactions and financial position of the Fund and as required by the Act including:

- 14.1.1 Minutes in which proceedings and Resolutions of the Trustee are recorded.

- 14.1.2 A Member's Account for each Member in which is recorded:

14.1.2.1 contributions to the Fund by any other person in respect of that Member;

14.1.2.2 contributions by that Member;

14.1.2.3 profits or losses of the Fund credited or debited to such account;

14.1.2.4 profits or losses on a specific investment credited or debited to such account;

14.1.2.5 forfeited benefits credited to such account;

14.1.2.6 amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity;

14.1.2.7 the proceeds of policies of insurance credited to such account;

14.1.2.8 amounts credited to such account pursuant to a transfer from another Fund;

14.1.2.9 amounts debited to such account to pay Income Tax and expenses;

14.1.2.10 amounts which are credited to or transferred from the Reserve Account.

14.1.2.11 amounts which are credited to or transferred from another account by order of the Family Court or under a Binding Financial Agreement in accordance with the *Family Law Act*.

- 14.1.3 A Reserve Account or Accounts in respect of which:

14.1.3.1 profits shall be credited in accordance with the provisions of this Deed which enable the crediting of profits to the Reserve Account;

14.1.3.2 forfeited benefits shall be credited;

- 14.1.3.3 any gifts or undesignated transfers of money or assets to the Fund, whether in the nature of income or capital, shall be credited;
- 14.1.3.4 forfeited benefits applied in accordance with Rule 10.1 shall be debited;
- 14.1.3.5 liabilities for Income Tax and other taxes authorised to be debited to the Reserve Account shall be debited;
- 14.1.3.6 payments and receipts under Rules 8.3 and 16 shall be debited and credited;
- 14.1.3.7 such other taxes, charges or expenses as determined by the Trustee shall be debited;
- 14.1.3.8 applications under Rule 15.3 shall be debited;
- 14.1.3.9 amounts are credited or debited which relate to a Member's Account which are not permitted by the Act to be credited or debited to the Member's Account.

## **14.2 Other Accounts**

The Trustee may dissect any Member's Account or Reserve Account in its absolute discretion as the Trustee sees fit into one or more accounts including, but not limited to, the following accounts:

- 14.2.1 Vested Benefits Account;
- 14.2.2 Complying Pensions Account;
- 14.2.3 Flexi Pensions Account;
- 14.2.4 Allocated Pensions Account (if commenced prior to 19 September 2007);
- 14.2.5 Non-Vested Employer's Contribution Account;
- 14.2.6 Special Treatment Account;
- 14.2.7 Fixed Term Pensions Account;
- 14.2.8 Accumulation Reserve Account;
- 14.2.9 Accumulation Retirement Account;
- 14.2.10 Pension Reserve Account;
- 14.2.11 Investment Reserve Account (that can amongst other things, holds undistributed investment income and income above the Fund's required return);
- 14.2.12 Contributions Reserve Account (that can, amongst other things, hold unallocated contributions made by the Permitted Contributor);
- 14.2.13 Insurance Benefits Reserve Account;

14.2.14 Miscellaneous Reserve Account (that can, amongst other things, include pre-12 May 2004 foregone and forfeited benefits, plus expenses and other legal provisions); or

14.2.15 Such Reserve Accounts or Liability Accounts as may assist the Trustee to identify the value of assets that may have been exchanged or segregated as either current pension assets, non-current pension assets or that are dealt with as a different Sub-Fund, segment or partition.

### **14.3 Application of Reserve Account**

#### **Payment Event**

Subject to Rule 14.7, upon a Payment Event, the Reserve Account or Accounts shall be applied to the respective Members' Accounts in proportion to the amounts standing to the credit of such Members' Accounts at the time of the Payment Event unless, or to the extent, that the Trustee otherwise determines prior to lodgment of the income tax return of the Fund in the year in which the Payment Event occurs.

#### **Winding Up**

Subject to Rule 14.7, immediately before the winding up of the Fund, the Reserve Account:

14.3.1 may be applied by the Trustee for the benefit of Members, former Members, or Dependants of deceased Members or former Members in such proportions as determined by the Trustee (subject to the Relevant Requirements).

14.3.2 to the extent that the Trustee does not exercise the discretion under the preceding paragraph - shall be transferred to the Members' Accounts in proportions to the amounts then standing to the credit of such Members' Accounts.

14.3.3 if there is no amount standing to the credit of any Members' Account and all of the Members of the Fund have died - shall be transferred to the Members' Account of the last surviving Member, and if more than one in equal shares.

#### **Payment of Pension**

Where the amount standing to the credit of a Pensions Account is exhausted, and further payments of Pension are due, the Pension may be paid from the Reserve Account.

### **14.4 Debits to Pension Accounts**

The Trustee must not debit against a Pensions Account (if any) any amount not being:

14.4.1 a payment of the relevant Pension; or

14.4.2 forfeiture in accordance with Rule 9.1.6; or

14.4.3 expenses in relation to the administration and investment attributable to the Pension.



#### **14.5 Commutation of Old Age Pension**

14.5.1 A Member or Relevant Beneficiary may, subject to the provisions of the Relevant Requirements, commute an Old Age Pension to a capital sum upon the following conditions:

14.5.1.1 if the Pension is commuted before or on the date of the first payment of the Pension, it is to be commuted to a capital sum equal to a lump sum Benefit;

14.5.1.2 if the Pension is commuted after the date of the first instalment of the Pension for payment, the Pension is commuted to a lump sum of such an amount as the Trustees may determine.

#### **14.6 Flexibility of Pension**

14.6.1 At a Member's request, the Trustee is eligible to:

14.6.1.1 rollback or initiate its internal rollover into the Fund for any purpose;

14.6.1.2 allow a Member to stop any Pension and start a new Pension for any purpose including cash flow, estate planning or other reasons subject to the sole purpose test.

#### **14.7 Member Classes**

If the Trustee resolves to treat the Members as being of more than one class for the purposes of this Rule then Rule 15.3 shall operate to apply the Reserve Account equally (or in such other proportions specified by the Trustee) among the classes, but within each class as specified in Rule 15.3.

#### **14.8 Keeping the Accounts and Records**

The accounting records of the Fund must be retained for such period required by the Act, must be kept in Australia and must be kept in the English language or in a form in which they are readily accessible and readily convertible into the English language.

#### **14.9 Application of Pensions Accounts**

Where pursuant to the terms of a Pension, the Trustee is required to make a payment of a Pension and there is a sufficient balance standing to the credit of the Member's Pensions Account, the Trustee must make the required payment from the relevant Pensions Account.

#### **14.10 Auditor and Actuary**

Where required by the Act, the Trustee must appoint an Auditor and/or an Actuary to the Fund to fulfil the requirements of the Act.

## **15. ALLOCATION OF PROFITS AND LOSSES AND VALUATIONS**

### **15.1 Allocation of Profits or Losses**

At the end of each financial year of the Fund, upon the winding up of the Fund, or whenever the Trustee determines it to be appropriate, the profits and losses arising from the investment of the Fund, less such provision for depreciation, liabilities, losses and taxation as the Trustee, in its absolute discretion, deems prudent shall be credited or debited by the Trustee to the Members' Accounts in the proportions to the amounts standing to the credit of such Members' Accounts at the beginning of the financial period for which the accounts are being prepared or on such other basis as the Trustee equitably determines. The Trustee may, in its absolute discretion, credit to the Reserve Account such proportion as it determines. The Trustee may make a reasonable estimate in crediting or debiting any profits or losses before final accounts are available to the Trustee for the financial period.

### **15.2 Valuation of Assets of the Fund**

15.2.1 The Trustee may make a valuation of the assets of the Fund (other than policies of life insurance and annuities) after the end of each financial year of the Fund and whenever it determines in such manner as the Trustee determines and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investments and such provision for taxation as the Trustee, in its absolute discretion, deems to be prudent.

15.2.2 If the net value of the assets of the Fund determined in accordance with this Rule exceeds or is less than the aggregate of the net amount standing to the credit of all of the Members' Accounts at that date the Trustee shall, but subject to Rule 15.2.3 and SISA, credit the surplus or debit the deficit to the Members' Accounts in proportion to the amounts standing to their respective credits at the beginning of the Fund's financial year for which accounts are being prepared or on such other basis as the Trustee determines to be equitable.

15.2.3 The Trustee may, in its absolute discretion, credit or debit to the Reserve Account such proportion as it determines of the amount that would otherwise be credited to the Member's Accounts as is attributable to Employer Contributions or debited to Members' Accounts.

### **15.3 Interim Earning Rate**

The Trustee may allocate to the Member's Accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under Rule 15.1 or 15.2 to the date on which the benefit is being paid.

## **16. TRUSTEE'S LIABILITY AND INDEMNITY**

### **16.1 Liability of Trustee and Directors**

The Trustee, and each director of a corporate Trustee, shall not be liable for any acts or omissions other than those that are:

16.1.1 dishonest;

16.1.2 attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a Trustee; or

16.1.3 contraventions of civil penalty provisions under the Act.

## **16.2 Members' Liability**

None of the Members (other than in their capacities as Trustees or directors of a corporate Trustee) shall be liable for any action taken or omitted in administering the Fund.

## **16.3 Trustee's and Directors' Indemnity**

Except where, and to the extent that, the Trustees may be personally liable pursuant to Rule 17.1, the Trustees shall be indemnified and reimbursed out of the Fund for any costs, expenses, claims, liability and damages which the Trustees may pay or incur in or about the administration of the trusts, authorities, powers and discretions contained in the Deed.

## **16.4 Not Liable for Compliance with Family Law Act Provisions**

The Trustee shall not be liable to any Member for any loss suffered by the Member or for any actions taken by the Trustee under the *Family Law Act* or pursuant to the provisions of a Family Court Order under the provisions of the *Family Law Act* or for compliance with the terms of the Superannuation Agreement made under the provisions of the *Family Law Act*.

# **17. TRUSTEE'S MEETINGS**

## **17.1 Individuals**

17.1.1 Where the Trustees are individual persons, they may meet together to dispose of business concerned with the administration of the Fund, determine a quorum, adjourn the meetings and otherwise regulate their meetings as they see fit. A majority of the Trustees shall be a quorum unless there is only one (1) Trustee, in which case a quorum shall be that Trustee.

17.1.2 A meeting of the Trustees at which a quorum is present shall be competent to exercise the trusts, powers, authorities and discretions vested in the Trustees by this Trust Deed.

17.1.3 The Trustees may elect a Chairman of each meeting.

17.1.4 A Resolution of the Trustees shall be valid and binding if a majority of the total number of Trustees have voted in favour of it.

17.1.5 The Trustees shall keep Minutes of their Resolutions and proceedings.

17.1.6 A Resolution in writing, signed by a majority of the Trustees, shall have the same effect and validity as a Resolution of the Trustees passed at a duly convened meeting.

## **17.2 No Limitation on Rule 7.3**

Nothing in Rule 17.1 shall limit the effect of Rule 7.3.

**18. SIGNING OF DOCUMENTS BY TRUSTEE**

Where there are two (2) or more individual persons acting as Trustees, any one (1) of the Trustees is hereby authorised on behalf of all the Trustees to execute, sign, enter into and acknowledge all cheques, negotiable instruments, agreements, contracts, writings, proposals for insurance, transfers of shares, policies of insurance or units in a unit trust and all other documents as validly and effectually as all the Trustees could do.

**19. REMUNERATION OF PROFESSIONAL PERSONS**

The Trustee shall not receive any salary or remuneration from the Fund but, subject to section 17A of SISA, nothing shall preclude any Trustee being a natural person, firm, corporation, company or partnership of which a Trustee is a partner, director, shareholder, related corporation (within the meaning of that term in Section 50 of the *Corporations Act* 2001), Employer or Employee from being paid out of the Fund any proper fees or remuneration for professional services rendered by such natural person, firm, corporation, company or partnership in connection with the Fund and the Trustees shall not be called upon or required to account for any such fees. For the purpose of this Rule "professional services" shall include, but shall not be limited to, the professional services of any actuary, auditor, bank, insurance company, merchant bank, accountant, solicitor or barrister.

**20. TRUSTEE AS MEMBER'S ATTORNEY**

Each Member hereby irrevocably appoints the Trustee as his Attorney to execute and sign all such deeds and instruments and do all such things the Trustee decides to be necessary or desirable in administering the Fund.

**21. TRUST DEED AVAILABLE FOR INSPECTION**

21.1 A copy of this Trust Deed shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.

21.2 If required by the Act, the Trustee shall provide a Member with a copy of this Trust Deed.

**22. VARIATION OF TRUST DEED**

**22.1 Variation of Trust Deed**

The Trustee may, at any time and from time to time, either by deed executed by the Trustee or by oral resolution, vary, add to or rescind all or any of the provisions from time to time of the Deed and the new provisions so made shall have the same validity and effect as if they had been originally contained in the Deed and shall be subject to being varied, added to or rescinded in like manner but no such variation, addition or rescission shall be made if it breaches the requirements of the Act or if it has the effect of reducing the amount of a benefit that is, or may become, payable in relation to a period before the date of the variation, addition or rescission unless:

22.1.1 the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund;

22.1.2 the reduction is required to enable the Fund to comply with the Act;

22.1.3 the Member so affected consents in writing of the reduction; or

22.1.4 the Authority approves in writing of the reduction; or

22.1.5 the variation is permitted or required by the Act.

## **22.2 Notification to Members**

As soon as practicable after a provision of the Trust Deed is varied, added to or rescinded, the Trustee shall give to a Member whose entitlements or rights are affected by the variation, addition or rescission, and in any other circumstances prescribed under the Act, written advice that complies with the Act and which explains the nature and purpose of the variation, addition or rescission and the effect of the variation, addition or rescission on the Member's entitlements or rights.

## **22.3 Effect of Variation**

A variation may take effect from before or after the time it is made.

# **23. COMPLIANCE**

## **23.1 Compliance with Act as at date of the Deed**

As at the date of the Deed, the Deed is deemed to include all matters prescribed by the Act to be included.

## **23.2 Deemed Compliance with Further Statutory Requirements**

Without limiting the effect of Rule 23, whenever the Authority validly issues a requirement in relation to the constitution or operation of the Fund, whether by parliamentary enactment, Regulation or otherwise ("**requirement**"), the Trustee shall, on the specified date, be deemed to have amended the Deed under Rule 23 to include that requirement, and this Deed shall be deemed to be the amending Deed for the purpose of Rule 23.

## **23.3 Optional Requirement**

Where the requirement is not an absolute requirement but a requirement upon which a particular result is conditioned, the Trustees may determine that such requirement is a requirement for the purposes of Rule 23.2.

## **23.4 Specified Date**

The specified date for the purposes of Rules 23.2 and 23.3 shall be 29 June next following the issue by the Authority of its requirement, or such other date, whether before or after 29 June, determined by the Trustee.

## **23.5 Family Law Act**

The Trustee shall comply with the provisions of the *Family Law Act* and shall provide such information to any party as required under that Act and shall take all such action as required under the *Family Law Act* or any Family Court Order or Superannuation Agreement entered into pursuant to the provisions of the *Family Law Act*.

# **24. INCONSISTENCY**

In the event of an inconsistency between Rule 24 and any other provision of the Deed, Rule 24 shall prevail and that other provision shall be read down to such extent as is reasonable in all the circumstances to give it a valid operation of a partial character

provided that if that other provision cannot be read down it shall be deemed void and severable and deleted from the Deed.

## **25. DISSOLUTION OF THE FUND**

### **25.1 Dissolution of the Fund**

When the last remaining person who has a benefit entitlement is paid the benefit, the Trustee shall wind up the Fund and shall pay or transfer to the Members or former Members, benefits in accordance with the provisions of these Rules, after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payments and transfers shall be accepted by Members and former Members in full discharge of all claims in respect of the Fund. The Trustee shall continue to administer the Fund until benefits are paid or transferred in accordance with these Rules.

### **25.2 Amount Remaining in the Fund**

If any amount remains in the Fund after all of the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependants or the Participating Employers in such proportions as the Trustee determines to be equitable.

### **25.3 Preserved Benefits**

Notwithstanding anything contained in these Rules, the Trustee shall not, in the case of a Preserved Benefit, pay or transfer the benefit to a Member until the Member reaches the Voluntary Benefit Age or such other age prescribed in the Act as being the preservation age for that Member, except in the event of his earlier death or Permanent Disablement or the payment of the benefit in such other circumstances as are permitted under the Act.

## SCHEDULE 1

### PROVISIONS APPLYING TO PENSION BENEFITS

#### 1. Forms of Pension

1.1 Without limiting anything in these Rules, the Trustee and a Beneficiary may agree that the whole or any part of any amount payable to a Beneficiary under these Rules will be paid in one or more of the forms of Pension if that is permitted by the Act and the terms of such a pension complies with any Relevant Requirements:

1.1.1 a Lifetime Pension;

1.1.2 an Allocated Pension;

1.1.3 a Life Expectancy Pension;

1.1.4 a Market Linked Pension;

1.1.5 a Flexi Pension;

1.1.6 a Simple Pension;

1.1.7 a Transition to Retirement Pension; and

1.1.8 subject to the Act, any other form of pension that the Trustee chooses to make available at the relevant time.

1.2 Terms relating to each type of pension referred to in Paragraphs 1.1.1 to 1.1.8 are provided in the subsequent Paragraphs 4 to 11 of this Schedule ("**Pension Rules**").

#### 2. Provisions of Act

##### 2.1 Pension Provisions

2.1.1 The Pension Rule including any other form of pension referred to in Paragraph 1.1.8 of this Schedule are designed to reflect certain provisions of the Act relating to pensions. To the extent that those provisions of the Act may be:

2.1.1.1 varied or supplemented, the Trustee may offer pensions on terms that are consistent with the varied or supplemented provisions; or

2.1.1.2 removed, the Trustee may adjust the features of pensions to which the Pension Rules apply, having regard to the provisions that have been removed.

2.1.2 To avoid any doubt, a provision of the Act or the SIS Regulations includes part of a provision.

2.1.3 Subject to the Act, where a change of the type referred to in Paragraphs 2.1.1.1 or 2.1.1.2 of this Paragraph 2 occurs, or if the Trustee otherwise considers it appropriate to do so, the Trustee may change the terms on which a current pension is paid, without being required to amend the terms of these Rules or any other deed evidencing any agreement with a Beneficiary in relation to payment of a Pension Benefit.

- 2.1.4 Any form a Pension being paid to a Beneficiary prior 1 July 2007 that satisfies the requirements of Regulation 1.06(2), (4), (6), (7) or (8) of the SIS Regulation may continue to be paid to the Beneficiary.

## 2.2 Life Tables etc

- 2.2.1 In determining the life expectancy of a person under these pension terms, then if required by the SIS Regulations or the Act, the relevant life tables required under the Act or Regulations made under the *Tax Act* (as the case may be) are to be used in ascertaining the life expectancy of a person for the purposes of these terms.

## 3. Additional Terms

- 3.1 Subject to the Act, the Trustee is also permitted to:

- 3.1.1 pay pensions in any form permitted by the Act, which may include forms other than those described in the Pension Rules;
- 3.1.2 make the payment of pensions, including those governed by the Pension Rules, subject to any other terms that the Trustee considers appropriate. Those other terms may supplement or wholly or partly replace the terms that would otherwise apply. For example, the Trustee may, but is not obliged to, impose terms that it considers may enable the pension payments or the assets supporting those payments to be subject to concessional treatment under laws relating to tax or social security or similar entitlements; and
- 3.1.3 further document the terms governing any pension, including those governed by the Pension Rules, in any manner it considers appropriate, whether by way of variation, supplement, qualification or deletion of terms that might otherwise apply.

## 4. Terms

- 4.1 Terms used in the Pension Rules have the same meaning as in the Act (and in particular those provision of the Act relating to pensions) unless the context otherwise requires.

## 5. Lifetime Pension

- 5.1 The following provisions apply to Lifetime Pensions:

- 5.1.1 the pension must meet the standards of SIS Regulation 1.06(2);
- 5.1.2 as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the standards of SIS Regulation 1.07B;
- 5.1.3 a benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of a pension provided that meets the requirements of SIS Regulation 1.06(2).



## **6. Allocated Pensions**

6.1 The following provisions apply to Allocated Pensions:

- 6.1.1 the pension must meet the standards of SIS Regulation 1.06(4);
- 6.1.2 as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the standards of SIS Regulation 1.07A.

## **7. Flexi Pension**

7.1 The following provisions apply to Flexi Pensions:

- 7.1.1 The pension must meet the standard of SIS Regulation 1.06(6);
- 7.1.2 As from 1 July 2007 if the Benefit commenced to be paid before 20 September 2007 the pension must also meet the standards of SIS Regulation 1.07B.

## **8. Life Expectancy Pension**

8.1 The following provisions apply to Life Expectancy Pensions:

- 8.1.1 the pension must meet the standards of SIS Regulation 1.06(7);
- 8.1.2 as from 1 July 2007 if the Benefit commenced to be paid before 20 September 2007 the pension must also meet the following requirements:
  - 8.1.2.1 where the primary beneficiary became entitled to the benefit on or after 20 September 1998 the commencement day is the day when the primary beneficiary became entitled to the pension.
  - 8.1.2.2 The pension must also meet the standards of SIS Regulation 1.07B.
- 8.1.3 a Benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if the Benefit meets the standards of SIS Regulation 1.06(1B) and the Benefit was purchased with a rollover superannuation Benefit that resulted from the commutation of a pension provided that meets the requirements of SIS Regulation 1.06(7) and also meets that standards of SIS Regulation 1.07B.

## **9. Market Linked Pension**

9.1 The following provisions apply to Market Linked Pensions:

- 9.1.1 the pension must meet the standards of SIS Regulation 1.06(8);
- 9.1.2 as from 1 July 2007 if the Benefit commenced to be paid before 20 September 2007 the pension must also meet the following requirements:
  - 9.1.2.1 if the pension has a commencement day on or after 20 September 2004, the pension must also meet the standards of SIS Regulation 1.07C;

- 9.1.3 a Benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if the benefit meets the standards of SIS Regulation 1.06(1B) and the Benefit was purchased with a rollover superannuation Benefit that resulted from the commutation of a pension provided that meets the requirements of SIS Regulation 1.06(8) also meet the standards of SIS Regulation 1.07C.

## **10. Simple Pensions**

- 10.1 The following provisions apply to Simple Pensions:

- 10.1.1 the pension must meet the standards of SIS Regulation 1.06(9A);
- 10.1.2 payment of the pension must be made at least annually;
- 10.1.3 no capital supporting the pension can be added to by way of contribution or rollover after the pension has commenced;
- 10.1.4 for a pension in relation to which SIS Regulation 1.06(9A)(a) applies the pension must also meet the standards of SIS Regulation 1.07D; and
- 10.1.5 for a pension in relation to which SIS Regulation 1.06(9A)(b) applies the pension must also meet the standards of SIS Regulation 1.07B.

## **11. Transition to Retirement Pensions**

- 11.1 The following provisions apply to Transition to Retirement Pensions:

- 11.1.1 the pension must meet the standards of:
  - 11.1.1.1 SIS Regulation 1.06(9A)(a); and
  - 11.1.1.2 SIS Sub-Regulation 1.06(9A);
- 11.1.2 the pension must allow total payments (including under a Payment Split) made in a financial year to amount to no more than ten per cent (10%) of the pension account balance:
  - 11.1.2.1 on 1 July in the financial year in which the payment is made; or
  - 11.1.2.2 if that year is the year in which the pension commences - on the commencement day; and
- 11.1.3 the pension must comply with paragraph (b) of the definition of Non-Commutable Allocated Pension in SIS Regulation 6.01(2), as if it were such a pension.

## **12. Particular Arrangements**

- 12.1 Subject to the Act, the Trustee may:

- 12.1.1 require a Beneficiary requesting payment of a pension to provide the Trustee with information and other particulars relating to the pension before the pension begins to be paid and during the period of payment of the pension; and

- 12.1.2 agree with the Beneficiary on particular arrangements to apply to the pension. For example, these may relate to the number and identity of any reversionary Beneficiaries, the frequency of pension payments, the amount of pension payments, the treatment of benefits on the Beneficiary's death and any other relevant matters.

### 13. **Reserves**

13.1 Subject to the Act, where it considers it appropriate, the Trustee may:

- 13.1.1 obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves in accordance with this Paragraph 13, or any other relevant matter;
- 13.1.2 establish pension reserves in relation to the funding of pension obligations relating to particular Beneficiaries;
- 13.1.3 where a pension Benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the Fund, but having special regard to the interests of the Beneficiary to whom the pension benefit related and that Beneficiary's Dependents.

## SCHEDULE 2

### TRUSTEE'S POWERS

These powers have been included for maximum practicality, in the context of continual changes in the relevant laws. However, the exercise of the powers is subject to the restrictions contained in the Act.

1. The Trustee must invest the Fund in any of the following investments:
  - 1.1 Any investment authorised by law for the investment of trust funds.
  - 1.2 The purchase or acquisition of shares, stocks, debentures, notes, bonds, mortgages, options, warrants or other securities.
  - 1.3 On deposit with any bank, building society, credit co-operative, trustee company or other financial institution.
  - 1.4 On deposit with or loan to any employer or any other person or organisation with or without security on any terms the Trustee considers reasonable.
  - 1.5 In any policy of insurance or annuity.
  - 1.6 The purchase, acquisition, leasing or hiring (from or to any person) of any real or personal property.
  - 1.7 The acquisition of any units in unit trusts.
  - 1.8 Any other investments which the Trustee considers appropriate.
2. The Trustee shall have power to sell any investments and to vary and transpose any investments into other investments authorised by the Deed.
3. The Trustee may:
  - 3.1 Settle, compromise or submit to arbitration or determination any claims or matters relating to this Deed or to the rights of Members or persons claiming under them.
  - 3.2 Commence, carry on or defend legal proceedings.
  - 3.3 Borrow moneys from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for the purposes of acquiring an asset (other than an asset that the Trustee is prohibited by applicable law from acquiring) upon such terms with or without security or interest as the Trustee deems fit and to give, or to authorise the giving of security by mortgage, charge (whether fixed or floating) or otherwise over the asset. The rights of the mortgagee or chargee shall take priority in all respects over the rights of the beneficiaries hereunder and all other persons whatsoever.
  - 3.4 Invest in any arrangement pursuant to Section 67A or Section 67(4A) of the SIS Act.
  - 3.5 To insure or re-insure any risks, contingencies or liabilities of the Fund.
  - 3.6 Underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Fund.

- 3.7 Engage the services of professional or other advisers and consultants.
- 3.8 Improve, renovate or repair any investment.
- 3.9 Set aside out of the Fund such money as is sufficient, in the Trustee's opinion, to meet any debtor obligation due or accruing.
- 3.10 Pay calls on shares or stock or units forming part of the Fund.
- 3.11 Assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures, units or other securities modifying any rights, privileges or interests in relation to the Fund and to agree and concur in any scheme of arrangement for the increase or reduction of the value or amount of the same in the capital of any company or trust in which any shares, stock, debentures or units forming part of the Fund may be invested or agreed to or concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose.
- 3.12 Indemnify or undertake to indemnify anyone in respect of any claims, matters or things relating to the Fund or to the rights of Members in respect of the Fund.
- 3.13 Hold any assets of the Fund through a nominee or bare trust.
- 3.14 Appoint any person as custodian to hold legal title for any asset acquired or to be acquired by the Trustee in such terms as the Trustee thinks fit.
- 3.15 Take or apply, without obtaining any consents, any part of the Fund in its actual condition or state of investment in or towards satisfaction of any entitlement of or in the Fund or in respect of Member's Benefits as the Trustee thinks fit.
- 3.16 Delegate any functions, duties, discretions or obligations to any person or organisation by Power of Attorney, Resolution or otherwise for any purposes and with any powers, authorities or discretions as it thinks fit and the Trustee may remove, replace or suspend any person as it considers appropriate.
- 3.17 By way of investment, discount loans, mortgages, contracts, hire purchase agreements or finance leases.
- 3.18 Open any account or accounts with any financial institution and to operate such account or accounts.
- 3.19 Draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument.
- 3.20 Acquire or conduct any business or an interest in any business and to employ persons in the carrying on of that business.
- 3.21 Invest any part of the Fund by entering into any contractual arrangement or joint venture.
- 3.22 To give any guarantees or indemnity for payment of money or the performance of any contract, obligation or undertaking by any person, firm, company, corporation or association (including, without limitation, any indemnity relating to contracts, obligations or undertakings to which the Trustee is a party or in respect of which the Trustee has existing or contingent obligations or liabilities); and to mortgage or

charge the whole or any part of the Trust Fund to secure performance of any such guarantee or indemnity.

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