

DATED 17 November 2006

BY

M M SAMPSON PTY LTD ACN 106 895 701

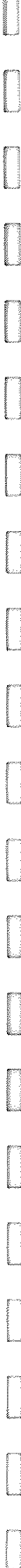
"the Trustee"

DEED OF VARIATION OF  
SUPERANNUATION FUND DEED

M SAMPSON SUPERANNUATION FUND

Tel: (07) 3839 5222

CLEARY HOARE  
Solicitors  
145 Eagle Street  
BRISBANE QLD 4000



**DEED OF VARIATION OF SUPERANNUATION FUND DEED**

**THIS DEED OF VARIATION OF SUPERANNUATION FUND DEED** is made on the date specified in Part 1 of the Schedule.

**BY:** The parties specified in Part 2 of the Schedule ("the Trustee")

**BACKGROUND:**

A. Under the Deed as previously amended, if applicable ("the Old Deed") dated as specified in Part 3 of the Schedule, the superannuation fund described in Part 4 of the Schedule ("the Fund") was established.

B. The Trustee is the trustee of the Fund.

C. Under the Old Deed, the Trustee has the power to vary any of the provisions of the Deed.

D. The Trustee desires to vary the Old Deed.

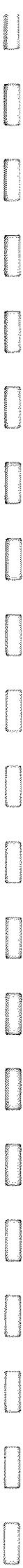
**OPERATIVE PARTS:**

1. All the provisions of the Old Deed, including any provisions inserted by variation prior to this Deed, are, as from the execution of this Deed, repealed.

2. The provisions of the Superannuation Trust Deed forming Appendix 1 to this Deed shall, from the execution of this Deed, replace, in its entirety, the repealed provisions of the Old Deed.

3. The Fund, established by virtue of the Old Deed, shall be deemed to continue but under the trusts as constituted by this Deed.

4. When a person executes this Deed, that person shall be deemed to have received written notice of the variations to the Old Deed.



## SCHEDULE

PART 1:	Date of this Deed:	17 November 2006
PART 2:	The Trustee:	M M SAMPSON PTY LTD ACN 106 895 701
PART 3:	Date of Old Deed:	20 December 1995
PART 4:	The Fund:	M SAMPSON SUPERANNUATION FUND

EXECUTED AND DELIVERED AS A DEED:

**EXECUTED AND DELIVERED AS A DEED:**

**EXECUTED** by M M SAMPSON PTY LTD  
ACN 106 895 701 in accordance with its  
Constitution

Constitution

for X  
J. M. W.



**APPENDIX 1**

**SUPERANNUATION FUND DEED**

**INTRODUCTION:**

- A. This Introduction relies upon the definitions in the Deed, including the definitions in this Introduction.
- B. The Trustee, being the person described in Part Two of the Schedule ("the Trustee") is the trustee of a superannuation fund established under the name set out in Part Three of the Schedule ("the Fund") on the date set out in Part One of the Schedule and now administered in accordance with this Deed ("the Deed").
- C. The purpose of the Fund is to provide superannuation benefits to Members and their Dependents.
- D. The Fund is an accumulation fund.
- E. The provisions of this Deed are subject to the requirements of the Act.

**THEREFORE THE TRUSTEE DECLARES AND COVENANTS THAT:**

**1. Interpretation**

- 1.1 In the Deed, the following terms shall have the following meanings (unless the context or the Act otherwise require):
- 1.1.1 "Act" means, as the context and time requires:
- 1.1.1.1 The *Occupational Superannuation Standards Act* ("OSSA") and regulations; and
- 1.1.1.2 The *Superannuation Industry (Supervision) Act* ("SISA") and regulations; and
- 1.1.1.3 The *Income Tax Assessment Act 1936* and regulations; and
- 1.1.1.4 The *Income Tax Assessment Act 1997* and regulations.
- 1.1.2 "Actuary" means a person who is qualified to make an actuarial investigation of the Fund in accordance with the requirements of the Act and is appointed by the Trustee as actuary for the Fund.
- 1.1.3 "Allocated Pension Account" means an account established pursuant to Rule 15 in which is recorded that part of the Member's Benefit to be used to pay an Allocated Pension to the Member or a Reversionary Beneficiary.
- 1.1.4 "Approved Fund" means a superannuation fund, approved deposit fund, eligible roll-over fund, retirement savings account or other approved fund including a pension fund or annuity arrangement which can accept a transfer from the Fund of a Member's Benefit or which may transfer a Member's Benefit to the Fund without breach of the Act.

- 1.1.5 "Auditor" means a person who satisfies the requirements of the Act and the Authority to be an auditor of the Fund.
- 1.1.6 "Authority" means the "Regulator" as that term is defined in the Act for the particular matter, or any person or body who is appointed by an Act of Parliament to supervise the conduct of the Fund.
- 1.1.7 "Beneficiary" means the person to whom a benefit is payable being the Member or the Reversionary Beneficiary, as the case may be.
- 1.1.8 "Child Contribution" means a contribution made by another person in respect of a Member that is under the age of eighteen (18) years.
- 1.1.9 "Clause" means a paragraph of Part Four of the Schedule.
- 1.1.10 "Complying Product" means a benefit that is:
- 1.1.10.1 An annuity provided under a contract that meets the standards of SISA Regulation 1.05(2), (3), (9) or (10); or
- 1.1.10.2 A pension provided under rules that meet the standards of SISA Regulation 1.06(2), (3), (7) or (8); or
- 1.1.10.3 A pension provided under terms and conditions that meet the standards of RSA Regulation 1.07(3A).
- 1.1.11 "Compulsory Benefit Age" means upon the death of a Member or the age at which, under the Act, benefits are required to be paid to a Member.
- 1.1.12 "Condition of Release" means a condition specified in the SISA Regulations which once satisfied allows some or all of the Member's Benefit to be paid.
- 1.1.13 "Constitutional Corporation" has the meaning attributed to it in the Act.
- 1.1.14 "Consumer Price Index", in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the eight capital cities and is published by the Australian Statistician in respect of that quarter.
- 1.1.15 "Dependant", in relation to a person, has the meaning attributed to it in SISA.
- 1.1.16 "Employee" means any person who is or has been in employment, whether full time or part time, casual or permanent, and includes, in the case of an incorporated Employer, the directors of the Employer.
- 1.1.17 "Employer" means an employer under the Act.
- 1.1.18 "Employer Contributions" means contributions to the Fund in respect of a Member by the Employer or any previous Employer of the Member.
- 1.1.19 "Fund Accounts" means the accounts prepared pursuant to Rule 15.
- 1.1.20 "Government Co-Contribution" means a contribution made by the Commonwealth of Australia in respect of a Member of the Fund in



- accordance with the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003*.
- 1.1.21 "Guarantee Act" means the *Superannuation Guarantee Charge Act 1992*, as amended from time to time.
- 1.1.22 "Legal Personal Representative" means:
- 1.1.22.1 the executor of the Will or administrator of the estate of a deceased person;
- 1.1.22.2 the trustee of the estate of a person under a legal disability;
- 1.1.22.3 a person who holds an enduring power of attorney granted by a person; or
- 1.1.22.4 any other person falling within the definition of "Legal Personal Representative" in Section 10(1) of SIS<sub>A</sub>;
- authorised by Section 17A(3) of SIS<sub>A</sub> to be a trustee of a self-managed superannuation fund.
- 1.1.23 "Lifetime Pension Account" means an account established pursuant to Rule 15 in which is recorded that part of the Member's Benefit to be used to pay a Lifetime Pension to the Member or a Reversionary Beneficiary.
- 1.1.24 "Lump-Sum Benefit" means a Member's Benefit or any part of it paid or provided other than as Pension Benefits.
- 1.1.25 "Market Linked Pension Account" means an account established pursuant to Rule 15 in which is recorded that part of the Member's Benefit to be used to pay a Market Linked Pension to the Member or a Reversionary Beneficiary.
- 1.1.26 "Member" means a person who has been accepted by the Trustee as a member of the Fund whether or not that person is or has been an Employee and whether or not that person is or has been self employed. A person ceases to be a Member when the whole of that person's benefit entitlement under the Deed has been paid and, unless otherwise determined by the Trustee where so permitted, shall include the legal personal representative of a deceased Member and Dependents of a deceased Member.
- 1.1.27 "Member's Accounts" means the accounts prepared pursuant to Rules 15.1.2 and 15.2.
- 1.1.28 "Member's Additional Benefit" means the amount by which Member's Benefit exceeds the Member's Minimum Benefit.
- 1.1.29 "Member's Benefit" in respect of a Member is the net amount standing to his credit in the Member's Account other than any Pension Account plus the capital value of any Pension payable to the Member determined in accordance with the Act, plus the value (if any) at that time of any policy of insurance owned by the Trustee and paid for out of that Member's Account and includes any amount paid or payable, whether subject to any contingency or otherwise, by the Trustee out of the Fund pursuant to the Deed to or in respect of the Member.

- 1.1.30 "Member's Minimum Benefit" means the minimum benefits of the Member for the purposes of Part 5 of the SISA Regulations.
- 1.1.31 "Non-Member Contributions" means contributions to the Fund in respect of a Member by any person other than the Member.
- 1.1.32 "Non-Member Spouse" has the same meaning as in the *Family Law Act 1975*.
- 1.1.33 "Non-Vested Employer's Contribution Account" means an account established pursuant to Rule 15 in which is recorded the Employer Contributions and any credits and debits attributable to those contributions which are not Vested Benefits.
- 1.1.34 "Old Age Pensions" has the same meaning as in SISA.
- 1.1.35 "Participating Employer" means an Employer from whom the Trustee accepts contributions to the Fund.
- 1.1.36 "Payment Event" means the time at which any Member's Benefit is paid or is commenced to be paid to a Member.
- 1.1.37 "Payment Split" has the same meaning as in the *Family Law Act 1975*.
- 1.1.38 "Pension" means an arrangement for the payment of Pension Benefits.
- 1.1.39 "Pension Account" means the Allocated Pension Account, Lifetime Pension Account or Market Linked Pension Account as the case may be.
- 1.1.40 "Pension Age" has the meaning it has for the purposes of Section 9B of the *Social Security Act 1991*.
- 1.1.41 "Pension Benefits" means any annuity or pension, as those terms are determined by the Trustee and which are not prohibited by the Act. The Trustee, subject to the Act, may determine from time to time the title and conditions of various Pension Benefits. Until otherwise determined by the Trustee, the characteristics of a Complying Pension, Fixed Term Pension, Flexi Pension, Lifetime Pension, Market Linked Pension, Non-Commutable Pension, Reversionary Pension and Allocated Pension shall be as set out, respectively, in Part Four of the Schedule.
- 1.1.42 "Permanently Disabled" and "Permanent Disablement" means:
- 1.1.42.1 in relation to a Member that has ceased gainful employment such disablement (whether physical or mental) as, in the opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainful employment for which the Member is reasonably qualified by training, education or experience; or
- 1.1.42.2 where any part of the benefit payable on permanent disablement is insured, the definition of permanent disablement or permanent and total disablement contained in the policy document evidencing the contract of insurance,

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

- 1.1.43 "Preservation Age" has the same meaning as in the SISA Regulations.
- 1.1.44 "Preserved Benefit" has the same meaning as in the SISA Regulations.
- 1.1.45 "RBL" means the Pension RBL for a Member as defined in the Act.
- 1.1.46 "Receiving Member" has the meaning attributed to it in Rule 12.14.1.
- 1.1.47 "Reserve Account" has the meaning attributed to it in Rule 15.1.3.
- 1.1.48 "Restricted Non-Preserved Benefits" has the same meaning as in the SISA Regulations.
- 1.1.49 "Reversionary Beneficiary" means a person who succeeds a Beneficiary to the entitlement to the payment of a Pension.
- 1.1.50 "RSA Regulations" means the Retirement Savings Accounts Regulations 1997.
- 1.1.51 "Rules" means the provisions of this Trust Deed including any alteration, addition to, or variation of the provisions made from time to time.
- 1.1.52 "Self-Employed Member" refers to a Member who is self-employed in a business, trade, profession, vocation, calling or occupation for at least ten hours a week or such other number of hours as are prescribed under the Act.
- 1.1.53 "Special Treatment Account" means an account established pursuant to Rule 15 in which is recorded the part of the Member's Benefit subject to a special requirement or concession in the Act, including, but not limited to, preservation.
- 1.1.54 "Specific Investment" means an investment made by the Trustee for a Member pursuant to Rule 7.4.
- 1.1.55 "Splittable Contributions" has the same meaning as in the SISA Regulations.
- 1.1.56 "Sub Fund" means a separate fund and trust constituted under Rule 2.5.
- 1.1.57 "Transferring Member" has the meaning attributed to it in Rule 12.14.1.
- 1.1.58 "Trustee" means the trustee for the time being of the Fund, whether original, additional or substituted.
- 1.1.59 "Unrestricted Non-Preserved Benefit" has the same meaning as in the SISA Regulations.
- 1.1.60 "Vested Benefit" means any part of a Member's Benefit arising from contributions to the Fund, or to a previous superannuation fund, which is required by the Act to be vested in or payable to the Member on termination of the Member's employment (subject to any preservation requirements).

- 1.1.61 "Vested Benefits Account" means an account established pursuant to Rule 15 in which is recorded the Vested Benefits of the Member.
- 1.1.62 "Voluntary Benefit Age" means the age specified in the Act as the Preservation Age or equivalent age for the relevant Member.
- 1.2 A reference to any person or body shall include references to its respective successors, assigns, executors and administrators.
- 1.3 References to any provision of the Deed, law, regulation, temporary modification order, ruling, circular or guideline are references to those items as amended, consolidated, supplemented or replaced from time to time.
- 1.4 Words importing one gender include other genders and words importing the singular number include the plural and vice versa.
- 1.5 The table of contents shall not be taken into account when interpreting the Deed.
- 1.6 Where any question or dispute arises in respect of the Fund or in respect of interpretation of the Deed, the Trustee's decision shall be final and binding.
- 1.7 Terms used in the Deed which are defined in the Act shall have the same meaning as in the Act unless inconsistent with the context of the Deed (but subject to Rule 1.8).
- 1.8 The Act overrides the provisions of this Deed and in the event of conflict between the Act and this Deed, the provisions of the Act shall prevail.

## 2. The Fund

- 2.1 **Fund Composition** The Fund shall comprise all assets (including money, contributions and other payments and transfers to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to the Deed.
- 2.2 **Purpose of the Fund** The Trustee shall hold the Fund upon trust for the Members. The primary purpose of the Fund shall be the provision of Old Age Pensions.
- 2.3 **Applicable Law** The Deed shall be governed and construed in accordance with the law of the location specified in Part Five of the Schedule.
- 2.4 **Commencement** The Fund shall commence when the first Member becomes a member of the Fund.
- 2.5 **Sub-Funds** The Trustees may determine to constitute separate trust funds ("a Sub-Fund") the terms and conditions of each of which shall be:
- 2.5.1 The Trustees shall specify the Members of the Fund who are to be Members of the Sub-Fund.
- 2.5.2 The Trustees may specify the name of the Sub-Fund.
- 2.5.3 The Trustees shall determine the amounts and assets to be paid or transferred to the Sub-Fund. Any such payments or transfers shall, unless otherwise determined by the Trustees, be effected by, in the books of account and records of the Fund, the Trustee establishing separate records

- and accounts for the Sub-Fund and recording the payment or transfer as having been made from the Fund to the Sub-Fund.
- 2.5.4 The Trustees shall be the trustees of the Sub-Fund.
- 2.5.5 Except to the extent otherwise determined by the Trustees at the constitution of the Sub-Fund, the provisions of this Deed shall, with all necessary modifications, apply to each Sub-Fund as if that Sub-Fund were established by a separate Deed with like provisions.
- 2.5.6 In the event of a question as to what, if any, modifications are necessary under Rule 2.5.5, the Trustees shall determine the question.
- 2.5.7 For the purposes of clarification and without limiting the earlier paragraphs of this Rule 2.5:
- 2.5.7.1 Each Sub-Fund and the trusts comprising it constitutes a trust fund and trust separate and distinct from the trusts established by this Deed and from the Fund and from each other Sub-Fund and the trusts comprising each other Sub-Fund.
- 2.5.7.2 This Deed shall be the constituent document for the Sub-Fund.
- 2.5.7.3 Upon a determination under Rule 2.5.3, the money and assets the subject of such determination shall be deemed to be held upon the trusts of the separate Sub-Fund and freed from the trusts of the Fund.
- 2.5.8 Any sub-fund established pursuant to this Rule 2.5 is not intended to be a sub-fund for the purposes of Part 5 of the Superannuation Industry (Supervision) Regulations.
3. The Trustee
- 3.1 **Ceasing to Act as Trustee** A Trustee shall cease to be a Trustee if:
- 3.1.1 The Trustee resigns his office;
- 3.1.2 He dies;
- 3.1.3 He becomes bankrupt or has, within the preceding three years, made an assignment to or an arrangement or composition with his creditors under Part X of the *Bankruptcy Act 1966* or any replacement legislation;
- 3.1.4 He is found to be of unsound mind or a person whose personal estate becomes liable to have his affairs dealt with in any way under the laws relating to mental health;
- 3.1.5 He is disqualified from being a trustee of any superannuation fund by the operation of the Act; or
- 3.1.6 In the case of the Trustee being a company, a resolution is passed or a petition is presented for its winding up or liquidation or a receiver or administrator of its assets is appointed.

- Trustees shall by virtue of his office or by virtue of powers being delegated by the Trustees to him be disqualified from being a Member of the Fund or from exercising any rights or deriving any Benefits as a Member. A Trustee or a director of a body corporate which is appointed as the Trustee who is or is about to become a Member may be counted in a quorum and vote at any meeting of the Trustee or of the directors of the Trustee when the Trustees or the directors are exercising powers pursuant to the Deed and may execute any document as Trustee or may attest the application of the common seal of the Trustee notwithstanding that he is interested in the matter by virtue of his membership of the Fund.
- 3.2 **Trustee as a Member** No director, officer or Employee of the Employer or of the Trustee as a Member shall by virtue of his office or by virtue of powers being delegated by the Trustees to him be disqualified from being a Member of the Fund or from exercising any rights or deriving any Benefits as a Member. A Trustee or a director of a body corporate which is appointed as the Trustee who is or is about to become a Member may be counted in a quorum and vote at any meeting of the Trustee or of the directors of the Trustee when the Trustees or the directors are exercising powers pursuant to the Deed and may execute any document as Trustee or may attest the application of the common seal of the Trustee notwithstanding that he is interested in the matter by virtue of his membership of the Fund.
- 3.3 **Retirement of Trustee** Any Trustee may retire upon giving written notice to the Participating Employers, or, if there are no Participating Employers, the Members and may at the same time appoint a Trustee as a successor.
- 3.4 **Death of Trustee-Member** Where the trustee of the Fund is also a Member of the Fund or is the Legal Personal Representative of a Member, and that trustee dies, the next Legal Personal Representative of that Member shall automatically become a Trustee of the Fund.
- 3.5 **Employers or Members may Remove a Trustee or Trustees** A majority of the Participating Employers, or, if there are no Participating Employers, a majority of the Members, may remove any Trustee from office and may appoint any replacement Trustee or additional Trustee.
- 3.6 **Member Representation** The Trustee and the Employers must comply with all requirements of the Act in relation to representation of Members at the trustee level.
4. **Members**
- 4.1 **Application** Persons who wish to become Members may apply for membership in forms nominated by the Trustee from time to time. Upon acceptance of the application by the Trustee, the applicant is bound by the Deed.
- 4.2 **Applicants' Information** All applicants shall provide to the Trustee such information as the Trustee may require, including proof of correct age.
- 4.3 **Deemed Membership**
- 4.3.1 The Trustee may accept an Employee selected by an Employer as a Member without requiring the Employee to complete a membership application form if the Employer has provided the Trustee with such information, consents and authorities that the Trustee may require, including the name, address and age of the Employee.
- 4.3.2 The Trustee shall, as soon as practicable, advise the Member in writing that he has been accepted as a Member and provide to the Member such other information, consents and authorities as is required by the Act or otherwise required by law.

5.	<u><b>Contributions by Employers and Other Persons</b></u>	
	5.1	<b>Non-Member Contributions</b>
	5.1.1	Subject to Rule 5.4, an Employer, or any other person or body authorised by the Act to make contributions to the Fund (including Child Contributions, Government Co-Contributions and Payment Splits), may contribute to the Fund in respect of each Member such amount in cash or in kind as the contributor, in the contributor's absolute and uncontrolled discretion, determines.
	5.1.2	Non-Member Contributions shall be credited to the Member's Accounts or the Non-Vested Employer's Contribution Accounts as is appropriate.
	5.1.3	This Rule does not apply to contributions made by a Member for himself.
	5.2	<b>Trustee to be Advised</b> The Employer, or any other person contributing, shall advise the Trustee of which Members the contribution is in respect of, and whether the contributions are made (if such be the case):
	5.2.1	Pursuant to an industrial award or agreement; and/or
	5.2.2	In lieu of the Employer paying the superannuation guarantee charge pursuant to the Guarantee Act.
	5.3	<b>Deemed Payments</b> Any payment of contributions by an Employer, or any other person contributing, directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.
	5.4	<b>Refusal to Accept</b> The Trustee may refuse to accept any contribution to the Fund or any payment of money or transfer of property to the Fund. The Trustee must refuse to accept any contribution to the Fund where not permitted by the Act.
	5.5	<b>Bound by Deed</b> Upon a contribution by an Employer being accepted by the Trustee, the Employer shall be bound by this Deed.
6.	<u><b>Contributions by Members</b></u>	
	6.1	<b>Member Contributions</b>
	6.1.1	Subject to Rule 5.4, each Member may contribute to the Fund such amount in cash or in kind as he, in his absolute and uncontrolled discretion, determines.
	6.1.2	The Employer may, if authorised by the Member, deduct such contributions from the Member's salary and remit them to the Trustee within 28 days of the end of the calendar month in which they were deducted. At the time of paying the Members' contribution to the Trustee, the Employer shall advise the Trustee of the amount of the contribution in respect of each Member.
	6.2	<b>Deemed Payment</b> Any payment of a Member's contribution directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to the life insurance company or investment manager.

6.3	<p><b>Payment on Behalf of a Member</b> The Employer may pay, on behalf of a Member, contributions that are payable by the Member and any contributions so paid by the Employer shall, if the Trustee is so advised, be deemed to be contributions made by the Member.</p>
6.4	<p><b>No Enquiry</b> The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay a Member's contribution by deducting the agreed amount pursuant to Rule 6.1 from the Member's salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice.</p>
<b>7. Investments and Powers</b>	
7.1	<p><b>General</b> The Trustee shall have the powers set out in Part Six of the Schedule, but subject to Rule 7.2.</p>
7.2	<p><b>Restriction</b> Without limiting Rule 7.1, the exercise of those powers is subject to the restrictions and requirements of the Act.</p>
7.3	<p><b>Exercise of Powers and Discretions</b> The Trustees, in the exercise of the trusts, authorities, powers and discretions conferred upon them by the Deed, shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of the Trustees' trusts, authorities, powers and discretions from time to time or may refrain from exercising all or any of the same from time to time or at all, and may do so by written or oral resolution or by writing. In the case of a corporate trustee, the resolution may be a resolution of its directors. Where Members may exercise a power, they may do so by written or oral resolution or by writing. Except as required by the Act, the Trustee shall not be bound to assign any reasons for any decisions (including the exercises of trusts, authorities, powers and discretions) made by the Trustee.</p>
7.4	<p><b>Specific Investments</b></p>
7.4.1	<p>The Trustee may, at the request of a Member, treat any asset of the Fund selected by a Member as an investment specifically for the Member ("Specific Investment").</p>
7.4.2	<p>The profit or loss arising from the Specific Investment, less such provision for depreciation, liabilities, losses and taxation as the Trustee, in its absolute discretion, deems prudent shall be debited or credited to the particular Member's Account.</p>
7.4.3	<p>Where the Trustee makes a valuation of the assets of the Fund under Rule 16.2.1 and the net value of a Specific Investment exceeds or is less than the amount at which that investment is recorded in the books of account of the Fund, the Trustee shall, subject to SISA, credit the surplus or debit the deficit of the Member's Account in respect of which the Specific Investment is held.</p>
7.4.4	<p>For the purpose of applying Rule 16, the balance of the particular Member's Account shall be reduced by the amount of the Specific Investment.</p>



## Insurance and Annuities

8.

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

- 8.1.1 The Trustee may, in its absolute discretion, invest or apply the whole or any part of the Fund in the payment of premiums of a policy or policies of life, disability, trauma or accident insurance in which the Trustee has a legal or equitable interest, or in payment of the consideration for an annuity.
- 8.1.2 The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee determines. The Trustee has the power to accept an assignment of a policy of life, disability or accident insurance or of any annuity on such terms as the Trustee, in its absolute discretion, determines.
- 8.1.3 The Trustee has the power to continue such policies or annuities for such periods as the Trustee determines and to discontinue or surrender such policies or annuities.

- 8.2 **Payment of Premiums and Application of Proceeds** Subject to Rule 8.3, the premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the credit of the Members' Accounts in such proportions as determined by the Trustee and the proceeds of such policies shall be credited to the Members' Accounts in the same proportions as premiums for such policies were paid from those accounts except that:

- 8.2.1 Unless otherwise determined by the Trustee, the purpose of the policies shall be to provide funds to the Trustee to meet the relevant Member's Benefit upon death or Permanent Disability of the Member.

- 8.2.2 To the extent that the proceeds of the policy, when added to the balance of the relevant Member's Benefit, would, if a Payment Event first arose at that time, result in the RBL for that Member being exceeded, then, unless otherwise determined by the Trustee, the proceeds of the policy equivalent to that excess shall be credited to the Reserve Account and, to that extent, the Member shall be deemed to have relinquished that part of the Member's Benefit.

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

9.

## Forfeiture of Benefits

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

- 9.1.1 The Member has attempted to assign, alienate, charge or encumber all or part of his Member's Benefit (other than by a testamentary disposition or devolution);

- 9.1.2 The Member is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health;
- 9.1.3 The Member's whereabouts cannot be traced by the Trustee for a period of three years after making reasonable enquiries;
- 9.1.4 The Member is convicted of an offence involving fraud against the Participating Employer;
- 9.1.5 The Member has relinquished or renounced the Member's Benefit but only to the extent of the relinquishment or the renunciation (which may take place in whole or in part);
- 9.1.6 To the extent of the balance standing to the credit of a Pension Account, no further payments of the Pension (other than an Allocated Pension) are required to be made in accordance with the terms of the Pension;
- 9.1.7 The relinquishment provisions of Rule 8.2.2 apply; or
- 9.1.8 The forfeiture provisions of Rule 12.7 apply.
- 9.2 **Mental Incapacity** When exercising the discretion under Rule 9.1.2, the Trustee shall not exercise the discretion to an extent that will diminish the availability of the Member's Benefit for the proper maintenance and support of the Member.
- 9.3 **Dependant** Rule 9.1 applies to a Dependant.
10. **Application of Forfeited Benefits**
- 10.1 **Credit to Reserve Account** Except to the extent otherwise determined by the Trustee, the amount of any forfeited benefit shall be credited to the Reserve Account. Such amount as is not credited to the Reserve Account shall be applied at the Trustee's discretion.
11. **Transfer Benefits To and From Other Funds**
- 11.1 **Transfer from Another Fund** Where a Member requests that an amount standing to his credit, or a policy of insurance, in another superannuation fund or in an Approved Deposit Fund be transferred to the Fund, the Trustee may accept the transfer of such amount, asset or policy to the credit of the Member's Account.
- 11.2 **Transfer from Another Fund: Preserved Benefits** If any part of the amount or the value of the policy which is transferred is a Preserved Benefit or a Restricted Non-Preserved Benefit, the benefit and accretions shall not be paid prior to the Member satisfying a Condition of Release, except in such circumstances permitted under the Act.
- 11.3 **Transfer to Another Fund** Subject to Rule 11.4, the Trustee may, upon the request of a Member or in order to satisfy a Payment Split, transfer the whole or part of the Member's Benefit to the trustee of another superannuation fund or Approved Deposit Fund (when permitted by the Act) in respect of which the Trustee has no reason to believe does not comply with the Act. The Trustee may, without the request of a Member, transfer the whole of the Member's Benefit to a successor fund to the Fund where the Trustee is satisfied that the successor fund complies with the Act. The receipt of the trustee of such other or successor fund shall be a complete discharge to

- the Trustee in respect of any liability to that Member (and persons claiming through him) in relation to the part of the benefit so transferred.
- 11.4 **Transfer to Another Fund: Preserved Benefits** A transfer of any Preserved Benefit pursuant to Rule 11.3 shall not be made where the Trustee has reason to believe that the transferee fund does not or will not comply with the Act.
- 11.5 **Transfer to Eligible Rollover Fund** Where a period of ninety (90) days has elapsed since a Member's Benefit became payable under the Rules and the Member's Benefit has not been paid, the Trustee may pay the Member's Benefit to an eligible rollover fund.
- 11.6 **Transfer in Specie** The Trustee may, in its absolute discretion, transfer a Member's Benefit in accordance with Rules 11.3 or 11.5 by paying the amount of the Member's Benefit, or transferring assets of the Fund equal in value to the Member's Benefit, to the trustee of the other fund.

## 12.

### Benefits

- 12.1 **Voluntary Benefit Age** The amount of the Member's Benefit may be paid or commenced to be paid to the Member when permitted by the Act.
- 12.2 **Compulsory Benefit Age** The amount of the Member's Benefit shall be paid or commence to be paid to the Member when he reaches the Compulsory Benefit Age.
- 12.3 **Benefit Preference** To the extent permitted by the Act a Member may express a preference to the Trustee to receive the Member's Benefit by way of Lump-Sum Benefits or Pension Benefits or a mixture of both or in any other manner permitted by the Act.
- 12.4 **Provision of Benefit**
- 12.4.1 Where, a benefit becomes payable, it must be paid by way of an Old Age Pension, unless the Trustee accedes to a request by the Member that the benefit be paid in some other form permitted by the Act.
- 12.4.2 For clarification, it is recorded that, to the extent permitted by the Act, and subject to Rule 12.4.3, and having regard to the Member's preference but without being bound by it and without having to assign any reasons for its decision, the Trustee may in its absolute discretion provide a Member's Benefit as a Lump-Sum Benefit or as a Pension Benefit or as a mixture of both or in any other manner permitted by the Act.
- 12.4.3 The Trustee shall not pay a benefit as a Lump Sum Benefit unless the Trustee is satisfied that the Member is not insolvent and that there is no immediate prospect of the Member's insolvency. Without limiting the foregoing, the Trustee shall not be so satisfied if the Member notifies the Trustee that the Member is an undischarged bankrupt or that there is a prospect that the Member will become insolvent. However, the Trustee will be so satisfied if the Member is not an undischarged bankrupt and the Member notifies the Trustee that there is no immediate prospect of the Member's insolvency.

- 12.4.4 For the purposes of Rule 12.4.3, Member includes the legal personal representative of a deceased Member and beneficiaries of a deceased Member.
- 12.5 **Form of Benefit** Member's Benefits may be paid either in money or in any other form of property.
- 12.6 **Debt Set Off** Where a Member owes money to the Trustee or to a Participating Employer, if a part of the Member's Benefit may be cashed, the Trustee may pay that part of the Member's Benefit as does not exceed the debt to the creditor in payment of the Member's Benefit.
- 12.7 **Dependants** Where a Member has died:
- 12.7.1 the Trustee may pay the Member's Benefit or various parts of it to such Dependants as determined by the Trustee. In making such a determination, the Trustee shall have regard to, but shall not be bound by the most recent direction or wish expressed by the Member, unless the Trustee has in writing accepted that direction or wish before the death of the Member and Sections 58 and 59 of SIS Act do not apply to the Fund, in which event the Trustee shall be bound by it unless changed by the Member;
- 12.7.2 the Trustee may (but subject to a binding direction as above) pay a Member's Benefit or part of it, to the Member's legal personal representative; or
- 12.7.3 where a Member has no Dependants or legal personal representative, or effective Will, the Member's Benefit shall be forfeited and credited to the Reserve Account unless the Trustee determines to pay it in specific proportions to the next of kin of the Member.
- 12.8 **The Member Mentally Unable to Conduct His Affairs** Where a Member is, in the opinion of the Trustee, mentally unable to conduct his affairs, the Trustee may pay the Member's Benefit in the same manner as under Rule 12.7.1.
- 12.9 **Payment to Minors** Where a person to whom benefits are payable is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.
- 12.10 **Preserved Benefits** For the sake of completeness, it is declared that the Trustee shall comply with the Act in respect of Preserved Benefits but that otherwise payment of the Preserved Benefits are governed by this Rule.
- 12.11 **Income Tax** The Trustee may deduct from any benefit payable the amount of any income tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.
- 12.12 **Government Co-Contributions** The Trustee may pay out of the assets of the Fund such amount of Government Co-Contributions as are required to be repaid to the Commonwealth of Australia under the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003* and is entitled to be reimbursed out of the assets of the Fund such amounts paid by the Trustee.

## 12.13 Family Law

- 12.13.1 The Trustee may pay out of a Member's Account benefits in the way and in the form described in this Rule 12 in order to satisfy the requirements of a Payment Split.
- 12.13.2 Notwithstanding any other provision of this Deed, the Trustee may alter the Affected Member's Benefit to take account of a Payment Split including, but not limited to, by altering the balance standing to the credit of the Affected Member's Account;
- 12.13.3 If the interest of an Affected Member becomes subject to a Payment Split:
- 12.13.3.1 The Non-Member Spouse is not entitled to become a Member;
- 12.13.3.2 The Trustee may admit the Non-Member Spouse as a Member only if the Affected Member agrees;
- 12.13.4 If the Non-Member Spouse is not and does not become a Member, the entitlement of the Non-Member Spouse must be paid to another superannuation fund or to an Approved Deposit Fund.
- 12.13.5 Without limiting any other power the Trustee has under this Deed, the Trustee may:
- 12.13.5.1 Provide information and notices about a Member's Benefits and Payment Splits to relevant parties;
- 12.13.5.2 Give effect to payment flags and any other relevant lawful agreement or order of a court of competent jurisdiction under the *Family Law Act 1975*;
- 12.13.5.3 Give effect to Payment Splits;
- 12.13.5.4 Recognise an interest created by virtue of the *Family Law Act 1975*.

## 12.14 Splitting of Contributions

- 12.14.1 Upon the request of a Member ("the Transferring Member"), the Trustee may in its absolute discretion, to the extent permitted by the Act, rollover transfer or allot to the spouse of the Transferring Member ("the Receiving Member") an amount of the Member's Benefit that constitutes Splittable Contributions made for the benefit of the Transferring Member in a financial year.
- 12.14.2 For the purpose of giving effect to this Rule 12.14, the Trustee has the power to:
- 12.14.2.1 Alter the balance standing to the credit of the Transferring Member;
- 12.14.2.2 Admit the Receiving Member as a member of the Fund;
- 12.14.2.3 Create a Members Account in respect of the Receiving Member;

12.14.2.4 Do such other acts, matters and things as may be necessary to give effect to this Rule 12.14 in accordance with the requirements of the Act.

### 13. Member's Rights

13.1 A Member shall have no right to or interest in his Member's Benefit except as provided in this Trust Deed.

13.2 For the avoidance of doubt, the nature of a Member's Benefit pursuant to the provisions of the Deed is:

13.2.1 The right to have the Fund administered according to the Deed.

13.2.2 The Member's Benefit under the Fund does not entitle the Member to any particular asset comprising, or to any particular part of, the Fund.

13.2.3 A Member does not have any proprietary, beneficial, caveatable or other interest in any asset forming part of the Trust Fund.

13.2.4 The Member does not have any proprietary, beneficial or other interest in the Fund.

13.2.5 The Member is not entitled, with all other Members, to the beneficial interest in the Fund as an entirety.

13.2.6 The Member's interest in the Fund is limited to the monetary benefits payable from the Fund at the times and subject to the conditions stipulated in the Deed.

13.3 The rights of the Members and their Dependents to receive the benefits payable under this Trust Deed shall be fully secured within the meaning of the Act.

13.4 The Trustee shall provide to the Members and Prospective Members, or cause the Members or Prospective Members to be provided with, such statements, notices, documents and information concerning the administration of the Fund as is required by the Act, including prescribed information on request and information concerning significant events.

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

### 14. Common Law Rights of Members

14.1 **Compensation or Damages Claim** The provisions of this Trust Deed shall not in any way affect the right of a Member or his personal representatives or any other person to claim compensation or damages in the event of the Member being injured or dying as a result of an event arising out of or in the course of his employment.

14.2 **Work-Related Claims** The Member shall not use the fact of being a Member as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

## 15. Records Accounts and Auditing

- 15.1 **Records** The Trustee shall keep such accounts and records as correctly record and explain the transactions and financial position of the Fund and as required by the Act including:
- 15.1.1 Minutes in which proceedings and resolutions of the Trustee are recorded.
- 15.1.2 A Member's Account for each Member in which is recorded:
- 15.1.2.1 Contributions to the Fund by any other person in respect of that Member;
- 15.1.2.2 Contributions by that Member;
- 15.1.2.3 Profits or losses of the Fund credited or debited to such account;
- 15.1.2.4 Profits or losses on a Specific Investment credited or debited to such account;
- 15.1.2.5 Forfeited benefits credited to such account;
- 15.1.2.6 Amounts debited to such account to pay premiums on policies of insurance or the consideration for an annuity;
- 15.1.2.7 The proceeds of policies of insurance credited to such account;
- 15.1.2.8 Amounts credited to such account pursuant to a transfer from another fund;
- 15.1.2.9 Amounts debited to such account to pay income tax and expenses;
- 15.1.2.10 Government Co-Contributions in respect of the Member which are repaid to the Commonwealth of Australia shall be debited;
- 15.1.2.11 The entitlement of a Non-Member Spouse that becomes a Member under a Payment Split may be credited;
- 15.1.2.12 The entitlement of a Non-Member Spouse to the amount standing to the credit of an Affected Member under a Payment Split shall be debited;
- 15.1.2.13 Amounts which are credited to or transferred from the Reserve Account.
- 15.1.3 A Reserve Account in respect of which:
- 15.1.3.1 Profits shall be credited in accordance with the provisions of this Deed which enable the crediting of profits to the Reserve Account;
- 15.1.3.2 Forfeited benefits shall be credited;

- 15.1.3.3 Any gifts or undesignated transfers of money or assets to the Fund, whether in the nature of income or capital, shall be credited;
- 15.1.3.4 Forfeited benefits applied in accordance with Rule 10.1 shall be debited;
- 15.1.3.5 Liabilities for income tax and other taxes authorised to be debited to the Reserve Account shall be debited;
- 15.1.3.6 Payments and receipts under Rules 8.3 and 16 shall be debited and credited;
- 15.1.3.7 Such other taxes, charges or expenses as determined by the Trustee shall be debited;
- 15.1.3.8 Applications under Rule 15.3 shall be debited;
- 15.1.3.9 Amounts are credited or debited which relate to a Member's Account which are not permitted by the Act to be credited or debited to the Member's Account.
- 15.2 **Other Accounts** The Trustee may dissect any Member's Account in its absolute discretion as the Trustee sees fit into one or more Accounts including, but not limited to, the following Accounts:
- 15.2.1 Allocated Pension Account.
- 15.2.2 Market Linked Pension Account.
- 15.2.3 Non-Vested Employer's Contribution Account.
- 15.2.4 Vested Benefits Account.
- 15.2.5 Special Treatment Account

### 15.3

#### Application of Reserve Account

- 15.3.1 **Payment Event** Subject to Rule 15.5, upon a Payment Event, the Reserve Account shall be applied to the credit of such Members' Accounts in proportion to the amounts standing to the credit of such Members' Accounts at the time of the Payment Event unless, or to the extent, that the Trustee otherwise determines prior to lodgment of the income tax return of the Fund in the year in which the Payment Event occurs.
- 15.3.2 **Winding Up** Subject to Rule 15.5, immediately before the winding up of the Fund, the Reserve Account:

- 15.3.2.1 May be applied by the Trustee for the benefit of Members, former Members, or Dependents of deceased Members or former Members in such proportions as determined by the Trustee.

- 15.3.2.2 To the extent that the Trustee does not exercise the discretion under the preceding paragraph - shall be transferred to the



- Members' Accounts in proportions to the amounts then standing to the credit of such Members' Accounts.
- 15.3.2.3 If there is no amount standing to the credit of any Members' Account and all of the Members of the Fund have died - shall be transferred to the Members' Account of the last surviving Member, and if more than one in equal shares.
- 15.3.3 **Payment of Pension** Where the amount standing to the credit of a Pension Account is exhausted, and further payments of Pension (not being an Allocated Pension) are due, the Pension shall be paid from the Reserve Account.
- 15.4 **Debits to Pension Accounts** The Trustee must not debit against a Pension Account (if any) any amount not being:
- 15.4.1 a payment of the relevant Pension; or
- 15.4.2 forfeiture in accordance with Rule 9.1.6; or
- 15.4.3 expenses in relation to the administration and investment attributable to the Pension.
- 15.5 **Member Classes** If the Trustee resolves to treat the Members as being of more than one class for the purposes of this Rule then Rule 15.3 shall operate to apply the Reserve Account equally (or in such other proportions specified by the Trustee) among the classes, but within each class as specified in Rule 15.3.
- 15.6 **Keeping the Accounts and Records** The accounting records of the Fund must be retained for such period required by the Act, must be kept in Australia and must be kept in the English language or in a form in which they are readily accessible and readily convertible into the English language.
- 15.7 **Application of Pension Accounts** Where pursuant to the terms of a Pension, the Trustee is required to make a payment of a Pension, not being an Allocated Pension, and there is a sufficient balance standing to the credit of the Member's Pension Account, the Trustee must make the required payment from the relevant Pension Account.
- 15.8 **Auditor and Actuary** Where required by the Act, the Trustee must appoint an Auditor and/or an Actuary to the Fund to fulfil the requirements of the Act.
16. **Allocation of Profits and Losses and Valuations**
- 16.1 **Allocation of Profits or Losses** At the end of each financial year of the Fund, upon the winding up of the Fund, or whenever the Trustee determines it to be appropriate, the profits and losses arising from the investment of the Fund, less such provision for depreciation, liabilities, losses and taxation as the Trustee, in its absolute discretion, deems prudent (other than from any Specific Investment) shall be credited or debited by the Trustee to the Members' Accounts and, unless the Trustee otherwise determines, to the Reserve Account in the proportions to the amounts standing to the credit of such Members' Accounts and the Reserve Account at the beginning of the financial period for which the accounts are being prepared or on such other basis as the Trustee equitably determines. The Trustee may make a reasonable estimate in

crediting or debiting any profits or losses before final accounts are available to the Trustee for the financial period.

## 16.2 Valuation of Assets of the Fund

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

16.2.2 If the net value of the assets of the Fund (other than from any Specific Investment) determined in accordance with this Rule exceeds or is less than the aggregate of the net amount standing to the credit of all of the Members' Accounts (excluding the net amount attributable to any Specific Investment) and, unless the Trustee otherwise determines, to the Reserve Account at that date the Trustee shall, but subject to Rule 16.2.3 and SISA, credit the surplus or debit the deficit to the Members' Accounts and the Reserve Account in proportion to the amounts standing to their respective credits as are taken for the purposes of this Rule or on such other basis as the Trustee determines to be equitable.

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

16.3 **Interim Earning Rate** The Trustee may allocate to the Member's Accounts of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under Rule 16.1 or 16.2 to the date on which the benefit is being paid.

## 17.

### Trustee's Liability and Indemnity

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

17.1.1 Dishonest;

17.1.2 Attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a trustee; or

17.1.3 Contraventions of civil penalty provisions under the Act.

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

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

## 18. Trustee's Meetings

### 18.1 Individuals

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

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

18.1.3 The Trustees may elect a chairman of each meeting.

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

18.1.5 The Trustees shall keep minutes of their resolutions and proceedings.

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

18.2 **No Limitation on Rule 7.3** Nothing in Rule 18.1 shall limit the effect of Rule 7.3.

## 19. Signing of Documents by Trustees

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

## 20. Remuneration of Professional Persons

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

## 21. Trustee as Member's Attorney

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

22. **Trust Deed Available for Inspection**
- 22.1 A copy of this Trust Deed shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.
- 22.2 If required by the Act, the Trustee shall provide a Member with a copy of this Trust Deed.
23. **Variation of Trust Deed**
- 23.1 **Variation of Trust Deed** Subject to Rule 23.3, the Trustee may, at any time and from time to time, either by deed executed by the Trustee or by oral resolution, vary, add to or rescind all or any of the provisions from time to time of the Deed and the new provisions so made shall have the same validity and effect as if they had been originally contained in the Deed and shall be subject to being varied, added to or rescinded in like manner but no such variation, addition or rescission shall be made if it breaches the requirements of the Act or if it has the effect of reducing the amount of a benefit that is, or may become, payable in relation to a period before the date of the variation, addition or rescission unless:
- 23.1.1 The reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund;
- 23.1.2 The reduction is required to enable the Fund to comply with the Act;
- 23.1.3 The Member so affected consents in writing of the reduction; or
- 23.1.4 The Authority approves in writing of the reduction; or
- 23.1.5 The variation is permitted or required by the Act.

- 23.2 **Notification to Members** As soon as practicable after a provision of the Trust Deed is varied, added to or rescinded, the Trustee shall give to a Member whose entitlements or rights are affected by the variation, addition or rescission, and in any other circumstances prescribed under the Act, written advice that complies with the Act and which explains the nature and purpose of the variation, addition or rescission and the effect of the variation, addition or rescission on the Member's entitlements or rights.
- 23.3 No variation shall be made to Rule 12.4 without the consent of all the Members signed in their own respective handwritings.

24.

**Compliance**

- 24.1 **Compliance with Act as at date of the Deed** As at the date of the Deed, the Deed is deemed to include all matters prescribed by the Act to be included.
- 24.2 **Deemed Compliance with Further Statutory Requirements** Without limiting the effect of Rule 23, whenever the Authority validly issues a requirement in relation to the constitution or operation of the Fund, whether by parliamentary enactment, Regulation or otherwise ("requirement"), the Trustee shall, on the specified date, be deemed to have amended the Deed under Rule 23 to include that requirement, and this Deed shall be deemed to be the amending Deed for the purpose of Rule 23.

- 24.3 **Optional Requirement** Where the requirement is not an absolute requirement but a requirement upon which a particular result is conditioned, the Trustees may determine that such requirement is a requirement for the purposes of Rule 24.2.
- 24.4 **Specified Date** The specified date for the purposes of Rules 24.2 and 24.3 shall be 29 June next following the issue by the Authority of its requirement, or such other date, whether before or after the 29 June, determined by the Trustee.
25. **Inconsistency**
- In the event of an inconsistency between Rule 24 and any other provision of the Deed, Rule 24 shall prevail and that other provision shall be read down to such extent as is reasonable in all the circumstances to give it a valid operation of a partial character provided that if that other provision cannot be read down it shall be deemed void and severable and deleted from the Deed.
26. **Dissolution of the Fund**
- 26.1 **Dissolution of the Fund** When the last remaining person who has a benefit entitlement is paid the benefit, the Trustee shall wind up the Fund and shall pay or transfer to the Members or former Members, benefits in accordance with the provisions of these Rules, after deducting from the assets of the Fund the cost of administering and winding up the Fund. Such payments and transfers shall be accepted by Members and former Members in full discharge of all claims in respect of the Fund. The Trustee shall continue to administer the Fund until benefits are paid or transferred in accordance with these Rules.
- 26.2 **Amount Remaining in the Fund** If any amount remains in the Fund after all of the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependents or the Participating Employers in such proportions as the Trustee determines to be equitable.
- 26.3 **Preserved Benefits** Notwithstanding anything contained in this Rule, the Trustee shall not, in the case of a Preserved Benefit or a Restricted Non-Preserved Benefit, pay or transfer the benefit to a Member until the Member satisfies a Condition of Release or the payment of the benefit in such other circumstances as are permitted under the Act.

**SCHEDULE**

**PART ONE:**

**Date:**

20 December 1995

**PART TWO:**

**The Trustee:**

M M SAMPSON PTY LTD ACN 106 895 701

**PART THREE:**

**Name of**

**Superannuation Fund:**

M SAMPSON SUPERANNUATION FUND

**PART FOUR:**

**1.**

**Allocated Pension:** Means a Pension or any component of it which:

**1.1**

complies with SISA Regulation 1.06(4);

**1.2**

satisfies the following requirements:

**1.2.1**

the size of payments are not fixed in amount but where the total payments of the Pension in any year (excluding payments by way of commutation but including payments made under a Payment Split) is the amount determined in the absolute discretion of the Trustee between the minimum and maximum limits prescribed by the Act;

**1.2.2**

can be transferred to a Reversionary Beneficiary on the death of the Beneficiary;

**1.2.3**

the capital value of the Pension and the income from it, cannot be used as security for a borrowing;

**1.2.4**

is paid at least annually in one or more instalments in such proportions and at such times as are determined in the absolute discretion of the Trustee;

**1.2.5**

ceases to be payable when the balance standing to the credit of the Member's Allocated Pension Account is reduced to nil;

**1.2.6**

is paid from the Member's Allocated Pension Account;

**1.2.7**

where the commencement day of the Pension occurs on or after the first day of June in a financial year, the Trustee may, in its absolute discretion, determine that no payment be made in that financial year;

1.2.8	if the balance standing to the credit of the Member's Allocated Pension Account at the beginning of the year is less than the minimum amount referred to in Clause 1.2.1, then the amount payable in that year is to be the balance standing to the credit of the Member's Allocated Pension Account; can be commuted, in the whole or in part, in the absolute discretion of the Trustee upon request by the Beneficiary only where:	1.2.9.1	the commutation results from the death of the Beneficiary; or	1.2.9.2	the sole purpose of the commutation is:	1.2.9.2.1	to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or	1.2.9.2.2	to meet the rights of a person to return a financial product under Division 5 of Part 7.9 of the <i>Corporations Act 2001</i> ; or	1.2.9.3	where there is a commutation in part – the balance standing to the credit of the Member's Allocated Pension Account immediately after the commutation would be no less than the minimum limit applicable under Clause 1.2.1 as reduced by the amount of income payments already made in the financial year in which the commutation would occur; or	1.2.9.4	the total payments of the Pension paid in the financial year in which the commutation is to take place, are no less than the minimum amount calculated in accordance with SISA Regulation 1.07A(3).	1.2.10	payments of the Pension may be suspended, at the absolute discretion of the Trustee, during any period when the Beneficiary is a holder of a paid public office;	1.2.11	any other requirement set out in SISA Regulation 1.06(4); and	1.3	otherwise complies with the provisions of the Act as govern such Pensions;	1.4	where the provisions of this Clause 1 differ from the provisions of the Act, the provisions of the Act shall prevail to the extent of the inconsistency;	1.5	without limiting the generality of Rule 24 of the Deed, where there is a requirement applying to pensions of a type covered by the provisions set out in Clause 1.1, whether by parliamentary enactment, regulation or otherwise ("requirement") the Trustee shall be deemed to have amended this Clause 1 to include that requirement.	2.	<b>Market Linked Pension:</b> Means a Pension or any component of it which:	2.1	complies with SISA Regulation 1.06(8);	2.2	satisfies the following requirements:	2.2.1	is paid in one or more instalments in each year in such proportions and at such times as are determined in the absolute discretion of the Trustee;
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- 2.2.2 is paid throughout the period nominated by the Member within the range permitted by the SISA Regulations after taking into account any options that may be exercised by the Member;
- 2.2.3 where the Trustee, in its absolute discretion nominates a Reversionary Beneficiary for the Pension, upon the death of the Beneficiary the pension reverts to the Reversionary Beneficiary;
- 2.2.4 the total amount of payments to be made in a year (excluding payments by way of commutation but including payments made under a Payment Split) is determined in the absolute discretion of the Trustee in accordance with Schedule 6 to the SISA Regulations;
- 2.2.5 does not have a residual capital value;
- 2.2.6 can be commuted, in the whole or in part, in the absolute discretion of the Trustee having regard to a request by the Beneficiary (but without being bound by it) if:
- 2.2.6.1 the commutation results from the death of a Beneficiary; or
- 2.2.6.2 the sole purpose of the commutation is:
- 2.2.6.2.1 to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
- 2.2.6.2.2 to meet the rights of a person to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
- 2.2.6.3 where there is a commutation in part – the balance standing to the credit of the Market Linked Pension Account immediately after the commutation would be no less than the total amount of payments to be paid in the financial year the commutation is to take place in accordance with Clause 2.2.4 reduced by the amount of income payments already made in the financial year in which the commutation would occur; or
- 2.2.6.4 the total amounts paid under the Pension in the financial year in which the commutation is to take place are at least equal to the minimum amount calculated in accordance with SISA Regulation 1.07C(3);
- in circumstances where:
- 2.2.6.5 the Pension is not funded from the commutation of a Complying Product and the commutation is made within six (6) months after the commencement day of the Pension; and
- 2.2.6.6 on the death of the Beneficiary provided that if the period described in Clause 2.2.2 has been calculated by reference to the life expectancy or age of the spouse of the Member the Pension cannot be commuted under this Clause 2.2.6.6 until the death of both the Member and the spouse. The payment of a commutation made under this Clause 2.2.6.6 shall be made in



- such form as is determined in the absolute discretion of the Trustee as is permitted by the SIS A Regulations; or
- 2.2.6.7 the payment resulting from the commutation is transferred directly to the purchase of another Complying Product; or
- 2.2.6.8 to give effect to an entitlement of a Non-Member Spouse under a Payment Split;
- 2.2.7 if the Pension reverts – the reversionary component is equal to the balance standing to the credit of the Market Linked Pension Account immediately prior to the reversion;
- 2.2.8 if the Pension is commuted – the commutation amount is equal to the balance standing to the credit of the Market Linked Pension Account immediately before the commutation; or
- 2.2.9 can be transferred on the death of the Beneficiary to one of the Dependents of the Beneficiary or the legal personal representative of the Beneficiary; and
- 2.2.10 the capital value of the Pension, and the income from it, cannot be used as security for a borrowing;
- 2.2.11 where the commencement day of the Pension occurs on or after the first day of June in a financial year, the Trustee may, in its absolute discretion, determine that no payment be made in that financial year;
- 2.2.12 payments of the Pension may be suspended, at the absolute discretion of the Trustee, during any period when the Beneficiary is a holder of a paid public office;
- 2.3 otherwise complies with the provisions of the Act as govern such Pensions;
- 2.4 where the provisions of this Clause 2 differ from the provisions of the Act, the provisions of the Act shall prevail to the extent of the inconsistency;
- 2.5 without limiting the generality of Rule 24 of the Deed, where there is a requirement applying to pensions of a type covered by the provisions set out in Clause 2.1, whether by parliamentary enactment, regulation or otherwise ("requirement") the Trustee shall be deemed to have amended this Clause 2 to include that requirement.
3. **Non-Commutable Pension:** Means the pension or any component of it which:
- 3.1 commences to be paid upon the Member attaining the Preservation Age;
- 3.2 is either a non-commutable pension or a non-commutable allocated pension for the purposes of the Act;
- 3.3 satisfies the following requirements:
- 3.3.1 is payable in accordance with the rules for either an Allocated Pension or a Market Linked Pension as selected by the Trustee upon commencement of the Pension, but subject to the condition in Clause 3.3.2;

3.3.2 where the Pension is commuted under Clause 1.2.9 or 2.2.6.5, the payment resulting from the commutation must be transferred directly to the purchase of another Complying Product unless:

3.3.2.1 the purpose of the commutation is to cash an Unrestricted Non-Reserved Benefit; or

3.3.2.2 before commutation, the Beneficiary has satisfied a Condition of Release in respect of which the cashing restriction for Reserved Benefits and Restricted Non-Reserved Benefits is "nil"; or

3.3.2.3 the Pension is paid in accordance with the rules for an Allocated Pension and the purpose of the commutation is to give effect to an entitlement of a Non-Member Spouse under a Payment Split.

3.4 otherwise complies with the provisions of the Act as governs such Pensions;

3.5 where the provisions of this Clause 3 differ from the provisions of the Act, the provisions of the Act shall prevail to the extent of the inconsistency;

3.6 without limiting the generality of Rule 24 of the Deed, where there is a requirement applying to pensions of a type covered by the provisions set out in Clause 3.3.1, whether by parliamentary enactment, regulation or otherwise ("requirement") the Trustee shall be deemed to have amended this Clause 3 to include that requirement.

4. **Reversionary Pension:** Means a Pension payable to a person who succeeds a Member to the entitlement of the Member to Pension Benefits and having the same characteristics as the Pension Benefits payable to the Member.

## PART FIVE:

### Applicable Law:

New South Wales

## PART SIX:

### Trustee's Powers:

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

1. The Trustee must invest the Fund in any of the following investments:

1.1 any investment authorised by law for the investment of trust funds.

1.2 the purchase or acquisition of shares, stocks, debentures, notes, bonds, mortgages, options or other securities.

1.3 on deposit with any bank, building society, credit co-operative, trustee company or other financial institution.

- 1.4 on deposit with or loan to any employer or any other person or organisation with or without security on any terms the Trustee considers reasonable.
- 1.5 in any policy of insurance or annuity.
- 1.6 the purchase, acquisition, leasing or hiring (from or to any person) of any real or personal property.
- 1.7 the acquisition of any units in unit trusts.
- 1.8 any other investments which the Trustee considers appropriate.
2. The Trustee shall have power to sell any investments and to vary and transpose any investments into other investments authorised by the Deed.
3. The Trustee may:
  - 3.1 settle, compromise or submit to arbitration or determination any claims or matters relating to this Deed or to the rights of Members or persons claiming under them.
  - 3.2 commence, carry on or defend legal proceedings.
  - 3.3 borrow money and secure the repayment of it in any manner and upon any terms which the Trustee considers appropriate.
  - 3.4 to insure or re-insure any risks, contingencies or liabilities of the Fund.
  - 3.5 underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Fund.
  - 3.6 engage the services of professional or other advisers and consultants.
  - 3.7 improve, renovate or repair any investment.
  - 3.8 set aside out of the Fund such money as is sufficient, in the Trustee's opinion, to meet any debtor obligation due or accruing.
  - 3.9 pay calls on shares or stock or units forming part of the Fund.
  - 3.10 assent to and concur in any arrangement, sale, transfer or exchange of any shares, stock, debentures, units or other securities modifying any rights, privileges or interests in relation to the Fund and to agree and concur in any scheme of arrangement for the increase or reduction of the value or amount of the same in the capital of any company or trust in which any shares, stock, debentures or units forming part of the Fund may be invested or agreed to or concur in any rearrangement of its capital or its reconstruction or any arrangement made or proposed to be made by it for any purpose.
  - 3.11 indemnify or undertake to indemnify anyone in respect of any claims, matters or things relating to the Fund or to the rights of Members in respect of the Fund.
  - 3.12 hold any assets of the Fund through a nominee.

- 3.13 take or apply, without obtaining any consents, any part of the Fund in its actual condition or state of investment in or towards satisfaction of any entitlement of or in the Fund or in respect of Member's Benefits as the Trustee thinks fit.
- 3.14 delegate any functions, duties, discretions or obligations to any person or organisation by power of attorney, resolution or otherwise for any purposes and with any powers, authorities or discretions as it thinks fit and the Trustee may remove, replace or suspend any delegate as it considers appropriate.
- 3.15 by way of investment, discount loans, mortgages, contracts, hire purchase agreements or finance leases.
- 3.16 draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument.
- 3.17 acquire or conduct any business or an interest in any business and to employ persons in the carrying on of that business.
- 3.18 invest any part of the Fund by entering into any contractual arrangement or joint venture.

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