

# Deed of Trust of Theokoles Super Fund (Self Managed Superannuation Fund)

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## Deed of Trust of the Theokoles Super Fund

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This Deed is made on the date specified in Schedule 1

- Parties: Theokoles Pty Ltd (ACN 616 107 156) of 6 Showgrounds Drive, Highvale QLD 4520 ("Trustee")
- And: Ko Lane of 6 Showgrounds Drive, Highvale QLD 4520 ("Member")
- And: Dianne Linda Lane of 6 Showgrounds Drive, Highvale QLD 4520 ("Member")

### Background:

- A. The Trustee has given a written consent to act as trustee and provided a declaration stating that the Trustee is not a Disqualified Person and understands the duties of a trustee of a SMSF.
- B. The Trustee will establish the Fund, which is to be operated and maintained as an indefinitely continuing self-managed superannuation fund for the purpose of providing superannuation benefits (old age pensions) to its Members.
- C. The Trustee has consented to hold the Fund as from the date of this Deed upon the trusts and subject to the terms set out in this Deed.

### Operative Part:

#### 1. Definitions

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In this Deed the following expressions shall have the meanings set out below unless the meanings are repugnant to or inconsistent with the subject matter in which the expressions are used:

- (a) **"Account-Based Pension"** means a Pension that satisfies the requirements in Regulation 1.06(9A)(a);
- (b) **"Act"** means the *Superannuation Industry (Supervision) Act 1993* (Cth) as amended from time to time;
- (c) **"Actuary"** means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia;
- (d) **"ADI"** or **"Authorised Deposit-taking Institution"** means:
- (i) A body corporate that is an ADI for the purposes of the *Banking Act 1959* (Cth); or
- (ii) A State bank;
- (e) **"Agreement"** includes any arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings;
- (f) **"Allocated Pension"** means a Pension that satisfies the requirements in Regulation 1.06(4);



- (g) **"Applicant"** means a prospective Member of the fund who has completed and submitted to the Trustee a Membership Application or intends to submit to the Trustee a Membership Application;
- (h) **"APRA"** means the Australian Prudential Regulation Authority;
- (i) **"Approved Arrangement"** means an arrangement into which or from which assets of the Fund can be rolled-over or transferred without breaching Prescribed Law including (but not limited to):
  - (i) Regulated superannuation funds;
  - (ii) Approved deposit funds;
  - (iii) Retirement savings accounts;
  - (iv) Exempt public sector funds;
  - (v) Deferred annuities; and
  - (vi) Unclaimed money authorities.
- (j) **"Approved Body"** means a body mentioned in Schedule 4 of the Regulations;
- (k) **"Approved Deposit Fund"** means a fund that:
  - (i) Is an indefinitely continuing fund;
  - (ii) Is maintained by an RSE licensee that is a constitutional corporation;
  - (iii) Is maintained solely for an approved purpose.
- (l) **"Approved Form"** means a reference to a form approved by the Regulator in writing for the provision in which the expression appears;
- (m) **"ASIC"** means the Australian Securities and Investment Commission;
- (n) **"Associate"** means an associate under s 12 of the Act and particularly, in relation to a Standard Employer-Sponsor, means an associate as if determined under the *Corporations Act* if the assumptions listed in s 12(2) of the Act were made including (but not limited to) business partners and any companies or trusts the Employer controls (either alone or with their other associates) or companies and trusts that control the Employer;
- (o) **"Auditor"** means an approved auditor under the Prescribed Law, being a person who:
  - (i) Is registered or taken to be registered as an auditor under the *Corporations Act*; or
  - (ii) Is the Auditor-General of the Commonwealth, a State or Territory, or is a delegate of the Auditor-General; or
  - (iii) Is associated with a professional organization listed below in the manner required:

Professional Organisation	Manner of Association Required
CPA Australia Limited	Member
The Institute of Chartered Accountants in Australia	Member
National Institute of Accountants	Member
Association of Taxation and Management Accountants	Member or Fellow
National Tax and Accountants Association Ltd	Fellow

- (p) **"Auditor's Certificate"** is a certificate issued by an appointed Auditor of the Fund for a Year of Income stating that the Fund has been audited;
- (q) **"Benefits"** means an amount payable from the Fund in respect of or to a Member or Beneficiary;
- (r) **"Beneficiary"** means a person who has a beneficial interest in the Fund and includes a Member (despite the express reference in this Deed to Member);
- (s) **"Business"** includes any profession, trade, employment, vocation or calling carried on for the purposes of profit, including (but not limited to):
- (i) The carrying on of primary production (as defined in the Tax Legislation); and
  - (ii) The provision of professional services;
- but does not include occupation as an employee;
- (t) **"Business Hours"** means 9:00am - 5:00pm, Monday to Friday excluding public holidays;
- (u) **"Business Real Property"** means:
- (i) Any freehold or leasehold interest of the Fund in real property;
  - (ii) Any interest of the Fund in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or
  - (iii) Such other class of interest held by the Fund in relation to real property as prescribed by the Regulations;

where the real property is used *wholly and exclusively* in one or more businesses (whether carried on by the Fund or not), but does not include any interest held in the capacity of a beneficiary of a trust estate.

However, real property used in one or more primary production businesses does not cease to be used *wholly and exclusively* in that business only because:

- (iv) An area of the real property, not exceeding two (2) hectares, contains a dwelling used primarily for domestic or private purposes; and
- (v) The area is also used primarily for domestic or private purposes;

provided that the use for domestic or private purposes referred to in paragraphs 1(u)(



and 1(u)(v) is not the predominant use of the real property;

- (v) “**Cashing Restriction**” means any restrictions placed on the payment of benefits on satisfaction of a Condition of Release under Column 2 of Schedule 1 of the Regulations;
- (w) “**Child**” in relation to a person includes:
  - (i) An adopted child, a stepchild or an ex-nuptial child of the person; and
  - (ii) A child of the person’s Spouse; and
  - (iii) Someone who is a child of a person within the meaning of the *Family Law Act 1975* (Cth).
- (x) “**Child Contributions**” means Contributions that are made to the Fund in respect of a Child, other than:
  - (i) Contributions made in respect of the Child by, or on behalf of, an Employer of the Child; and
  - (ii) Contributions made by a Child in respect of himself/herself;
- (y) “**Co-contribution Act**” means the Superannuation (Government Co-contribution for Low Income Earners) Act 2003 (Cth);
- (z) “**Commutable**” or “**Commute**” or “**Commutation**” as the terms are used interchangeably through the Deed, means withdrawing some of all of a Member’s benefits and entitlements and paying as a lump sum;
- (aa) “**Company**” means a registered company, corporation or body corporate including a constitutional corporation;
- (bb) “**Condition of Release**” means those conditions of release under Schedule 1 of the Regulations as summarized in clause 8.6;
- (cc) “**Contributions**” includes Employer contributions for Employees, personal contributions by Members, spousal contributions, contributions made by another person, payments of shortfall components, payments to the Fund from the Superannuation Holding Accounts Special Account but does not include benefits rolled-over or transferred into the Fund;
- (dd) “**Corporate Trustee**” means a Company which is acting as Trustee of the Fund from the time;
- (ee) “**Corporations Act**” means the *Corporations Act 2001* (Cth) as amended from time to time;
- (ff) “**Custodian**” means a person (other than the Trustee), who, under contract with the Trustee or an Investment Manager of the Fund, performs custodial functions in relation to any of the assets of the Fund;
- (gg) “**Death Nomination**” means a Preferential Death Nomination, a Binding Death Nomination or a Non-Lapsing Binding Death Nomination as the case may be;
- (hh) “**Defined Benefit Fund**” means:

- (i) A Public Sector Superannuation Scheme that:
  - (A) Is a Regulated Superannuation Fund; and
  - (B) Has at least 1 Defined Benefit Member; or
- (ii) a Regulated Superannuation Fund (other than a Public Sector Superannuation Scheme):
  - (A) That has at least 1 Defined Benefit Member; and
  - (B) Some or all of the Contributions (out of which, together with earnings on those Contributions, the benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual Member but are paid into and accumulated in a fund in the form of an aggregate amount;
- (ii) **"Defined Benefit Pension"** means an income stream which complies with the Regulations (such as a Lifetime Pension or Life Expectancy Pension) other than:
  - (i) A Pension wholly determined by a policy of life insurance purchased or obtained by the Trustee of the Fund solely for the purposes of providing benefits to a Member of the Fund;
  - (ii) An Allocated Pension;
  - (iii) A Market Linked Pension; or
  - (iv) From 1 July, 2007, an Account-Based Pension;
- (jj) **"Dependant"** in relation to a person, includes the Spouse of the person, any Child of the person and any person with whom the person has an Interdependency Relationship;
- (kk) **"Derivative"** means a financial asset or liability the value of which depends on, or is derived from, other assets, liabilities or indices;
- (ll) **"Derivatives Contract"** means an options contract or futures contract relating to any right, liability or thing;
- (mm) **"Director"** means:
  - (i) In relation to the Fund - a director of a Corporate Trustee of the Fund;
  - (ii) In relation to another entity - a director of the other entity;
- (nn) **"Disqualified Person"** means:
  - (i) **For an individual** - a person that:
    - (A) Has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or foreign law involving dishonest conduct; or
    - (B) A civil penalty order was made in relation to; or



- (C) Is insolvent under administration; or
  - (D) Has been disqualified by the Regulator under s 126H or 126K of the Act;
- (ii) **For a Company** - a Company where:
  - (A) A Director, secretary or executive officer of that Company is a Disqualified Person;
  - (B) A receiver, receiver and manager, official manager or administrator, or provisional liquidator has been appointed to the Company; or
  - (C) Action to wind up the company has commenced;
- (oo) **"Eligible Rollover-Fund"** means a Fund that has the following characteristics:
  - (i) The fund is a Regulated Superannuation Fund or an Approved Deposit Fund;
  - (ii) The trustee of the fund has given to APRA a notice in the Approved Form stating that it is an Eligible Rollover Fund;
  - (iii) The fund has not ceased to be an Eligible Rollover Fund; or
  - (iv) The fund:
    - (A) Was an Eligible Rollover Fund immediately before 1 July 1995; and
    - (B) Has not ceased to be an Eligible Rollover Fund;
- (pp) **"Eligible Spouse Contribution"** means a Contribution made by an individual to the Fund:
  - (i) To provide superannuation Benefits for the individual's Spouse, whether or not the Benefits would be payable to the Dependants of the individual's Spouse if the Spouse dies before or after becoming entitled to receive the Benefits; and
  - (ii) In circumstances in which the individual:
    - (A) Could not have deducted the Contribution under section 82AAC of the *Income Tax Assessment Act 1936* (Cth) in the 2006-07 income year or a previous year; and
    - (B) Cannot deduct the contribution under Subdivision 290-B of the 1997 *Income Tax Assessment Act 1936* (Cth) in the 2007-08 income year or a later year;
- (qq) **"Employee"** has its natural and ordinary meaning except where that meaning is expanded by s 15A of the Act;
- (rr) **"Employer"** has its natural and ordinary meaning except where that meaning is expanded by s 15A of the Act;
- (ss) **"Employer Contributions"** means a Contribution by, or on behalf of, an Employer-Sponsor of the Fund;

- (tt) **"Employer-Sponsor"** means an Employer who:
- (i) Contributes to the Fund; or
  - (ii) Would, apart from a temporary cessation of Contributions, contribute to the Fund;
- for the benefit of:
- (iii) A Member of the Fund who is an Employee of the Employer or an Associate of the Employer; or
  - (iv) The Dependants of such a Member in the event of Death;
- (uu) **"Fulltime"** in relation to being Gainfully Employed, means Gainfully Employed for at least thirty (30) hours each week;
- (vv) **"Fund"** means the Self-Managed Superannuation Fund established by this Deed and any subsequent amendments under the name in Schedule 1;
- (ww) **"Fund-Capped Contributions"** means Member Contributions other than the following:
- (i) A Contribution to which a valid and acknowledged notice under section 290-170 of the *Income Tax Assessment Act 1997* (Cth) relates;
  - (ii) A Contribution that meets the requirements of s 292-95 (1) (d) of the *Income Tax Assessment Act 1997* (Cth);
  - (iii) A Contribution that meets the requirements of s 292-100 (9) of the *Income Tax Assessment Act 1997* (Cth);
  - (iv) A payment made by the Commissioner of Taxation under s 65 of the *Superannuation Guarantee (Administration) Act 1992* (Cth);
  - (v) A payment made by the Commissioner of Taxation under s 61 or 61A of the *Small Superannuation Accounts Act 1995* (Cth);
  - (vi) A Government Co-Contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth);
  - (vii) A Contribution that is a directed termination payment within the meaning of s 82-10F of the *Income Tax (Transitional Provisions) Act 1997* (Cth);
- (xx) **"Gainful Employment"** or **"Gainfully Employed"** means any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged;
- (yy) **"Governing Rules"** means:
- (i) In relation to this Fund - this Deed; and
  - (ii) Any rules contained in a trust instrument, other document or legislation, or combination of them or any unwritten rules establishing the Fund;



(zz) **"In-House Asset"** means:

- (i) A Loan to a Related Party;
- (ii) An investment in a Related Party;
- (iii) An asset of the Fund that is subject to a lease or lease arrangement between the Trustee and a Related Party;

but does not include:

- (iv) A life policy issued by a life insurance company; or
- (v) A deposit with an ADI; or
- (vi) An investment in a pooled superannuation trust, where a trustee of the fund and the trustee of the pooled superannuation trust acted at arm's length in relation to the making of that investment; or
- (vii) An asset of a public sector fund, where the asset consists of an investment in securities issued under the authority of:
  - (A) The Commonwealth or a government of a State or a Territory; or
  - (B) A public authority constituted by or under a law of the Commonwealth, a State or a Territory, where the public authority is neither a Standard Employer-Sponsor, nor an Associate of a Standard Employer-Sponsor, of the Fund; or
- (viii) An asset which the Regulator, by written notice given to a Trustee of the Fund, determines is not an In-House Asset of the Fund; or
- (ix) An asset which the Regulator, by legislative instrument, determines is not an In-House Asset of:
  - (A) Any fund; or
  - (B) A class of funds in which the fund is included; or
- (x) Real property subject to a lease, or to a lease arrangement enforceable by legal proceedings, between the Trustee and a Related Party of the Fund, if, throughout the term of the lease or lease arrangement, the property is Business Real Property; or
- (xi) An investment in a Widely Held Unit Trust; or
- (xii) Property owned by the Fund and a Related Party as tenants in common, other than property subject to a lease or lease arrangement between the Trustee and a Related Party; or
- (xiii) An asset included in a class of assets specified in the Regulations not to be an In-House Asset of the Fund or a class of funds to which this Fund belongs.

In paragraph 1(zz)(xi), a trust is a *Widely Held Unit Trust* if:

- (i) It is a unit trust in which entities have fixed entitlements to all of the income and capital of the trust; and
- (ii) It is not a trust in which fewer than 20 entities between them have:
  - (A) Fixed entitlements to 75% or more of the income of the trust; or
  - (B) Fixed entitlements to 75% or more of the capital of the trust;
- (aaa) **"Insolvency Event"** means official management, appointment of an administrator and/or receiver, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme of composition or arrangement of creditors, fixing by creditors of any floating security over the assets of the person or body, any act of insolvency or bankruptcy or any similar procedure or event;
- (bbb) **"Interdependency Relationship"** means, subject to the Act and the Regulations, two (2) persons (whether or not related by family) if:
  - (i) They have a close personal relationship; and
  - (ii) They live together; and
  - (iii) One or each of them provides the other with financial support; and
  - (iv) One or each of them provides the other with domestic support and personal care.
- (ccc) **"Interested Parties"** means the Applicants, Members, former Members, Legal Personal Representatives, Beneficiaries, Employers, the Federal Commissioner for Taxation, Australian Taxation Office, APRA, ASIC, Centrelink, any other person or body that may be responsible for regulation of the Fund under the Prescribed Law or such other person as the Trustee may in the Trustee's sole discretion determine to have a direct or indirect interest in the operation and activities of the Fund;
- (ddd) **"Invest"** means to apply assets in any way, or make a contract, for the purpose of gaining interest, income, profit or gain;
- (eee) **"Investment Manager"** means a person appointed by the Trustee to invest on behalf of the Trustee;
- (fff) **"Legal Personal Representative"** means:
  - (i) **Where a Member is Incapable:** the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person;
  - (ii) **Where A Member Dies Leaving a Will** - the executor/s of the estate as stated in a Grant of Probate or administrator/s of the estate as stated in a Grant of Letters of Administration issued by the Supreme Court of Queensland or another equivalent Grant from another State or jurisdiction;
  - (iii) **Where A Member Dies Intestate** - the administrator/s of the estate as stated



in a Grant of Letters of Administration issued by the Supreme Court of Queensland or another equivalent Grant from another State or jurisdiction;

- (iv) **Where No Grant** - The Trustee may, in the Trustee's sole discretion, decide to recognize an executor or intending administrator (the person with the best priority to act as administrator under the Uniform Civil Procedure Rules 1999 (Qld) or other equivalent legislation of another jurisdiction) without insisting on the production of a Grant of Probate or Letters of Administration. In making such a determination, the Trustee may require the executor or intending administrator to provide such information as the Trustee may deem necessary for that purpose including (but not limited to) a copy of the will and Statement of Assets and Liabilities;
- (v) **Release and Indemnity** - If the Trustee decides to recognize an executor or intending administrator in 1(ff)(iv), then the Trustee may reasonably require the executor or intending administrator to sign documents releasing the Trustee from any liability arising through the Trustee recognizing the executor or intending administrator, and indemnifying the Trustee against any loss suffered as result;
- (ggg) **"Listed Security"** means a security listed for quotation in the official list of any of the following:
  - (i) A licensed market within the meaning of s 761A of the *Corporations Act*;
  - (ii) An approved stock exchange as defined by the Tax Legislation;
  - (iii) A market exempted under section 791C of the *Corporations Act*;
- (hhh) **"Loan"** includes the provision of credit or any other form of financial accommodation, whether or not enforceable, or intended to be enforceable, by legal proceedings;
- (iii) **"LPR"** means Legal Personal Representative;
- (jjj) **"Lump Sum"** means a one-time payment received that is not expected to recur (as opposed to an income stream or pension);
- (kkk) **"Mandated Employer Contributions"** means Contributions by, or on behalf of, an Employer that are equal to the sum of:
  - (i) The Contributions made by, or on behalf of, the Employer to the Fund in relation to the Member, that:
    - (A) Reduce the Employer's potential liability for the superannuation guarantee charge imposed by s 5 of the *Superannuation Guarantee Charge Act 1992* (Cth); or
    - (B) Are payments of shortfall components; and
  - (ii) The Contributions (other than Contributions of the kind specified in paragraph 1(kkk)(i)) made by, or on behalf of, the Employer to the Fund in relation to the Member in or towards satisfaction of the Employer's obligation to make Contributions for the Member, being an obligation under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority;

- (III) **"Maximum Splittable Amount"** means as it is defined in Regulation 6.40. In essence, the Maximum Splittable Amount is:
- (i) Up to eighty-five (85%) of the Contributions where the Contributions will be included in the Fund's taxable income for a Year of Income; and
  - (ii) Up to 100% of the Contributions if the Contributions were made on or before 5 April, 2007 and will not be included in the Fund's taxable income for a Year of Income;
- (mmm) **"Member"** means those persons listed in Schedule 1 to this Deed (initial Members) or such additional Members as the Trustee may admit to the Fund from time to time pursuant to clause 5.2;
- (nnn) **"Membership Application"** means the form set out in Schedule 2 to this Deed or such other form as may be approved by the Trustee;
- (ooo) **"Member Contributions"** means Contributions by, or on behalf of, the Member to the Fund, but does not include Employer Contributions made in respect of the Member;
- (ppp) **"Minor"** means a person under the age of eighteen (18) years;
- (qqq) **"Non-Concessional Contributions Cap"** means the amount mentioned in subsection 292-85(2) of the *Income Tax Assessment Act 1997* (Cth);
- (rrr) **"Non-Member Spouse"** in relation to a Superannuation Interest that is subject to a Payment Split means the person who is the Non-Member Spouse in relation to the interest under Part VIIIB of the *Family Law Act 1975* (Cth);
- (sss) **"Old Age Pensions"** has the same meaning as in section 51 (xxiii) of the Constitution;
- (ttt) **"Part-Time"** in relation to being Gainfully Employed, means Gainfully Employed for at least 10 hours, and less than 30 hours, each week;
- (uuu) **"Payment Split"** means a payment split under Part VIIIB of the *Family Law Act 1975* (Cth);
- (vvv) **"Prescribed Law"** means the Act; the Regulations; the *Corporations Act*; the *Social Security Act 1991* (Cth); the *Trusts Act 1975* (Qld); the Tax Legislation; any regulations made under any of the above statutes; any common law decisions relating to superannuation practice or policy, and any other lawful requirements, policies or practices of the Federal Commissioner for Taxation, the Australian Taxation Office, APRA, ASIC or any other body that regulates superannuation law or retirement benefits in Australia;

If there is an inconsistency arising between the various sources comprising the Prescribed Law, then the Act and Regulations shall prevail over all other sources;

- (www) **"Preservation Age"** means:
- (i) For a person born before 1 July 1960 — 55 years; or
  - (ii) For a person born during the year 1 July 1960 to 30 June 1961 — 56 years; or



- (iii) For a person born during the year 1 July 1961 to 30 June 1962 — 57 years; or
- (iv) For a person born during the year 1 July 1962 to 30 June 1963 — 58 years; or
- (v) For a person born during the year 1 July 1963 to 30 June 1964 — 59 years; or
- (vi) For a person born after 30 June 1964 — 60 years;
- (xxx) **“Product Disclosure Statement”** means a product disclosure statement under section 761A of the Corporations Act;
- (yyy) **“Public Sector Superannuation Scheme”** means a Scheme for the payment of superannuation, retirement or death benefits, where the Scheme is established:
  - (i) By or under a law of the Commonwealth or of a State or Territory; or
  - (ii) Under the authority of:
    - (A) The Commonwealth or the government of a State or Territory; or
    - (B) A municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth or of a State or Territory;
- (zzz) **“Receiving Spouse”** means a receiving spouse as defined by Regulation 6.46;
- (aaaa) **“Regulator”** means the person or body who is administering the Act and monitoring the activities of the Fund including the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) or the Federal Commissioner of Taxation;
- (bbbb) **“Regulations”** means the Superannuation Industry (Supervision) Regulations 1994 (Cth) as amended from time to time;
- (cccc) **“Regulated Superannuation Fund”** is a Fund that:
  - (i) Has a Trustee; and
  - (ii) Either the Trustee of the Fund must be a constitutional corporation pursuant to a requirement contained in the governing rules or the governing rules must provide that the sole purpose of the fund is the provision of old-age pensions; and
  - (iii) The Trustee must have given to APRA (or such other body or person specified in the Regulations), a written notice that is in the Approved Form and signed by all Trustees electing that the Act is to apply in relation to the Fund;
- (dddd) **“Relatives”** means those set out in s 10 of the Act, namely:
  - (i) A parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the individual or his or her spouse; or
  - (ii) A spouse of the individual or of any other individual referred to in paragraph 1(dddd)(i);

- (eeee) **"Related Party"** means the Members, the Member's Associates, the Employer-Sponsors of the Fund and the Employer-Sponsor's Associates;
- (ffff) **"Restricted Investments"** means those as listed in clause 18 to this Deed and any other restricted investments under the Prescribed Law;
- (gggg) **"Reversionary Pension Nomination"** means a nomination made by a Member when commencing a Pension in accordance with clause 9.6 providing for the Pension to continue to be paid after the Member's death to an eligible reversionary Beneficiary under the Prescribed Law;
- (hhhh) **"Scheme"** means:
  - (i) Any agreement, arrangement, understanding, promise or undertaking:
    - (A) Whether express or implied; or
    - (B) Whether or not enforceable, or intended to be enforceable, by legal proceedings; and
  - (ii) Any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;
- (iiii) **"SMSF" or "Self Managed Superannuation Fund"** means a complying Self Managed Superannuation Fund under the Prescribed Law;
- (jjjj) **"Sole Purpose Rule"** means the requirements for a complying SMSF as set out under s 62 of the Act and summarised in clause 4.1 of this Deed;
- (kkkk) **"Splittable Contributions"** are defined under Regulation 6.42;
- (llll) **"Spouse"** of a person includes another person (whether of the same sex or a different sex) who lives with the person on a genuine domestic basis as a couple although not legally married;
- (mmmm) **"Standard Employer-Sponsor"** means an Employer who contributes to the Fund for the benefit of a Member, under an arrangement between the Employer and the Trustee;
- (nnnn) **"Superannuation Holding Accounts Special Account"** means the Special Account established by s 8 of the Small Superannuation Accounts Act 1995 (Cth);
- (oooo) **"Superannuation Interest"** means a beneficial interest in a superannuation entity;
- (pppp) **"Tax File Number"** has the meaning given by s 202A of the Income Tax Assessment Act 1936 (Cth);
- (qqqq) **"Tax Legislation"** means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth) as amended from time to time;
- (rrrr) **"Transition to Retirement Pension"** means a 'Transition to Retirement Income Stream' under Regulation 6.01 as summarized in Schedule 6 to this Deed;
- (ssss) **"Trustee"** means the person, persons or the Corporate named in Schedule 1 to this



Deed;

- (tttt) **"Year of Income"** means a period that is, for the purposes of the Tax Legislation, a year of income of the Fund.

## **2. Interpretation**

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In this Agreement, unless the context requires otherwise:

- (a) A reference to a word includes the singular and the plural of the word and vice versa;
- (b) A reference to a gender includes any gender;
- (c) A term which refers to a natural person includes a company, a partnership, an association, a corporation, a body corporate or a joint venture;
- (d) Headings are included for convenience only and do not affect interpretation;
- (e) A reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- (f) A reference to a part, clause, part, annexure, exhibit or schedule is a reference to an item of that type in this Agreement;
- (g) A reference to this Agreement includes any annexure and any schedule (if any) to this Agreement;
- (h) A reference to a statute or statutory provision includes but is not limited to a statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision;
- (i) A covenant or an agreement between more than one person binds them jointly and severally.
- (j) A reference to any legislation (including subordinate legislation) in this Deed shall include any amendments, variations or new legislation replacing the legislation from time to time;
- (k) Any reference to "State" includes a reference to "Territory".
- (l) If any term or provision of the Deed is unenforceable or inconsistent with the Prescribed Law then it shall be severed from the Deed or read down but so as to maintain all other terms of this Deed so far as it is possible to do so.

## **3. Basic Rules for Self Managed Superannuation Funds**

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Subject to the Act and Regulations, the Fund is a Self Managed Superannuation Fund only if it satisfies all of the conditions in either 3.2 or 3.3.

### **3.1. Extended Definitions**

In this clause:

- (a) The meaning of "Employee" in the Definitions is extended such that a person is also

taken to be an employee of another person ("Other Person") if the Other Person is:

- (i) A Relative of the Other Person;
  - (ii) Either a Company of which the Other Person or a Relative of the Other Person is a director or a Company related to that Company;
  - (iii) A Trustee of a trust of which the Other Person or a Relative of the Other Person is a beneficiary;
  - (iv) A partnership where the Other Person or a relative of the Other Person is either an individual partner, a director of a Company that is a partner or a trustee of a trust that is a partner in the partnership.
- (b) "Relative", in relation to an individual means:
- (i) A parent, child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the individual or of his or her Spouse of former Spouse; or
  - (ii) A Spouse or former Spouse of the individual, or of an individual referred to in 3.1(b)(i).

### **3.2. Funds Other Than Single Member Funds**

Where the Fund has more than one member, the Fund is a Self Managed Superannuation Fund if and only if it satisfies the following conditions:

- (a) It has fewer than 5 members;
- (b) If the Trustees of the fund are individuals - each individual Trustee is a member of the Fund;
- (c) If the Trustee of the fund is a Company - each Director of the Company is a Member of the Fund;
- (d) Each Member of the Fund is:
  - (i) A Trustee of the Fund; or
  - (ii) In the case of a Corporate Trustee, each Member of the Fund is a Director of the Company;
- (e) No Member of the Fund is an Employee of another Member of the Fund, unless the Members are Relatives.
- (f) No Trustee of the Fund receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund;
- (g) If the Trustee of the Fund is a Company - no Director of the Company receives any remuneration from the Fund or from any person (including the Company) for any duties or services performed by the director in relation to the Fund.



### **3.3. Funds with Single Members**

Where the Fund only has one Member, the Fund is a Self Managed Superannuation Fund if and only if it satisfies the following conditions:

- (a) If the Trustee of the Fund is a Company:
  - (i) The Member is the sole Director; or
  - (ii) The only Directors are the Member and one Relative of the Member;
  - (iii) The only Directors are the Member and one other person who is not the Member's Employer; and
- (b) If the Trustees of the Fund are individuals:
  - (i) The Trustees are the Member and one Relative of the Member; or
  - (ii) The Trustees are the Member and one other person who is not the Member's Employer; and
- (c) No Trustee of the Fund receives any remuneration from the Fund or from any person for any duties or services performed in relation to the Fund;
- (d) If the Trustee of the Fund is a Company - no Director of the Company receives any remuneration from the Fund or from any person (including the Company) for any duties or services performed in relation to the Fund.

### **3.4. Certain Other Persons May Be Trustee**

The Fund does not fail to satisfy the conditions in clauses 3.2 or 3.3 because:

- (a) A Member of the Fund has died and the Member's LPR is Trustee of the Fund or a Director of a Corporate Trustee of the Fund in place of the Member for the period from when the Member dies until such time as death benefits commence to be payable in respect of the Member of the Fund; or
- (b) A Member's LPR is Trustee of the Fund or Director of a Corporate Trustee in place of the Member during any period where the Member is under a legal disability or the LPR has an enduring power of attorney from the Member; or
- (c) If a Member is under a legal disability because of age but does not have a LPR and the Member's parent or guardian is Trustee of the Fund or Director of a Corporate Trustee in place of the Member; or
- (d) An appointment under s 134 of the Act of an acting Trustee of the Fund is in force.

## **4. The Fund**

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### **4.1. Sole Purpose**

It is a requirement of this Deed that:

- (a) The trustee of the Fund must be a Constitutional Corporation; or

- (b) Where the trustee is a natural person or persons, that the sole or primary purpose of this Fund is to provide Old Age Pensions to its Members.

#### **4.2. Sub-Plans**

The Trustee may, for any objective it considers reasonable and prudent, break up the Fund into one or multiple Sub-Plans provided that no Member's Benefits or entitlements are reduced without informed, written consent being given from the Member.

The Trustee must maintain the Memberships, Contributions, Assets and Liabilities in the Sub-Plan for payment of Benefits separately from the remainder of the Fund.

### **5. Membership**

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#### **5.1. Initial Members of the Fund**

The initial Members of the Fund shall be those persons named in Schedule 1 to this Deed. Each of the initial Members have completed and submitted a Membership Application to the Trustee. Having completed and submitted a Membership Application to the Trustee, each initial Member is deemed to be bound by the provisions of this Deed.

#### **5.2. Additional Members**

- (a) Application by Additional Members

The Trustee may at anytime admit additional person/s as Members to the Fund provided that each of the Applicants have completed and submitted a Membership Application.

- (b) Eligible Members

The Trustee may admit as a Member, any person who is or has at any time been an Employee or a Child of a Member and/or any other person acceptable to the Trustee and Regulator. In determining whether an Applicant is acceptable, the Trustee may request in writing such information as the Trustee thinks necessary for this purpose. If the Applicant fails to provide the requested information, then the Trustee may decline to accept the Applicant as a Member of the Fund.

- (c) Additional Member who is a Minor

A Minor's parent or guardian may make application for the Minor to become a Member of the Fund by completing a Membership Application on behalf of the Minor. The parent or guardian of the minor shall make all decisions regarding the Minor's membership in the Fund until the Minor reaches the age of eighteen (18) years. Once the Minor reaches the age of eighteen (18) years then the Minor will become a Trustee of the Fund.

- (d) Additional Member to Consent to be Trustee

Each Applicant must consent to becoming a Trustee of the Fund or in the case of a Corporate Trustee, a Director unless the Applicant is disqualified from acting as Trustee.

- (e) Bound by Deed

Each Applicant of the Fund who completes and submits a Membership Application to the Trustee is deemed to be bound by the provisions of this Deed (as if the Applicant was an initial



Member under this Deed).

- (f) Comply with SMSF Rules

When admitting new Members to the Fund, the Trustee must ensure that it does not offend the rules for SMSF as set out in clause 3.

- (g) Commencement of Membership

The Applicant's commencement as a Member of the Fund shall be such date as specified by the Trustee or if no date is specified, shall be seven (7) days from the date which the Applicant submitted his or her Membership Application to the Trustee. The Applicant will become a Trustee of the Fund on the same date as the Applicant becomes a Member of the Fund.

- (h) Conditions on Membership

The Trustee may impose such conditions on the Applicant's membership and may alter the conditions at anytime.

### **5.3. Member Disclosure**

A Member must immediately notify the Trustee if:

- (a) The Member becomes an Employee of another Member who is not a Relative of the Member;
- (b) The Member's circumstances have changed such that the Member is disqualified from acting as Trustee.

If the Trustee receives notice of either of the above events, then the Trustee must ensure that the Member ceases to be a Member of Fund within six (6) months of the event having occurred.

### **5.4. Classes of Members**

The Trustee may split the Members into different classes as it deems appropriate and attach different conditions, criteria, Benefits and entitlements to each class provided that the split does not cause any Member's Benefits or entitlements to be reduced without consent.

### **5.5. Ceasing of Membership/Trusteeship**

A person will cease to be a Member of the Fund upon any of the following events:

- (a) The Member's death; or
- (b) The Member ceasing to be Trustee of the Fund or in the case of a Corporate Trustee, ceasing to be a Director; or
- (c) When Benefits payable to or for the Member cease to be payable; or
- (d) When the Member's Benefits are paid to the Member or to an Approved Arrangement in favour of the Member.

Further, when a person ceases to be a Member of a Fund, then that Member also automatically ceases to be Trustee of the Fund.

## **6. Accounts**

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### **6.1. Accumulation Account**

(a) Establish Accumulation Account

The Trustee must establish an Accumulation Account for each new Member of the Fund.

(b) Credits to Accumulation Account

The Trustee must credit to a Member's Accumulation Account:

- (i) All Contributions made by, for, or in respect of a Member;
- (ii) All Contributions allocated to the Member's Accumulation Account from the Non-Compulsory Contributions Reserve;
- (iii) All Benefits and entitlements which are rolled-over or transferred to the Fund in respect of a Member pursuant to this Deed;
- (iv) All income which is allocated to the Member's Accumulation Account, earned from investments of the Fund or in respect of a sub-plan (where a Member is a member of a sub-plan) attributable to the amounts in 6.1(b)(i) and 6.1(b)(ii);
- (v) Any amount allocated to the Member's Accumulation Account by the Trustee from any reserves held by the Fund or sub-plan (where the Member is a member of a sub-plan);
- (vi) An amount transferred from the Pension Reserve of a Beneficiary of the Member;
- (vii) The proceeds of any insurance policy or annuity effected by the Trustee for a Member or a Beneficiary which the Trustee deems appropriate to credit to the Member's Accumulation Account;
- (viii) The current surrender value of any capital guaranteed life assurance policy taken out over the life of a Member by the Trustee;
- (ix) Any refunds of overpaid tax, levies or other charges together with interest accrued on such sums (if any) in circumstances where the tax, levies or other charges were directly deducted from the Contributions made by, for or in respect of a member; and
- (x) Any other amount that the Trustee thinks appropriate to credit to the Member's Accumulation Account.

(c) Deductions from Accumulation Account

The Trustee must debit from a Member's Accumulation Account, where necessary:

- (i) Such proportion as the Trustee deems appropriate of:
  - (A) The expenses associated with setting up, operating, and winding up



the Fund;

- (B) Any administrative costs associated with the setting up, operating, and winding up of the Fund;
  - (C) The premiums of any group insurance policies taken out by the Trustee for a number of or class of Members and/or Beneficiaries;
  - (D) Any tax payable in respect of any income derived by the Fund and credited to the Member's Accumulation Account;
- (ii) Any taxation assessed on the Member's Contributions, payment of Benefits to the Member or Member's Beneficiaries or as a consequence of a roll-over or transfer which are required to be taken directly from a Member's Contributions;
  - (iii) Any amounts required to be paid to the Regulator as a consequence of a Member failing to provide the Member's Tax File Number;
  - (iv) Any amounts required to be paid by the Fund for overpayment of the Government Co-Contribution;
  - (v) Any amount rolled-over or transferred out of the Fund in respect of a Member;
  - (vi) The costs of any annuity or premiums on any policy of insurance effected for a Member by the Trustee;
  - (vii) Any amount allocated to a Pension Account of a Beneficiary; and
  - (viii) An amount to be allocated and credited to another Member's Accumulation Account pursuant to a Contributions-Split accepted by the Trustee;
  - (ix) Any other amount that the Trustee thinks appropriate to debit from the Member's Accumulation Account.

Where a Trustee has discretion to determine what proportion of amounts should be debited from a Member's Accumulation Account, the Trustee must exercise that discretion in a just, reasonable and consistent fashion, taking into consideration any extraordinary circumstances of any Members which may affect the allocation of debits from a Member's Accumulation Account. The Trustee's decision as to the allocation of amounts to be debited shall be final.

## **6.2. Accounts for Non-Member Spouses**

### **(a) Family Court Orders**

If an order is made under the *Family Law Act* with respect to any Member's Superannuation Interest, the Trustee may be required to:

- (i) Establish and maintain a new Accumulation Account for a Non-Member Spouse;
- (ii) Transfer or roll-over a Non-Member Spouse's Superannuation Interest to another Approved Fund;
- (iii) Split with the Non-Member Spouse, the sum standing to the credit of a

Member's Accumulation Account;

- (iv) Classify or categorise part of a Member's Superannuation Interest which is to be paid to a Non-Member Spouse;
- (v) Notify the Members and the Non-Member Spouse of any orders requiring a Payment Split.

(b) Costs

The Trustee may deduct any costs of complying with the order from the Non-Spouse's Interest including any costs incurred through the Trustee seeking professional advice.

### **6.3. Non-Compulsory Contributions Reserve**

(a) Non-Mandated Contributions

The Trustee may establish a Non-Compulsory Contributions Reserve for the Fund or for each sub-plan (where there are sub-plans within the Fund) to which the Trustee may credit all Non-Mandated Contributions (voluntary).

(b) Allocation of Funds from Non-Compulsory Contributions Reserves

Upon any amounts being received into the Non-Compulsory Contributions Reserve, the Trustee must, in the Trustee's discretion, either:

- (i) Use the reserve for the Fund's activities; or
- (ii) Within twenty-eight (28) days (or if not reasonably practicable, such longer period as is reasonable in the circumstances), allocate the amounts to the Members' Accumulation Accounts in such proportions as the Trustee shall determine.

(c) Direct Allocation from Non-Compulsory Contributions Reserves to Accumulation Accounts

Notwithstanding the above, nothing in this clause shall prevent the Trustee from allocating and crediting any Non-Mandated Contributions received directly to the Members' Accumulation Accounts (rather than to the Non-Compulsory Contributions Reserve).

### **6.4. Income Reserve**

(a) Credit Income to Income Reserve

Subject to the Prescribed Law, the Trustee may credit:

- (i) Any income earned by the Fund or by a sub-plan (where a sub-plan exists in the Fund) through investments; and
- (ii) Any proceeds of an insurance policy that the Trustee decides not to credit immediately to the Members' Accumulation Accounts or Pension Reserves;

to an Income Reserve.



(b) Application of Income Reserves

The Trustee, in its discretion, may use the Income Reserves for such purposes of the Fund as the Trustee deems fit including (but not limited) to smoothing out investment earnings being allocated to Member's Accumulations Accounts and partially or fully satisfying any debts owing by the Fund.

(c) Allocation of Income Reserve to Accumulation Accounts

The Trustee may allocate part or all of the remaining Income Reserve:

- (i) Where the income is earned by the Fund's investments - to the Member's Accumulation Accounts; or
- (ii) Where the income is earned by the Fund attributable to investments for a sub-plan - to the Accumulation Accounts of Members of the sub-plan;

in such proportions as the Trustee, in its sole discretion, may decide.

(d) Exercise of Discretion

The Trustee must exercise its discretion in a just, reasonable and consistent fashion, taking into consideration any extraordinary circumstances of any Members which may affect the allocation of Income Reserves to a Member's Accumulation Account. The Trustee's decision as to the proportion of Income Reserves allocated to Member's Accumulation Accounts shall be final.

(e) Income Tax from Income Reserve

The Trustee must ensure payment is made of any tax assessable in respect of income earned by the Fund and deduct any taxation assessed from the Income Reserves or the Member's Accumulation Accounts as is required.

## 6.5. Pension Reserve

(a) Credits to Pension Reserves

If the Trustee decides to pay a pension to a Member or Beneficiary, the Trustee **must** transfer or allocate amounts to one or multiple pension reserves established in order to pay the pension. The Trustee must reduce the Members' Accumulation Accounts to the extent of any amounts transferred from a Member's Accumulation Account into a pension reserve.

(b) Debits to Pension Reserve

All expenses incurred in establishing or administering a pension reserve including taxes, levies or other outgoings associated with the reserve may be deducted from the reserve balance.

## 6.6. Other Reserves

(a) Credits to Other Reserves

The Trustee may, if it desires, transfer or allocate amounts which are not already allocated to the Member's Accumulation Accounts to one or multiple other reserves as the Trustee may establish from time to time.

(b)      **Debits to Other Reserves**

All expenses incurred in establishing or administering any other reserve including taxes, levies or other outgoings associated with the reserve may be deducted from the reserve balance.

**6.7.      Transfer between Accounts or Reserves**

The Trustee may, on receipt of advice from an Actuary, transfer amounts between the Member's Accumulation Accounts, Income Reserves, Pension Reserves and Other Reserves as the Trustee thinks fit provided the Trustee does so in a just, reasonable and consistent fashion.

**7.      Contributions**

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**7.1.      When Contributions May be Accepted**

From 1 July, 2007, the Trustee may only accept Contributions that are made in accordance with the Prescribed Law and more particularly, regulation 7.04 of the Regulations as summarised below.

The Trustee may accept the following Contributions where the Member is:

- (a)      **Under 65** - all Contributions made in respect of that Member; or
- (b)      **Over 65 but under 70** - Contributions made in respect of the Member that are:
  - (i)      Mandated Employer Contributions;
  - (ii)      If the Member has been Gainfully Employed on at least a Part-Time Basis during the financial year in which the Contributions are made then the Trustee may accept Employer Contributions (except Mandated Employer Contributions) or Member Contributions;
  - (iii)      Payment under s 31(1)(b)(i) or (ii) of the *First Home Saver Accounts Act 2008*; or
- (c)      **Not under 70, but under 75** - Contribution made in respect of a Member that are:
  - (i)      Mandated Employer Contributions, or
  - (ii)      If the Member has been Gainfully Employed on at least a Part-Time Basis during the financial year in which the contributions are made then the Trustee may accept Contributions received on or before the day that is twenty-eight (28) days after the end of the month in which the Member turns 75 that are either Employer Contributions (except Mandated Employer Contributions) or Member Contributions made by the Member; or
- (d)      **Not under 75** - Contributions made in respect of a Member that are Mandated Employer Contributions.

**7.2.      Tax File Number**

The Trustee must not accept any Member Contributions if the Member's Tax File Number has not been quoted to the Trustee.



### **7.3. Maximum Fund Cap Contributions**

The Trustee must not accept any Fund-Capped Contributions in a financial year of a member that exceed:

- (a) If a Member is 64 or less on 1 July of the financial year - three (3) times the amount of the Non-Concessional Contributions Cap; or
- (b) If the Member is 65 but less than 75 on 1 July of the financial year - the Non-Concessional Contributions Cap.

### **7.4. Government Co-Contributions**

The Trustee may accept Contributions received in respect of a Member under the Co-Contribution Act.

### **7.5. Contribution for Spouse or Child**

The Trustee may accept Eligible Spouse Contributions or Child Contributions subject to the rules in r 7.04 of the Regulations.

### **7.6. Splitting-Contributions**

The Trustee may accept Splitting-Contributions in accordance with clause 7.12.

### **7.7. Contributions in Specie**

The Trustee must not accept any Contributions in specie to the Fund so as to cause a contravention of the Restricted Investment rules unless an exemption applies under the Prescribed Law.

### **7.8. Contributions from Employers**

The Trustee may accept Contributions from any Employer, even if such Employer has not given written notice of their agreement to the terms and conditions in Deed. Notwithstanding this, a sample application to become a Standard Employer-Sponsor appears in Schedule 3 to this Deed.

### **7.9. Allocation of Funds**

The Trustee must allocate Contributions received by, from or in respect of Members within twenty-eight (28) days after the end of the month or, if not reasonably practicable, within such longer period as is reasonable in the circumstances.

### **7.10. Contributions received as Preserved Benefits**

From 1 July, 1999, all Contributions which are made by or on behalf of a Member to the Fund and all earnings after that date are deemed Preserved Benefits, regardless of who makes the Contribution and whether or not they are entitled to a concession for such Contribution under the Tax Legislation.

### **7.11. Return of Non-Complying Contributions**

Where a sum is unable to be accepted by the Trustee under the Prescribed Law, the sum must be returned to the person or entity who paid the sum within thirty (30) days of the Trustee becoming aware that the sum was received in a manner inconsistent with the Prescribed Law.

## 7.12. Contribution-Splitting

### (a) Application to Trustee

A Member may apply to the Trustee to roll-over, transfer or allot an amount of Benefits for the benefit of the Member's Spouse. An application to the Trustee may be made in the Approved Form (as at the date of this Deed - a 'Superannuation Contributions Splitting Application') or subject to the Prescribed Laws, as otherwise approved by the Trustee.

### (b) Contributions Able to be Split

The Trustee may only split Splittable Contributions. The Member may apply for the roll-over, transfer or allotment of the amount of Splittable Contributions made by or on behalf of the Member in:

- (i) The last financial year that ended before the application (ie. a Member can only request a contributions split from 1 July for Contributions made in the year up to the previous 30 June); or
- (ii) The financial year in which the application is made but only where the Member's entire Benefit is to be rolled-over or transferred in that year.

### (c) Contributions Unable to be Split

Contributions which are not eligible for splitting are:

- (i) Existing Benefits and Contributions made before 1 January, 2006;
- (ii) Amounts rolled-over or transferred from another superannuation fund;
- (iii) An amount allotted to a Member's Account under Division 6.7 of the Regulations;
- (iv) A superannuation Lump Sum that is paid from a foreign superannuation fund;
- (v) A directed termination payment or an amount that would form part of the Contributions segment of the Superannuation Interest; and
- (vi) A Contribution by the Commonwealth, a state or territory to a Public Sector Superannuation Scheme in relation to a Benefit that accrued in a financial year that commenced prior to 1 July, 2005;
- (vii) Those subject to a Payment Split or Payment Flag.

### (d) Invalid Applications for Contribution-Splitting

A Member's application under clause 7.12 is invalid if:

- (i) The Member has already made a Splitting Application in the current Year of Income, which the Trustee is either still considering or has already motioned;
- (ii) It relates to Benefits exceeding the Maximum Splittable Amount of a Member's Contribution for the year;



- (iii) At the time of the Contribution, the Member's Spouse is aged sixty-five (65) years or more or is aged between the relevant Preservation Age and sixty-five (65) years and has satisfied the "Retirement" Condition of Release.

However, an application may be valid if it includes a statement from the Receiving Spouse ("*Receiving Spouse's Statement*") that, at the time of the Contributions, they are either between their relevant Preservation Age and sixty-five (65) and not permanently retired, or that they are under their Preservation Age.

(e) Trustee's Decision

A Trustee may only accept a Member's Contribution-Splitting application if all of the following requirements are satisfied:

- (i) The application complies with Regulation 6.44;
- (ii) The Trustee has no reason to believe that the Receiving Spouse's Statement is untrue; and
- (iii) The application relates to an amount that is not more than the Maximum Splittable Amount for the Year.

The decision as to whether to accept a Member's Contribution Splitting application is at the sole discretion of the Trustee and the Trustee may accept an application subject to any terms and conditions it wishes to impose (subject to the Prescribed Law).

If the Trustee accepts a Member's Contribution Splitting application, then the Trustee must roll-over, transfer or allot the amount within ninety (90) days of receiving the Benefit.

(f) Consequences of Contributions Splitting

The Splitting of a Member's Contributions with his/her Spouse causes:

- (i) Either:
  - (A) A new superannuation Benefit to be created for the Spouse where the Trustee must credit the sum set out in the Contribution-Splitting Application subject to any terms and condition imposed by the Trustee;
  - (B) If the Receiving Spouse already has an interest in the Fund, credit the sum set out in the Contribution-Splitting Application to the existing interest of the Receiving Spouse;
- (ii) The new superannuation Benefit is treated as a roll-over if rolled over to another fund or if transferred to an account in the existing fund in the Spouse's name (it is not treated as a Contribution to the Spouse's fund);
- (iii) The new Benefit consists entirely of a taxable component;
- (iv) The Benefit rolled over or transferred for a Member's Spouse is deemed to be a Preserved Benefit unless and until the Trustee is satisfied that it is not a Preserved Benefit.

## **8. Payment of Benefits**

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### **8.1. Prescribed Law to Prevail**

The Trustee must only cash and pay benefits to the Members or other entitled persons in accordance with the Prescribed Law. To the extent that any of the provisions of this Deed may be inconsistent with the Prescribed Law, the Prescribed Law shall prevail.

### **8.2. Payment of Preserved Benefits**

The Trustee may only cash and pay a Member's Preserved Benefits in the Fund if a Condition of Release has been satisfied and subject to any Cashing Restrictions.

### **8.3. Payment of Restricted Non-Preserved Benefits**

The Trustee may only cash and pay a Member's Restricted Non-Preserved Benefits in the Fund if a Condition of Release has been satisfied and subject to any Cashing Restrictions.

### **8.4. Payment of Unrestricted Non-Preserved Benefits**

The Trustee may cash (subject to any Cashing Restrictions) and pay a Member's Unrestricted Non-Preserved Benefits at anytime on written request by the Member. It is not necessary that the Member satisfy a Condition of Release in order for the Unrestricted Non-Preserved Benefits to be paid.

### **8.5. Cashing Restriction "Nil"**

If the Cashing Restriction with respect to any of the Benefits above is "nil" then, then subject to any restrictions in this Deed or otherwise relating to commutation of a Pension to a Lump Sum, the Benefits may be cashed as one or multiple Lump Sums, one or multiple Pensions and/or the purchase of one or multiple Annuities.

### **8.6. Conditions of Release**

The Conditions of Release are as set out in Schedule 1 of the Regulations. In summary, the Conditions of Release are as follows:

- (a) **Retirement** - the Retirement of a Person is taken to occur:
  - (i) In the case of a person who has reached the Preservation Age that is less than 60 years of age:
    - (A) If an arrangement under which the Member was Gainfully Employed has come to an end; and
    - (B) The Trustee is reasonably satisfied that the person intends never to again become Gainfully Employed, either on a Full-Time or Part-Time basis; or
  - (ii) In the case of a person who has attained the age of 60:
    - (A) An arrangement under which the Member was Gainfully Employed has come to an end and either the person has attained that age on or before the ending of employment; or



- (B) The Trustee is reasonably satisfied that the person intends never to again become Gainfully Employed, either on a Full-Time or a Part-Time basis;
- (b) **Attaining age 65;**
- (c) **Termination of Gainful Employment** - termination of 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;
- (d) **Termination of Gainful Employment with Preserved Benefits <\$200** - termination of Gainful Employment with a Standard Employer-Sponsor of the Fund on or after 1 July 1997 (where the Member's Preserved Benefits in the Fund at the time of the termination are less than \$200);
- (e) **Terminal Medical Condition** - in relation to a person exists at a particular time if the following circumstances are satisfied:
  - (i) Two (2) registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the certification period) that ends not more than twelve (12) months after the date of the certification;
  - (ii) At least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
  - (iii) For each of the certificates, the certification period has not ended.
- (f) **Death** - see clause 8.7;
- (g) **Permanent Incapacity** - in relation to a Member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, due to the ill-health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;
- (h) **Temporary Incapacity** - in relation to a Member who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental) that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity;
- (i) **Severe Financial Hardship** - a person is taken to be in Severe Financial Hardship if:
  - (i) The Trustee of the Fund is satisfied:
    - (A) Based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments, that the person has received Commonwealth income support payments for a continuous period of 26 weeks and the person was in receipt of payments of that kind on the date of the written evidence; and
    - (B) That the person is unable to meet reasonable and immediate family living expenses; or

- (ii) The person has reached the age that is the person's Preservation Age plus 39 weeks and the Trustee of the Fund is satisfied:
  - (A) Based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments — that the person received Commonwealth income support payments for a cumulative period of 39 weeks after the person reached the person's Preservation Age; and
  - (B) That the person was not Gainfully Employed on a Full-Time, or Part-Time basis on the date of the application for cashing of his or her Preserved Benefits, or Restricted Non-Preserved Benefits, in the Fund.

However, the written evidence provided for this Condition of Release is of no effect if it is dated more than twenty-one (21) days before the date of the person's application to the Trustee for cashing of his or her Preserved Benefits or Restricted Non-Preserved Benefits.

- (j) **Compassionate Grounds** - are those grounds listed in reg 6.19A of the Regulations, being (in summary):
  - (i) To pay for medical treatment or medical transport for the person or a Dependant; or
  - (ii) To enable the person to make a payment on a Loan, to prevent:
    - (A) Foreclosure of a mortgage on the person's principal place of residence; or
    - (B) Exercise by the mortgagee of an express, or statutory, power of sale over the person's principal place of residence; or
  - (iii) To modify the person's principal place of residence, or vehicle, to accommodate the special needs of the person, or a Dependant, arising from severe disability; or
  - (iv) To pay for expenses associated with the person's palliative care, in the case of impending death; or
  - (v) To pay for expenses associated with a Dependant's:
    - (A) Palliative care, in the case of impending death; or
    - (B) Death; or
    - (C) Funeral; or
    - (D) Burial; or
    - (E) To meet expenses in other cases where the release is consistent with a ground mentioned in paragraphs 8.6(j)(i) to 8.6(j)(v), as the Regulator determines.



- (k) **Attaining Preservation Age;**
- (l) **Lost Member** - Being a lost member who is found, and the value of whose Benefit in the Fund, when released, is less than two hundred dollars (\$200);
- (m) **Temporary Residents** - former temporary resident to whom reg 6.20A or 6.20B of the Regulations applies, requesting in writing the release of his or her Benefits;
- (n) **Transitional Release Authority** - A person gives a transitional release authority to the Trustee under section 292-80B of the Income Tax (Transitional Provisions) Act 1997;
- (o) **Release of Benefits under ATO authority** - either:
  - (i) A person gives a release authority to a superannuation provider under subsection 292-410(1) of the *Income Tax Assessment Act 1997* (Cth);
  - (ii) The Commissioner of Taxation gives a released authority to the Trustee under s 292-410(4) of the *Income Tax Assessment Act 1997* (Cth);
- (p) **Release to ATO** - the Trustee is required to pay an amount to the Commissioner of Taxation under the Superannuation (Unclaimed Money and Lost Members) Act 1999 for the person's Superannuation Interest in the Fund.
- (q) **Any other condition**, if expressed to be a Condition of Release under the Act.

#### 8.7. **Payment of Death Benefit**

- (a) When Payable

A Member's Death Benefits becomes payable upon the Member's death or upon the death of a Spouse who is receiving a Pension. A Member's Death Benefit must be paid as soon as practicable after the Member's death.

- (b) Calculation

A Member's Death Benefit is the balance credited to the Member in the Member's Accumulation Account less any duties, fees, taxes or reasonable expenses levied or incurred with respect to the payment of the Death Benefit.

- (c) Trustee's Discretion as to Recipient

Subject to any valid Reversionary Pension Nomination, Binding Death Nomination or Non-Binding Death Nomination by the deceased Member, the Trustee shall, in its sole discretion elect, having due regard to any wishes of the Member contained in a Preferential Death Nomination or an invalid or failed Reversionary Pension Nomination, Binding Death Nomination or Non-Lapsing Binding Death Nomination, which of the following persons shall receive the Member's Death Benefit (noting that the Trustee may decide to pay the entire Death Benefit to only one of these persons):

- (i) The Member's Legal Personal Representative; and/or
- (ii) The Member's Dependants.

By way of clarity, if a Member has made a Reversionary Pension Nomination and either a

Binding Death Nomination or Non-Binding Death Nomination which conflict (e.g. nominate different Beneficiaries or methods by which they are to take the Death Benefit), then the Reversionary Pension Nomination will prevail (unless an express contrary intention exists in the Reversionary Pension Nomination or the Binding Death Nomination or Non-Lapsing Binding Death Nomination), even if the Reversionary Pension Nomination was made prior to the Binding Death Nomination or Non-Binding Death Nomination.

(d) Notifying Death Benefit Beneficiary

If on a Member's death, the Death Benefit is payable to a person or persons other than the deceased Member's LPR, then the Trustee must notify such person or persons as to why the death benefits are payable to them, the sums payable and any conditions on which the sums are to be paid.

(e) Lost Death Benefit Beneficiary

If the Trustee, after exhausting all reasonable efforts, is unable to locate a Dependant to whom death benefits are payable, then the Trustee may, in its sole discretion, decide to pay such part of the death benefits as the lost Dependant was to receive to the deceased Member's LPR or other remaining Dependents. The Trustee shall not be liable or subject to any claim or action as a result of exercising this discretion, provided the Trustee has exhausted all reasonable efforts to locate the lost Dependant.

(f) Method of Payment

The Trustee may pay the Death Benefit in the form of a Lump Sum, one or more Pensions (subject to clauses 9.6 and 9.7) or Annuities as the Trustee in its sole discretion thinks fit.

(g) Discharge of Trustee

The receipt of the Death Benefit (or any part of it) by a Dependant, LPR or other person discharges the Trustee from liability insofar as the Trustee is not responsible to see to its proper application.

(h) Anti-detriment Payment

Where a Death Benefit is to be paid in the form of a lump sum to a Spouse, former Spouse or Child of the deceased Member, then the Trustee may also pay to the Spouse, former Spouse or Child an anti-detriment payment from the reserves of the Fund or from such other source (such as life insurance) permitted by the Prescribed Law.

## **8.8. Preferential Death Nomination**

(a) Giving of Notice

At any time, a Member may provide the Trustee with a Preferential Death Nomination informing the Trustee of how the Member would prefer his or her Death Benefit to be paid but leaving the final decision as to whom the Death Benefit will be paid to the discretion of the Trustee.

(b) Trustee's Discretion

On the death of a Member who has provided a Preferential Death Nomination, the Trustee retains its discretion regarding payment of the Death Benefit (as in clause 8.7) but must make the eventual decision having given careful and due consideration to the Member's stated



intention contained in the Preferential Death Nomination and all the other relevant circumstances.

This in no way restricts the Trustee's ability to make a decision as to the payment of the Death Benefit which departs from a Member's Preferential Death Nomination.

(c) Requirements

A Preferential Death Nomination must:

- (i) Be in writing; and
- (ii) Be signed and dated by the Member making the Preferential Death Nomination; and
- (iii) Be delivered to the Trustee; and
- (iv) Only list the Member's Legal Personal Representative or Dependents as potential nominees.

A Preferential Death Nomination does not have to be witnessed. A sample form of Preferential Death Nomination appears in Schedule 4 to this Deed.

## **8.9. Binding Death Nomination**

(a) Giving of Notice

At any time, the Member may provide the Trustee with a Binding Death Nomination, directing the Trustee of the Fund where to pay some or all of the Member's Death Benefit. A Member may vary or revoke a Binding Death Nomination at anytime by written notice to the Trustee.

(b) When Trustee Bound

Unless the Binding Death Nomination is invalid, has lapsed, been revoked by the Member, is overturned by a Court or contravenes the Prescribed Law, the Trustee will be bound to pay the Member's Death Benefit in accordance with the notice. However, the Trustee will not be required to follow the Binding Death Nomination if the Trustee is aware that the paying the Death Benefit in accordance with the Binding Death Nomination would breach a court order.

(c) Requirements for Valid Notice

For a Binding Death Nomination to be valid:

- (i) It must be in writing; and
- (ii) It must be signed and dated by the Member making the Binding Death Nomination in the presence of two (2) witnesses who are both over the age of eighteen (18) and not a person mentioned in the Binding Death Nomination; and
- (iii) It must contain sufficient detail to identify the Member making the Binding Death Nomination; and
- (iv) It must contain a declaration by the witnesses which is signed and dated,

stating that the Binding Death Nomination was signed by the Member in their presence; and

- (v) It must be delivered to the Trustee; and
- (vi) It must be accepted by the Trustee (with such acceptance of a valid Binding Death Nomination not to be unreasonably withheld); and
- (vii) Each nominee under the Binding Death Nomination must be a LPR or Dependant of the Member making the Binding Death Nomination; and
- (viii) The allocation of the Death Benefit among the nominees must be clear; and
- (ix) It must be 'in effect' in that it has been renewed, signed, amended or confirmed within a three (3) year period from the day the Binding Death Nomination was made, or last signed, amended or confirmed.

A Member may also nominate a backup or alternative recipient, being either the Member's LP or one or more of the Member's Dependants to receive all of part of the Death Benefit in the event that the initial nomination should fail. A sample form for a Binding Death Nomination appears as Schedule 5 to this Deed.

(d) Trustee Must Supply Information

The acceptance of a Member's Binding Death Nomination is subject to the Trustee having supplied the Member with information that the Trustee believes the Member requires to allow the Member to make an informed decision on the making of a Binding Death Nomination. The Trustee should also recommend that the Member seek independent legal advice prior to making such a nomination.

## **8.10. Non-Lapsing Binding Death Nomination**

(a) Giving of Notice

At any time, the Member may provide the Trustee with a Non-Lapsing Binding Death Nomination, directing the Trustee of the Fund where to pay some or all of the Member's Death Benefit. A Member may vary or revoke a Non-Lapsing Binding Death Nomination at anytime by written notice to the Trustee.

(b) When Trustee Bound

Unless the Non-Lapsing Binding Death Nomination is invalid, has been revoked by the Member, has been overturned by a Court, or contravenes the Prescribed Law, the Trustee will be bound to pay the Member's Death Benefit in accordance with the notice. However, the Trustee will not be required to follow the Non-Lapsing Binding Death Nomination if the Trustee is aware that the paying of the Death Benefit in accordance with the Binding Death Nomination would breach a court order.

(c) Requirements for Valid Notice

For a Non-Lapsing Binding Death Nomination to be valid:

- (i) It must be in writing; and



- (ii) It must be signed and dated by the Member making the Non-Lapsing Binding Death Nomination in the presence of two (2) witnesses who are both over the age of eighteen (18) and not a person mentioned in the Non-Lapsing Binding Death Nomination; and
- (iii) It must contain a declaration by the witnesses which is signed and dated, stating that the Non-Lapsing Binding Death Nomination was signed by the Member in their presence; and
- (iv) It must be delivered to the Trustee; and
- (v) It must be accepted by the Trustee (with such acceptance of a valid Non-Lapsing Binding Death Nomination not to be unreasonably withheld); and
- (vi) Each nominee under the Non-Lapsing Binding Death Nomination must be a LPR or Dependant of the Member making the Non-Lapsing Binding Death Nomination; and
- (vii) The allocation of the Non-Lapsing Death Benefit among the nominees must be clear; and
- (viii) It must state that the notice will not lapse by passing of time.

A Member may also nominate a backup or alternative recipient, being either the Member's LPR or one or more of the Member's Dependents to receive all or part of the Death Benefit in the event that the initial nomination should fail. A sample form for a Binding Death Nomination appears as Schedule 5 to this Deed.

(d) **Trustee Must Supply Information**

The acceptance of a Member's Non-Lapsing Binding Death Nomination is subject to the Trustee having supplied the Member with information that the Trustee believes the Member requires to allow the Member to make an informed decision on the making of a Non-Lapsing Binding Death Nomination. The Trustee should also recommend that the Member seek independent legal advice prior to making such a nomination.

### **8.11. Automatic Revocation of Nomination**

Any valid Preferential Death Nomination, Binding Death Nomination or Non-Lapsing Binding Death Nomination by a Member is automatically revoked by a later Binding Death Nomination or Non-Lapsing Binding Death Nomination, regardless of whether or not the same type of nomination is made.

### **8.12. Deductions from Benefits**

Prior to making payment of any Benefits, the Trustee may deduct from the Member's Benefits, any taxation, administrative and insurance costs, levies and expenses relating to the creation, operation and winding up of the Fund applicable to the Member's Benefits.

### **8.13. Suspended or Terminated Benefits**

(a) **Circumstances Causing Suspension or Termination**

Subject to the Prescribed Law, a Beneficiary's Benefits payable out of the Fund will be suspended while or terminated if the Beneficiary:

- (i) Attempts to assign, alienate or charge all or part of their Benefit entitlement other than in accordance with the Prescribed Law;
  - (ii) Has their Benefits or entitlements vested in or made payable to another person or a government or public authority;
  - (iii) Commits an act of bankruptcy or is or becomes insolvent;
  - (iv) In the Trustee's opinion, is incapable of managing his/her own affairs;
  - (v) Has been found guilty of fraud or dishonesty;
- (b) Dealing with Suspended or Terminated Benefits

If all or any part of a Beneficiary's Benefits become payable during a period when the Benefits have been suspended or terminated, then the Trustee may, in its ultimate discretion, pay or apply the Benefits to:

- (i) The Beneficiary; or
- (ii) A Pension for the sole objective of applying the Benefits for the Beneficiary or their Dependants;

on the basis that the payment or application of the Benefits will be an absolute discharge to the Trustee and the Fund. After the payment or application, the Trustee is not responsible to see to the proper application of the Benefits.

#### **8.14. Procedural Requirements**

When making payment of Benefits, the Trustee must ensure that it:

- (a) Registers for pay as you go (PAYG) withholding tax
- (b) Obtains a tax file number declaration from the Member or Beneficiary receiving the Benefits;
- (c) Issues payment summaries; and
- (d) Complies with any other requirements as may be required under the Prescribed Law.

### **9. Payment of Pensions**

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#### **9.1. Manner of Payment of Benefits**

Although this Deed primarily contemplates payment of Pensions, the Trustee is not prevented from making Lump Sum payments of Benefits. The Trustee may pay any Pension permitted by the Prescribed Law to its Members, having regard to any restrictions, terms or conditions imposed on the type of Pension by the Prescribed Law.

#### **9.2. New Pensions Commencing After 30 June, 2007**

All new Pensions commencing after 20 September, 2007 must be paid as:



- (a) An Account-Based Pension - summarised in (A) in Schedule 6; or
- (b) A Transition to Retirement Pension - summarised in (B) in Schedule 6; or
- (c) An Allocated Pension; or
- (d) Any other form of Pension that the Trustee chooses to make available, subject to the Prescribed Law.

### **9.3. Existing Pensions**

Pensions which commenced prior to 20 September, 2007 and complied with the Pension rules existing at that time must continue to be paid in accordance with those rules (apart from Allocated Pensions).

The types of Pensions that may have commenced prior to 20 September, 2007 include (but are not limited to):

- (a) Allocated Pension;
- (b) Market Linked Pensions;
- (c) Lifetime Pensions;
- (d) Life Expectancy Pensions;
- (e) Lifetime Commutable Pensions;
- (f) Non-Commutable Allocated Pensions.

### **9.4. No Defined Benefit Pensions**

The Fund must not pay a Defined Benefit Pension to its Members or Beneficiaries.

### **9.5. Allocated Pensions which Commenced Prior to 1 July 2007**

Allocated Pensions which commenced prior to 1 July, 2007 under previous Pension standards can be paid in accordance with the Pensions standards (for Account-Based Pensions) from 1 July, 2008 without the need to commute and restart a new Pension.

### **9.6. Reversionary Pension Nomination**

A Member taking a Pension may make a Reversionary Pension Nomination when they commence a Pension from the Fund providing that upon the Member's death, the Pension is to continue to be paid to an eligible reversionary Beneficiary under the Prescribed Law.

### **9.7. Deceased Member's Pension to Spouse**

If a Member dies during a period in which they were receiving a Pension from the Fund, then the Member's Spouse, on application to the Trustee, may request to have the Pension continued, but only if the person was the Member's Spouse before the Member retired. The continuing Pension must comply with the Prescribed Law.

### **9.8. Restriction on Death Benefit Pensions to Children**

If a Member dies after 30 June, 2007 and part or all of the Member's Death Benefit is to be paid to a Dependant Child, then the Death Benefit may only be paid as a Pension if the Child:

- (a) Is under the age of eighteen (18); or
- (b) Is aged between eighteen (18) years and twenty-five (25) years and either was financially dependant on the Member or has a disability under the Disability Services Act 1986 (Cth).

### **9.9. Pension Reserve**

Before commencing payment of a Pension to a Member or Beneficiary, the Trustee must establish a Pension Reserve for the Member in accordance with clause 6.5.

### **9.10. Actuarial Certificate**

Unless provided otherwise by the Tax Legislation, the Trustee must obtain an Actuarial Certificate in relation to any Pension to be paid pursuant to the Prescribed Law.

### **9.11. Record Keeping**

The Trustee must ensure that the Fund's Minutes of Meetings record that the Member has:

- (a) Requested to commence a Pension; and
- (b) Except where the Member is requesting a Transition to Retirement Pension - met a Condition of Release.

### **9.12. Summaries of Pension Types and Requirements**

The summary of pensions in Schedule 6 is designed to reflect certain provisions (or parts of provisions) of the Act relating to Pensions. To the extent that those provisions of the Act may be:

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

If the situation in either paragraphs 9.12(a) or 9.12(b) apply or if the Trustee considers it otherwise appropriate, the Trustee may change the terms on which a current pension is payable, without being required to vary the Deed.

## **10. Lump Sum Payments**

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The Trustee may, on written request, commute any amount or pay any Benefit (other than a Total or Temporary Disablement Benefit) as a Lump Sum in one or more installments to a person who is entitled to receive a Pension from the Fund (other than a Transition to Retirement Pension) to the extent permitted by this Deed or the Prescribed Law.