



# DARK SUPERANNUATION FUND

## Deed of Confirmation

Prepared by:  
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Perth, Western Australia  
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This Deed of Confirmation is made on the Deed Date by the Trustee and the Member whose details are in the Schedule.

**RECITALS:**

- A. The Fund was established by the execution of the Trust Deed on the Creation Date.
- B. The Trust Deed was varied by the Variation Deeds.
- C. All copies of the Trust Deed have been misplaced.
- D. The Member and the Trustee wish to confirm and ratify the establishment of the Fund and to adopt the Replacement Rules in place of the misplaced Trust Deed.

**NOW THIS DEED WITNESSES:**

**1. INTERPRETATION AND DEFINITIONS**

**1.1 Interpretation**

Unless a contrary intention is evident or the relevant term is defined in the Deed, the terms and expressions in the Replacement Rules have the same meaning as this Deed.

**1.2 Definitions**

For the purposes of this Deed the following terms shall mean as follows:

"**Creation Date**" means the date so specified in the Schedule;

"**Deed Date**" means the date the Trustee and the Members sign this Deed so specified in the Schedule;

"**Member**" means the current Member or Members of the Fund so specified in the Schedule;

"**Replacement Rules**" means the Deed and Rules attached to this Deed and marked "A";

"**Trust Deed**" means the deed establishing the Trust Fund signed on the Creation Date together with the Variation Deeds and all deeds or declarations amending or varying the said Deed;

"**Trustee**" means the current Trustee of the Trust Fund so specified in the Schedule;

"**Trust Fund**" means the superannuation fund established by execution of the Trust Deed by the name described in the Schedule and "**Fund**" shall have the same meaning;

"**Variation Deeds**" means deed(s) resolution(s) or declaration(s) signed subsequent to the Creation Date (if any) which vary or amend the Trust Deed or replace the trustees as particularised in the Schedule.

**2. REPLACEMENT RULES**

The Trustee with the consent of the Members as witnessed by their execution hereof and pursuant to all other powers conferred upon and available to the Trustee (whether or not contained in the Trust Deed) lawfully enabling the Trustee to do so DOES HEREBY declare that as and from the Deed Date the provisions of the Trust Deed shall be replaced by the Replacement Rules.

**3. CONFIRMATION AND RATIFICATION BY TRUSTEE AND THE MEMBER**

The Trustee and the Member hereby:

- (a) acknowledge that all copies of the Trust Deed have been misplaced and accordingly adopt the terms of the Replacement Rules
- (b) confirm and acknowledge the establishment of the Fund as and from the Creation Date
- (c) confirm that since the establishment of the Fund.
  - (i) no variations or alterations have been made to the Trust Deed except by the Variation Deeds;
  - (ii) the Member is and has been the only member of the Fund.



- (d) confirm that the Replacement Rules shall be deemed to constitute the rules of the Fund.
- (e) confirm that the Trustee must hold the assets of the Fund on trust and apply them in the manner set out in the Replacement Rules.
- (f) declare, notwithstanding anything contained in this Deed to the contrary, this Deed does not and shall not:
  - (i) alter the objects of the Fund;
  - (ii) reduce the benefits and entitlements payable to Members;
  - (iii) alter the rights and benefits of existing Members in a manner such that, on the whole, equity between Members is not maintained; or
  - (iv) offend the provisions of any relevant Act or Regulation as they exist, from time to time, or any amendment or variation of any relevant Act or Regulation made after the date of this Deed.

#### **4. NO RE-SETTLEMENT**

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:

- (a) 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
- (b) the deletion of part or all of the provision does not result in a re-settlement of the Fund; and
- (c) amendments made by this Deed are deemed to have occurred after the deletion referred to in this clause.

#### **5. SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993**

This Deed shall not take effect, to the extent that:

- (a) any one or more of the provisions of this Deed 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
- (b) the provision is not capable of amendment to enable or allow this Deed to take effect.

#### **6. PURPOSE OF THE FUND**

Subject to the Replacement Rules the purpose of the Fund is to provide individual personal benefits, pensions or retiring allowances upon the death or retirement of a member, provided that:

- (a) the purpose would not cause the Fund not be a complying superannuation fund (as defined for the purposes of the *Income Tax Assessment Act 1997*);
- (b) the purpose is a purpose contained in the Replacement Rules;
- (c) if the trustees of the Fund are natural persons the sole or primary purpose of the Fund is to provide old age pensions (as defined for the purposes of the *Superannuation Industry (Supervision) Act 1993*).



## **SCHEDULE**

**1. Deed Date**

**2. Trustee Details**

Name and Address: **KEN & SANDY DARK PTY LIMITED [ACN: 075 050 332]**  
2/77 Hunter Street, Newcastle, New South Wales

**3. Member Details**

Name and Address: **KENNETH EIDLER DARK**, 338 McFarlanes Road, Morpeth,  
New South Wales  
**SANDRA LORRAINE DARK**, 338 McFarlanes Road,  
Morpeth, New South Wales

**4. Date of Trust Fund Deed (Creation Date)**

23 June 1997

**5. Variation Deeds**


Not Applicable

**6. Name of Super Fund**

DARK SUPERANNUATION FUND



**SIGNED** by **KEN & SANDY DARK PTY** )  
**LIMITED [ACN: 075 050 332]** pursuant )  
to Section 127(1) of the *Corporations Act* )  
2001 (Cth) )

  
.....

Here

**KENNETH EIDLER DARK**

Witness:  
Name (printed):

Fiona Jeffries

Sandy

**SANDRA LORRAINE DARK**

Witness:

Name (printed):

Fiona Jeffries



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## **1. Definitions and Interpretation**

### **1.1 Definitions**

In these Rules:

"Act" means the Superannuation Industry (Supervision) Act 1993, the Corporations Act 2001 and the Tax Act and any other law of the Commonwealth of Australia which deals with superannuation or taxation in relation to superannuation (as the context requires) and includes any regulations, declarations or orders made under that Act or any other law or any requirement of a Regulator;

- (a) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds; or
- (b) which the Trustee or the Fund must comply with to avoid any penalty or disadvantage which might be incurred in connection with the operation of the Fund;

"Asset" means any cash investments and any other form of property;

"Associate" has the meaning given by the Act;

"Beneficiary" includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the Act and shall include a Non-Member Spouse;

"Benefit arrangement" means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and superannuation holding accounts reserve;

"Benefit Schedule" means Schedule 1 to these Rules;

"Binding Death Benefit Nomination" means a direction which is a binding direction for the purposes of the Act as to payment of the Member's Death Benefit and referred to in Rule 12.6.4;

"Child", in relation to a Beneficiary, includes a stepchild, an adopted child or an ex-nuptial child, or any other person who is a child for the purposes of the Act;

"Constitutional Corporation" has the meaning given by the Act;

"Contribution" means payments and/or transfers of property to the Fund by or in respect of a Member and/or payments of expenses on behalf of the Fund;

"Death Benefit" means a benefit payable on a Member's death. It includes a benefit that became payable in respect of a Member before, but that is not actually paid until after, the Member's death;

"Death Benefit Nomination" means an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination;

"Deed" means the Deed as amended from time to time to which these Rules are attached;

"Dependant", in relation to a Beneficiary, includes:

- (a) the Beneficiary's Spouse;
- (b) the Beneficiary's Child;
- (c) any other person who, in the Trustee's opinion, is or was at the relevant time dependant on the Beneficiary;



(d) any other person who, in the opinion of the Trustee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date; and

(e) any person who is a dependant within the meaning of the Act;

"Eligible Rollover Fund" has the meaning given by the Act;

"Employer" means an employer of a Member who contributes to the Fund on behalf of the Member;

"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;

"Family Law Act" means the Family Law Act 1975 (Cth);

"Family Law Legislation" means

(a) the Family Law Act and the Regulations made under that Act; and

(b) 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;

"Family Law Requirement" means any requirement whatsoever under Family Law Legislation relating to superannuation benefits of parties or former parties to a marriage and incidental matters, including without limitation, requirements regarding Payment Splits and the imposition of any other condition or restriction on, or variation of, a Beneficiary's interest in the Fund;

"Financial Instrument" includes a futures contract, forward contract, interest rates swap contract, currency swap contract, forward exchange contract, forward interest rate contract, a right or option in respect of any such contract or any similar financial instrument;

"Fund" means the fund referred to in the Schedule and established in accordance with the Deed;

"Gainful Employment" has the meaning given by the Act and includes full time and part time employment;

"Indicative Death Benefit Nomination" means a Death Benefit Nomination expressed to take effect as an indication of the Member's wishes as to payment of the Member's Death Benefit and referred to in Rule 12.6.4;

"Investment Earnings" means the positive or negative amount which the Trustee determines to be the Fund's profit for the period, having regard to the income of the Fund, the expenses of the Fund, the movement in the value of the Fund assets (including unrealised assets), the Fund liabilities (including unrealised liabilities) and any other matters the Trustee considers appropriate.

"Investment Option" means an investment strategy that may be chosen in respect of investments in the Fund in accordance with these Rules;

"Legal Personal Representative" means the executor of the will or administrator of the estate of a deceased member, the Trustee of the estate of a member under a legal disability, a person who holds an enduring power of attorney granted by a member or the parent or legal guardian of a member under the age of eighteen.

"Liabilities" means all liabilities whatsoever of the Fund, and includes any provisions the Trustee makes in connection with such liabilities;

"Member" means a person who has been admitted as a member of the Fund in accordance with Rule 9 and who has not ceased to be a Member;



"Member's Account" means an account maintained in respect of a Member in accordance with Rule 9.8;

"Member's Account Balance" means the amount standing to the credit of a Member's Account, determined in accordance with Rule 9.8.2;

"Member Spouse" has, in relation to and interest in the Fund the same meaning as in the Family Law Act;

"Non-Member Spouse" has in relation to an interest in the Fund the same meaning as that term has under the Family Law Act;

"Old Age Pensions" has the meaning given by the Act;

"Payment Flag" has the same meaning as in the Family Law Act;

"Payment Split" has the same meaning as in the Family Law Act;

"Policy" means an insurance policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest;

"Preserved Benefits" means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits;

"Regulator" means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Commissioner of Taxation or any other governmental authority responsible for the administering of the laws, regulations or any other rules governing the operation of or the availability of income tax concessions to superannuation funds, as relevant;

"Reserve Account" means an account or accounts established and maintained in accordance with Rule 15;

"Retirement Age" means:

- (a) age 65; or
- (b) 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;

"Rule" means these Rules including a provision of the Schedule as amended from time to time;

"Schedule" means where the context allows the Schedule to the Deed or the Schedules to the Rules;

"Service" means a period of Gainful Employment by the Member;

"SIS Regulations" means the Superannuation Industry (Supervision) Regulations 1994 as amended;

"Social Security Act" means the Social Security Act 1991 and the Veterans' Entitlement Act 1986 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;

"Spouse", in relation to a person, includes:

- (a) 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



- (b) any other person who is a spouse for the purposes of the Act;

"Successor Fund" has the meaning given by the Act;

"Tax" includes:

- (a) any form of taxation surcharge levy duty or other government charges that the Trustee must pay out of the Fund or a member or former member is required to pay;
- (b) any interest, fines, penalties, charges, fees or other amounts payable in respect of the items mentioned in paragraph (a);

"Tax Act" means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 (as amended) as appropriate and the regulations made under the relevant Act;

"Total and Permanent Disablement":

- (a) means, if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, total and permanent disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or
- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the meaning for the time being adopted by the Trustee

and "Totally and Permanently Disabled" has a corresponding meaning.

"Temporary Disablement":

- (a) means, if any part or all of the benefit payable on such disablement is insured under a Policy enforced in respect of a Member at the relevant time, temporary disablement as defined in that Policy or as agreed by the Trustee and the insurer for the purposes of that Policy; or
- (b) if at the relevant time the benefit is not insured under a Policy, then in respect of such benefit, the term has the meaning for the time being adopted by the Trustee

and "Temporarily Disabled" has a corresponding meaning.

"Trustee" means the trustee described in the Schedule and includes the trustee for the time being of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund. The expression also includes any replacement or additional trustees.

## 1.2 Compliance

The Fund must meet the requirements of the Act to be regulated as a complying self managed superannuation fund.

To the extent that anything in the Deed and these Rules is inconsistent with the Act then it is to be severed from the Deed and these Rules.

The Deed and these Rules includes the provisions of the Act applying to the regulation of self managed superannuation funds, and in the absence of a specific provision in the Deed and these Rules those provisions are (to the extent they are relevant to the Fund) deemed to be incorporated in the Deed and these Rules.

If there is any conflict between the provisions of the Deed and these Rules and the provisions deemed to be included in the Deed and these Rules as provided above then the deemed provisions shall prevail over the provisions of the Deed and these Rules to the extent of any inconsistency.

Nothing in the Deed and these Rules requires the Trustee or any other person to do anything that is contrary to the Act or prevents the Trustee or any other person doing



anything that is required to be done to comply with the Act.

### 1.3 Interpretation

In the Deed and these Rules unless the contrary intention appears or can reasonably be implied from the context:

A term used in the Deed and these Rules which is defined in the Act has the same meaning in the Deed and these Rules.

A reference to the Deed and these Rules or any other instrument includes any variation or replacement of them;

A reference to a statute or other law includes regulations and other instruments ("subordinate instrument") made under such a statute or law and any consolidation, amendment, re-enactment or replacement of such a statute, law or subordinate instrument;

The singular includes the plural and vice versa;

Terms such as "including", "for example" and similar expressions or words are not words or expressions of limitation;

A reference to a person includes:

- (a) a body corporate, any other entity recognised at law, a partnership and any other group or organisation of persons; and
- (b) a person's legal personal representatives, successors and assigns;

Where an expression is defined in the Act but is not defined in the Deed and these Rules then that expression will have the meaning given to it in the Act.

Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

Headings are inserted for convenience of reference only and are not to be taken into account in interpreting the Deed and these Rules;

A reference to any thing (including any amount) is reference to the whole or any part of it; and

A reference to a group of persons is a reference to any one or more of them.

## 2. The Fund

### 2.1 Assets

The Fund comprises all assets held by the Trustee at any time in accordance with these Rules. The Trustee shall hold the assets on trust for the objects and purposes of these Rules.

### 2.2 Name

The Trustee may change the name or promote the Fund under a different name without the necessity of amending the Deed and these Rules.

### 2.3 Single trust

Nothing in these Rules is to be taken as establishing a separate trust in respect of any of the categories of Investment Options, any Investment Option or any part of the Fund.



### 3. Trustee

#### 3.1 Trustee

The person or persons named in the Schedule is or are appointed as Trustee.

#### 3.2 Regulated superannuation fund

- (a) The number of Trustees appointed shall be in accordance with the requirements of the Act relevant to the number of Members of the Fund;
- (b) Subject to Rule 3.2(c), the Trustee must be a Constitutional Corporation;
- (c) Despite Rule 3.2(b) the Trustee may be, or include a person or persons, other than a Constitutional Corporation, but in that event and for so long as that situation continues, the primary purpose of the Fund will be the provision of Old Age Pensions in accordance with Part 2 of the Benefit Schedule;
- (d) Despite Rule 3.2(c) the Fund may also be conducted for any other ancillary purpose which may be permitted under the Act.

#### 3.3 Conditions

- (a) A person that is to be appointed as Trustee must give written consent to the appointment and a declaration that the person understands his or her duties as trustee of the Fund in accordance with the Act before accepting the appointment;
- (b) A person that is to be appointed a director of a Constitutional Corporation as trustee of the Fund must give written consent to the appointment and a declaration that the person understands his or her duties as a director of a Constitutional Corporation that is trustee of the Fund in accordance with the Act before accepting the appointment;
- (c) A member's Legal Personal Representative may act as Trustee in the members stead where permitted by the Act;
- (d) An additional person or persons may be appointed as Trustee by Deed;
- (e) The Trustee must otherwise comply with any other requirements of the Act including, for example, requirements under the Act for approval by the Regulator, requirements as to the qualifications or identity of the person or persons appointed as Trustee or, where relevant, officers or directors of the Trustee corporation;
- (f) A person in the capacity of Legal Personal Representative of a disqualified person cannot be a director of a Constitutional Corporation that is trustee of the Fund.

#### 3.4 Termination of Trustee's office

##### 3.4.1 A Trustee will hold office until:

- (a) the Trustee resigns the office by notice in writing to the Members; or
- (b) the Trustee ceases to be a member of the Fund; or
- (c) being a natural person, dies or becomes incapable of performing his duties hereunder; or
- (d) being a corporation, goes into liquidation or has a receiver appointed or enters into administration; or
- (e) the Trustee is removed or ceases to be eligible or is otherwise disqualified to act as Trustee under the Act; or



- (f) the Trustee is removed by vote of the Members pursuant to Rule 3.4.2.
- 3.4.2 A majority of the Members shall have the right to appoint and remove the Trustee subject at all times to the Act.
- 3.4.3 If a Trustee:
  - (a) retires;
  - (b) becomes aware that it will be removed as Trustee;
  - (c) becomes aware that it will cease to be eligible to act as Trustee; or
  - (d) is otherwise disqualified or removed from its office as Trustee;

it must appoint another person to act as Trustee that otherwise complies with the Act (unless there is more than one Trustee and the Act does not require the vacancy to be filled).
- 3.4.4 If the Act or any other law does not permit the terminating Trustee to appoint a new Trustee in accordance with Rule 3.4.3 or the terminating Trustee fails to do so, the new Trustee may be appointed:
  - (a) where management of the affairs of the Trustee has been placed under a liquidator, receiver, manager, administrator or other controller, by that person;
  - (b) where paragraph (a) does not apply, or where it does apply but the controller fails to appoint a new Trustee within 30 days of the vacancy arising, by vote of the Members;
  - (c) by the continuing Trustee or Trustees if that appointment and the holding of office by the New Trustee is consistent with the Act; or
  - (d) in accordance with any procedure prescribed by the Act.
- 3.4.5 Where the office of Trustee becomes vacant due to the operation of Rule 3.4.1(c) the Member's Legal Personal Representative shall act as Trustee until such time as the Member's benefits have been dealt with as prescribed by these Rules and the Act.
- 3.4.6 The terminating Trustee and the new Trustee will record the retirement and appointment by Deed.
- 3.5 Transfer of assets
 

If a Trustee's office terminates, the Trustee must:

  - (a) provide to any Trustee all records, information and other property relating to the Fund in its control; and
  - (b) otherwise do such acts, matters and things as may be necessary to perfect or complete the appointment of a new Trustee.
- 3.6 Power to appoint
 

Without limiting any other power conferred on the Trustee by these Rules or law, the Trustee has power to appoint any additional Trustee by deed. This power is to be exercised subject to any relevant provision of the Act.
- 3.7 Number of Trustees
 

Any limitations or requirements under the laws of any State or Territory relating to the number of trustees do not apply to these Rules.



### 3.8 Reports

The Trustee must lodge such reports and returns with the Regulator as may be required by the Act within the prescribed time.

## 4. Trustee Powers

### 4.1 Powers

Subject to the Act, the Trustee:

- (a) is empowered to do anything whatsoever necessary or desirable for the purpose of maintenance, operation, management, development of the Fund or to otherwise further the interests of the Fund;
- (b) may regulate and conduct Trustee meetings or if the Trustee is a corporation meetings of its directors as it considers appropriate;
- (c) has, in addition to the powers conferred by these Rules, all the powers conferred on a trustee by statute or general law;
- (d) has the power to do anything required or permitted by the Act.

### 4.2 Examples of Powers

Without limiting Rule 4.1 and in addition to any powers described in these Rules the Trustee has power to:

- (a) accept any assets given or transferred to the Trustee as a Contribution by a Member or other person under these Rules;
- (b) retain an asset in the condition it is received by the Trustee as the Trustee may determine notwithstanding that it may have a wasting, reversionary or depreciating nature;
- (c) retain any part of the Fund in cash as the Trustee may determine notwithstanding that the cash retained may not be earning interest;
- (d) retain for such period as the Trustee may determine any assets notwithstanding that it may not be producing any income;
- (e) purchase or otherwise acquire any assets (whether income-producing or not) in any country upon such terms and conditions as the Trustee may determine;
- (f) acquire and retain life insurance policies on the life of any Member and upon such conditions as the Trustee may determine;
- (g) acquire and retain an annuity for such period and on such terms and conditions as the Trustee may determine;
- (h) advance or lend money to any person, corporation, bank, government, public body or authority in any country, either with or without security and either bearing or not bearing interest and in such currency and upon such terms as the Trustee may determine;
- (i) lend any assets other than money to any person or corporation, either with or without security and for such period and upon such terms as to use, return and otherwise as the Trustee may determine. If the Trustee takes any security in relation to assets advanced or lent, the value of the security may be less than the value of the assets advanced or lent and the Trustee shall not be obliged to obtain any valuation of the security or the assets lent.
- (j) sell, exchange or otherwise dispose of any assets and to grant options or rights to



purchase, exchange or otherwise acquire any assets upon such terms and conditions as the Trustee may determine; and to vary any contract for sale, buy at any auction, rescind any contract for sale and resell upon such terms and conditions as the Trustee may determine;

- (k) lease or license and to grant options or rights to lease or license any assets to any person for such period and for such rent or consideration including rent free and upon such terms and conditions as the Trustee may determine;
- (l) promote or carry on any scheme or undertaking of any nature in any country (including any scheme or undertaking of a speculative nature) upon such terms as the Trustee may determine;
- (m) join or enter into partnership or into any arrangement for sharing of profits, co-operation, joint venture or otherwise in any country with any person, corporation or other Fund for the purpose of promoting or carrying on any business, scheme or undertaking of any nature upon such terms as the Trustee determine;
- (n) make, add to, enlarge, alter, demolish or reconstruct any improvements on any land whether the title to such land be freehold, leasehold or some other title;
- (o) repair, maintain, renovate or improve any assets;
- (p) insure any assets in which the Trustee has an interest on such terms as the Trustee may determine. Any such insurance need not be for the full value of the assets insured. The Trustee shall not be obliged to obtain any valuation of any assets for the purpose of insuring it;
- (q) surrender any assets upon such terms as the Trustee thinks fit;
- (r) accept any shares, units, notes, debentures or other securities in any corporation and/or other Fund in any country in place of or in exchange for any shares, units, notes, debentures, or other securities forming part of the Fund;
- (s) exercise all rights and privileges in respect of any shares, units, notes or other securities forming part of the Fund as the Trustee may determine;
- (t) pay calls on any shares, units, notes, or other securities or to allow same to be forfeited;
- (u) allow documents of title in respect of any assets to remain out of the possession of the Trustee whether with or without security and for such period and upon such terms and conditions as the Trustee thinks fit;
- (v) allow any assets to be held by or registered in the name of any person in any country whether with or without security and for such period and upon such terms as the Trustee thinks fit;
- (w) give receipts for capital and other monies and to allow any person or corporation to give a receipt on behalf of the Trustee. Any receipt shall be a valid discharge to the person, corporation or Fund in whose favour it is given;
- (x) commence, defend or otherwise take part in any proceedings in any court, tribunal or other judicial, quasi-judicial or administrative body, including any arbitration. The Trustee may conduct such proceedings in such manner as it thinks fit and may discontinue, withdraw from, compromise or proceed to the final determination of any such proceedings on such terms (including a total admission of liability at any stage of the proceedings) as the Trustee thinks fit;
- (y) compromise, compound, abandon or otherwise settle any debt, account, or claim relating to the whole or any part of the Fund's assets including releasing in whole or in part the payment or transfer of any assets owing or due to the Trustee.
- (z) move, transmit or reinvest all or any part of the Fund's Assets to whatever



location and at such time or times as the Trustee may determine;

- (aa) do anything and to execute any writing incidental to or which may facilitate any exercise of the powers, authorities and discretions conferred on the Trustee by this Rule;
- (bb) invest in any asset available to the Trustee including assets outside of Australia provided that this does not prejudice its ability to receive the taxation concessions provided to regulated self-managed superannuation funds under the Act;
- (cc) settle, compromise or submit to arbitration any claims, matters or things relating to these Rules or to the rights of Members, former Members or Beneficiaries;
- (dd) commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries and to commence, carry on or defend legal proceedings to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, or breach of the terms of these Rules and the Trustee may abandon compromise or release any such legal proceedings as it may consider desirable;
- (ee) insure or reinsure any risks or liabilities of the Fund with an insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (ff) purchase an annuity to provide all or a part of the benefit payable to a Member;
- (gg) retain the services of and to appoint professional or other advisers in relation to the management, investment, administration or conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (hh) pay and advance out of the Fund all costs, expenses and outgoings (including tax) of and incidental to the management of the Fund;
- (ii) provide a full or part release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or membership of the Fund by that person;
- (jj) insure and keep insured as it sees fit any liability of the Trustee or any directors or officers of the Trustee or the liability of the Fund or indemnify or reimburse the Trustee or its directors or officers under these Rules;
- (kk) enter into and perform:
  - (i) any transaction involving, or in connection with, an exchange of streams of payment between counterparts whether directly or indirectly;
  - (ii) any transaction involving, or in connection with, trading commodities, securities or currency at a fixed price for delivery or settlement, whether immediately or at a future date;
  - (iii) any transaction for managing, lessening, hedging or protecting against movements in currency exchange, interest or discount rates or against costs of borrowing, lending or obtaining financial accommodation;
  - (iv) to enter into any option agreement relating to any lending or financing facility agreement or transaction.

and without limiting the generality of the foregoing, the power conferred on the Trustee as aforesaid shall include power for any purpose to enter into and perform any interest rate swap or exchange transaction, currency swap or exchange transaction, rate cap, rate floor, rate collar, option contract relating to swaps, futures contract, currency option and forward rate agreement or any interest and or currency protection transaction or any combination of such transactions, contracts or agreements or any other transactions, financial



arrangements or contracts of a kind or class similar to the transactions herein referred to.

- (ll) engage brokers and commission agents against and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world to buy, sell, open, close out or otherwise deal in futures contracts of all kinds and to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss orders to tender and take delivery of commodities and currencies which are the subject of any futures contract or option and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or future exchange.
- (mm) generally do all acts the Trustee considers necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under these Rules.

#### 4.3 Compliance

- (a) The Trustee must do all things and must not do or fail to do anything as the Trustee of the Fund that would result in any of the following:
  - (i) the Fund ceasing to qualify as a complying superannuation fund under the Tax Act or as a complying self managed superannuation fund under the Act;
  - (ii) a breach of law including the Act.
- (b) Without limiting anything in these Rules the Trustee may:
  - (i) do anything that the Trustee considers necessary or desirable in order to comply with the Act; and
  - (ii) refrain from actions that the Trustee might otherwise be empowered or obliged to do if the Trustee considers it necessary or desirable in order to comply with the Act.

#### 4.4 Discretions

The Trustee:

- (a) has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under these Rules;
- (b) may exercise any of the Trustee's powers at any time;
- (c) may refrain from exercising any of the Trustee's powers from time to time or at all;
- (d) may exercise a power even if the Trustee or any of the Trustee's Associates have a direct or indirect interest that may be affected by the exercise of that power or may benefit directly or indirectly from its exercise;
- (e) may enter arrangements with Associates, Beneficiaries, Employers or other persons in connection with the Fund and retain for the Trustee's own benefit, any commission, profit or other gain received in connection with such arrangements; and
- (f) may exercise a power even if the Trustee or any of the Trustee's Associates has any interest as a Beneficiary that may be affected by the exercise of that power and may exercise the power such that the interests of the Trustee or any Associate are advanced, preferred or better secured over those of any other Beneficiary or class of Beneficiary.



#### 4.5 Fees

- (a) The Trustee must not charge any fees in relation to acting as trustee under these Rules or for performing any services in respect of the Fund.
- (b) If the Trustee of the Fund is a Constitutional Corporation no director of the Constitution Corporation can receive any remuneration from the Fund or from any person (including the Constitutional Corporation) for any duties or services performed by the director in relation to the Fund.

#### 4.6 Decisions

4.6.1 Subject to Rule 4.6.2, where the Trustee comprises:

- (a) two individuals – Trustee decisions require unanimous approval;
- (b) more than two individuals – Trustee decisions require majority approval;
- (c) a Constitutional Corporation – Trustee decisions shall be in accordance with the governing rules of the corporation unless the Act requires otherwise.

4.6.2 Where there is a deadlock in making any Trustee decision (including at a meeting of the directors of a Constitution Corporation) the deadlock shall, subject to the Act, be resolved by weighting each Trustee's vote in accordance with their respective Member's Account Balance as a proportion of the total Member Account balances of the Fund.

#### 4.7 Meetings

- 4.7.1 Subject to the Act and the Deed, the Trustees may communicate with each other, meet together and otherwise regulate their business as Trustee as they think fit.
- 4.7.2 The Trustees may communicate via any means they approve, and a resolution passed by such communication method shall, notwithstanding that the Trustees are not present together in the same place, be deemed to have been validly passed at a Trustee's meeting.
- 4.7.3 If all the Trustees have signed a document or separate documents containing a statement that they are in favour of a resolution of the Trustees as set out in the document, a resolution in those terms shall be deemed to have been validly passed.

#### 4.8 Delegation

Subject to the Act the Trustee may delegate any of the Trustee's powers duties and discretions to any person on any terms the Trustee thinks fit and may alter or revoke any delegation.

### 5. Limitation of Liability

#### 5.1 Limitation

Subject to Rule 5.2, no Trustee or, where the Trustee is a corporation, any of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for whatever reason. This limitation applies whether or not the loss or detriment arises from an act or omission on the part of the Trustee director or an officer.

#### 5.2 Exceptions

Rule 5.1 does not apply:



- (a) to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise;
- (b) in any other circumstance specified by the Act in which the liability of a Trustee or director or officer of a Trustee of a regulated superannuation fund may not be excluded or limited; or
- (c) where the limitation expressed in Rule 5.1 would not otherwise be enforceable at law.

## **6. Indemnity**

### **6.1 Indemnity**

The Trustee and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Act, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under these Rules.

### **6.2 Payment and reimbursement**

Subject to the Act, the Trustee and its directors and officers may recover from the Fund amounts necessary:

- (a) to meet the indemnities referred to in Rule 6.1; and
- (b) to meet all expenses and liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with these Rules.

To this end, to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

## **7. Investment**

### **7.1 General**

- 7.1.1 The Trustee shall invest the assets of the Fund in such a manner that complies with the investment strategy of the Fund and does not contravene the Act;
- 7.1.2 Subject to the Act, the Trustee may invest the assets of the Fund in any manner or form in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the assets. To the maximum extent possible any duties and limitations under State laws relating to trustee investments do not apply to the Fund.
- 7.1.3 Subject to Rule 7.1.1 and without limiting Rule 7.1.2, the Trustee has in addition to the powers in Rule 4 the power:
  - (a) to vary, substitute, sell or otherwise deal with assets in any manner;
  - (b) to acquire an interest in an asset jointly with any other person and mix assets of the Fund with other property (as long as separate records are maintained that enable assets attributable to the Fund or any Investment Option to be identified); and
  - (c) to acquire and use financial instruments in any manner consistent with the Trustee's investment strategy for the Fund or for any Investment Option including for the purposes of risk management and enhancing investment returns or in substitution for physical holdings.
- 7.1.4 The Trustee must not invest in any investment that is forbidden by the Act. The Trustee must not make an investment in the form of a loan or other financial



assistance to a Member or a relative of a Member.

**7.2 Investment strategy**

- 7.2.1 Investments of the Fund must be made in accordance with a written investment strategy formulated by the Trustee that complies with the Act. Such strategy to be formulated in light of all of the circumstances relevant to the Fund and shall be reviewed on a regular basis.
- 7.2.2 The Trustee may formulate and adopt separate investment strategies for each Investment Option offered in accordance with Rule 14.1.
- 7.2.3 If the Trustee invests in what are known as derivative investments the Trustee shall, if required by the Act, implement satisfactory risk management practices by way of a risk management statement prepared in accordance with the Act and any guidelines issued by a Regulator.

**7.3 Reserves management**

The Trustee must formulate and give effect to a strategy for prudent management of any reserves maintained in the Fund, consistent with the Act.

**7.4 Valuation**

The Trustee will arrange for valuations of assets at such times and on such basis as it considers appropriate, subject to the Act.

**7.5 Investment earnings**

- 7.5.1 As at the end of each financial year, and at such other times as the Trustee determines, the Trustee shall distribute the whole or any portion of the Investment Earnings of the Fund as the Trustee determines to be appropriate to the Member's Account(s) maintained in respect of each Member.
- 7.5.2 Any Investment Earnings not applied to Member Accounts in accordance with Rule 7.5.1 shall be applied to a Reserve Account maintained under Rule 15.

**8. Records, Audit and Information**

**8.1 The Trustee must, in accordance with the Act:**

- (a) keep records and accounts for the Fund;
- (b) prepare and/or lodge financial and other statements and/or returns in respect of the Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund; and
- (e) provide information to Beneficiaries, prospective Members, Employers, a Regulator and any other person in connection with the Fund.

**8.2 Without limiting anything else in these Rules the Trustee must comply with all relevant requirements of the Family Law Legislation in relation to the provision of information to any affected person in connection with the Fund and the interest or claims of any Member, Member Spouse or Non Member Spouse therein.**

**9. Membership**

**9.1 Eligibility**



The Trustee may set eligibility conditions for membership of the Fund.

## 9.2 Acceptance

### 9.2.1 Membership applications:

- (a) may be made by a person who wishes to become a Member or by a person on behalf of a prospective Member (for example a child of the person); and
- (b) must be made in the form provided in Schedule 3 or in another form acceptable to the Trustee.

Schedule 2 provides forms of application to be used depending on whether the Member will make either an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination under Rule 12.6.4.

### 9.2.2 The Trustee may:

- (a) accept or reject any application;
- (b) establish arrangements under which people satisfying certain eligibility conditions may become Members provisionally from a certain date unless the Trustee subsequently rejects the application;

Prior to making a decision under Rule 9.2.2(a) the Trustee may, subject to the Act, request an applicant to undergo a medical examination and to provide all relevant information and evidence and sign all documents as may be required by the Trustee.

### 9.2.3 The Trustee may admit a person as a Member even though a formal application has not been completed where:

- (a) the applicant is under eighteen years of age and the applicants Legal Personal Representative is eligible to act as a Trustee; or
- (b) the applicant becomes entitled to a benefit or interest in the Fund under an order or agreement made pursuant to the Family Law Legislation.

## 9.3 Timing

If a membership application is accepted the person's membership will commence from:

- (a) the date on which the Trustee accepts the application; or
- (b) another date agreed by the Trustee and the Member.

## 9.4 Rules

Each person admitted as a Member and each Beneficiary is deemed to have approved of, and becomes bound by these Rules.

## 9.5 Member's attorney

Each Member irrevocably appoints the Trustee as the Member's attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Trustee reasonably considers appropriate for the purposes of administering the Fund.

## 9.6 Cessation of Membership

A person ceases to be a Member when:

- (a) all benefits to which the Member has become entitled under these Rules have been paid;



- (b) the whole of the Member's Account Balance relating to that Member has been transferred out of the Fund in accordance with Rule 13.2;
- (c) the Member dies;
- (d) the Member is required to cease his membership to comply with the Family Law Legislation or an agreement made pursuant thereunder;
- (e) the Trustee requires that a Member ceases his membership in order to comply with the Act; or
- (f) the Member's entitlement to benefits is otherwise terminated.

## 9.7 Beneficiaries' interests and liabilities

9.7.1 No Beneficiary has any interest in any particular asset of the Fund. Beneficiaries must not

- (a) interfere with the exercise of the Trustee's powers; and
- (b) assert any right in respect of any asset or part of an asset.

9.7.2 The liability of Beneficiaries in connection with the Fund is limited as described below:

- (a) the Trustee's right of indemnity and the right of recourse of any creditor is limited to the Fund's assets; and
- (b) Beneficiaries are not liable (in their capacity as Beneficiaries):
  - (i) to indemnify the Trustee in respect of any deficiency in the Fund; or
  - (ii) in connection with claims by any of the Trustee's creditors relating to the Fund.

9.7.3 The rights of Beneficiaries to receive benefits are those set out in these Rules.

## 9.8 Member's account

9.8.1 The Trustee will maintain a Member's Account in respect of each Member for the purpose of recording benefit entitlements under these Rules.

9.8.2 The Member's Account Balance at any time is determined by adding:

- (a) contributions in respect of the Member and amounts transferred to the Fund in respect of the Member under Rule 13.1;
- (b) investment earnings determined having regard to Rule 7.5 and the requirements of the Act, and any Investment Options applicable to the Member;
- (c) proceeds of any Policy in respect of the Member;
- (d) amounts transferred to the Member's Account in accordance with an order or agreement made pursuant to the Family Law Legislation; and
- (e) any other amount that the Trustee considers should be credited to the Member's Account;

and deducting:

- (f) benefits paid from the Member's Account or transferred to another Benefit



Arrangement in accordance with Rule 13.2;

- (g) any costs or fees deducted from the Member's Account or any other liabilities attributed to it;
- (h) amounts in respect of Tax deducted from the Member's Account;
- (i) any negative investment returns determined having regard to Rule 7.5, the requirements of the Act, and any investment strategy applicable to the Member;
- (j) amounts transferred from the Member's Account in accordance with an order or agreement made pursuant to the Family Law Legislation; and
- (k) any other amount that the Trustee considers should be debited to the Member's Account.

9.8.3 More than one Member's Account may be maintained in respect of a Member if a Member participates in the Fund in more than one capacity. If so, provisions dealing with a Member's Account will be applied separately to the separate Member's Accounts.

## 9.9 Special Arrangements

9.9.1 Subject to the Act, the Trustee and a Member may agree at any time that special conditions will apply to the Member in place of those that would otherwise apply under these Rules;

9.9.2 Any special arrangements of the type referred to in Rule 9.9.1:

- (a) must be recorded in writing; and
- (b) may be varied at any time by further agreement in writing between the Trustee and Member.

## 9.10 Separate Investments

9.10.1 Without limiting Rule 9.9 but subject to the Act, the Trustee may (but is not obliged to) provide Members with the ability to request that a separate investment be made in respect of that Member being:

- (a) a separate investment option or investment strategy; and/or
- (b) a specific investment.

9.10.2 Subject to the Act, if a separate investment is made for a Member under Rule 9.10.1 it is made for the sole benefit of and at the sole risk of the Member, and any income, gains, losses or expenses incurred in respect of that investment must be attributed to the relevant Member Account prior to calculating the Funds Investment earnings in accordance with Rule 7.5.

9.10.3 The Trustee is not liable for the performance of or for any loss attributable to any separate investment referred to in Rule 9.10.1.

## 10. Actuarial Requirements

The Trustee shall engage an actuary where required under the Act and shall cause the Fund to otherwise comply with the actuarial requirements of the Act, if applicable.

## 11. Contributions

### 11.1 Powers

Subject to the act the Trustee may accept contributions from:



- (a) Members or prospective Members;
- (b) Employers;
- (c) a Spouse of a Member or prospective Member.
- (d) any related person or entity as defined in the Act;
- (e) any State, Territory or Federal government for a Member (including under the Federal Government's co contribution scheme); or
- (f) other persons or entities permitted to make contributions under the Act.

Without limiting this Rule 11, the Trustee may accept a shortfall component, as defined in the Superannuation Guarantee (Administration) Act 1992 (Cth), in respect of a Member.

#### 11.2 A Trustee may

- (a) choose whether or not to accept all or part of a contribution.
- (b) accept contributions in respect or by a Member in accordance with the requirements of the Act.

#### 11.3 Defective contributions

11.2.1 Notwithstanding any other provision 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;

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

11.2.3 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.

11.2.4 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.

#### 11.4 A person permitted to make contributions may make contributions by way of:

- (a) money;
- (b) securities listed on a stock exchange in Australia
- (c) other property in kind
- (d) payment of fund expenses or liabilities

to the Fund on behalf of one or more Members with the consent of and on such terms conditions and at such value as determined by the Trustee subject to compliance with the Act.

#### 11.5 If required by the Act, the Trustee must allocate relevant contributions to a Member's Account to the extent provided by the Act and within any relevant timeframe set out in the Act.

#### 11.6 (a) 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:

- (i) the last financial year that ended before the application; or
- (ii) 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.

(b) However, the application is taken to be invalid:

- (i) if in the financial year in which it is made:
  - (A) the Member has already made an application in respect of a relevant financial year; and
  - (B) the Trustee:
    - (I) is considering the application; or
    - (II) has given effect to that application; or
- (ii) if the amount of benefits to which the application relates exceeds the maximum splittable amount allowed under the Act; or
- (iii) subject to paragraph (c); if:
  - (A) the member's spouse is aged 65 years or more; or
  - (B) both:
    - (I) the member's spouse is aged between the relevant preservation age and 65 years; and
    - (II) 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.

(c) Despite paragraph (b)(iii), 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:

- (A) is aged less than the relevant preservation age; and
- (B) both:
  - (I) is aged between the relevant preservation age of 65 years; and
  - (II) does not satisfy item 101 conditions of release, set out in Schedule 1 of the SIS Regulations.

(d) The applicant must specify, in the application, the amount of the benefit from the following:

- (i) the Member's taxed splittable contributions;
- (ii) the Member's untaxed splittable contributions;

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

11.7 A Trustee may accept an application made under Rule 11.6(a) if all of the following conditions are satisfied:

- (a) the application complies with Rule 11.6;



- (b) the Trustee has no reason to believe that the statement mentioned in Rule 11.6(c) is untrue;
  - (c) the amount to which the application relates is not more than the maximum splittable amount for the relevant financial year.
- 11.8 If a Trustee accepts an application in accordance with Rule 11.6 then it must as soon as practicable, and in any case within 90 days after receiving the application, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.
- 11.9 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 undeducted 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.
- 11.10 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 83 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.
- 11.11 If a Trustee accepts an application made under Rule 11.6, the applicant's spouse is a receiving spouse.
- 11.12 The Trustee is not bound to accept a contribution splitting application and may reject any such application for any reason.
- 11.13 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.
- 11.14 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.

## **12. Benefits: General Provisions**

- 12.1 Schedules
 

Particulars regarding calculation of benefits and the circumstances in which they are payable appear in the Benefit Schedule.
- 12.2 Conditions
 

The Trustee may impose any reasonable conditions regarding payment of a benefit. For example the Trustee may require Beneficiaries to produce evidence of entitlement.
- 12.3 Policy
 

If a benefit would ordinarily include an insured component under a Policy but:

  - (a) no amount is paid under that Policy; or
  - (b) the amount paid under the Policy is less than the amount that would ordinarily be payable;

the amount payable to the Member may be adjusted accordingly.
- 12.4 Method
 

Benefits may be paid by any method that the Trustee considers appropriate.



## 12.5 Circumstances and amounts — general

### 12.5.1 Benefits:

- (a) may, in addition to any specific circumstance described in the Benefit Schedules, be paid in any other circumstance permitted by the Act. For example, benefits may be paid to a Member in the event of a Member's financial hardship and on compassionate grounds as provided by the Act. However, the Trustee is not obliged to pay benefits in those other circumstances unless it agrees to do so or the Act compels it to do so.
- (b) must be paid in the form and in the circumstances in which the Act compels benefits to be paid;
- (c) may be paid in any form and in any circumstances in which the Act permits benefits to be paid;
- (d) may, where payable in lump sum form, be paid in more than one instalment;
- (e) may, at a Member's request, be retained wholly or partly in the Fund with the Trustee's agreement and if the Act permits, until paid in accordance with these Rules;
- (f) must not be paid if payment of the Benefit would result in the Fund not complying with the Act.

12.5.2 Except where these Rules provides otherwise or the Trustee otherwise determines, the amount of any benefit will be an amount not:

- (a) exceeding the Member's Account Balance; or
- (b) less than any amount required under the Act.

## 12.6 Death benefits

12.6.1 This Rule 12.6 applies to Death Benefits. To avoid doubt, it does not apply to a Member's Account or any portion of a Members' account relating to benefits that have already begun to be paid or applied for payment of a benefit in provision form.

12.6.2 A Death Benefit to which this Rule applies must, subject to the remaining provisions of this Rule 12.6, be paid in proportions decided by the Trustee to one or more of the following:

- (a) one or more of the Member's Dependants; and
- (b) the Member's Legal Personal Representative.

The Trustee must consider any Death Benefit Nomination made in accordance with Rule 12.6.4, but unless Rule 12.6.5 applies may not treat the Death Benefit Nomination as binding.

12.6.3 Subject to the Act, if after making enquiries that it considers reasonable the Trustee cannot locate any Dependants or the Legal Personal Representative, the benefit may be paid to any other person that the Trustee chooses or in any other manner.

12.6.4 For the purposes of this Rule 12.6, the following provisions apply:

- (a) Members may give the Trustee a Death Benefit Nomination;
- (b) a Death Benefit Nomination may be an Indicative Death Benefit



Nomination, or, alternatively, but subject to the Act, a Binding Death Benefit Nomination as to payment of the Death Benefit payable in respect of the Member;

- (c) subject to any requirements of the Act, members may vary Death Benefit Nominations at any time;
- (d) Death Benefit Nominations may be made in accordance with the form included in the Member application forms contained in Schedule 2 or in another form acceptable to the Trustee;
- (e) the Trustee may disregard an Indicative Death Benefit Nomination if it does not comply with any formal requirements set by the Trustee; and
- (f) subject to the Act, the Trustee must disregard a Binding Death Benefit Nomination if it does not comply with the formal requirements of the Act.

12.6.5 The Trustee will treat a Binding Death Benefit Nomination made in accordance with the form included in the Member application forms contained in Schedule 2 or in another form acceptable to the Trustee as a binding direction and nomination and effect payments in accordance with the Death Benefit Nomination, provided it is given in accordance with the requirements of the Act and is current and valid at the date of the Member's death.

12.6.6 The Trustee may in its absolute discretion increase the amount of the Death Benefit by an amount equal to such amount (if any) which is available as a deduction to the Fund under s279D of the Tax Act.

12.6.7 Subject to Rule 12.6.5 the Trustee may pay a Death Benefit in any manner permitted by the Act, including as a lump sum, pension or combination of both.

## 12.7 Transfer of assets

Subject to the Act (including any requirement for approval by the Regulator) where the Trustee is obliged to pay a benefit, it may at the request of the Beneficiary meet that obligation wholly or partly by transferring one or more assets in kind of equivalent value to the Beneficiary.

## 12.8 Form of Benefits

12.8.1 If the Trustee is not a Constitutional Corporation any Benefit payable under these Rules, other than a Death Benefit, is payable in the form of one or more pensions.

12.8.2 If the Trustee is a Constitutional Corporation any Benefit payable under these Rules, other than a Death Benefit, is, subject to the Act, payable in the form of:

- (a) one or more lump sums; or
- (b) one or more pensions; or
- (c) a combination of one or more pensions and one or more lump sums.

## 12.9 Bankruptcy and Assignments

Subject to the Act a Beneficiary's interest under this Deed will be forfeited if:

- (a) a Beneficiary attempts to assign, alienate or charge all or part of their interest under these Rules; or
- (b) any other event occurs that results in a person other than the Beneficiary becoming entitled to that interest (except an event that produces that result because of a provision of these Rules).



Subject to the Act, the amount representing any interest that is forfeited in accordance with this Rule may be applied in proportions decided by the Trustee for the benefit of one or more of the Beneficiary, former Beneficiary or Beneficiary's Dependents as the Trustee considers appropriate.

12.10 Minor beneficiaries those without legal capacity

If:

- (a) a Beneficiary is a minor;
- (b) the Trustee believes that a Beneficiary is unable to manage their financial affairs because of legal incapacity; or
- (c) the Trustee otherwise considers it appropriate for any reason;

the Trustee may, subject to the Act, pay some or all of the amount payable in respect of the Beneficiary to another person including the guardian or Legal Personal Representative of that person to be applied for the benefit of the Beneficiary. The receipt of the person to whom the benefit is paid is a complete discharge to the Trustee in respect of that benefit. The Trustee may impose any terms on such a payment that it considers appropriate.

12.11 Discharge

The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full. The Trustee has no obligation to see how the payment is applied.

12.12 Deductions

Subject to the Act, the Trustee may deduct fees and amounts in respect of Liabilities and Tax from any benefit payment. This is not intended to restrict the Trustee from deducting fees or recovering such amounts in any other way permitted by the Act or law.

12.13 Family Law

- (a) 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 12.13(a) to the extent relevant:
  - (i) the value of a Member's Account will be adjusted accordingly; and
  - (ii) 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.
- (b) Subject to Rule 12.13(c) and the Family Law Requirements, if the interest of a Beneficiary (Affected Beneficiary) in the Fund becomes subject to a Payment Split:
  - (i) the Non-Member Spouse is not entitled to become a Member;
  - (ii) the Trustee may admit the Non-Member Spouse as a Member if it so resolves and the Affected Beneficiary agrees; and
  - (iii) 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 13.2.

If the Affected Beneficiary is incapable of giving agreement under Rule 12.13(b)(ii) for any reason, the Trustee may admit the Non-Member Spouse as a Member if it so resolves.



- (c) 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 12.13(b) is to be taken as:
  - (i) 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
  - (ii) enabling an Affected Beneficiary to request transfer of benefits other than Transferable Benefits of the Non-Member Spouse in accordance with Rule 12.13(b)(iii).
- (d) 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:
  - (i) power to provide information about Member's entitlements and Payment Splits to relevant parties;
  - (ii) power to give effect to Payment Flags and any relevant lawful agreement or order of a court of competent jurisdiction in relation thereto;
  - (iii) power to give effect to Payment Splits within any required time period;
  - (iv) power to transfer Transferable Benefits within any time period set by the Family Law Legislation;
  - (v) power to charge fees; and
  - (vi) power to recognise interests created under the Family Law Requirements.

#### 12.14 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. Transfers

#### 13.1 Transfers in

Subject to the Act, the Trustee may accept into the Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Benefit Arrangement, Employer or other person or entity permitted to do so under the Act or transferred or rolled over within the Fund.

#### 13.2 Transfers out

13.2.1 The Trustee may transfer the whole or part of any amount held in the Fund in respect of a Member to another Benefit Arrangement.

13.2.2 The Trustee may make such a transfer without the Member's consent where the Act permits (including to a Successor Fund or an Eligible Rollover Fund).

13.2.3 The Trustee may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the Act (or in the case of a retirement savings account, the *Retirement Savings Account Act 1997 (Cwlth)*) and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the Act.

13.2.4 A transfer of an amount under this Rule 13.2 is a complete discharge to the Trustee in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred.



## **14. Investment Options**

### **14.1 Investment options**

14.1.1 The Trustee may offer Investment Options in accordance with this Rule 14.1.

14.1.2 The Trustee may offer a new Investment Option at any time.

14.1.3 On establishing an Investment Option, the Trustee will decide its name and other specifications relating to it (including the kinds of asset or assets to be held, the investment objectives and strategy and other relevant matters). The Trustee may change the name or other specifications at any time.

14.1.4 Subject to the Act, the Trustee may merge, divide or discontinue Investment Options at any time. In this event the Trustee will determine how the interests of Beneficiaries will be attributed between the Investment Options to reflect those changes.

14.1.5 The Trustee will ensure that the assets and liabilities associated with each Investment Option can be identified separately.

### **14.2 Selection of investment options**

Amounts may be attributed to one or more Investment Options requested by the Member and accepted by the Trustee.

### **14.3 Switches**

14.3.1 A Member may apply to switch amounts between Investment Options.

14.3.2 The Trustee may accept or reject a switch application and, if it accepts an application, determine the date on which it takes effect.

### **14.4 Order of debiting**

14.4.1 Where there are two or more Investment Options attributable to a Beneficiary, the order in which debits relating to the Member's Account (including those relating to benefit payments) attributed to those Investment Options will be in accordance with arrangements selected by the Member and accepted by the Trustee.

14.4.2 The Trustee:

(a) may determine the form in which a selection referred to in Rule 14.4.1 is to be made; and

(b) may suspend a selection made in accordance with Rule 14.4.1.

## **15. Reserve Account**

15.1 The Trustee may establish and maintain any Reserve Account or Accounts as the Trustee thinks necessary or desirable for the convenient and efficient operation and administration of the Fund or that is required or permitted by the Act. The Trustee may use such Accounts for any purpose permitted by the Act or these Rules.

### **15.2 Credits**

Subject to the Act, the following amounts may be credited to a Reserve Account:

(a) amounts transferred from another Benefit Arrangement that are not allocated to any Member's Account;

(b) any amount in a Member's Account that is not required or that cannot be applied



to pay benefits in respect of the Member;

- (c) any investment earnings determined having regard to Rule 7.5, the requirements of the Act, and any Investment Options applicable; and
- (d) any other amounts for such matters or things as the Trustee considers appropriate or as provided for under these Rules.

#### 15.3 Debits

The following amounts may be debited from the Reserve Account if the Act permits:

- (a) any amounts to be credited to Member's Accounts by way of:
  - (i) additions to benefits otherwise payable; or
  - (ii) satisfaction in whole or in part of any obligation of an Employer or Member to make contributions to the Fund;
- (b) amounts to be applied by way of payment to an Employer; and
- (c) any negative investment earnings determined having regard to Rule 7.5, the requirements of the Act, and any Investment Options; and
- (d) amounts to be applied in any other way that the Trustee considers appropriate.

### 16. Confidentiality

#### 16.1 Non-disclosure

The Trustee will not disclose any confidential information regarding Beneficiaries or Employers acquired in the course of acting as Trustee to other parties, except in connection with Members' interests in the Fund.

#### 16.2 Exceptions

This Rule 16 does not apply:

- (a) where the Trustee may be legally compelled to, or penalised for, failure to disclose such information; or
- (b) to disclosures made to Employers or agents or delegates of the Trustee in connection with the operation of the Fund; or
- (c) where non-disclosure of the material may cause adverse tax consequences to the Fund.

### 17. Termination of the Fund

#### 17.1 General

17.1.1 The Fund will be terminated upon the first to occur of the following:

- (a) if the Trustee's office becomes vacant and no new Trustee is appointed within ninety (90) days;
- (b) if the Trustee resolves to terminate the Fund in accordance with Rule 17.3.

17.1.2 Where Rule 17.1.1(a) applies, references in Rules 17.2 and 17.3 to:

- (a) the "Trustee", refer to any entity appointed after the ninety (90) day period referred to in Rule 17.1.1 (a); and



- (b) the "Closure Date" refer to the date of expiry of the ninety (90) day period referred to in Rule 17.1.1 (a).

**17.2 No Further Receipts**

From the Closure Date no further contributions or transfers of amounts into the Fund may be accepted unless the Trustee specifically agrees (except for payment of any contributors arrears due on that date).

**17.3 Termination by Trustee**

The Trustee may resolve to terminate the Fund at any time. If it decides to do so the following provisions will apply:

- (a) the Members and Employers will be notified in accordance with the Act; and
- (b) the Trustee will determine a closure date ("Closure Date").

**17.4 Application of assets**

Assets of the Fund will be applied in the following order on termination:

- (a) to provide for all Liabilities relating to the Fund, except for those relating to benefit payments;
- (b) to provide for benefits that became payable on or before the Closure Date including benefits that have begun to be paid in pension form;
- (c) in relation to Beneficiaries for whom benefits have not become payable under paragraph (b), and subject to these Rules, to provide for a benefit being an amount equal to the Member's Account Balance;
- (d) in the case of Members in respect of whom a Reserve Account is maintained in the Fund, to increase any benefits by application of amounts from the Reserve Account on a basis determined by the Trustee; and
- (e) subject to the Act, to pay any amounts remaining to or for the benefit of one or more of the Members or former Members, as the Trustee considers appropriate.

**18. Amendments**

**18.1 Power**

Subject to this Rule 18 the Trustee may amend any provision of these Rules (including this Rule) at any time by deed. An amendment must be made by Deed.

**18.2 Effective date**

An amendment made under this Rule will take effect from a date specified by the Trustee (whether before or after the date of the deed), or if none is specified, from the date of the deed or resolution.

**18.3 Limitations**

No amendment may be made that:

- (a) is inconsistent with the Act; or
- (b) would have the effect of reducing the amount of a benefit that has accrued or become payable by or in respect of the Member before the date of payment of the benefit, unless any such reduction:



- (i) is required to meet a Tax liability in respect of the Fund; or
- (ii) is required to comply with the Act; or
- (iii) is approved in writing by the Member; or
- (iv) is approved in writing by the Regulator.

## **19. Severance**

If any provision of these Rules or part thereof is void, prohibited or unenforceable in a jurisdiction then such provision or the relevant part thereof will be severed. The remainder of these Rules will have full force and effect notwithstanding any consequential alteration to the meaning or construction of that provision or these Rules that may result unless severing the provision would be contrary to public policy or the Act.

## **20. Notices**

### **20.1 Form**

Any notice given under these Rules must be in writing.

### **20.2 Receipt**

Notices will be deemed to have been given to the recipient if:

- (a) they are handed to them personally; or
- (b) they are sent by pre-paid post addressed to:
  - (i) in the case of Beneficiary, the person's last known address or place of employment; or
  - (ii) in the case of a Trustee or an Employer which is a corporation, its registered office or place of business; or
  - (iii) in the case of a Trustee or an Employer which is not a corporation, its place of business or other last known address.

## **21. Governing Law**

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia where the Trustee resides.



**SCHEDULE 1**  
**BENEFIT SCHEDULE : PART 1**

**1. Circumstances**

Subject to the Act and these Rules, benefits are payable in the following circumstances:

- (a) if the Member has reached the Retirement Age;
- (b) if the Member has ceased Service;
- (c) if the Member has died;
- (d) if the Member has become Totally and Permanently Disabled;
- (e) if the Member has become Temporarily Disabled;
- (f) as a transition to retirement of the Member; or
- (g) any other circumstance allowed by the Act.

To avoid doubt, a benefit must be paid when required under the Act as provided by Rule 12.5.1(b).

**2. Calculation of benefits other than pension benefits**

**2.1 General**

Subject to these Rules and except where Rules 2.2 or 3 of this Schedule apply, the amount of a Member's benefit will be the amount of the Member's Account Balance plus any additional amount included in accordance with Rule 12.6.6 where applicable;

**2.2 Disablement benefit**

The above Rule 2.1 does not apply in the case of a benefit payable on the Member's Temporary Disablement. The benefit payable in those circumstances will be calculated having regard to:

- (a) the amount or amounts payable under the Policy in respect of the Member's Disablement;
- (b) the timing of those payments;
- (c) the liabilities incurred by the Trustee in connection with the Policy (including receipt and payment of proceeds); and
- (d) any relevant Policy terms.

**3. Pension benefits**

**3.1 General**

Where a benefit in respect of a Member is to be payable in pension form, the amount referred to in Rule 3.2 of this Schedule will be applied for the purposes of providing that pension.

**3.2 Relevant amount**

For the purposes of the above Rule 3.1, the relevant amount is:

- (a) the amount that would be payable as a lump sum under Rule 2.1 of this Schedule if it applied; or



- (b) if the Member requests that only part of that amount be applied to fund the pension and the Trustee accepts that request, the amount of the part requested.

### 3.3 Pension conditions

The conditions applicable to payment of pension benefits appear in Part 3 of this Benefit Schedule.

## PART 2

### 1. Application

Where Rule 3.2(c) of these Rules applies, the main benefit payable from the Fund is an Old Age Pension payable at the Member's Retirement Age as described in Rule 2 of this Part of the Benefit Schedule.

### 2. Retirement pension

If a benefit is payable to the Member on the Member's attaining Retirement Age, then subject to the Act, the benefit will be paid in the form of a pension on terms agreed between the Trustee and the Member, or in any absence of agreement, as determined by the Trustee. A Member to whom a pension benefit is payable as described above is entitled, subject to the Act, to commute part or all of that benefit to a lump sum on terms agreed between the Trustee and the Member, or in the absence of agreement as determined by the Trustee.

### 3. Incidental benefits

Where this Part 2 of the Benefit Schedule applies, subject to Rule 2 of this Schedule, benefits will otherwise be payable in accordance with Parts 1 and 3 of the Benefit Schedule, as relevant.

## PART 3

### PROVISIONS APPLYING TO PENSION BENEFITS

#### 1. Forms of pension

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 provision of the SIS Regulations:

- (a) a Lifetime Pension;
- (b) an Allocated Pension;
- (c) a Life Expectancy Pension;
- (d) a Market Linked Pension;
- (e) a Flexi Pension;
- (f) a Simple Pension; and
- (g) subject to the Act, any other form of pension that the Trustee chooses to make available at the relevant time.

Terms relating to each type of pension referred to in paragraphs (a) to (g) are provided in the subsequent Rules 4 to 10 of this Schedule ("Pension Rules").

#### 2. Provisions of Act

##### 2.1 Pension Provisions

The Pension Rules and including any other form of pension referred to in Rule 1(g) of this



Part are designed to reflect certain provisions of the Act relating to pensions. To the extent that those provisions of the Act may be:

- (a) varied or supplemented, the Trustee may offer pensions on terms that are consistent with the varied or supplemented provisions; or
- (b) removed, the Trustee may adjust the features of pensions to which the Pension Rules apply, having regard to the provisions that have been removed.

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

Subject to the Act, where a change of the type referred to in paragraphs (a) or (b) of this Rule 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.

Any form of 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 Act may continue to be paid to the Beneficiary.

## 2.2 Simple Pension

After 20 September 2007 a person may only commence a Simple Pension.

## 2.3 Life Tables etc

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

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

- (a) pay pensions in any form permitted by the Act, which may include forms other than those described in the Pension Rules;
- (b) make the payment of pensions, including those governed by the Pensions 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
- (c) 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

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

## 5. Lifetime Pension

The following provisions apply to Lifetime Pensions:

- (a) the pension must meet the standards of Regulation 1.06(2);
- (b) as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the standards of Regulation 1.07B;



- (c) 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 Regulation 1.06 (2).

#### **6. Allocated Pension**

The following provisions apply to Allocated Pensions:

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

#### **7. Flexi Pension**

The following provisions apply to Life Expectancy Pensions:

- (a) the pension must meet the standard of Regulation 1.06(6)
- (b) as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the standards of Regulation 1.07B.

#### **8. Life Expectancy Pension**

The following provisions apply to Life Expectancy Pensions:

- (a) the pension must meet the standards of Regulation 1.06(7);
- (b) as from 1 July 2007 if the benefit commenced to be paid before 20 September 2007 the pension must also meet the following requirements:
  - (i) 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;
  - (ii) the pension must also meet the standards of Regulation 1.07B.
- (c) 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 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 Regulation 1.06 (7) and also meets the standards of Regulation 1.07B.

#### **9. Market Linked Pension**

The following provisions apply to Market Linked Pensions:

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



## **10. Simple Pensions**

The following provisions apply to Simple Pensions:

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

## **11. Particular arrangements**

Subject to the Act, the Trustee may:

- (a) 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
- (b) 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.

## **12. Reserves**

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

- (a) 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 Rule 11, or any other relevant matter;
- (b) establish pension reserves in relation to the funding of pension obligations relating to particular Beneficiaries;
- (c) 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.

## **13. Death benefits**

- (a) This Rule 13 applies if the terms of a particular pension as provided above, and taking into account any particular arrangements made in accordance with Rules 8 and 11 of this Part, do not provide for the consequences for payment of the pension on the death of the pension recipient.
- (b) Where this Rule 13 applies, then unless the Trustee otherwise agrees, and subject to the Act, if any amount is payable in respect of the pension recipient on the pension recipient's death, it will be dealt with in accordance with Rule 12.6 of these Rules. For this purpose, references in Rule 12.6 of these Rules to the Member will be treated as references to the deceased pension recipient.



**SCHEDULE 2**

**PART 1**  
**Application for Membership**  
**With Indicative Death Benefit Nomination – No Binding**  
**Death Benefit Nomination**

<b>Member details</b>
Name:
Address:
Date of Birth:
Occupation:
Telephone:
Tax File No:
Amount of Deposit (\$)*:

\* (A Statement of Termination Payment needs to be attached if an amount is being transferred from another superannuation fund)

I hereby apply to become a member of

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

SIGNED                      DATED

<b>Employer details</b>
Employer:
Address:

**Nomination of dependants**

<b>Important information for completion</b>
1. This Nomination Notice is not binding. The Trustee/s will take it into account in the event that a benefit is paid from the Fund on your death. However, the Trustee/s have complete discretion as to which of your Dependants and/or Legal Personal Representative may receive the benefit and in what proportions. If there are no Dependants or Legal Personal Representative, the benefit may be payable to any other person.
2. This Nomination Notice must be fully completed in accordance with the details below:
<ul style="list-style-type: none"><li>• Ensure both pages of this Notice are completed.</li><li>• The Beneficiaries named in this Notice must be Dependants and/or your Legal Personal Representative. Your Dependants are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death. Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who, as your next of kin, applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.</li><li>• For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.</li></ul>

<b>Nomination of dependants</b>		
Name	Relationship to you	Proportion of benefit

**Member declaration**

I, \_\_\_\_\_ of \_\_\_\_\_  
as a member of the Fund, request the Trustee/s to pay my death benefit to the above persons in the proportions shown.

I understand that:

- in the event of my death, the Trustee/s have complete discretion as to which of my dependants and/or estate will receive any death benefit payable.
- this Notice revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries.

Signature of Member	Date
	/   /



### SCHEDULE 3

#### PART 2 Application for Membership With Binding Death Benefit Nomination

<b>Member details</b>
Name:
Address:
Date of Birth:
Occupation:
Telephone:
Tax File No:
Amount of Deposit (\$)*:

\* (A Statement of Termination Payment needs to be attached if an amount is being transferred from another superannuation fund)

I hereby apply to become a member of.

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

SIGNED

DATED

<b>Employer details</b>
Employer:
Address:

#### Binding death benefit nomination

<b>Information about binding directions</b>
The operation of the Fund, of which you are a member or are being invited to be a member, is governed by a document called a Trust Deed. The Trustee of the Fund is bound to act in accordance with the requirements of the Trust Deed in administering the Fund. Under the Trust Deed, the Trustee has a discretion to decide whether, in the event of your death, to pay the death benefit, which is payable to your estate or to dependants of yours, and, in what proportions. However, the Trust Deed also enables you to override the Trustee's discretion by you giving a binding direction to the Trustee. This is a direction to the Trustee to pay any death benefit payable either to your estate or to dependants specified by you and in the proportions that you specify. You may either elect for the Trustee to exercise the discretion given to it to decide who to pay your benefit to, in the event of your death, or you can give a binding direction to the Trustee by completing the direction in this Nomination.

<b>Important points about binding directions</b>
If you decide to give a binding direction by completing this Nomination, it is important for you to note the following: 1. You can only direct the Trustee to pay the benefit either to your estate or to the dependants that you specify on this Nomination (or both). 2. If you wish to give such a direction to the Trustee, you must specify the percentage of your total death benefit which is to be paid to each of the estate of your dependants. 3. You can confirm, amend or revoke this Nomination at any time by giving written notice to the Trustee. 4. The direction that you give automatically ceases to have any effect 3 years after the date on which you sign and date this Nomination. If the direction ceases to have effect, the Trustee will have a discretion to decide who to pay the death benefit to. 5. If, on this Nomination, you direct the Trustee to pay any part of your death benefit to a person who is not a dependant (as described below), your direction will be void and of no effect and the Trustee will be required to decide who to pay your death benefit to. 6. For the purposes of the Trust Deed, a dependant is: <ul style="list-style-type: none"><li>• a spouse of a Member</li><li>• any children of a Member</li><li>• any other person (whether related to the Member or not) who is financially dependent on the Member "Spouse" includes a de facto spouse and "children" includes step-children, adopted and ex-nuptial children. If you have any doubt as to whether a person you wish to nominate to receive any part of your death benefit is a dependant, you should seek advice from the Trustee before completing this Nomination.</li></ul> 7. For this Nomination to be effective, it must be signed and dated by you in the presence of 2 witnesses who are both at least 18 years old and neither of the witnesses can be a person who you have nominated to receive a part of your death benefit.



**Important information for completion**

1. In order for this Nomination Notice to be valid, it must be fully completed in accordance with the details below:
  - Ensure the Nomination, Member Declaration and Witness Declaration are completed.
  - The Beneficiaries named in this Nomination must be Dependants and/or your Legal Personal Representative. As mentioned above, your Dependants are your spouse, de facto spouse and your children (including step, adopted and ex-nuptial children), and any other person financially dependent upon you at the time of your death. Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who applies for and has been granted letters of administration for your estate. Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.
  - For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.
  - The Nomination must be signed and dated by you in the presence of two witnesses aged 18 years or over. Both witnesses must also provide their date of birth, sign and date the Nomination. It is important to note that the witnesses cannot be persons nominated as beneficiaries.
2. If any of this information is not provided, then your Nomination may be invalid. The Trustee/s will contact you for clarification if this is the case.
3. It is not compulsory to complete this Nomination. Details of who a death benefit will be paid to in the situation where there is no valid Nomination, can be found in the Member Information document.

**Nomination of dependants**

Name of beneficiary	Relationship to you	Proportion of benefit

Total Allocation 100%

**Member declaration**

I, \_\_\_\_\_ of \_\_\_\_\_  
as a member of the Fund, direct the Trustees to pay my death benefit to the above persons in the proportions shown above.

I understand:

- I can amend or revoke this Nomination at any time by providing a new Nomination to the Trustee/s of the Fund, signed and dated by myself in the presence of two witnesses who are aged 18 years or over;
- Unless amended or revoked earlier, this Nomination is binding on the Trustee/s for a period of 3 years from the date it is first signed or last confirmed;
- This Nomination revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries;
- If this Nomination is not correctly completed, it may be invalid.
- If I have nominated persons who are not "dependants" as explained above, the direction contained in the Nomination, will be void and of no effect and the Trustee will have a discretion as to when the benefit is payable and in what proportion.

I acknowledge that I have been provided with information by the Trustee/s of the Fund that enables me to understand my rights to direct the Trustee/s to pay my Death Benefit in accordance with this Nomination.

Signature of Member	Date  / /
---------------------	-----------------

**Witness declaration**

We declare that:

- this Nomination was signed by the member in our presence;
- we are aged 18 or more; and
- we are not named as beneficiaries.

Signature of Witness	Signature of Witness	Date  / /
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