

## Part 6 - Accounts of the Fund

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### **14 Trustee to open Accounts**

The Trustee has the power to open and operate the Accounts.

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### **15 Accumulation Account**

#### **15.1 Establishment**

The Trustee must establish an Accumulation Account in respect of each Member or Beneficiary.

#### **15.2 Amounts to be credited**

The Trustee must credit all amounts that are required by this deed and the Superannuation Law to be credited to the Accumulation Account, including:

- (a) Contributions;
- (b) the portion of the Earnings (if positive) that the Trustee determines in accordance with clause 17.4;
- (c) amounts received by transfer from Approved Benefit Arrangements;
- (d) proceeds of any Policy or Annuity attributable to the Member;
- (e) any Financial Assistance received by the Fund that is attributable to the Member;
- (f) any amounts transferred or Allotted from other Accounts;
- (g) any Levy or Shortfall Component paid in respect of the Member; and
- (h) any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

#### **15.3 Amounts to be debited**

The Trustee must debit all amounts that are required by this deed and the Superannuation Law to be debited to the Accumulation Account, including:

- (a) Benefits paid to Members or Beneficiaries;
- (b) the portion of the Earnings (if negative) that the Trustee determines in accordance with clause 17.4;
- (c) amounts transferred to Approved Benefit Arrangements;
- (d) any Tax calculated in accordance with clause 24 attributable to the Member for whom the Accounts or Account has been established;
- (e) any amounts transferred or Allotted to other Accounts;
- (f) any costs or expenses attributable to the Member including the cost of any Policies effected by the Trustee in respect of the Member; and

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

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## **16 Pension Account**

### **16.1 Establishment**

Where the Trustee determines to pay all or any of the Benefits to the Member as a Pension, the Trustee must establish a Pension Account in respect of the Member.

### **16.2 Amounts to be transferred**

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

### **16.3 Amounts to be credited**

The Trustee must credit to the Pension Account the portion of the Earnings (if positive) as the Trustee determines in accordance with clause 17.4, and any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

### **16.4 Amounts to be debited**

The Trustee must debit all amounts that are required by this deed and the Superannuation Law to be debited to the Pension Account, including:

- (a) Benefits to be debited to the Pension Account paid to Members or Beneficiaries;
- (b) the portion of the Earnings (if negative) that the Trustee determines in accordance with clause 17.4; and
- (c) any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

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## **17 Income Account**

### **17.1 Establishment**

The Trustee must establish an Income Account for the Fund.

### **17.2 Amounts to be credited**

The Trustee must credit the Income Account with amounts that are required by this deed and the Superannuation Law, including the Earnings (if positive) determined in accordance with clause 17.4 and any proceeds from Policies or Financial Assistance not credited to any other Account.

### **17.3 Amounts to be debited**

The Trustee must debit the Income Account with all amounts that are required by this Deed and the Superannuation Law including:

- (a) any amounts required under clause 21(b);
- (b) any losses on sale of investments;

- (c) any Tax or Levy not attributed to a Member Account; and
- (d) the cost of any Policy not credited to a Member Account.

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

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

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

#### **17.5 Distribution of Earnings**

Subject to clauses 18 and 20 and the Superannuation Law, the Fund Earning Rate determined under clause 17.4 must be used to determine, at the Trustee's discretion, the proportion of the Earnings to be credited or debited from the Income Account to other Accounts, including Member Accounts, Pension Accounts or Reserve Accounts.

#### **17.6 Trustee to notify Members**

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

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### **18 Fluctuation Account**

#### **18.1 Establishment**

The Trustee may establish a Fluctuation Account.

#### **18.2 Transfers to Fluctuation Account**

The Trustee must transfer any amount remaining in the Income Account after distribution of Earnings under clause 17.5 to the credit of the Fluctuation Account.

#### **18.3 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.

#### **18.4 Use of Fluctuation Account**

Subject to the Superannuation Law, the Fluctuation Account may be used:

- (a) as part of a reserving strategy to stabilise investment earnings;
- (b) to supplement the Fund Earning Rate;
- (c) to pay any Tax; and
- (d) to provide for any contingencies the Trustee decides to provide for.

## **18.5 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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## **19 Reserve Accounts**

Subject to the Superannuation Law, the Trustee may establish and maintain one or more Reserve Accounts and operate Reserve Accounts for any purpose that it may specify from time to time, including for the purpose of separating:

- (a) 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) assets funding a Pension into various classes to comply with the rules of the relevant Pension or to obtain favourable taxation treatment; or
- (c) some assets of the Fund from other assets to establish any other type of reserve account permitted by the Superannuation Law.

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## **20 Specific investments**

### **20.1 Recording of specific investments**

Where the Trustee invests separately in respect of certain Members or Beneficiaries in accordance with clause 11.5, the Trustee must record on whose behalf the specific investments are made for the purposes of determining allocations to the Member Account.

### **20.2 Allocation of Earnings and costs for specific investments**

The Member Account of the relevant Member or Beneficiary must be:

- (a) credited with any income and profit; and
- (b) debited with any costs, charges or Tax

in proportions applicable to any specific investment made under clause 20.1, in accordance with the Superannuation Law.

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## **21 Valuation of Fund**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as 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 in accordance with clause 20.1, to the Income Account; and
- (c) ensure that the records and Accounts of the Fund reflect the valuation of each asset.

# Part 7 - Record Keeping

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## 22 Records, Reports and Audit

### 22.1 Trustee obligations

The Trustee must:

- (a) where required by the Superannuation Law or where otherwise appropriate keep accounts and issue receipts in respect of all money and any other assets received into and disbursed from the Fund and of all dealings in connection with that money or assets;
- (b) collect and promptly pay all money due to or received on behalf of the Fund to the credit of an account in the name of the Fund kept with a bank, building society, or other financial institution or into a trust account of a solicitor, accountant, investment manager or administration manager;
- (c) pay all premiums to Insurers that are required to maintain any Policies or Annuities;
- (d) keep and retain in safe custody all records, books, accounts, minutes, reports and other documentation for the period that the Superannuation Law requires;
- (e) prepare and lodge all documents that the Superannuation Law requires to be lodged;
- (f) ensure the Fund is audited at the end of each Fund Year or at such other time as is required by the Superannuation Law and ensure that the Auditor provides all certificates that are required by the Statutory Authority in accordance with the Superannuation Law;
- (g) once in each Fund Year, report on the affairs of the Fund to the Member in any form that the Superannuation Law requires;
- (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 in accordance with the Superannuation Law; and
- (i) record against a Member's Benefit or Benefit Entitlement, a Payment Flag that has been validly served on the Trustee in accordance with the Superannuation Law until the time when it is validly lifted.

### 22.2 Provision of information

The Trustee must provide any information or documentation required by the Superannuation Law to:

- (a) Employers;
- (b) the Statutory Authority;
- (c) the Actuary;
- (d) the Auditor;
- (e) Members; and

- (f) any other persons specified in the Superannuation Law.

### **22.3 Information and documents for Tribunal**

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

### **22.4 Directions of Statutory Authority**

The Trustee must comply with any direction or requirement of the Statutory Authority or Tribunal in relation to the Fund including:

- (a) the acceptance of Contributions into the Fund;
- (b) the disposal of assets of the Fund;
- (c) the appointment of an investigator to the Fund; and
- (d) the conduct of an investigation into the Fund.

## Part 8 - General matters

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### **23 Policies of insurance**

#### **23.1 Member Policies**

The Trustee may, in its absolute discretion, 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.

#### **23.2 Member may request a specific Policy**

Where a Member requests in writing the Trustee to effect a Policy of a specified type in respect of the Member, the Trustee must effect that Policy, except if it is of the opinion that the Policy is not in the best interests of the Member or the Dependants of the Member and provided that the Member has not in writing withdrawn, cancelled or altered the Member's original request.

#### **23.3 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 a Member, the Trustee must effect the Policy except if the Member has requested the Trustee in writing not to effect that Policy.

#### **23.4 Premiums**

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

#### **23.5 Limitation on liability of Trustee**

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

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### **24 Payment of Tax and Levies**

#### **24.1 Deduction of Tax on Benefit**

The Trustee must deduct from any Benefit payable to any Member or Beneficiary under this deed any Tax required to be deducted from it.

#### **24.2 Tax on Contributions and Shortfall Components**

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

## Part 9 - Membership of the Fund

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### **25 Membership**

#### **25.1 Eligibility for Membership**

- (a) The Trustee may admit any person who applies for membership in the Fund provided that his or her admission would not cause the Fund to breach the Superannuation Law.
- (b) If the Trustee accepts a person's application for Membership, the person will become a Member from the date and on the terms and conditions as the Trustee may, in its absolute discretion, determine.

#### **25.2 Application for Membership**

Each application for Membership is to be made by the relevant applicant in any form as the Trustee may from time to time approve.

#### **25.3 Admission to Membership without application**

The Trustee may, subject to Superannuation Law, admit a person as a Member even though he or she has not applied for membership in accordance with clauses 25.1 and 25.2.

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

Each applicant for Membership and any Beneficiary must whenever requested by the Trustee supply all information that the Trustee deems necessary for the purposes of any investigations in connection with the Fund.

#### **25.5 Trustee may amend or alter Benefits**

Where the Trustee is or becomes aware that the information provided under clause 25.4 is incorrect or misleading or that any relevant information has been deliberately withheld, the Trustee may, in its absolute discretion, alter or amend the Benefits to amounts which would have been determined had full and accurate information been supplied.

#### **25.6 Member bound by deed**

Each Member is deemed to have consented to be bound by the provisions of this deed by virtue of his or her application for Membership.

#### **25.7 Member to be medically examined**

For the purposes of effecting, increasing or otherwise varying any Policy or Annuity, the Trustee may require a Member, or any person who has applied to become a Member, to take any steps that are required for those purposes to the satisfaction of the Insurer, including:

- (a) being medically examined;
- (b) submitting other evidence of health; or
- (c) providing proof of age.

## **25.8 Refusal to be medically examined**

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

- (a) take any step reasonably required under clause 25.7;
- (b) do anything which would or might prejudice the relevant Policy or Annuity; or
- (c) do anything which would or might result in some or all of the relevant Policy money not becoming payable,

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

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## **26 Membership notification requirements**

### **26.1 Product Disclosure Statements**

The Trustee must give to all new Members a Disclosure Document containing information and details relating to the Fund that are required by the Superannuation Law.

### **26.2 Disclosure and reporting requirements**

The Trustee must provide annually to Members, former Members and Beneficiaries, all information in writing and copies of accounts, records and documents of the Fund that are required by the Superannuation Law.

### **26.3 Former Member notices**

- (a) The Trustee must give to former Members or their Legal Personal Representatives a written statement containing all information and details relating to the Benefits of the former Members that the Superannuation Law requires to be provided.
- (b) No Member or Dependent of a Member is entitled to obtain information or details on the operation of the Fund or on any matter which may relate to the conduct of the Fund which, in the opinion of the Trustee, would be inappropriate to disclose other than as provided for in this clause 26.

### **26.4 Inspection of deed and other Documents**

- (a) A copy of this deed or any other documents required by the Superannuation Law to be made available for inspection 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 26.4 to make a copy of this deed or other documents available to the Member or Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when that office or business is open.

### **26.5 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 in accordance with the provisions of the Superannuation Law and for the purposes of this deed are to be called and conducted.

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## 27 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 his or her Benefit from the Fund;
- (b) where the Member dies, the Trustee determines that the deceased Member's Benefit has been paid to the deceased Member's dependants or Legal Personal Representative;
- (c) the Trustee determines that the Member's continued membership would cause the Fund to cease complying with Superannuation Law; or
- (d) the Trustee determines, on reasonable grounds, that the Member should cease to be a Member.

## Part 10 - Contributions to the Fund

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### **28 Contributions to the Fund**

#### **28.1 Eligibility to make Contributions**

Subject to the consent of the Trustee and the provisions of clause 29, Contributions to the Fund may be made by a Member, an Employer or any other Permitted Entity.

#### **28.2 Amount of Contributions**

Subject to the provisions of clause 29 and the Superannuation Law, the Trustee may receive amounts by way of Contributions that are:

- (a) determined from time to time by each contributor; or
- (b) deemed to be made by Superannuation Law.

#### **28.3 Superannuation Guarantee legislation**

Where the Trustee accepts Contributions in accordance with the Guarantee Act, the Trustee must provide all certificates, reports and other information that the Guarantee Act requires to be provided.

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### **29 General provisions concerning Contributions**

#### **29.1 Form of Contribution**

A Contribution made under this Part 10 may be made either in cash or by transfer of an asset or assets provided that the assets transferred are authorised investments and are transferred on the terms and conditions provided under the Superannuation Law and the acquisition of the assets is not prohibited by the Superannuation Law.

#### **29.2 Obligations to contribute**

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

#### **29.3 Limitation on commencing 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 that Member's behalf.

#### **29.4 Limit on Contributions**

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

- (a) 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 by the Superannuation Law;
- (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 or any Shortfall Component in accordance with Superannuation Law.

## 29.5 Ineligible Contributions

If any Contribution or Shortfall Component is accepted by the Fund in breach of the provisions of this Part 10, the Trustee must refund such Contribution or Shortfall Component as required by the Superannuation Law, less any:

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

and the Trustee must debit the Member's Account accordingly.

## 29.6 Contributions Splitting

- (a) This clause 29.6 does not apply to a Benefit:
  - (i) that is subject to a Payment Split; or
  - (ii) on which a Payment Flag is operating.
- (b) Subject to the Superannuation Law, an Applicant may, in a Financial Year, apply to the Trustee in writing in such form (if any) as the Trustee may require to roll over, transfer out of the Fund or Allot an amount of the Applicant's Benefits, for the benefit of the Spouse of the Applicant, that is 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 provided that 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 29.6(b) is invalid:
  - (i) if in the Financial Year in which it is made:
    - (A) the Applicant has already made an application in respect of the relevant Financial Year; and
    - (B) the Trustee is:
      - (1) considering the application; or
      - (2) has given effect to the application; or

- (ii) if the amount of any Benefits that the application relates to exceeds the Maximum Splittable Amount; or
- (iii) subject to clause 29.6(d), if the Spouse of the Applicant is aged:
  - (A) 65 years or more; or
  - (B) between the relevant Preservation Age and 65 years and satisfies item 101 in schedule 1 of the SIS Regulations.
- (d) Despite clause 29.6(c)(iii), an application is not invalid under that clause 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, and does not satisfy item 101 in schedule 1 of the SIS Regulations; or
  - (ii) less than the relevant Preservation Age.
- (e) The Applicant must specify, in the application, the amount from his or her:
  - (i) Taxed Splittable Contributions;
  - (ii) Untaxed Splittable Contributions; or
  - (iii) both,

that the Applicant seeks to split for the benefit of his or her Spouse.
- (f) The Trustee may at its discretion accept an application made under clause 29.6(a) if:
  - (i) the application complies with clauses 29.6(a) to 29.6(e); and
  - (ii) the Trustee has no reason to believe that the statement referred to in clause 29.6(d) is untrue; and
  - (iii) the amount that the application relates to does not exceed the Maximum Splittable Amount for the relevant Financial Year.
- (g) Where the Trustee accepts an application under this clause 29.6, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application, roll over 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 29.6(g) for the benefit of the Spouse:
  - (i) the Trustee must ensure that the requirements of clause 9.2 are satisfied where the Fund is a Self Managed Superannuation Fund; and
  - (ii) either, the Spouse must:
    - (A) be a Member; or
    - (B) apply to become and be accepted as a Member.
- (i) Subject to the Superannuation Law, if an Applicant requests a split of:
  - (i) his or her 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 his or her entire Benefits on or before 5 April 2007; or

- (ii) his or her 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 Concessional Contributions that may be split under the Superannuation Law that would form part of any Superannuation Lump Sum that would be payable if the Applicant withdrew his or her entire Benefits at the time the Trustee gave effect to the application.

## **29.7 Fund capped Contributions**

- (a) Despite any other provision of this deed, the Trustee, having made all reasonable inquiries, must not accept any Contributions in a financial year in respect of a Member (excluding Employer Contributions required under Superannuation Law) that would cause the Member to exceed his or her Contributions Caps.
- (b) If a Trustee receives an amount to which clause 29.7(a) applies, the Trustee must return the amount to the person that paid the amount within 30 days of becoming aware that the amount is an amount to which clause 29.7(a) applies, unless a valid notice under section 290-170 of the Taxation Act is received by the Trustee within 30 days of that amount being received by the Trustee.
- (c) Any increase or decrease in the value of the amount to be returned by the Trustee under clause 29.7(b) as determined in the Trustee's sole discretion may be taken into account by the Trustee in determining the amount that must be returned.

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## **30 Transfers from and to Approved Benefit Arrangements**

### **30.1 Transfers from Approved Benefit Arrangements**

Subject to clause 30.2, the Trustee may make any arrangements as it thinks fit with any Member or the trustee of any Approved Benefit Arrangement to transfer any assets to the Fund and may also make arrangements about any other matter which is incidental to, or consequent on, the admission of that Member to the Membership of the Fund.

### **30.2 Payment of Benefits deferred**

If the Approved Benefit Arrangement from which assets are to be transferred is one in which the payment of Benefits is required by Superannuation Law to be deferred until the attainment of a particular age or until the occurrence of a specified event, then the Member is not entitled to receive from the Fund any part of the Benefits that is attributable to those assets at a date earlier than the date on which that Member would have been entitled to receive those Benefits from the transferring Approved Benefit Arrangement.

### **30.3 Transfers to Approved Benefit Arrangements**

The Trustee may:

- (a) if requested by the Member, in lieu of part or all of any other Benefit that the Member may be entitled to under this deed, transfer to the trustee of another Approved Benefit Arrangement a portion of the assets of the Fund that the Trustee, in its discretion, determines does not exceed the amount that 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 provided 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 29.6 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.

#### **30.4 Roll overs**

The Trustee may, on receiving a written election or application from a Member to:

- (a) pay all or any of the Benefit of that Member in the Fund to any Approved Benefit Arrangement or back into the Fund in a manner permitted by the Superannuation Law;
- (b) roll over an amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; or
- (c) retain or apply all or any of the Benefit of that 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.

#### **30.5 Trustee to protect Preservation on roll over**

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

# Part 11 - Benefits

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## **31 Types of Benefits**

### **31.1 Benefit Entitlement**

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

- (a) one or more lump sums;
- (b) one or more Income Streams; or
- (c) any other form of Benefit permissible under the Superannuation

Law, but an election is not binding on the Trustee.

### **31.2 Election**

Unless the Trustee otherwise agrees, the election provided by the Member for the purposes of clause 31.1 must:

- (a) be in writing;
- (b) state the amount to be paid;
- (c) state the extent to which the amount is to be paid as any one or more types of Benefit permitted to be paid by this deed and the Superannuation Law; and
- (d) be provided to the Trustee before the Benefit commences to be paid to the Member.

### **31.3 Benefit Entitlement - with cashing restrictions**

Subject to the Superannuation Law, where a Member becomes entitled to a Benefit in accordance with clauses 36 or 37, and there are cashing restrictions that apply to that Benefit under the Superannuation Law, the Trustee must pay that Benefit in accordance with the applicable cashing restrictions.

### **31.4 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 relevant Policy to the Member or Beneficiary or to the Dependants.

### **31.5 Transfer of assets as Benefit**

Subject to the Superannuation Law, 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 the provisions of this deed.

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## **32 Preservation**

The Trustee must Preserve amounts of Contributions in respect of Members or Beneficiaries on the terms and conditions that are required by the Superannuation Law.

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## **33 Payment of Unrestricted Non Preserved Amount**

Despite any other provisions in this deed 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 that the Trustee may determine from time to time; and
- (b) the minimum Unrestricted Non Preserved Amount which may be withdrawn by a Member under clause 33(a) will be determined by the Trustee and notified to Members of the Fund.

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## **34 Payment of additional Benefits**

In circumstances where a Member ceases to be a Member of the Fund, the Trustee may determine to pay, in addition to amounts otherwise payable under this deed, any part of the Fluctuation Account, which the Trustee considers equitable, to the Member's Accumulation Account for purposes of payment of a Benefit.

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## **35 Retention of Benefit in Fund**

Where a Member or Beneficiary does not require Benefits to be paid immediately, the Trustee may, in its absolute discretion, retain all or any part of any Benefit payable under this Part 11 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 they are required to be paid under the Superannuation Law or this deed.

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## **36 Compulsory payment of Benefits**

The Trustee must pay a Member's Benefits as soon as practicable after:

- (a) the Member dies; or
- (b) payment of the Benefit is required in accordance with the provisions of this Deed or the Superannuation Law.

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## **37 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) if the Member Retires from Gainful Employment;
- (b) if the Member suffers Permanent Incapacity;
- (c) if the Member suffers Temporary Incapacity;

- (d) if 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 his or her Benefits;
- (e) if 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;
- (f) if the Member suffers Severe Financial Hardship;
- (g) if the Member attains age 65;
- (h) the Trustee determines that some or all of the Member's Benefit may be released on Compassionate Grounds;
- (i) if the Member attains Preservation Age;
- (j) if the Member has a Terminal Medical Condition; or
- (k) any other condition of release permitted by the Superannuation Law.

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## **38 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 that Pension in accordance with the governing rules of the Fund (including this deed) trustee resolutions or any pension agreement;
- (c) where an instalment of Pension is payable in respect of a Member and the amount standing to the credit of the Member's 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; and
- (d) despite any other provisions of this clause 38, 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 to be made directly to the Member but may assign the Annuity to the Member if requested to do so and if permitted to do so under the Superannuation Law.

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## **39 Reduction of Member's Benefit**

### **39.1 Reduction in Member's Benefit by amounts owed to Employer**

Despite any other provision of this deed, the Member's Benefit may, in the Trustee's absolute discretion, be reduced by:

- (a) 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 in accordance with this deed or the Superannuation Law;

- (b) the amount of any loss incurred by an Employer in consequence of the Member's proven fraud, dishonesty, misconduct or negligence; or
- (c) 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 his or her proven fraud, dishonesty, misconduct or negligence,

provided that this clause 39 must not be relied on to reduce the Member's Benefit below the amount required in accordance with the Superannuation Law to be vested in the Member.

### **39.2 Evidence of amounts owed to Employer**

Subject to the Superannuation Law, a written statement signed by an Employer and given to the Trustee that:

- (a) specifies the amount owing by a Member to the Employer or the amounts of any loss or costs incurred by the Employer in respect of the relevant Member; and
- (b) requests that the Member's Benefit is reduced by that amount,

will be sufficient authority to the Trustee to reduce the extent of the Member's Benefit by the specified amount.

### **39.3 Payment of amounts to Employer**

On receipt of a written statement under clause 39.2, the Trustee is entitled to pay to the relevant Employer all amounts actually owing or incurred as specified in the relevant statement and is entitled to retain any amount contingently owing pending the occurrence or non occurrence of the contingency.

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## **40 Statement of Unclaimed Benefits**

The Trustee must give to the Statutory Authority a statement of Unclaimed Benefits and must pay any Unclaimed Benefits to the Statutory Authority at the time and in the manner as is required by the Superannuation Law.

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## **41 Limitation on payment**

Despite any other provision in this deed, the Trustee must not pay any Benefits to Members, Dependants or Beneficiaries if any such payment would cause the Fund to breach the Superannuation Law.

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## **42 Forfeited Benefits**

### **42.1 Forfeiture**

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

- (a) without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge all or any part of those Benefits; or
- (b) required under the Bankruptcy Act.

## **42.2 Application of forfeited money**

The whole of the Benefits forfeited by a person under clause 42.1 must be applied by the Trustee for the benefit of a Member and his or her Dependants or for any one or more of them as the Trustee, in its absolute discretion, determines.

## **42.3 Forfeiture Account**

The Trustee has power at any time to establish a Forfeiture Account of the Fund and must transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the reasons above or otherwise forfeited in accordance with this deed or the Bankruptcy Act.

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

While any money is held in the Forfeiture Account, that money does not form part of any other Account and any income derived by the Fund in respect of money held in the Forfeiture Account must be credited to the Forfeiture Account.

## **42.5 Unclaimed Benefits Account**

The Trustee is, subject to the Superannuation Law, entitled to treat as unclaimed and to forfeit and transfer to the Unclaimed Benefits Account, any money in the Fund standing to the credit of any Member whose whereabouts are unknown to the Trustee and if, after making such enquiries as the Trustee deems appropriate, the Trustee is unable to positively trace any person entitled to the benefit of that money.

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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, provided that:

- (a) a Member wishing to designate a Nominated Beneficiary may do so by providing a written notice to the Trustee in any form as approved by the Trustee from time to time; and
- (b) subject to the Superannuation Law, a Non Binding Death Benefit Nomination is not binding on the Trustee.

## **43.2 Binding Death Benefit Nomination**

- (a) A Member wishing to make a Binding Death Benefit Nomination must make that Binding Death Benefit Nomination in a form that:
  - (i) is in writing and states that the document is a Binding Death Benefit Nomination;
  - (ii) is signed and dated by the Member in the presence of two witnesses, each of who is:
    - (A) a person who has turned 18 years; and
    - (B) not a person mentioned in the notice; and

- (iii) contains a declaration signed and dated by the two witnesses stating that the Binding Death Benefit Nomination was signed by the Member in their presence.
- (b) A Member may nominate in a Binding Death Benefit Nomination :
  - (i) the person or persons to whom their Benefit must be paid so long as that person or each of those persons are a Legal Personal Representative or Dependant of the Member;
  - (ii) the proportions in which the Benefit will be paid to that person or each of those persons; and
  - (iii) the manner in which those benefits must be paid to the person or each of those persons.
- (c) A Binding Death Benefit Nomination may be confirmed, amended or revoked at any time by the Member and will otherwise be effective until revoked.
- (d) A Binding Death Benefit Nomination may be revoked by making a later valid Binding Death Benefit Nomination or by otherwise revoking it by notice in writing given to the Trustee.

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## **44 Payment of death benefits**

### **44.1 Application**

This clause 44 applies to a Member's Benefit that is payable under clause 36(a) on or following the death of a Member.

### **44.2 Payment if Non Binding Death Benefit Nomination**

Subject to clause 44.3 and the Superannuation Law, on or following the death of a Member, if that Member had made one or more Non Binding Death Benefit Nomination, any Benefit payable in respect of that Member may be paid or applied in accordance with clause 44.6 to:

- (a) one or more of the Nominated Beneficiaries (if any) designated in the most recent Non Binding Death Benefit Nomination made by that Member;
- (b) other Dependants of that Member and in such proportions as the Trustee, in its absolute discretion, determines; or
- (c) one or more of the Legal Personal Representatives of that Member.

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

Subject to clause 44.7, if a Member made a valid Binding Death Benefit Nomination, 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.

### **44.4 Payment if Binding Death Benefit Nomination is invalid or ineffective**

If a Member had made a Binding Death Benefit Nomination that is invalid or ineffective at the date of death, the Binding Death Benefit Nomination will be treated as a Non Binding Death Benefit Nomination.

#### **44.5 Payment if no Binding Death Benefit Nomination**

Subject to clause 44.3 and the Superannuation Law, on or following the death of a Member, if that Member has not made a Binding Death Benefit Nomination, any Benefit payable in respect of that Member may be paid or applied in accordance with clause 44.6 to:

- (a) one or more of the Nominated Beneficiaries (if any) designated in the most recent Non Binding Death Benefit Nomination made by that Member (if any) in accordance with clause 44.2;
- (b) other Dependants of that Member and in such proportions as the Trustee, in its absolute discretion, determines; or
- (c) one or more of the Legal Personal Representatives of that Member.

#### **44.6 Forms of payment**

Payment of a Member's Benefit under clauses 44.2 or 44.5 may be paid or applied, in the manner and on the terms that the Trustee, in its absolute discretion, determines, including by way of:

- (a) one or more Annuities;
- (b) one or more Income Streams;
- (c) one or more Superannuation Lump Sums; or
- (d) any combination of such methods of payment.

#### **44.7 Commutation of Income Stream**

Despite any other clause of this deed and subject to the Superannuation Law, the Trustee may, and must where required by 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 lump sum equal to the amount of the Benefits payable to the relevant Member, Dependant or Beneficiary.

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### **45 Anti detriment payment**

The Trustee may determine to increase the Superannuation Lump Sum Benefit payable to a Member's Dependant or Dependents on the death of a Member by way of an anti detriment payment in accordance with section 295-485 of the Taxation Act.

## Part 12 - Family Law

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### 46 Information to Members and Non Member Spouses

If a Member's Benefit or Benefit Entitlement becomes subject to a Payment Split, the Trustee must provide the Member and the Non Member Spouse with all notices and information, and in such form as required under the Superannuation Law.

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### 47 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 provides a written request as required by the Superannuation Law to the Trustee in a form approved 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 this clause 47, or the Non Member Spouse is already a Member of the Fund, 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 in accordance with the Superannuation Law.

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### 48 Non Member Spouse may request transfer of interest

If the Non Member Spouse in respect of a Payment Split is not admitted as a Member under clause 47, the Trustee must:

- (a) either:
  - (i) transfer or roll over 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 to do so 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 in accordance with the Superannuation Law.

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### 49 Family Law fees

- (a) In addition to its other powers under this deed, the Trustee may charge reasonable fees in respect of any action taken by the Trustee which is permitted or required by Family Law and for which the Trustee is entitled to charge fees.
- (b) The Trustee is entitled to 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.

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## 50 Satisfaction of entitlement

- (a) The payment, transfer or roll over of the entitlement of a Non Member Spouse in accordance with this Part 12 will be a complete discharge of the Trustee's obligations 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) In addition to its other powers under this deed, the Trustee may deduct from the amount to be paid, transferred or rolled over the amount of any Tax that is calculated by the Trustee to be payable in respect of the entitlement of the Non Member Spouse.

# Part 13 - Termination of Trust

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## **51 Termination**

### **51.1 Events of termination**

The trusts declared under this deed will cease and terminate and the Fund must be wound up in accordance with this Part 13 on the occurrence of any of the following events:

- (a) if 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 is not reasonable to continue to operate the Fund; or
- (d) the Fund is required to be terminated to comply with the Superannuation Law.

### **51.2 Notice to Members**

On the trusts ceasing and terminating due to an event set out in clause 51.1, the Trustee must give written notice to each Employer and to each the Member, if any, that the Fund will be wound up on the Closing Date, which will be a date no later than any date on which the Fund is required to be wound up under clause 51.1(d).

### **51.3 No further Contributions**

As from the Closing Date:

- (a) no Employer or Member may make any further Contributions, other than arrears of Contributions due to the Closing Date; and
- (b) arrears of Contributions, if any, must be called in immediately.

### **51.4 Order of payment of Benefits**

On the trusts ceasing and terminating due to an event set out in clause 51.1, subject to clause 51.8, the Trustee must make provision out of the Fund, after meeting expenses and liabilities, as is necessary to provide for the 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 his or her Normal Retirement Date equal to his Member's Accumulation Account;
- (c) payment to each Member who is still in the employment of the Employer and has not attained his or her Normal Retirement Date equal to his or her Benefit had he or she resigned immediately prior to the Closing Date; and
- (d) payment to each Member who is still in the employment of the Employer of such amount of the assets of the Fund then remaining as the Trustee considers equitable after taking into account payments determined under clauses 51.4(b) and 51.4(c) as can be paid without being regarded as excessive amounts under the Superannuation Law.

### **51.5 Payment if Member Dies**

Where a Member dies before receiving a Benefit to which he or she has become entitled to under clause 51.4, that Benefit must be paid in accordance with clause 44.

### **51.6 Surplus**

If a surplus remains after providing Benefits for Members and their Dependants in accordance with clause 51.4, that surplus must, subject to any requirements of the Superannuation Law and clause 51.8, be paid by the Trustee to, or for the benefit of:

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

as the Trustee, in its absolute discretion, determines and, if provided to or for two or more persons, in the proportions as the Trustee, in its absolute discretion, determines, subject in the case of clauses 51.6(a) and 51.6(d) to clause 51.4.

### **51.7 Form of Payment**

Subject to clause 51.8, the payments to be provided under clauses 51.4 and 51.6 may be made in cash, Policies, participation in any other Approved Benefits Arrangement or otherwise as determined by the Trustee, but shall not be payable to or for the benefit of a Member unless and until he ceases to be in the employment of the Employer other than for personal maintenance and support in case of hardship.

### **51.8 Payment to other Persons**

If any payment of Benefits provided under clauses 51.4 and 51.6 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 relevant Member is not entitled to receive from the Fund any part of the Benefit which is required to be deferred and the Trustee must 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 prior to 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 prior to the attainment of the particular age or the specified event; or
- (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.

# Part 14 - Amendment

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## **52 Amendment of this deed**

### **52.1 Method of amendment**

- (a) Subject to clauses 52.1(b) and 52.1(c) and the Superannuation Law, the Trustee may at any time by resolution or by instrument in writing amend, alter, vary, modify or delete with immediate, prospective or, to the extent that the law allows, retrospective effect from time to time, any or all of the provisions of this deed.
- (b) No reduction of the accrued Benefit of a Member can be made without the written consent of the particular Member.
- (c) No amendment may be made under clause 52.1(a) which would cause the trusts contained in this deed to fail by reason of the application of the rule against perpetuities.
- (d) No amendment may be made under clause 52.1(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.

### **52.2 Notification of Members of Amendment**

As soon as practicable after this deed has been amended under clause 52.1, 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 entitlements of the Member.

## Schedule 1

**1 Name of Fund**

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**Harry Winkel Super Fund**

**2 Trustees**

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DPT Qld Pty Ltd

ACN: 106 949 884

**3 Date of Establishment**

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15th February 2007

**4 Previous Amendments**

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**5 Proper Law Governing Fund**

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The Law of the State of Queensland