



# DEED OF VARIATION

**L Russell Superfund**

**L Russell Enterprises Pty Ltd ACN 105 042 206**

**Linelle Russell**

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[www.mcw.com.au](http://www.mcw.com.au)

**Brisbane**  
Maroochydore  
Southport

Affiliated office  
Sydney

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## DEED OF VARIATION

DATE 14-3-2016

### DETAILS OF PARTIES

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Name	L Russell Enterprises Pty Ltd ACN 105 042 206 ( <b>Trustee</b> )
Address	C/- Virtu Super PO Box 83 Mount Gravatt Qld 4122

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Name	Linelle Russell ( <b>Member</b> )
Address	C/- Virtu Super PO Box 83 Mount Gravatt Qld 4122

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### BACKGROUND

- A. The L Russell Superfund (**Fund**) was established pursuant to a Deed of Trust dated 10 June 2003 which contained the rules for the Fund (**Trust Deed**).
- B. Pursuant to a Deed of Variation dated 29 June 2007 the rules of the Fund were changed.
- C. Pursuant to rule 29.1 of the Trust Deed, the Trustee may vary the Trust Deed.
- D. The Trustee wishes to vary the Trust Deed.

### OPERATIVE PROVISIONS

#### 1. VARIATION

The Trustee varies the Trust Deed by substituting the existing rules of the Trust Deed and replacing them with the rules contained in Annexure A to this deed (**New Rules**).

#### 2. RULES FOR THE FUND

The Fund shall be held by the Trustee upon trust to be managed and administered in accordance with the New Rules annexed to this deed and shall have effect as if set out in the body of the Trust Deed.

#### 3. MEMBERS

The Members, by executing this deed, consent to the variation of the Trust Deed set out in this deed, and acknowledge that they have been advised of the nature and purpose of the variation.

#### 4. INTENTION

This deed is not intended to create any new trusts for the Fund.

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## Execution

**Executed** as a deed.

**EXECUTED** by **L RUSSELL ENTERPRISES  
PTY LTD ACN 105 042 206:**

*L. Russell*

Signature of sole director

*14-3-2016*

Date signed

LINELLE RUSSELL

Name (BLOCK LETTERS)

**SIGNED SEALED AND DELIVERED** by  
**LINELLE RUSSELL**, in the presence of:

*L. Russell*

Signature of party

*P. C. Burke*

Signature of witness

*PAULA BURKE*

Name of witness (BLOCK LETTERS)

*14-3-2016*

Date signed

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## Annexure A

### New Rules

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## 1. FUND

This document sets out the way in which the Fund must operate and the roles and the responsibilities of the Trustee and any person, company or entity associated with the Fund or having some responsibility under this document.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this document:

**Account** means any one of the following:

- (a) Accumulation Account;
- (b) Pension Account;
- (c) Income Account;
- (d) Fluctuation Account;
- (e) Forfeiture Account;
- (f) Reserve Account; and
- (g) any other accounts required to be opened or maintained by the Trustee under the Superannuation Law or any other accounts the Trustee decides to establish and maintain.

**Accumulation Account** means the account established on behalf of each Member or Beneficiary as described in clause 18.

**Actuary** means the actuary (if any) for the time being appointed under this document.

**Administration Manager** means a person appointed as administration manager of the Fund under clause 6.1(c).

**Allocated Pension** has the meaning given to that term in the SIS Regulations.

**Allot** has the meaning given to that term in the SIS Regulations.

**Annuity** means a Benefit payable by instalments that satisfies the meaning of 'annuity' in regulation 1.05 of the SIS Regulations or any other provision of the Superannuation Law.

**Applicant** means a Member who makes a contributions splitting application under clause 24.8.

**Approved Benefit Arrangement** means a fund or benefit arrangement other than the Fund (including without limitation another Complying Superannuation Fund, an Approved Deposit Fund and an Annuity arrangement) into which or from which assets can be transferred from or into the Fund without causing the Fund to be in breach of or to fail to comply with the Superannuation Law, and includes an Eligible Rollover Fund.

**Approved Deposit Fund** in relation to a year of income means a fund which is a complying approved deposit fund under the Taxation Act.

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**Approved Trustee** means a trustee approved by the Australian Prudential Regulation Authority or any other body or person that has responsibility for the administration of superannuation funds other than Self Managed Superannuation Funds.

**Auditor** means the auditor for the time being appointed under clause 6.1(d).

**Authorised Deposit-taking Institution** has the meaning given to that term in the *Banking Act* (Cth).

**Beneficiary** means a person who is presently and absolutely entitled to, or has a contingent right to receive, a Benefit under this document at any given time, and includes a Member, a Dependant or a Pensioner.

**Benefit** means any amount which is payable by the Trustee out of the Fund under this document to or in respect of a Member.

**Benefit Entitlement** means any amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled, and includes a contingent right to payment of an amount.

**Binding Death Benefit Nomination** means a nomination made by a Member for the payment or application of a death benefit that is binding on the Trustee.

**Closing Date** has the meaning given to that term in clause 48.2(a).

**Compassionate Grounds** has the meaning given to that term in the Superannuation Law.

**Complying Superannuation Fund** in relation to a year of income means a fund which is a complying superannuation fund under the Superannuation Law.

**Constitutional Corporation** has the meaning given to that term under the Superannuation Law.

**Contribution** means a payment to the Fund by a Member, Employer or other Permitted Entity under this document before the deduction of any Taxation payable in respect of that payment.

**Corporations Act** means *Corporations Act 2001* (Cth).

**Custodian** means a person appointed as custodian under clause 6.1(e).

**Defunct Body** has the meaning given to that term in clause 2.2(b)(vii).

**Dependant** in relation to a Member, or former Member, means:

- (a) the Spouse of the Member or former Member or the widow or widower of a deceased Member;
- (b) any child of the Member or former Member;
- (c) any person with whom the Member is in an Interdependency Relationship; or
- (d) any other person who, in the opinion of the Trustee, was financially dependent on the Member or former Member at the relevant time.

**Directors** means (where the Trustee is a Constitutional Corporation) the directors or board of management for the time being of the Trustee as the case requires.

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**Disclosure Document** means any document required to be given under the Corporations Act to a person applying to be a Member.

**Earnings** means all net income and net capital gains derived from the assets of the Fund, whether realised or unrealised, after deducting any capital losses, allowances for expenses and Taxation as the Trustee considers appropriate.

**Eligible Rollover Fund** has the meaning given to that term in the Superannuation Law.

**Employee** has the meaning given to that term in the SIS Act.

**Employer** has the meaning given to that term in the SIS Act.

**Excess Contributions Tax** means any tax imposed by reason of the *Superannuation (Excess Concessional Contributions Tax) Act 2007 (Cth)* or the *Superannuation (Excess Non-Concessional Contributions Tax) Act 2006 (Cth)*.

**Financial Assistance** means any financial assistance granted to the Fund under Part 23 SIS Act.

**Financial Year** means a period of 12 months ending on 30 June or any other period of 12 months as the Trustee determines.

**Fluctuation Account** means the account established under clause 21.

**Forfeiture Account** means the account established under clause 42.3.

**Full-Time Gainful Employment** means Gainful Employment on a full-time basis within the meaning of the Superannuation Law.

**Fund** means the L Russell Superfund.

**Fund Earning Rate** means the earning rate for the Fund (which may for the purposes of this document be negative) calculated under clause 20.4 after taking into account any provisions or reserves for future contingencies as the Trustee considers reasonable.

**Fund Year** means a period of 12 months ending on 30 June, or any other period ending on any other date as the Trustee determines.

**Gainful Employment** in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for personal gain to the extent required by the Superannuation Law.

**Guarantee Act** means the *Superannuation Guarantee Charge Act 1992 (Cth)* which incorporates the *Superannuation Guarantee (Administration) Act 1992 (Cth)* and any regulations made to those Acts.

**Income Account** means the account established under clause 20.

**Income Stream** means:

- (a) a Pension;
- (b) an Annuity; or
- (c) a Benefit payable in a form other than as a Superannuation Lump Sum, as permitted by the Superannuation Law.

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**Individual Trustee** means a natural person who is appointed to be a Trustee of the Fund.

**Insured Member** means any Member who has a Policy effected in their name by the Trustee.

**Insurer** means any insurer with whom the Trustee effects a Policy or Policies.

**Interdependency Relationship** has the meaning given to that term in the Superannuation Law.

**Investment Manager** means a person appointed as an investment manager of the Fund under clause 6.1(a).

**Legal Personal Representative** has the meaning given to that term in the SIS Act.

**Levy** includes a levy payable by the Fund in accordance with the *Superannuation Supervisory Levy Act 1991 (Cth)*, the *Superannuation (Fund Assistance Levy) Act 1993 (Cth)* and any other legislation or regulations which impose a levy or levies on the Fund.

**Market Linked Pension** has the meaning given to that term in the SIS Regulations.

**Maximum Splittable Amount** has the meaning given to that term in the SIS Regulations.

**Member** means a person who has been admitted as a member of the Fund under clause 9.

**Member Account** means an Accumulation Account or Pension Account as the case may be.

**Membership** means a Member's or Beneficiary's membership of the Fund.

**Nominated Beneficiary** means one or more Dependants or Legal Personal Representatives of a Member nominated by the Member as the Member's Nominated Beneficiary.

**Non-Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is not a Binding Death Benefit Nomination.

**Non-Concessional Contribution** has the meaning given to that term in the Taxation Act.

**Non-Member Spouse** in relation to a Member has the meaning given to that term in the Superannuation Law. A person ceases to be a Non-Member Spouse when:

- (a) the entitlement of the Non-Member Spouse in respect of a Payment Split is paid to the Non-Member Spouse or transferred or rolled over under the Superannuation Law; or
- (b) they become a Member.

**Normal Retirement Age** means the age of 65 years or any other age not less than 55 years that is acceptable to or required by the Superannuation Law and as the Trustee determines.

**Part-Time Gainful Employment** means Gainful Employment on a part-time basis within the meaning of the Superannuation Law.

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**Payment Flag** has the meaning given to that term in the Superannuation Law.

**Payment Split** has the meaning given to that term in the Superannuation Law, and includes a payment split under the SIS Regulations.

**Pension** includes a Benefit payable by instalments that satisfies the meaning of 'pension' in regulation 1.06 of the SIS Regulations or any other provision of the Superannuation Law.

**Pension Account** means the account established in respect of a Pensioner under clause 19.

**Pensioner** means a Member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension, and includes a Reversionary Beneficiary in receipt of a Pension.

**Permanent Incapacity** has the meaning given to that term in the Superannuation Law.

**Permitted Entity** means any person or entity permitted under the Superannuation Law to make a Contribution (or not prohibited under the Superannuation Law from making a Contribution) in respect of a Member.

**Policy** means any policy of assurance including:

- (a) a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy for a Member or a former Member;
- (b) any policy which provides that benefits are payable to the Trustee on the death or disablement of a Member unless the acquisition of the policy is prohibited by the Superannuation Law.

**Preservation Age** means:

- (a) for a person born before 1 July 1960 – 55 years of age;
- (b) for a person born during the year 1 July 1960 to 30 June 1961 – 56 years of age;
- (c) for a person born during the year 1 July 1961 to 30 June 1962 – 57 years of age;
- (d) for a person born during the year 1 July 1962 to 30 June 1963 – 58 years of age;
- (e) for a person born during the year 1 July 1963 to 30 June 1964 – 59 years of age;
- (f) for a person born after 30 June 1964 – 60 years of age.

**Preserved** means subject to the prohibition against paying any amount held in the Fund before a Member:

- (a) reaches Preservation Age; or
- (b) is otherwise entitled to be paid that amount under the Superannuation Law,

and 'Preserve' has a corresponding meaning.

**Preserved Payment** means a payment required to be Preserved in order for the Fund to be a Complying Superannuation Fund, whether made to the Fund by:

- 
- (a) an Employer;
  - (b) a Permitted Entity;
  - (c) a Member; or
  - (d) a transfer from an Approved Benefit Arrangement.

**Relative** in relation to a Member or former Member means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member;
- (b) the Spouse of the Member, or of any person specified in paragraph (a); or
- (c) any child of any of the persons specified in paragraph (a) or (b).

**Release Request** means a written notice provided by the Statutory Authority authorising the Member to withdraw monies from the Fund to pay Excess Contributions Tax.

**Reserve Account** means an account established under clause 22.

**Retires from Employment** means enters retirement as defined by the Superannuation Law for the payment of Benefits.

**Retires from Gainful Employment** in relation to a Member means enters actual retirement from Gainful Employment or Retires from Employment.

**Reversionary Beneficiary** means a Dependant nominated by a Pensioner (and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee) who is eligible to receive a Benefit at and from the time of the death of the Pensioner.

**RSE Licensee** has the meaning given to that term in the SIS Act.

**Self Managed Superannuation Fund** means a superannuation fund which satisfies the requirements of a self managed superannuation fund set out in the Superannuation Law.

**Severe Financial Hardship** has the meaning given to that term in the Superannuation Law.

**Shortfall Component** has the meaning given to that term in section 64 of the Guarantee Act.

**Signatory** has the meaning given to that term in clause 52.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Splittable Contribution** has the meaning given to that term in the SIS Regulations.

**Spouse** means:

- (a) a person legally married to a Member at any time; or

- 
- (b) a person who (whether of the same sex or a different sex to the Member), although not legally married to the Member, in the opinion of the Trustee lives with a Member on a genuine domestic basis in a relationship as a couple and, in relation to a deceased Member, the term widow or widower includes a person who lived with the Member on such a basis immediately before the Member's death; or
  - (c) a person (whether of the same sex or a different sex to the Member) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* (Cth) as a kind of relationship prescribed for the purposes of that section,

except that where a person has more than one Spouse, the Trustee must decide:

- (d) which one or more of them is deemed to be that person's Spouse for the purposes of this document; and
- (e) the proportions in which a Benefit payable to each Spouse is to be divided between them where there is no Binding Death Benefit Nomination.

When determining whether a person meets the requirements of paragraph (b) above:

- (f) the Trustee may have regard to the following criteria with regard to the relationship between the person and the Member:
  - (i) the duration of the relationship;
  - (ii) the nature and extent of any common residence;
  - (iii) whether a sexual relationship exists;
  - (iv) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
  - (v) the ownership, use and acquisition of their property;
  - (vi) the degree of mutual commitment to a shared life;
  - (vii) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;
  - (viii) the care and support of children; or
  - (ix) the reputation and public aspects of the relationship;
  - (x) to remove all doubt, no particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the relationship is on a genuine domestic basis; and
  - (xi) the Trustee in determining whether the relationship is on a genuine domestic basis is entitled to have regard to any other matters, and to attach weight to these matters, as may seem appropriate to the Trustee in the circumstances of each case.

For the avoidance of doubt, a person can be a Spouse of a Member even if that person or the Member is:

- (g) legally married to someone else; or

- 
- (h) the Spouse of another person.

**Statutory Authority** means a regulatory body or person having responsibility for the administration of superannuation as the case requires, including the:

- (a) Commissioner of Taxation;
- (b) Australian Prudential Regulation Authority; and
- (c) Australian Securities and Investments Commission.

**Superannuation Law** means any requirement under the:

- (a) SIS Act;
- (b) SIS Regulations;
- (c) *Occupational Superannuation Standards Act 1987* (Cth);
- (d) *Occupational Superannuation Standards Regulations* (Cth);
- (e) *Family Law Act 1975* (Cth);
- (f) Corporations Act;
- (g) *Corporations Regulations 2001* (Cth);
- (h) Taxation Act;
- (i) *Financial Sector (Collection of Data) Act 2001* (Cth);
- (j) *Financial Institutions Supervisory Levies Collection Act 1998* (Cth); and
- (k) any other present or future legislation which the Trustee must comply with for the Fund to:
  - (i) qualify for concessional Taxation treatment as a Complying Superannuation Fund; or
  - (ii) meet any other requirement of the Statutory Authority,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively.

**Superannuation Lump Sum** has the meaning given to that term in the Taxation Act.

**Taxation** includes income tax, payroll tax, land tax, stamp duty and any other taxes, duties or surcharges paid or payable by the Trustee on behalf of the Fund or a Member or, where applicable, by any Member, former Member, Dependant or Beneficiary.

**Taxation Act** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) and any regulations or public rulings issued under those Acts.

**Taxed Splittable Contribution** has the meaning given to that term in the SIS Regulations.

**Temporary Incapacity** has the meaning given to that term in the Superannuation Law.

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**Terminal Medical Condition** has the meaning given to that term in the Superannuation Law.

**Tribunal** means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993* (Cth).

**Trustee** means the trustee or trustees for the time being of the Fund (whether original, additional or substituted) appointed under clause 5 of this document.

**Unrestricted Non-Preserved Amount** means an amount (including a rollover payment) payable to or in respect of a Member, which:

- (a) is not required to be Preserved, or at the time of payment is no longer required to be Preserved, under the Superannuation Law; and
- (b) is an unrestricted non-preserved benefit as that term is defined in the SIS Regulations, including Subdivision 6.1.4 of the SIS Regulations.

**Untaxed Splittable Contribution** has the meaning given to that term in the SIS Regulations.

## 2.2 Rules for Interpreting this Document

This clause 2.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The contents pages, the Background and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
  - (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (v) anything (including a right, obligation or concept) includes each part of it;
  - (vi) property includes real, personal and intangible property;
  - (vii) any body or agency, if that body or agency ceases to exist, is renamed, reconstituted, replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;

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- (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
  - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other genders.
- (e) If a word is defined, another part of speech or grammatical form of that word has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) An obligation on, warranty by, or right of:
- (i) two or more persons; or
  - (ii) a party that comprises two or more persons,
- is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
- (h) Time is reckoned as follows:
- (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
  - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
    - (A) excluding the day, or the day of the act or event; and
    - (B) including the day on which the purpose is to be fulfilled.
  - (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
    - (A) the day, or the day of the act or event; until
    - (B) the corresponding day in the next appropriate week, calendar month or year.
  - (iv) If there is no corresponding day for the purposes of clause 2.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
  - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
  - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.

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- (i) If there is a dispute about the interpretation of this document or the rights or obligations of a Member or any other person, then (except to the extent otherwise expressly provided in this document) the decision of the Trustee is final and binding.
  - (j) If:
    - (i) any provision of this document is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly; or
    - (ii) notwithstanding clause 2.2(j)(i), a provision of this document would still be void, voidable, unenforceable or illegal:
      - (A) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be severed; and
      - (B) in any other case, the whole provision must be severed,

and the remainder of this document will be of full force and effect.
  - (k) This document is at all times subject to the Superannuation Law and is deemed to incorporate the Superannuation Law to the extent necessary for the Trustee and the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Statutory Authority.
  - (l) If there is an inconsistency between this document and the Superannuation Law, the Superannuation Law prevails to the extent of the inconsistency.
  - (m) Any references to any requirements, consents or approvals being required to be given by the Statutory Authority or for the purposes of satisfying the Superannuation Law, means requirements, consents or approvals of the Statutory Authority or under the Superannuation Law.

### **3. ESTABLISHMENT OF THE FUND**

#### **3.1 Establishment**

The Fund was established by a deed of trust dated 10 June 2003 and started on the date of that document.

#### **3.2 Fund vested in trustee**

The Fund is at all times vested in the Trustee and managed by the Trustee upon the terms and subject to the trusts, powers, authorities and discretions in this document.

#### **3.3 Composition of the Fund**

The gross assets of the Fund consist of all cash, investments and other property for the time being held and received by or on account of the Trustee upon the trusts of this document.

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#### 4. COVENANTS

To the extent that the Superannuation Law implies covenants, trusts, conditions and obligations into this document, the Trustee must observe them as if they were specified in this document.

#### 5. APPOINTMENT AND CHANGE OF TRUSTEE

##### 5.1 Purpose of Fund

Subject to the Superannuation Law, the Trustee must at all times be a Constitutional Corporation or, where the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund must be the provision of old-age pensions as that term is defined in section 51(xxiii) of the *Commonwealth of Australia Constitution Act*.

##### 5.2 Self managed superannuation funds and approved trustee funds

- (a) Notwithstanding anything in this clause, at any time whilst the Fund is a Self Managed Superannuation Fund, a person is not eligible to be:
  - (i) the Trustee; or
  - (ii) where the Trustee is a Constitutional Corporation, a Director of the Trustee, of the Fund unless clause 5.2(b) or clause 5.2(c) is satisfied.
- (b) Subject to clause 5.2(d), where the Fund is a Self Managed Superannuation Fund with one Member, the Trustee must either be:
  - (i) a Constitutional Corporation where:
    - (A) the Member is the sole Director of the Constitutional Corporation; or
    - (B) the Member is one of only two Directors of the Constitutional Corporation, and the Member and the other Director are Relatives; or
    - (C) the Member is one of only two Directors of the Constitutional Corporation, and the Member is not employed by the other Director; or
  - (ii) two Individual Trustees comprising the Member and another person who is either:
    - (A) a Relative of the Member; or
    - (B) not an Employer of the Member.
- (c) Subject to clause 5.2(d), if the Fund is a Self Managed Superannuation Fund with more than one Member, the Trustee must be:
  - (i) a Constitutional Corporation where each Member is a Director of the Constitutional Corporation and each Director is a Member; or
  - (ii) Individual Trustees where each Member is an Individual Trustee and each Individual Trustee is a Member of the Fund.

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- (d) The requirements in clauses 5.2(b) and 5.2(c) are subject to any alternative tests or exceptions to the general rules outlined in section 17A(3) of the SIS Act, or any other provision of the Superannuation Law.
  - (e) For the purposes of clause 5.2(c), no Member of the Fund may be employed by another Member of the Fund unless permitted by the Superannuation Law.
  - (f) If the Fund has fewer than five Members and is not a Self Managed Superannuation Fund, the Trustee must be an Approved Trustee or an RSE Licensee that is a Constitutional Corporation.

### **5.3 Appointment of Trustee**

- (a) Subject to the Superannuation Law, a majority of Members may, by deed or other written instrument, appoint a person or persons as Trustee if the person or persons consent to the appointment in writing and give any other consents or declarations required by the Superannuation Law.
- (b) The Legal Personal Representative of:
  - (i) a deceased Member;
  - (ii) a Member who has lost legal capacity; or
  - (iii) a Member who has appointed that Legal Personal Representative as the Member's attorney under an enduring power of attorney,may exercise that Member's power to appoint a Trustee.
- (c) Where a Member is under the age of 18 years, a parent or guardian of the Member may exercise that Member's power to appoint a Trustee.
- (d) If the Fund has no remaining Members and no other person mentioned in this clause has the power to appoint a Trustee on behalf of the last person ceasing to be a Member, the Legal Personal Representative of the last Member to have a Legal Personal Representative has power to appoint a Trustee.

### **5.4 Ceasing to act as Trustee**

A Trustee must immediately cease to act as Trustee of the Fund:

- (a) if, being an individual, they die or otherwise lose legal capacity;
- (b) if, being a Constitutional Corporation, it is placed into receivership or liquidation or an administrator is appointed over its affairs;
- (c) if the Trustee is disqualified from holding office as a trustee by operation of the Superannuation Law or is removed or suspended from office under the Superannuation Law;
- (d) if the Trustee resigns as Trustee of the Fund by written notice to a majority of the Members; or
- (e) subject to the Superannuation Law, if the Trustee is removed from office by written notice given to the Trustee by no less than two-thirds of the Members.

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### **5.5 Continuity of office**

Any person who acts as Trustee must, on ceasing to be Trustee under this clause, do everything necessary to vest the Fund in the remaining or new Trustee or Trustees and must deliver all records and other books to the remaining or new Trustee or Trustees.

### **5.6 Quorum of Individual Trustees**

A quorum of Trustees is that number of Trustees agreed upon or required by the Superannuation Law.

### **5.7 Remuneration of Trustee**

Unless permitted by the Superannuation Law, during any time the Fund is a Self Managed Superannuation Fund, no Trustee of the Fund may receive remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund in its capacity as Trustee of the Fund.

### **5.8 Confidentiality of information**

The Trustee and every Employer must, as far as possible, treat as confidential all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this document.

### **5.9 Member may be Trustee**

No Individual Trustee, Director or officer of a Constitutional Corporation or Employee of an Employer is by virtue of their office or the powers delegated to them by the Trustee disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

### **5.10 Discharge of an Initial Trustee**

If:

- (a) two or more trustees are appointed as the original Trustees of the Fund;
- (b) a Trustee resigns or is removed from office in accordance with this document (**Retiring Trustee**); and
- (c) there is at least one continuing Trustee,

the Retiring Trustee is discharged, even if after resignation or removal, there is not:

- (d) at least two individuals; or
- (e) a corporation authorised by statute to administer the estates of deceased persons and other trust estates,

to act as Trustee.

## **6. APPOINTMENT AND REMOVAL OF OTHER PERSONS**

### **6.1 Appointment**

The Trustee may appoint in writing one or more persons, as appropriate, as:

- 
- (a) Investment Manager, who has powers, discretions and authority relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to the Investment Manager;
  - (b) Actuary, who must be a Fellow of the Institute of Actuaries of Australia or a firm or company of actuaries of which at least one member or director (as the case requires) is a Fellow of the Institute of Actuaries of Australia;
  - (c) Administration Manager, who has power to carry out some or all of the administration of the Fund;
  - (d) Auditor, who is appropriately qualified and is independent according to any criteria specified in the Superannuation Law;
  - (e) Custodian, who has powers, discretions and authorities relating to the custody of:
    - (i) title deeds and any other documents of any nature; or
    - (ii) any part of the assets of the Fund,unless that person is prohibited from acting under the Superannuation Law; and
  - (f) other consultants and officers desirable for the proper management and administration of the Fund.

## **6.2 Removal**

The Trustee may remove from office any person or company appointed to any position under clause 6.1 and must remove that person or company if required by the Superannuation Law.

## **7. LIABILITY AND INDEMNITY OF TRUSTEE**

### **7.1 Liability**

The Trustee (and, when the Trustee is a Constitutional Corporation, its Directors and officers) are not liable for:

- (a) any act or default done or omitted to be done in the exercise of their powers, duties or discretions;
- (b) any losses or expenses incurred by the Fund due to the insufficiency or deficiency of any security in or upon which any of the moneys of the Fund are invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities are deposited;
- (d) any loss suffered as a result of relying on any professional advice or assistance; or
- (e) any other loss, damage or misfortune,

except if that person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil penalty order under the Superannuation Law.

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## **7.2 Indemnity**

The Trustee (and, when the Trustee is a Constitutional Corporation, its Directors and officers) are indemnified and, subject to the Superannuation Law, have a lien on the Fund for that indemnity against all liabilities incurred by them through any act, omission or mistake in connection with the exercise of the powers, duties and discretions vested in them under this document or in the proper performance of their duties under this document. The indemnity in this clause is not available if the person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil penalty order under the Superannuation Law.

## **7.3 Limitation of clause**

This clause 7 only operates to exempt a person from liability and provide an indemnity to the extent that the exemption from liability or provision of the indemnity is not limited by or inoperative under the Superannuation Law.

## **8. RECORDS, REPORTS AND AUDIT**

### **8.1 Trustee obligations**

The Trustee must:

- (a) keep accounts and issue receipts for all money and other assets received into and disbursed from the Fund and of all dealings in connection with that money or those assets;
- (b) collect and promptly pay all moneys due to or received on behalf of the Fund:
  - (i) to the credit of an account in the name of the Fund kept with a bank, building society, or other financial institution; or
  - (ii) into a trust account of a solicitor, accountant, investment manager or administration manager;
- (c) pay any premiums to Insurers as required to maintain any Policies or Annuities;
- (d) safely retain all records, books, accounts, minutes, reports and other documents for any period required by the Superannuation Law;
- (e) prepare and lodge all documents required by the Superannuation Law;
- (f) ensure the Fund is audited at the end of each Fund Year or at any other time required by the Superannuation Law and ensure that the Auditor provides any certificates required by the Statutory Authority under the Superannuation Law;
- (g) once each Fund Year, report on the affairs of the Fund to the Members in the form required by the Superannuation Law;
- (h) produce any books or information relating to the Fund and make suitable arrangements for access to premises where the books or information are kept for the purposes of inspection under the Superannuation Law; and

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- (i) record against a Member's Benefit or Benefit Entitlement, a Payment Flag that has been validly served on the Trustee under the Superannuation Law until it is validly lifted.

## **8.2 Provision of information**

The Trustee must give:

- (a) Employers;
  - (b) the Statutory Authority;
  - (c) the Actuary;
  - (d) the Auditor;
  - (e) Members;
  - (f) a court; and
  - (g) any other persons specified in the Superannuation Law,
- any information or documents required by the Superannuation Law.

## **8.3 Information and documents for Tribunal or court**

The Trustee must do all things necessary to comply with its obligations to the Tribunal under the *Superannuation (Resolution of Complaints) Act 1993* (Cth) or to a court.

## **8.4 Directions of Statutory Authority**

The Trustee must comply with any direction or requirement of the Statutory Authority, Tribunal or a court in relation to the Fund, including the acceptance of Contributions, the disposal of assets of the Fund, the appointment of an investigator to the Fund and the conduct of an investigation into the Fund.

# **9. MEMBERSHIP**

## **9.1 Eligibility for Membership**

- (a) The Trustee may admit any person who applies for Membership unless their admission would cause the Fund to breach the Superannuation Law.
- (b) If the Trustee accepts a person's application for Membership, the person becomes a Member from the date and on the terms that the Trustee determines.

## **9.2 Application for Membership**

Each application for Membership must be made by the relevant applicant in the form approved by the Trustee.

## **9.3 Admission to Membership without application**

- (a) The Trustee may, subject to the Superannuation Law, admit a person as a Member even though the person has not applied for Membership in accordance with clauses 9.1 and 9.2.

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- (b) Subject to the Superannuation Law, the Trustee is deemed to have admitted each of the following as a Member even though the person has not applied for Membership in accordance with clauses 9.1 and 9.2:
- (i) a Pensioner;
  - (ii) a Reversionary Beneficiary in receipt of a Pension.

#### **9.4 Members and Beneficiaries to provide information**

Each applicant for Membership and any Beneficiary must whenever requested by the Trustee give the information the Trustee considers appropriate. Where the Trustee is or becomes aware that the information given is incorrect or misleading or any relevant information has been deliberately withheld, the Trustee may alter or amend the Benefits to those amounts which would have been determined had full and accurate information been supplied.

#### **9.5 Member bound by this document**

Each Member by virtue of their application is deemed to have consented to be bound by this document.

#### **9.6 Member to be medically examined**

To effect, increase or otherwise vary any Policy or Annuity, the Trustee may require any Member or any person who has applied to become a Member to be medically examined or to submit other evidence of health or to provide proof of age to the satisfaction of the Insurer or to take steps necessary for those purposes.

#### **9.7 Member refusing to be medically examined**

If any Member or person who has applied to become a Member:

- (a) refuses to undergo a medical examination or to undertake any other step which may reasonably be required for those purposes; or
- (b) fails to do anything where the failure would or might prejudice the Policy or result in the Policy moneys or any part thereof not becoming payable,

the Trustee may adjust the Benefit to be provided by the Fund for or in respect of that Member or person in any manner the Trustee considers appropriate.

#### **9.8 Class of Members**

The Trustee has the power to create any additional class or classes of Membership with rights, entitlements, conditions of eligibility and Benefits as the Trustee thinks appropriate.

### **10. MEMBERSHIP NOTIFICATION REQUIREMENTS**

#### **10.1 Product disclosure statements**

The Trustee must give all new Members a Disclosure Document containing information and details of the Fund as required by the Superannuation Law.

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## **10.2 Disclosure and reporting requirements**

The Trustee must annually give Members, former Members and Beneficiaries any written information and copies of accounts, records and documents of the Fund required by the Superannuation Law.

## **10.3 Former member notices**

- (a) The Trustee must give former Members or their Legal Personal Representatives a written statement containing information and details about the Benefits of the former Member as required by the Superannuation Law.
- (b) Other than as set out in this clause, no Member or Dependant of a Member is entitled to obtain information about the operation or the conduct of the Fund which, in the opinion of the Trustee, it is inappropriate to disclose.

## **10.4 Inspection of this document and other documents**

- (a) A copy of this document and any other documents required by the Superannuation Law must be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary.
- (b) Unless otherwise required by the Superannuation Law, it is sufficient for this clause to make a copy of this document and the other documents referred to in clause 10.4(a) available to the Member or the Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when the office or business is open.

## **10.5 Meetings and Members**

The Trustee must notify the Members from time to time of the manner, time and place in which meetings of the Members of the Fund held under the Superannuation Law and for the purposes of this document are to be called and conducted.

## **11. CEASING TO BE A MEMBER**

A Member ceases to be a Member of the Fund on the first of the following to occur:

- (a) the Trustee determines that the Member has been paid all of their Benefit from the Fund;
- (b) where the Member dies, the Trustee determines that the deceased Member's Benefit has been paid in accordance with clause 43;
- (c) the Trustee determines that the Member's continued Membership would cause the Fund to cease complying with the Superannuation Law; or
- (d) the Trustee determines, on reasonable grounds, that the Member should cease to be a Member.

## **12. INFORMATION TO MEMBERS AND NON-MEMBER SPOUSES**

If a Member's Benefit or Benefit Entitlement becomes subject to a Payment Split, the Trustee must give the Member and the Non-Member Spouse all notices and information (in the appropriate form) required by the Superannuation Law.

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**13. TRUSTEE MAY CREATE NEW INTEREST FOR NON-MEMBER SPOUSE**

- (a) The Trustee may admit a Non-Member Spouse in respect of a Payment Split as a Member:
  - (i) if the Non-Member Spouse requests the Trustee to do so in writing under the Superannuation Law and in the form prescribed by the Trustee; or
  - (ii) on its own initiative in the circumstances permitted by the Superannuation Law.
- (b) If the Trustee admits a Non-Member Spouse as a Member under clause 13(a), the Trustee must reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee under the Superannuation Law.

**14. PAYMENT OR TRANSFER OF INTEREST OF NON-MEMBER SPOUSE**

If the Non-Member Spouse in respect of a Payment Split is not admitted as a Member under clause 13, the Trustee must:

- (a) either:
  - (i) transfer or rollover the entitlement of the Non-Member Spouse to an Approved Benefit Arrangement; or
  - (ii) pay the entitlement of the Non-Member Spouse to the Non-Member Spouse if permitted or required by the Superannuation Law; and
- (b) reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee under the Superannuation Law.

**15. FAMILY LAW FEES**

The Trustee may:

- (a) charge reasonable fees in respect of any action taken by the Trustee which is permitted or required by the Payment Splitting arrangements under the Superannuation Law and for which the Trustee is entitled to charge fees; and
- (b) recoup those fees in accordance with the Superannuation Law from:
  - (i) a Member's Benefit Entitlement; or
  - (ii) the entitlements of the Non-Member Spouse.

**16. SATISFACTION OF NON-MEMBER SPOUSE ENTITLEMENT**

- (a) The payment, transfer or rollover of the entitlement of a Non-Member Spouse in accordance with a Payment Split is a complete discharge of the Trustee in respect of any liability to that Non-Member Spouse and the Member in respect of that Non-Member Spouse for the amount paid, transferred or rolled over.
- (b) The Trustee may deduct from the amount to be paid, transferred or rolled over the amount of any Taxation that is calculated by the Trustee to be payable in respect of the entitlement of the Non-Member Spouse.

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**17. TRUSTEE TO OPEN ACCOUNTS**

The Trustee may open and operate the Accounts.

**18. ACCUMULATION ACCOUNT****18.1 Establishment**

The Trustee must establish an Accumulation Account for each Member or Beneficiary.

**18.2 Amounts to be credited**

The Trustee must credit to the Accumulation Account for a Member or Beneficiary any amounts required by this document and the Superannuation Law including:

- (a) Contributions made by or on behalf of the Member or Beneficiary;
- (b) the portion of the Earnings (if positive) the Trustee determines to credit to that Accumulation Account under clause 20.5;
- (c) amounts received by transfer from Approved Benefit Arrangements attributable to the Member or Beneficiary;
- (d) proceeds of any Policy or Annuity attributable to the Member or Beneficiary;
- (e) any Financial Assistance received by the Fund attributable to the Member or Beneficiary;
- (f) any amounts transferred or Allotted from other Accounts attributable to the Member or Beneficiary; and
- (g) any other amounts the Trustee determines and which are permitted by the Superannuation Law.

**18.3 Amounts to be debited**

The Trustee must debit against the Accumulation Account for a Member or Beneficiary any amounts required by this document and the Superannuation Law including:

- (a) Benefits paid to the Member or Beneficiary;
- (b) the portion of the Earnings (if negative) the Trustee determines to debit against that Accumulation Account under clause 20.5;
- (c) amounts transferred to Approved Benefit Arrangements attributable to the Member or Beneficiary;
- (d) any Taxation calculated under clause 30 attributable to the Member or Beneficiary;
- (e) any amounts transferred or Allotted to other Accounts attributable to the Member or Beneficiary;
- (f) any Levy or Shortfall Component paid in respect of the Member or Beneficiary;
- (g) any costs or expenses attributable to the Member or Beneficiary including the cost of any Policies effected by the Trustee in respect of the Member; and

- 
- (h) any other amounts the Trustee determines and which are permitted by the Superannuation Law.

## **19. PENSION ACCOUNT**

### **19.1 Establishment**

- (a) Where the Trustee decides to pay Benefits as a Pension, the Trustee must establish a Pension Account in respect of the Pensioner.
- (b) The Trustee may maintain more than one Pension Account for a Pensioner.

### **19.2 Amounts to be transferred**

The Trustee must transfer to the Pension Account for a Pensioner any assets of the Fund or amounts determined in accordance with this document which the Trustee believes are necessary to provide the Member's Benefit as a Pension.

### **19.3 Amounts to be credited**

The Trustee must credit to the Pension Account for a Pensioner that portion of the Earnings (if positive) that the Trustee determines to credit to that Pension Account under clause 20.5, and any other amounts that the Trustee determines and which are permitted by the Superannuation Law.

### **19.4 Amounts to be debited**

The Trustee must debit against the Pension Account for a Pensioner all amounts required by this document and the Superannuation Law including:

- (a) Benefits paid to the Pensioner;
- (b) that portion of the Earnings (if negative) that the Trustee determines to debit to that Pension Account under clause 20.5; and
- (c) any other amounts that the Trustee determines and which are permitted by the Superannuation Law.

## **20. INCOME ACCOUNT**

### **20.1 Establishment**

The Trustee must establish an Income Account for the Fund.

### **20.2 Amounts to be credited**

The Trustee must credit the Income Account with all amounts required by this document and the Superannuation Law including the Earnings (if positive) determined under clause 20.4 and any proceeds from Policies or Financial Assistance not credited to any other Account.

### **20.3 Amounts to be debited**

The Trustee must debit against the Income Account all amounts required by this document (including any amounts required under clause 29(b)) and the Superannuation Law, including any losses on sale of investments, any Taxation or Levy not attributed to a Member Account and the cost of any Policy not credited to a Member Account.

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## **20.4 Trustee to determine Earnings and Fund Earning Rate**

At the end of each Fund Year or at any other time that the Trustee considers appropriate or the Superannuation Law requires, the Trustee must determine:

- (a) the Earnings in respect of the period since the previous determination; and
- (b) the Fund Earning Rate.

## **20.5 Distribution of earnings**

Subject to clauses 21 and 28 and the Superannuation Law, the Fund Earning Rate must be used to determine, at the Trustee's discretion, the proportion of the Earnings to be credited to or debited against other Accounts (including Member Accounts, Pension Accounts or Reserve Accounts) from the Income Account.

## **20.6 Trustee to notify members**

The Trustee must, when required by the Statutory Authority or the Superannuation Law, notify the Members of the basis of the calculation of the Fund Earning Rate.

## **21. FLUCTUATION ACCOUNT**

### **21.1 Establishment**

The Trustee may establish a Fluctuation Account for the Fund.

### **21.2 Transfers to Fluctuation Account**

The Trustee must transfer to the credit of the Fluctuation Account any amount remaining in the Income Account after distribution of Earnings under clause 20.5.

### **21.3 Separation of account moneys**

Amounts credited to the Fluctuation Account do not form part of any Member Account and any income earned by the Fund on the moneys held in the Fluctuation Account must be credited to the Fluctuation Account.

### **21.4 Use of Fluctuation Account**

The Fluctuation Account must be used for the following purposes:

- (a) as part of a reserving strategy to stabilise investment earnings;
- (b) to supplement the Fund Earning Rate; and
- (c) to pay any Taxation.

### **21.5 Adjustment of Member Account**

The Trustee may make, in its discretion and in accordance with the Superannuation Law, adjustments to the credit of a Member Account to reflect the Fund Earning Rate applying at the date of payment.

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## **22. RESERVE ACCOUNTS**

Subject to the Superannuation Law, the Trustee may establish and maintain one or more Reserve Accounts for the Fund and operate those accounts in accordance with rules it may specify from time to time for purposes including:

- (a) to separate assets funding a Pension from assets that are needed for solvency reasons as instructed by an Actuary or as otherwise determined by the Trustee;
- (b) to separate assets funding a Pension into various classes to comply with the rules of the relevant Pension or to obtain favourable taxation treatment; or
- (c) to separate some assets of the Fund from other assets to establish any other type of reserve account permitted by the Superannuation Law.

## **23. CONTRIBUTIONS TO THE FUND**

### **23.1 Eligibility to make Contributions**

Subject to the consent of the Trustee and clause 24, Contributions to the Fund may be made by a Member, an Employer or any other Permitted Entity.

### **23.2 Guarantee Act**

Where the Trustee accepts Contributions under the Guarantee Act, the Trustee must give all certificates, reports and other information required by the Guarantee Act.

## **24. GENERAL PROVISIONS CONCERNING CONTRIBUTIONS**

### **24.1 Form of contribution**

A Contribution may be made either in cash or by transfer of an asset or assets if:

- (a) the assets transferred are authorised investments;
- (b) the assets are transferred in accordance with the Superannuation Law; and
- (c) the acquisition of the assets is not prohibited by the Superannuation Law.

### **24.2 Obligations to contribute**

Subject to the Superannuation Law:

- (a) in the absence of any agreement to the contrary, no Member, Employer or Permitted Entity is under an obligation to make a Contribution to the Fund in respect of any Fund Year; and
- (b) a Member may remain a Member of the Fund notwithstanding that no Contributions are made in respect of that Member for any Fund Year.

### **24.3 Limitation on accepting Contributions**

The Trustee must refuse to accept Contributions to the Fund by or in respect of a Member if the Fund is not authorised by the Superannuation Law to accept Contributions made on the Member's behalf.

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#### **24.4 Limit on contributions**

The Trustee must refuse to accept any Contributions or Shortfall Component if:

- (a) under the Superannuation Law the Contributions are not otherwise authorised to be made, or are in excess of the amount of Contributions that can be made, on the Member's behalf;
- (b) acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- (c) the Statutory Authority directs the Trustee not to accept any Contributions by an Employer or any Shortfall Component under the Superannuation Law.

#### **24.5 Ineligible contributions**

If any Contribution or Shortfall Component is accepted by the Fund in breach of the Superannuation Law, the Trustee must refund the Contribution or Shortfall Component as required by the Superannuation Law, less any:

- (a) Taxation payable, or which the Member has validly authorised the Trustee to pay, to the Statutory Authority;
- (b) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to that Contribution or Shortfall Component; and
- (c) reasonable administration charges,

and the Trustee must debit the Member Account accordingly.

#### **24.6 Certain receipts may be held on separate trust**

Where:

- (a) the Trustee is in receipt of an amount which the payer otherwise intended to be a Contribution on behalf of a Member; and
- (b) if the amount referred to in clause 24.6(a) were treated as a Contribution, it would cause part or all of that receipt to be subject to Excess Contributions Tax,

the Trustee may, subject to the Superannuation Law, set aside that amount on separate trust, to hold the same together with any Earnings thereon for the benefit of the payer absolutely but with the same powers of investment, management and administration as the Trustee has in relation to the Fund, and such amounts shall not form part of the Fund.

#### **24.7 Excess Contributions**

If a Member has a liability for Excess Contributions Tax and has lodged a Release Request with the Trustee, the Trustee shall within thirty days of receipt of that request pay to the Member or, at the Member's request, pay to the Australian Taxation Office that amount which is the lesser of:

- (a) any amount requested that the Trustee pay to the Member or to the Australian Taxation Office, which the Member has, by notice, attached to the Release Request;
- (b) the amount of the Excess Contributions Tax stated in the Release Request; and

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- (c) the total amount of that Member's Benefit Entitlement.

#### **24.8 Contributions splitting**

- (a) This clause does not apply to a Benefit:
- (i) that is subject to a Payment Split; or
  - (ii) on which a Payment Flag is operating.
- (b) An Applicant may, in a Financial Year, apply to the Trustee in writing in the form (if any) required by the Trustee, to rollover or transfer out of the Fund or Allot for the benefit of the Applicant's Spouse an amount of the Applicant's Benefits equal to an amount of the Splittable Contributions made by, for, or on behalf of the Applicant in:
- (i) the previous Financial Year; or
  - (ii) the Financial Year in which the application is made if the entire Benefit of the Applicant is to be rolled over or transferred in that Financial Year.
- (c) Subject to the SIS Regulations, an application under clause 24.8(b) is invalid:
- (i) if in the Financial Year in which it is made:
    - (A) the Applicant has already made an application; and
    - (B) the Trustee is considering or has given effect to the application; or
  - (ii) if the amount of any Benefits to which the application relates exceeds the Maximum Splittable Amount; or
  - (iii) subject to clause 24.8(d), if the Applicant's Spouse:
    - (A) is aged 65 years or more; or
    - (B) is aged between the relevant Preservation Age and 65 years and considers themselves to be permanently retired.
- (d) An application is not invalid under clause 24.8(c)(iii) if the application includes a statement by the Applicant's Spouse that the Spouse is aged:
- (i) between the relevant Preservation Age and 65 years but does not consider themselves to be permanently retired; or
  - (ii) less than the relevant Preservation Age.
- (e) The Applicant must specify, in the application, the amount from their:
- (i) Taxed Splittable Contributions; or
  - (ii) Untaxed Splittable Contributions; or
  - (iii) both,
- that the Applicant seeks to split for the benefit of their Spouse.

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- (f) The Trustee may at its discretion accept an application made under clause 24.8(b) if:
    - (i) the application complies with clauses 24.8(b) and 24.8(e); and
    - (ii) the Trustee has no reason to believe that the statement referred to in clause 24.8(d) is untrue; and
    - (iii) the amount to which the application relates does not exceed the Maximum Splittable Amount for the relevant Financial Year.
  - (g) Where the Trustee accepts an application under this clause, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application, rollover or transfer to an Approved Benefit Arrangement or Allot the amount of the Splittable Contribution that is the subject of the application for the benefit of the Applicant's Spouse.
  - (h) Before the Trustee Allots any amount under clause 24.8(g) for the benefit of the Spouse:
    - (i) the Trustee must ensure that the requirements of clause 5.2 are satisfied where the Fund is a Self Managed Superannuation Fund; and
    - (ii) the Spouse must either:
      - (A) be a Member; or
      - (B) apply to become and be accepted as a Member.
  - (i) If an Applicant requests a split of their 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 Non-Concessional Contributions that would form part of any Superannuation Lump Sum that would be payable if the Applicant withdrew their entire Benefits at the time the Trustee gave effect to the application.
  - (j) If an Applicant requests a split of their 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 post-June 1983 component that would form part of any Superannuation Lump Sum that would be payable if the Applicant withdrew their entire Benefits at the time the Trustee gave effect to the application.

## **25. TRANSFERS FROM AND TO APPROVED BENEFIT ARRANGEMENTS**

### **25.1 Transfers from Approved Benefit Arrangements**

- (a) Subject to clause 25.1(b), the Trustee may make any arrangements it thinks fit with any Member, or the trustee of any Approved Benefit Arrangement, to transfer any assets to the Fund and may make arrangements about any other matter which, at the option of the Trustee, is incidental to or consequent upon the admission of a person to Membership of the Fund.
- (b) If an Approved Benefit Arrangement from which assets are transferred under clause 25.1(a) is one in which the payment of Benefits is otherwise required by the Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member is not entitled to receive from the Fund any part of that Benefit that is attributable to those assets at a date earlier

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than that on which the Member would have been entitled to receive the same from that Approved Benefit Arrangement.

- (c) The Trustee must hold all amounts transferred under clause 25.1(a) as part of the Fund and reflect equivalent rights, entitlements and interests in the particular Member's Accumulation Account or Pension Account as existed in the other Approved Benefit Arrangement and, if the Trustee so determines, the Member is deemed to have become a Member of the Fund on the date the Member became a member of the Approved Benefit Arrangement from which the Benefit was transferred.

## **25.2 Transfers to Approved Benefit Arrangements**

The Trustee may:

- (a) if requested by the Member, in lieu of part or all of any other Benefit to which the Member may be entitled under this document, transfer to the Trustee of an Approved Benefit Arrangement that portion of the assets of the Fund as the Trustee determines, not exceeding the amount the Trustee considers equivalent in value to the Benefit being provided to the Member to the extent that it has accrued;
- (b) transfer a Benefit which has become payable to a Member to an Approved Benefit Arrangement selected by the Trustee where a Member has not given instructions to the Trustee on the payment or transfer of the Benefit within a reasonable period of the Benefit first becoming payable;
- (c) transfer some or all of any amount which is the subject of an application by a Member under clause 24.8 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; and
- (d) transfer any other asset or amount in the Fund that it approves including any reserves, surplus or unallocated amounts in the Fund to another account or reserve in the Fund or to another Approved Benefit Arrangement.

## **25.3 Rollovers**

- (a) The Trustee may, upon receiving a written request from a Member to:
  - (i) pay all or any of the Benefit of the Member in the Fund to any Approved Benefit Arrangement or into the Fund in a manner permitted by the Superannuation Law;
  - (ii) rollover an amount which is the subject of an application by the Member under clause 24.8 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; or
  - (iii) retain or apply all or any of the Benefit of the Member within the Fund in a manner permitted by the Superannuation Law, pay, apply or retain the Benefit in accordance with that election or application.
- (b) The receipt of the transferred or rolled over Benefit by the proper officer of the Approved Benefit Arrangement is a complete discharge to the Trustee of all liabilities in respect of the transferred amount and the Trustee has no responsibility to see to the application of the transferred or rolled over Benefit.

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- (c) Upon the completion of a payment in respect of a Member under this clause all the rights and interest of that Member under this document (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or on the occurrence of any event or circumstances affecting the Member) in respect of the amount paid are entirely extinguished.

#### **25.4 Condition of rollover**

Where the Trustee accepts a rollover into the Fund of the Benefits under clause 25.3, those Benefits must be maintained and are only payable:

- (a) in accordance with this document; or
- (b) as permitted by the Superannuation Law.

#### **25.5 Successor fund transfers**

Subject to clause 25.6, the Trustee may transfer the whole or part of a Member's Benefit to an Approved Benefit Arrangement without the request or consent of the Member where the Approved Benefit Arrangement is a successor fund within the meaning of the Superannuation Law. The Trustee may transfer the Member's Benefit to that Approved Benefit Arrangement whether or not the Member is at the time of the transfer a participant in that Approved Benefit Arrangement.

#### **25.6 Eligible Rollover Funds**

The Trustee may if permitted by the Superannuation Law, and must if required by the Superannuation Law, transfer a Member's Benefit to an Eligible Rollover Fund and must give any information to the trustee of the Eligible Rollover Fund at the times and in the manner required by the Superannuation Law.

#### **25.7 Trustee to protect preservation on rollover**

Where a Member or former Member has a Preserved Payment Benefit in the Fund which forms part of the amount to be transferred or rolled over to an Approved Benefit Arrangement, the Trustee must ensure that the governing rules of the Approved Benefit Arrangement provide that the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Superannuation Law.

### **26. INVESTMENT POWERS OF TRUSTEES**

#### **26.1 Investment strategy**

The Trustee must from time to time formulate and give effect to one or more investment strategies having regard to the Fund's circumstances and the Superannuation Law.

#### **26.2 Power of investment**

Subject to the Superannuation Law and the Fund's investment strategy, the Trustee may invest the whole or any part of the Fund's assets in any one or more of the following investments as if the Trustee were the absolute owner beneficially entitled:

- (a) the acquisition by original subscription or by purchase or otherwise of debentures, debenture stock, notes or other loan instruments (whether secured or unsecured) of any corporation wherever situated or incorporated and payable or repayable in any currency and whether bearing interest or not;

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- (b) the acquisition by original subscription or by purchase or otherwise of the shares or stocks (whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon) of any corporation wherever situated or incorporated and expressed in any currency;
  - (c) the purchase of (or at interest upon the security of) shares, stocks, funds, securities, warrants, land or other investment or property of any nature and wherever situated (other than an investment of a wasting or speculative nature), whether income producing or not and whether fully or partly paid up or involving liabilities or not;
  - (d) the making of loans upon personal credit with or without security as the Trustee thinks fit;
  - (e) the acquisition by original subscription or by purchase or otherwise of interests or rights (whether partly paid or not and whether having liability thereon or not) in corporations not having a share capital, wherever situated or incorporated;
  - (f) the acquisition of securities of any country or of any state, territory or colony, whether by original subscription, purchase or otherwise;
  - (g) the acquisition of securities of any statutory or municipal body wherever situated and for any period, whether by original subscription, purchase or otherwise;
  - (h) the acquisition by original agreement or by purchase or otherwise of options and rights to take up:
    - (i) shares or stock (whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon) of any corporation wherever situated or incorporated; or
    - (ii) interests or rights (whether having liability thereon or not) in corporations not having a share capital, wherever situated or incorporated;
  - (i) the acquisition of units or sub-units of any unit trust, whether by original subscription, purchase or otherwise;
  - (j) the acquisition by any means of land or any interest in land of any tenure, improved or unimproved, and wherever situated;
  - (k) loans to any person or deposited with any person, with or without security and for any period;
  - (l) deposits with any Authorised Deposit-taking Institution for any period;
  - (m) any investment in the erection of buildings or structures or the making of improvements on land with any tenure, improved or unimproved, and wherever situated;
  - (n) any Policy or Annuity with an Insurer and any chose in action, interest for life or any lesser term or any reversion, whether as original Policy holder or by assignment; and
  - (o) any other investments which the Trustee considers appropriate and which satisfy the Superannuation Law,

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with full power to vary, replace, or otherwise deal with investments as fully and effectively as a person absolutely and beneficially entitled dealing with their own property may do so. The Trustee must not invest in loans to or give any Financial Assistance to a Member or a Relative of a Member unless:

- (p) the Fund was established before 16 December 1985; and
- (q) until 1 July 1994, the Trustee had express power under the governing rules of the Fund to lend money or give Financial Assistance to Members or their Relatives.

### **26.3 Power to hold investment in different names**

An investment may be held in any name, including the name of a nominee (whether an individual or a corporation), as the Trustee decides.

### **26.4 Disclosure of trustee's interest in investment**

The Trustee and any Director must disclose details of any interest in any investment in the manner prescribed under the Corporations Act and the Superannuation Law whenever they have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

### **26.5 Specific investments**

Subject to clauses 26.1 and 26.2, the Trustee may, with or without the consent of a Member or Beneficiary, make separate investments as the Trustee may decide in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund or in respect of different classes of investment for certain Members or Beneficiaries.

## **27. TRUSTEE POWERS GENERALLY**

### **27.1 General powers**

Subject to the Superannuation Law and without prejudice to the powers vested in the Trustee by this document or otherwise, the Trustee may:

- (a) institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or the Trustee or otherwise concerning the affairs of the Fund;
- (b) compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Fund;
- (c) commence, carry on and defend legal proceedings to recover damages against any person arising out of any loss suffered by any Member, former Member or Beneficiary as a result of any negligence, default, remission, breach of duty or breach of the terms of this document;
- (d) carry on a business;
- (e) refer any claims or demands by or against the Fund to arbitration and observe and perform any awards arising from that arbitration;
- (f) make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;

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- (g) open bank accounts and retain on current or deposit account at any bank any moneys as it considers proper and make procedures for the operation of those accounts including the signing and endorsing of cheques;
  - (h) enter into or grant a lease, sublease or leasing arrangement with any person, including:
    - (i) a finance lease;
    - (ii) an operating lease; or
    - (iii) a hire-purchase agreement;
  - (i) decide who may sign receipts, acceptances, endorsements, releases, contracts and documents on the Fund's behalf;
  - (j) pay Benefits out of the Fund to a Member or a Dependant;
  - (k) decide who are Dependants for the purposes of this document;
  - (l) in case of the mental or physical ill health or incapacity of any person entitled to Benefits, pay or apply those Benefits or any part thereof at the Trustee's discretion to or for the benefit of any person and the Dependants of that person or any of them as the case may be without being responsible for seeing to the application of payments;
  - (m) indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund to the extent that indemnity is not limited by or contrary to the Superannuation Law;
  - (n) pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund;
  - (o) pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
  - (p) take and act upon the opinion of any legal practitioner, whether about the interpretation of this document or any other document or statute or the administration of the trusts declared, without being liable to any Member or Dependants for any act done in accordance with that opinion;
  - (q) insure and keep insured as it sees fit:
    - (i) any liability of the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers); or
    - (ii) the liability of the Fund to indemnify and reimburse the Trustee (or, where the Trustee is a Constitutional Corporation, any of its Directors or officers);
  - (r) insure or re-insure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company or re-insurance company;
  - (s) provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;

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- (t) purchase an Annuity from an Insurer to provide all or a part of the Pension payable in respect of a Member or former Member, in the name of the Trustee or of the Member or former Member;
  - (u) enter into any agreement, provide any notice, make any election or undertake any other action (whether revocable or irrevocable) which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
  - (v) seek modifications of or exemptions from the application of the Superannuation Law to the Fund;
  - (w) accept Contributions and any Shortfall Component from any person authorised to make Contributions or pay the Shortfall Component under this document or the Superannuation Law;
  - (x) accept from the trustee of any other trust (including for the avoidance of doubt from the Trustee in its capacity as trustee of any other trust) in the absolute discretion of the Trustee transfers or dispositions of any real or personal property subject to the trust declared in this Fund;
  - (y) borrow money, or maintain a borrowing of money and secure the repayment of it in a manner and upon terms (including with or without security) that the Trustee decides; and
  - (z) exercise or concur in exercising all the powers and discretions contained in this document or otherwise by law conferred notwithstanding that any person being:
    - (i) a Trustee;
    - (ii) a director or shareholder of a Trustee;
    - (iii) a relative of a Trustee; or
    - (iv) a relative of a director or shareholder of a Trustee,either:
    - (v) has or may have a direct or personal interest whether:
      - (A) as trustee of any other settlement;
      - (B) in his or her personal capacity;
      - (C) as a shareholder, director or relative of the Trustee;
      - (D) as a relative of a director or shareholder of a Trustee;
      - (E) as a member or partner of any company or partnership;
      - (F) as a unit holder in any unit trust;
      - (G) as a beneficiary of any trust; or
      - (H) in any other capacity,in the mode or result of exercising such power or discretion; or

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- (vi) may benefit either directly or indirectly as a result of the exercise of any such power or discretion,

and notwithstanding that the Trustee for the time being is the sole Trustee;

- (aa) generally manage the real and personal property of the Fund;
- (bb) purchase or acquire any real or personal property, or any part, share or interest in any real or personal property (including units in any unit trust), wherever in the world it might be located;
- (cc) sell, exchange, partition, lease, hire, mortgage or otherwise turn to account any assets of the Fund;
- (dd) invest in, hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sub divide, sell, transfer, convey, assign, discount, factor, surrender, let, lease or sublease (for any term, whether as lessor or lessee), hire, exchange, take and grant options or rights to alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with or dispose of any real or personal property or any interest in it wherever in the world it might be located including (without limitation):
  - (i) any lease or licence;
  - (ii) the benefit of any contract;
  - (iii) any thing in action;
  - (iv) chattels of every description;
  - (v) any shares (with or without deferred restricted qualified or special rights attaching to them);
  - (vi) units in any unit trust;
  - (vii) any interest in any trust or partnership;
  - (viii) any interest in any scheme for a retirement village or for time share of accommodation; or
  - (ix) any reversionary interest or deferred property or deferred rights of any description; and
- (ee) exercise any power conferred by paragraphs 27.1(bb), 27.1(cc) or 27.1(dd) or any power of acquisition or disposal conferred by any provision of this document on any terms and conditions, for cash or on terms, for any period, for the whole or part of the price, with or without security, secured or unsecured or in consideration of an annuity or of marketable securities or from money to come to the Trustee in future including any income of the Fund and even if the price exceeds the amount of the Fund.

The Trustee's power in paragraph 27.1(h) to grant a lease or sublease of property is not restricted by any law which limits the term for which a trustee may grant a lease. The Trustee may grant a lease (including options to renew) for any term, even if the term (including options) exceeds the limit specified in the law.

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**27.2 Discretion of trustee**

Subject to any exceptions in the Superannuation Law, despite any other provision in this document no discretion under the rules of this Fund can be exercised by a person other than the Trustee, unless the Fund is a Self Managed Superannuation Fund.

**27.3 Power of delegation**

The Trustee may, subject to the Superannuation Law:

- (a) delegate, in writing, to any person, or (where there is more than one Individual Trustee) to any one or more Individual Trustee(s), any of the powers, duties and discretions conferred on the Trustee under this document, and sign any power of attorney or other document necessary to give effect to that purpose and, where anything contained in this document is required or entitled to be done by deed, the same may be done in writing by a document which states that the power contained in this clause is being exercised, upon any terms that the Trustee decides; and
- (b) vary, limit or revoke that delegation.

**27.4 Power to contract with Trustee acting in a different capacity**

The Trustee may:

- (a) contract with;
- (b) sell, or grant options to buy, any part of the Fund to;
- (c) purchase real or personal property from; or
- (d) enter into any sharefarming or agistment agreement, lease, tenancy or partnership with,

the Trustee (or any one or more of them if more than one) in its own or any other capacity either alone or in conjunction with another or other persons.

**27.5 Power to act despite conflict**

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

**28. SPECIFIC INVESTMENTS****28.1 Recording of specific investments**

Where the Trustee invests separately in respect of certain Members or Beneficiaries under clause 26.5, the Trustee must record on whose behalf those specific investments are made for the purposes of determining allocations to the Member Account.

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**28.2 Allocation of earnings and costs for specific investments**

The Member Account of the relevant Member or Beneficiary must be credited with any income and profit and debited with any costs, charges or Taxation in proportions applicable to any specific investment made under clause 28.1, in accordance with the Superannuation Law.

**29. VALUATION OF FUND**

At the end of each Fund Year, or at any other time the Trustee considers it appropriate or the Superannuation Law requires, the Trustee must:

- (a) make a valuation of all of the assets of the Fund (including the value of any Policy held by the Fund);
- (b) transfer any surplus or deficiency in the valuation of assets, other than specific investments under clause 26.5, to the Income Account; and
- (c) ensure that the records and accounts of the Fund reflect the valuation of each asset.

**30. PAYMENT OF TAXATION AND LEVIES****30.1 Deduction of taxation on benefit**

The Trustee may deduct from any Benefit payable to any Member or Beneficiary under this document any Taxation required to be deducted from it.

**30.2 Taxation on Contributions and Shortfall Components**

The Trustee, or (with the agreement of the Trustee) any other appropriate organisation, may deduct any Taxation payable in relation to a Contribution or Shortfall Component before the Contribution or Shortfall Component is credited to the Accumulation Account of a Member.

**31. POLICIES OF INSURANCE****31.1 Member policies**

The Trustee may determine to effect Policies with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one and partly in another.

**31.2 Member may request a specific policy**

Where a Member makes a written request to the Trustee to effect a Policy of a specified type in respect of the Member, the Trustee must effect that Policy unless:

- (a) the Trustee thinks the Policy is not in the best interests of the Member or the Member's Dependents; or
- (b) the Member has in writing withdrawn, cancelled or altered the Member's original request.

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**31.3 Trustee to effect policy if required**

If the Trustee has informed a Member that a Policy of a specified type will be effected in respect of the Member, the Trustee must effect the Policy unless the Member requests the Trustee in writing not to effect the Policy.

**31.4 Premiums**

Any premiums for a Policy may, if the Trustee considers it appropriate, be debited to an Insured Member's Accumulation Account.

**31.5 Limitation on liability of trustee**

Where a Trustee is not required to exercise the power to effect a Policy, the Trustee is not responsible or liable to a Member or a Member's Legal Personal Representative or Dependant if the Trustee decides not to exercise the power to effect that Policy.

**32. TYPES OF BENEFITS****32.1 Benefit entitlement**

Where a Member becomes entitled to a Benefit under this document and the Superannuation Law, and there are no cashing restrictions that apply to the Benefit under the Superannuation Law, the Member may elect in writing to the Trustee to be paid the Benefit in one or more of the forms permitted by the Superannuation Law, including:

- (a) one or more Superannuation Lump Sums; or
- (b) one or more Income Streams.

**32.2 Benefit entitlement before 1 July 2007**

For the purposes of this clause where a Member was already receiving one or more of the following Pensions before 1 July 2007:

- (a) an Allocated Pension and/or non-commutable Allocated Pension under regulation 1.06(4) of the SIS Regulations;
- (b) a life expectancy pension under regulation 1.06(7) of the SIS Regulations;
- (c) a lifetime commutable pension under regulation 1.06(6) of the SIS Regulations; and
- (d) a Market Linked Pension under regulation 1.06(8) of the SIS Regulations,

that Member may continue to receive that Pension or those Pensions as permitted by the Superannuation Law.

**32.3 Election**

Unless the Trustee otherwise determines, an election given by a Member under clause 32.1:

- (a) must be in writing and state the amount to be paid and the extent to which the amount is to be paid as any one or more types of Benefit permitted to be paid by the Superannuation Law and this document; and

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- (b) must be given to the Trustee before the Benefit starts to be paid to the Member, but is not binding on the Trustee.

#### **32.4 Benefit entitlement – with cashing restrictions**

Subject to the Superannuation Law, where a Member becomes entitled to a Benefit under clauses 37 or 38 of this document, and there are cashing restrictions that apply to the Benefit under the Superannuation Law, the Trustee must pay that Benefit in accordance with those cashing restrictions.

#### **32.5 Transfer of policy as benefit**

Where a Member or a Beneficiary is entitled to be paid a Benefit and that Benefit includes any interest in a Policy of any kind on the life of the Member or Beneficiary, the Trustee may transfer the Policy to the Member or Beneficiary or their Dependents.

#### **32.6 Transfer in specie as benefit**

The Trustee may, with the consent of a Member or Beneficiary to whom a Benefit is payable, transfer assets of the Fund of an equivalent value to that Member or Beneficiary in lieu of paying the whole or any part of the amount otherwise payable under this document.

### **33. PRESERVATION**

The Trustee must Preserve the amounts of Contributions in respect of Members or Beneficiaries as required by the Superannuation Law.

### **34. PAYMENT OF UNRESTRICTED NON-PRESERVED AMOUNT**

Notwithstanding any other provisions in this document which may be construed to the contrary and subject to the Superannuation Law:

- (a) a Member may elect at any time to withdraw the whole or any part of the Unrestricted Non-Preserved Amount of that Member by giving notice to the Trustee in the form and manner determined by the Trustee; and
- (b) the minimum Unrestricted Non-Preserved Amount which may be withdrawn by a Member under clause 34(a) must be determined by the Trustee and notified to Members of the Fund.

### **35. PAYMENT OF ADDITIONAL BENEFITS**

Where a Member ceases to be a Member of the Fund, the Trustee may pay to the Member's Accumulation Account, in addition to amounts otherwise payable under this document, that part of the Fluctuation Account which the Trustee considers equitable for purposes of payment of a Benefit.

### **36. RETENTION OF BENEFIT IN FUND**

Where a Member or Beneficiary does not require Benefits to be paid immediately, the Trustee may retain all or any part of any Benefit in the Fund until the Member or Beneficiary entitled to the Benefit requests that the Benefit is paid to that Member or Beneficiary or until the Benefit is required to be paid under the Superannuation Law or this document.

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## **37. COMPULSORY PAYMENT OF BENEFITS**

### **37.1 Payment**

The Trustee must cash a Member's Benefits as soon as practicable after the occurrence of any of the following:

- (a) the Member dies; or
- (b) cashing of the Benefit is otherwise required under this document or the Superannuation Law,

whichever occurs first.

### **37.2 Cashing methods**

The Trustee may cash a Member's Benefits in any one or more of the following ways:

- (a) by paying the Benefit as a single lump sum;
- (b) by paying the Benefit as an interim lump sum (not exceeding the amount of the Member's Benefits ascertained at the date the cashing of the Benefit is required under clause 37.1) and a final lump sum (not exceeding the balance of the Benefits as finally ascertained in relation the event requiring the Benefit to be cashed);
- (c) by commencing to pay the Benefit as one or more Pensions; and
- (d) by commencing to pay the Benefit as one or more Annuities.

## **38. VOLUNTARY PAYMENT OF BENEFITS**

Subject to the Superannuation Law, a Member may elect to receive a Benefit on or after the occurrence of any of the following events:

- (a) the Member Retires from Gainful Employment;
- (b) the Member suffers Permanent Incapacity;
- (c) the Member suffers Temporary Incapacity;
- (d) the Member is diagnosed with a Terminal Medical Condition;
- (e) the Member, being a temporary resident, permanently departs Australia in circumstances described in the SIS Regulations, including regulation 6.20A or 6.20B, and requests in writing the release of their Benefits;
- (f) the Member's Gainful Employment with an Employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member is terminated;
- (g) the Member suffers Severe Financial Hardship;
- (h) the Member attains age 65;
- (i) the Trustee determines that some or all of the Member's Benefit may be released on Compassionate Grounds;

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- (j) the Member attains Preservation Age; or
  - (k) any other condition of release permitted by the Superannuation Law.

### **39. PENSION BENEFIT**

The following provisions apply to the payment of a Pension:

- (a) where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee may, subject to the Superannuation Law, provide a Benefit to the Member as any one or more types of Pension permitted by the Superannuation Law;
- (b) subject to the Superannuation Law, where the whole or part of a Member's Benefit is payable in the form of a Pension, the Trustee must provide the Pension under the governing rules of the Fund (including this document, trustee resolutions or any pension agreement);
- (c) where an instalment of a Pension is payable in respect of a Member and the amount standing to the credit of the relevant Pension Account is less than the instalment payable, the lesser amount must be paid and the Trustee's liability in respect of the payment of the Pension is discharged;
- (d) notwithstanding clauses 39(a), 39(b) and 39(c), where a Benefit is payable as a Pension, the Trustee may at its discretion apply an amount representing the capital value of that Benefit in the purchase of an Annuity in its name and may arrange for payments under that Annuity to be made directly to the Member. The Trustee in its discretion may assign the Annuity to the Member if requested and if permitted by the Superannuation Law.

### **40. REDUCTION OF MEMBER'S BENEFIT**

- (a) Notwithstanding any other clause in this document, the Member's Benefit may, as the Trustee determines, be reduced by:
  - (i) all amounts, whether actual or contingent, owing by the Member to an Employer or to the Trustee at the time when the Benefit becomes payable or applicable under this document or the Superannuation Law;
  - (ii) the amount of any loss incurred by an Employer in consequence of the Member's proven fraud, dishonesty, misconduct or negligence; or
  - (iii) the amount of any costs of all proceedings, civil or criminal, incurred by an Employer in attempting to recover any amount owing by the Member to the Employer or in respect of the Member's proven fraud, dishonesty, misconduct or negligence,

however this clause cannot be relied upon to reduce the Member's Benefit below the amount required under the Superannuation Law to be vested in the Member.

- (b) A written statement signed by an Employer and given to the Trustee setting out the amount owing by a Member to the Employer or the amounts of any loss or costs incurred by the Employer in respect of a Member, and requesting that the Member's Benefit be reduced by that amount, is sufficient authority to the Trustee to reduce the amount of the Member's Benefit.

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- (c) Upon receiving a written statement under clause 40(b), the Trustee may pay to the relevant Employer all amounts actually owing or incurred and is entitled to retain any amount contingently owing pending the outcome of the contingency, whether the amount in question is dealt with under this clause or paid as a Benefit in respect of the relevant Member.

#### **41. LIMITATION ON PAYMENT**

Notwithstanding any other clauses of this document, the Trustee must not pay any Benefits if the payment would cause the Fund to breach the Superannuation Law.

#### **42. FORFEITED BENEFITS**

##### **42.1 Forfeiture**

Subject to the Superannuation Law, Benefits payable out of the Fund must be forfeited if:

- (a) without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge those Benefits or part of those Benefits;
- (b) the Member:
- (i) commits an act of bankruptcy; or
  - (ii) becomes or is insolvent (including, without limiting the generality of the foregoing, if the Member signs an authority under section 188 of the *Bankruptcy Act 1966* (Cth), or enters into any deed of assignment or deed of arrangement under Part X of that Act;
- (c) the Member's interest in any Benefit, whether by the Member's or Beneficiary's own act, operation of law, an order of any court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- (d) the Member for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit or, in the opinion of the Trustee, is incapable of managing the Member's affairs; or
- (e) the Member, in the opinion of the Trustee, commits any fraud or is guilty of dishonesty or defalcation.

##### **42.2 Application of forfeited money**

The whole of the Benefits forfeited by a person under clauses 42.1(a) to 42.1(e) may be applied by the Trustee for the benefit of a Member and their Dependants or any one or more of them as the Trustee determines.

##### **42.3 Forfeiture Account**

The Trustee has power at any time to establish a Forfeiture Account of the Fund and may transfer to the credit of the Forfeiture Account any amounts forfeited under clauses 42.1(a) to 42.1(e) or otherwise forfeited under this document.

##### **42.4 Treatment of money in Forfeiture Account**

Whilst any moneys are held in the Forfeiture Account, they do not form part of any other Account and any income derived by the Fund in respect of moneys held in the Forfeiture Account must be credited to the Forfeiture Account.

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## **43. DEATH BENEFIT NOMINATIONS**

### **43.1 Non-Binding Death Benefit Nomination**

A Member may at any time make a Non-Binding Death Benefit Nomination designating one or more Dependants or Legal Personal Representatives as a Nominated Beneficiary of any Benefit payable by the Trustee on or following the death of the Member. However:

- (a) if the Trustee has approved a form for the purposes of this clause 43.1, the Non-Binding Death Benefit Nomination must be in that approved form, and in any case the Non-Binding Death Benefit Nomination must be in writing; and
- (b) subject to the Superannuation Law, that nomination is not binding on the Trustee.

### **43.2 Binding Death Benefit Nomination**

- (a) A Member may make a Binding Death Benefit Nomination that:
  - (i) is in writing;
  - (ii) if the Trustee has approved a form for the purposes of this clause 43.2(a), is in that approved form;
  - (iii) is signed and dated by the Member in the presence of two witnesses, being persons:
    - (A) each of whom has turned 18 years; and
    - (B) neither of whom is a person nominated as a beneficiary or within a class of beneficiaries in the notice; and
  - (iv) contains a declaration signed and dated by the witnesses, stating that the Binding Death Benefit Nomination was signed by the Member in their presence.
- (b) A Member may in a Binding Death Benefit Nomination nominate:
  - (i) the person or persons to whom the Member's Benefit must be paid so long as that person or each of those persons is a Legal Personal Representative or Dependant of the Member;
  - (ii) the proportions in which the Benefit is to be paid to that person or each of those persons;
  - (iii) the conditions or circumstances in which the Binding Death Benefit Nomination applies or in which those benefits must be paid to that person or each of those persons; and
  - (iv) the manner in which those benefits must be paid to that person or each of those persons.
- (c) A Member may in a Binding Death Benefit Nomination specify:
  - (i) that the Binding Death Benefit Nomination is to lapse, and in that case the Member must specify the circumstances in which the Binding Death Benefit Nomination will lapse and be of no further effect. Where those

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circumstances are satisfied, the Binding Death Benefit Nomination lapses and is of no further effect; or

(ii) that the Binding Death Benefit Nomination is not to lapse,

and for the avoidance of doubt where the Member does not specify that the Binding Death Benefit Nomination is to lapse, or does not specify the circumstances in which the Binding Death Benefit Nomination will lapse, the Member will be taken to have specified that the Binding Death Benefit Nomination is not to lapse.

- (d) A Member may confirm or amend a Binding Death Benefit Nomination at any time provided that the confirmation or amendment:
- (i) is in writing;
  - (ii) if the Trustee has approved a form for the purposes of this clause 43.2(d), is in that approved form;
  - (iii) is signed and dated by the Member in the presence of two witnesses, being persons:
    - (A) each of whom has turned 18 years; and
    - (B) neither of whom is a person nominated as a beneficiary or within a class of beneficiaries in the Binding Death Benefit Nomination as confirmed or amended (as the case may be); and
  - (iv) contains a declaration signed and dated by the witnesses, stating that the confirmation or amendment to the Binding Death Benefit Nomination was signed by the Member in their presence.
- (e) A Binding Death Benefit Nomination is effective until it lapses or is revoked, whichever occurs first.
- (f) A Binding Death Benefit Nomination may be revoked by:
- (i) making a later valid Binding Death Benefit Nomination; or
  - (ii) otherwise revoking it in writing signed by the Member in the presence of two witnesses, being persons each of whom has turned 18 years, and the revocation contains a declaration signed and dated by the witnesses stating that the revocation of the Binding Death Benefit Nomination was signed by the Member in their presence.
- (g) Any action required or permitted to be undertaken by a Member in relation to the making, confirmation, amendment or revocation of a Binding Death Benefit Nomination under this clause 43 may be instead undertaken by the Member's duly appointed attorney.
- (h) Where:
- (i) a Member makes a Binding Death Benefit Nomination that is otherwise valid under this clause 43.2; and

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- (ii) the Binding Death Benefit Nomination contains a nomination in favour of a person who is not living at the date a payment is to be made by the Trustee to that person in accordance with the Binding Death Benefit Nomination,

the Binding Death Benefit Nomination is taken to be invalid to the extent of the nomination in favour of that deceased person and the Trustee must:

- (iii) pay the Member's Benefit in accordance with the remaining terms of the Binding Death Benefit Nomination; or
  - (iv) if no other person is nominated or if all other persons nominated are also not living at the date their payment is to be made, pay the Member's Benefit in accordance with clause 46 as if the Binding Death Benefit Nomination was invalid at the date of the Member's death.
- (i) For the avoidance of doubt:
    - (i) a Binding Death Benefit Nomination is not invalid merely because it was not delivered or given to the Trustee prior to the Member's death provided the Trustee receives the Binding Death Benefit Nomination within a reasonable time after the Member's death having regard to the requirements of clause 43.2(i)(iii);
    - (ii) the confirmation of, amendment to or revocation of a Binding Death Benefit Nomination is not invalid merely because it was not delivered or given to the Trustee prior to the Member's death provided the Trustee receives the confirmation of, amendment to or revocation of the Binding Death Benefit Nomination (as the case may be) within a reasonable time after the Member's death having regard to the requirements of clause 43.2(i)(iii);
    - (iii) prior to making a decision regarding the payment of a Benefit payable on or following the death of a Member, the Trustee must make reasonable enquiries to ascertain:
      - (A) whether the Member executed a Binding Death Benefit Nomination;
      - (B) where the Member executed a Binding Death Benefit Nomination (including one which appears to have otherwise lapsed) – whether the Member executed a confirmation of, amendment to or revocation of the Binding Death Benefit Nomination;
    - (iv) the Trustee is not required to have regard to and may treat as ineffective any Binding Death Benefit Nomination of which the Trustee has not received notice within a reasonable time after the Member's death where the Trustee has made enquiries in accordance with the requirements of clause 43.2(i)(iii);
    - (v) the Trustee is not required to have regard to and may treat as ineffective any confirmation of, amendment to or revocation of a Binding Death Benefit Nomination of which the Trustee has not received notice within a reasonable time after the Member's death where the Trustee has made enquiries in accordance with the requirements of clause 43.2(i)(iii).

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## **44. DEATH BENEFITS**

### **44.1 Payment if Binding Death Benefit Nomination**

Subject to clauses 44.2 and 43.2(h), if a Member makes a Binding Death Benefit Nomination that at the date of death is valid under clause 43.2, any Benefit payable on or following the death of the Member must be paid by the Trustee in accordance with that Binding Death Benefit Nomination.

### **44.2 Payment where both Binding Death Benefit Nomination and nomination of Reversionary Beneficiary**

Where a Member, who is a Pensioner, has:

- (a) made a Binding Death Benefit Nomination; and
- (b) nominated a Reversionary Beneficiary in respect of their Benefit,

then unless the nomination of the Reversionary Beneficiary is contrary to the Superannuation Law:

- (c) the nomination of the Reversionary Beneficiary shall take effect as if the Member has made no Binding Death Benefit Nomination; and
- (d) the Trustee must cash the Member's benefit in accordance with the nomination of Reversionary Beneficiary.

### **44.3 Payment if no valid Binding Death Benefit Nomination**

If a Member has not made a valid Binding Death Benefit Nomination under clause 43.2 at the date of death, the Trustee may pay the Member's Benefit in accordance with clause 45 or 46.

### **44.4 Commutation of Income Stream**

Notwithstanding any other clause of this document and subject to the Superannuation Law, the Trustee may, and must where required by the Superannuation Law, discharge its liability to a Member, Dependant or Beneficiary in respect of a Pension by paying to the Member, Dependant or Beneficiary a Superannuation Lump Sum equal to the amount standing to the Pension in the relevant Pension Account.

### **44.5 Anti-detriment**

The Trustee may (but is not obliged to) claim the benefit of anti-detriment provisions in the Taxation Act which allow tax paid on the Member's Contributions to be refunded to eligible Beneficiaries in the event of the Member's death.

## **45. PAYMENT IF NO BINDING DEATH BENEFIT NOMINATION**

Subject to clause 44.1 and the Superannuation Law, any Benefit payable on the death of a Member may be paid or applied as the Trustee decides, by way of one or more Annuities, one or more Pensions or other periodical payment or by one or more Superannuation Lump Sum payments or any combination of those methods of payment (in each case upon the terms that the Trustee decides) to any one of the following, in the proportions the Trustee decides:

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- (a) the Nominated Beneficiaries (if any) designated in a Non-Binding Death Benefit Nomination made by the Member and received by the Trustee prior to making a determination under this clause 45;
  - (b) the Dependants of the Member; or
  - (c) the Legal Personal Representative of the Member.

#### **46. PAYMENT IF BINDING DEATH BENEFIT NOMINATION IS INVALID OR INEFFECTIVE**

If a Member makes a Binding Death Benefit Nomination that at the date of death is invalid or ineffective, the Binding Death Benefit Nomination is treated as a Non-Binding Death Benefit Nomination, made at the date of making the Binding Death Benefit Nomination, whether or not validly or effectively binding at that date.

#### **47. AMENDMENT OF THIS DOCUMENT**

##### **47.1 Method of amendment**

- (a) Subject to clauses 47.1(b) to 47.1(f), and the Superannuation Law, the Trustee may at any time by resolution or by written instrument amend, alter, vary, modify or delete any provisions of this document with immediate, prospective or, to the extent allowed by the Superannuation Law, retrospective effect.
- (b) No reduction of the accrued Benefit of a Member may be made without that Member's written consent.
- (c) No amendment may be made under clause 47.1(a) that would cause the trusts contained in this document to fail by reason of the application of the rule against perpetuities.
- (d) No amendment may be made under clause 47.1(a) that would allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the governing rules provide, and will continue to provide after the amendment, that the Fund has as its sole or primary purpose the provision of old-age pensions.
- (e) No amendment may be made under clause 47.1(a) that would cause a death benefit nomination made by a Member under clause 43 to become invalid or ineffective without the prior written consent of that Member.
- (f) No amendment may be made under clause 47.1(a) that would cause a death benefit nomination made by a Member under clause 43 to become invalid or ineffective after the date of that Member's death.

##### **47.2 Notifying members of amendment**

As soon as practicable after this document has been amended under clause 47.1, the Trustee must give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlement of the Member.

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## **48. TERMINATION**

### **48.1 Events of termination**

The trusts declared terminate and the Fund is wound up under this clause if any of the following events happen:

- (a) there are no Members in the Fund and the Trustee resolves to terminate the Fund;
- (b) all Members agree to terminate the Fund;
- (c) the Trustee decides that it would not be reasonable to continue to operate the Fund; or
- (d) the Fund is required to be terminated to comply with the Superannuation Law.

### **48.2 Notice to members and closing date**

- (a) Upon the trusts terminating under clause 48.1, the Trustee must give notice in writing to each Employer and the Members, if any, that the Fund will be wound up on a specified date, that date being no later than any date on which the Fund is required by clause 48.1(d) to be terminated (**Closing Date**).
- (b) From the Closing Date:
  - (i) no further Contribution may be made by any Employer or any Member, other than arrears of Contributions due to the Closing Date; and
  - (ii) arrears of Contributions, if any, must be called in immediately.

### **48.3 Order of payment**

Upon the trusts terminating under clause 48.1, the Trustee, subject to clause 48.7, must make provision out of the Fund (after meeting expenses and liabilities) as necessary to provide for payment of the following Benefits, in the following order of priority:

- (a) payments which on or before the Closing Date had become payable to retired Members or Dependants;
- (b) payments to each Member who is still in employment and has attained their Normal Retirement Age of an amount equal to their Member's Accumulation Account;
- (c) payment to each Member who is still in the employment of an Employer and has not attained their Normal Retirement Age of an amount equal to their Benefit had they resigned immediately before the Closing Date; and
- (d) payment to each Member who is still in the employment of an Employer of that amount of the assets of the Fund then remaining as:
  - (i) the Trustee considers equitable after taking into account payments determined under clauses 48.3(b) and 48.3(c); and
  - (ii) can be paid without being treated as an excessive amount having regard to the Superannuation Law.

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**48.4 Payment if member dies**

Where a Member dies before receiving a Benefit to which they had become entitled under clause 48.3, that Benefit must be paid in accordance with clause 43.

**48.5 Surplus**

If a surplus remains after providing Benefits for Members and their Dependants under clause 48.3, that surplus must, subject to the requirements of the Superannuation Law and clause 48.7, be paid by the Trustee to or for the benefit of:

- (a) any Members;
- (b) any former Members;
- (c) any Dependants of those Members or former Members;
- (d) the Legal Personal Representatives (in that capacity) of those Members, former Members or Dependants; or
- (e) any Employer,

as the Trustee determines and, if paid to or for the benefit of two or more persons, in the proportions as the Trustee determines, subject, in the case of clauses 48.5(a) and 48.5(d), to clause 48.3.

**48.6 Form of payment**

Subject to clause 48.7, the payments to be made under clauses 48.3 and 48.5 may be made in cash, Policies, participation in any other Approved Benefit Arrangement or otherwise as determined by the Trustee, but must not be paid to or for the benefit of a Member unless:

- (a) the Member ceases to be in the employment of an Employer; or
- (b) for personal maintenance and support in case of hardship.

**48.7 Payment to other persons**

If any payment of Benefits under clauses 48.3 and 48.5 is required by the Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member is not entitled to receive from the Fund any part of the Benefit which is required to be deferred and the Trustee may make any of the following arrangements with respect to the Benefits required to be deferred:

- (a) transfer the Benefit to another Complying Superannuation Fund if that Fund does not permit the payment of the Benefit before the attainment of the particular age or the specified event;
- (b) purchase an Annuity with the Benefits commencing no earlier than the particular age or specified event or which otherwise satisfies the Superannuation Law;
- (c) transfer the Benefits to an Approved Deposit Fund if that Fund does not permit the payment of the Benefit before the attainment of the particular age or the specified event; or

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- (d) purchase a non-commutable Pension payable for life in the name of the Member but only if the Member has permanently retired from the employment.

#### **49. EXERCISE OF POWERS AND RIGHTS**

All powers, rights, decisions, discretions, appointments or other authorisations granted to or conferred on the Trustee by, under or for the purposes of this document, may be fully and effectively exercised or made by or on behalf of a Trustee:

- (a) where the Trustee is a Constitutional Corporation, by resolution of the Directors in accordance with its constitution or by any person or persons having the authorisation of those Directors to act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, by unanimous resolution or, if required by the Superannuation Law, by a majority of persons holding the office of Trustee,

if all requirements of the Superannuation Law are satisfied.

#### **50. GOVERNING LAW**

This document is governed by the law in force in Queensland, Australia. Each of the Trustee, Members, Beneficiaries and Employers irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts for any proceeding in connection with this document, and waives any right it may have to claim that those courts are an inconvenient forum.

#### **51. DISPUTE RESOLUTION**

##### **51.1 Enquiries and complaints mechanism**

The Trustee must effect arrangements to deal with enquiries and complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Superannuation Law.

##### **51.2 Trustee to implement decision**

Subject to the Trustee's right to decide in its discretion to appeal against any decision of a court or tribunal, the Trustee must ensure it implements any decision of a court or tribunal as required by that court or tribunal.

#### **52. COUNTERPARTS AND FACSIMILE COPIES**

This document may be executed in counterparts. A counterpart may be a copy of this document printed from a facsimile transmission. All counterparts together are taken to constitute one instrument. A copy of this document which has been executed by a party (**Signatory**) may be relied upon by a party to the same extent as if it was an original of this document executed by the Signatory.