

- (iii) error in judgment;
 - (iv) neglect, default, intent to defraud, wilful misconduct, defalcation, or act or omission of any manager, agent, professional adviser, banker, stockbroker, or other person not bound or deemed to be a bound by this Deed; or
 - (v) breach of duty or of trust, or any neglect or otherwise.
- (i) **Persons entitled to indemnity.** The following persons are entitled to claim the indemnity in Rule 8.3(h):
- (i) the Trustee;
 - (ii) the Directors and other officers of the Trustee, in the case of a Corporate Trustee;
 - (iii) any Custodian; and
 - (iv) any Investment Manager.
- (j) **Exception to indemnity.** The indemnity contained in Rule 8.3(h) does not apply to any expense, damage or liability which arises from or as a result of:
- (i) a breach of trust if the Trustee:
 - A. fails to act honestly in a matter concerning the Fund; or
 - B. intentionally or recklessly fails to exercise in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
 - (ii) a liability for a monetary penalty under a Civil Penalty Provision.
- (k) **Instalment Warrants.** The Trustee has the power to borrow money under arrangements of the kind contemplated by Section 67(4A) of the Act and to enter into any and all such arrangements for that purpose, including:
- (i) the granting of indemnities to lenders for the purpose of furthering these arrangements;
 - (ii) the granting of any security for the performance of any obligation or other dealing or engagement incurred or to be entered into by the Trustee or by any other person. The Trustee's power includes the power to grant any mortgage, charge or encumbrance over all or any part of any asset or property to be acquired in accordance with the Trustee's powers under Section 67(4A) of the Act;
 - (iii) despite the covenants in Rule 8.3(a), to give proxies and powers of attorney (with or without power of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any part of the Fund. Without limitation, the Trustee may empower its attorney to take any action and/or perform any act on behalf of the Trustee and to sign and execute any deed, agreement or document that the Trustee may lawfully do, including the exercise of any of the Trustee's rights or obligations and the execution of mortgage and security documents. The Trustee may in its discretion, grant powers of attorney or proxies to any third party including any mortgagee, lender or financier of the Fund.

8.4 IN-HOUSE ASSETS AND OTHER RESTRICTED INVESTMENTS

- (a) **Restricted and prohibited investments.** The Trustee must not make any investments and, to the extent necessary, must divest the Fund of investments, to ensure that:
- (i) the acquisition of an asset would not cause the Market Value of In-house Assets of the Fund to exceed 5% of the Market Value of the total assets of the Fund;

- (ii) the Market Value of In-house Assets of the Fund does not exceed, at the end of any Year of Income, 5% of the Market Value of the total assets of the Fund;
- (iii) the Fund's assets do not include loans to a Member or to a Relative of a Member unless the Fund was established before 16 December 1985 and the Trustee had express power to lend money to Members and had lent money to Members before that date;
- (iv) there is no intentional acquisition of assets by the Fund from a Related Party of the Fund, except where:
 - A. the asset is a listed security acquired at Market Value;
 - B. the Fund is a Self Managed Superannuation Fund and the asset acquired is Business Real Property of the Related Party acquired at Market Value;
 - C. the Trustee acquired the asset under a merger between Regulated Superannuation Funds;
 - D. the asset is a life insurance policy issued by a life insurance company (other than a policy acquired from a Member or from a Relative of a Member);
 - E. the asset is of a kind which the Regulator has determined may be acquired by the Fund; or
 - F. the asset is an In-house Asset of the Fund, acquired at Market Value, which would not result in the level of In-house Assets of the Fund exceeding the level permitted by Rule 8.4.

(b) **Pre 23 December 1999 not In-house Assets.** Subject to the Act and Regulations, where an asset of the Fund was acquired, or a lease or Lease Arrangement was entered into, under a contract entered into prior to 23 December 1999, and that asset would otherwise be an In-house Asset of the Fund, but that asset was not an In-house Asset at the time it was acquired, the asset is not an In-house Asset of the Fund.

(c) **Post 22 December 1999 not In-house Assets.** Subject to the Act and Regulations, where an asset of the Fund was acquired under a contract entered into after 22 December 1999, and that asset would otherwise be an In-house Asset of the Fund and:

- (i) where the asset was acquired after 22 December 1999, but before 1 July 2001, and the asset would not have been an In-house Asset of the Fund if acquired before 23 December 1999, that asset is not an In-house Asset of the Fund until 1 July 2001.
- (ii) where the asset was acquired after 22 December 1999, but before 1 July 2001, and was still owned by the Fund on 1 July 2001, or where the asset was acquired after 30 June 2001, the asset will not be an In-house Asset if:
 - A. the asset was acquired prior to 1 July 2009, and was acquired solely by way of reinvestment of dividends or trust distributions in an Entity, in respect of an investment in that Entity made by the Fund prior to 23 December 1999; or
 - B. the asset was acquired prior to 1 July 2009 and:
 - I. the Fund has less than 5 Members;
 - II. the asset is an investment in a company or unit trust in which the Fund held a pre-23 December 1999 investment;
 - III. the company or unit trust had a Loan principal amount outstanding on 23 December 1999; and

- IV. the sum of the investments in the company or unit trust, acquired by the Fund after 23 December 1999, does not exceed the limits specified in section 71E of the Act.

8.5 RULES APPLY TO OTHERS

All of the rules and restrictions contained in this Deed which affect or apply to any act or thing done or not to be done by the Trustee, will apply to any act or thing done or not done on behalf of the Trustee by any person including, without limitation, any Director of a Corporate Trustee, Custodian or Investment Manager appointed by the Trustee.

9. ACCOUNTS, AUDIT, RECORDS AND RETURNS

9.1 VOLUNTARY CONTRIBUTIONS

- (a) **Voluntary contribution reserve.** Subject to the Act and Regulations, the Trustee may establish and keep, in respect of the Fund or, where there are one or more sub-plans, in respect of each sub-plan, a voluntary contribution reserve, to which the Trustee may credit all contributions other than Mandated Employer Contributions.
- (b) **Allocations within 28 days.** Where, during a Year of Income, an amount has accumulated in the voluntary contribution reserve, the Trustee must:
 - (i) use the reserve for any purposes of the Fund as the Trustee decides; and
 - (ii) allocate all of the amounts in the reserve to one or more Members' Accumulation Accounts, in the proportions determined by the Trustee within 28 days after their receipt.
- (c) **Change in allocation.** If required by the Act and Regulations, or otherwise if the Trustee decides to do so, the Trustee may decide to allocate some or all contributions made by or on behalf of a Member directly to the Member's Accumulation Account, even if those contributions are of a type which would normally be allocated to the voluntary contribution reserve.

9.2 MEMBER ACCUMULATION ACCOUNTS

The Trustee must establish and keep, in respect of each new Member, an Accumulation Account, to which must be added:

- (a) all contributions made by, for, or in relation to the Member which form part of a Member's Minimum Benefits;
- (b) all contributions allocated to the Member's Accumulation Account from the voluntary contribution reserve;
- (c) all benefits or entitlements (including Superannuation Lump Sums) transferred into the Fund by, for, or in relation to the Member, in accordance with this Deed;
- (d) all investment earnings of the Fund or, where the Member is a member of a sub-plan, of that sub-plan, allocated to that Member's Accumulation Account attributable to the amounts in (a) and (b);
- (e) the current surrender value of any policy of capital guaranteed life assurance taken out by the Trustee upon the life of that Member; and
- (f) any reserves held by the Fund or, where the Member is a member of a sub-plan, by that sub-plan, which the Trustee has allocated to that Member's Accumulation Account;
- (g) any refunds of taxes or surcharges and any interest applicable to such amounts, where the tax or surcharge was deducted directly from contributions made by or on behalf of that Member,

and against which must be deducted:

- (h) all direct costs of establishing, operating and terminating the Fund and any administrative, insurance and taxation costs relating to the establishment, operation and termination of the Fund allocated to the Member's Accumulation Account; and
- (i) any overpayments of Government Co-contribution which the Fund is required to repay;
- (j) any amounts required to be paid to the Commissioner of Taxation as a result of the Member's failure to quote his or her tax file number to the Fund within the prescribed time;
- (k) any other taxes or surcharges applicable to contributions made by or on behalf of a Member which are required to be withheld or deducted directly from such contributions,

and the Trustee must allocate all amounts in a fair, reasonable and consistent manner, having regard to any special circumstances relating to one or more Members which might otherwise affect the allocation of amounts to a Member's Accumulation Account. Where the Trustee has made the allocations in accordance with these principles, its decision will be final.

9.3 ACCOUNTS FOR NON-MEMBER SPOUSES

- (a) **Compliance with Family Court Orders.** When any order is made under the Family Law Act in respect of a Member's Superannuation Interest, the Trustee may be required to:
 - (i) create and maintain a new Accumulation Account for a Non-member Spouse;
 - (ii) split the amount standing to the credit of a Member's Accumulation Account with the Non-member Spouse;
 - (iii) identify a component or percentage of a Member's Superannuation Interest which is to be paid to the Non-member Spouse;
 - (iv) transfer or roll over a Non-member Spouse's Superannuation Interest to another regulated superannuation fund, approved deposit fund, EPSSS or RSA; and/or
 - (v) notify the Non-member Spouse and the Member of orders requiring a Payment Split and other matters.
- (b) **Cost of complying.** If Rule 9.3(a) applies, the reasonable costs incurred in complying with any Family Court order, including the costs of the Trustee seeking professional advice, may be deducted from the Non-member Spouse's interest.
- (c) **Splitting Pensions.** Where, pursuant to the Family Law Act, an order is made which affects the Superannuation Interest of a Member in receipt of a Pension, the Trustee may deduct any reasonable costs incurred in complying with those orders from the capital sum supporting the Pension to be paid to the Non-member Spouse, or from the periodical payments of the Pension to be paid to the Non-member Spouse.

9.4 INVESTMENT RESERVE

Subject to the Act and Regulations the Trustee may, in its discretion, credit any investment earnings of the Fund to an investment reserve, to be used for such purposes as the Trustee may decide, including in the satisfaction of any expenses of the Fund and for the purpose of smoothing investment earnings allocated to members' accounts. Part or all of the balance of the investment reserve may be allocated to one or more Member's Accumulation Accounts or, where the reserve relates to a sub-plan, to the Accumulation Accounts of Members of that sub-plan. The Trustee must make any allocation in a fair, reasonable and consistent manner having regard to any special circumstances relating to one or more Members which might otherwise affect the allocation.

9.5 PENSION RESERVE

Subject to the Act and Regulations, where the Trustee is required to pay one or more Pensions to one or more Beneficiaries, the Trustee may, in its discretion, transfer an amount or amounts to one or more pension reserves, for the purpose of paying that Pension or Pensions. The cost of meeting expenses, taxes or other outgoings as the Trustee decides, may be deducted from the reserve. Where an amount is transferred to a pension reserve, the Trustee may reduce the Member's Accumulation Account, to the extent of the amount transferred and may, upon receiving the advice of an Actuary or other properly qualified person, transfer amounts between the pension reserve and Member's Accumulation Account or other reserves, in a fair, reasonable and consistent manner.

9.6 MISCELLANEOUS RESERVES

Subject to the Act and Regulations, the Trustee may, in its discretion, establish a miscellaneous reserve in respect of amounts not presently allocated to Members' Accumulation Accounts or to other reserves. The cost of meeting expenses, taxes or other outgoings as the Trustee decides, may be deducted from the reserve. The balance of the reserve may be allocated to the Accumulation Accounts of one or more Members or, where the Fund is divided into sub-plans, of Members of that sub-plan. The Trustee must make any allocation in a fair, reasonable and consistent manner having regard to any special circumstances relating to one or more Members which might otherwise affect the allocation.

9.7 ALLOCATIONS FROM RESERVES

Where, during a Year of Income, amounts appropriate to be allocated to Members' Accumulation Accounts have arisen, the Trustee may make as many allocations of those amounts during the course of the Year of Income as the Trustee decides. Except for amounts allocated to a voluntary contribution reserve, the Trustee may decide when and how much of a reserve amount is to be distributed to Members' Accumulation Accounts.

9.8 TRUSTEE TO KEEP RECORDS OF TYPES OF BENEFITS

In addition to maintaining details of the value of Accumulation Accounts for each Member, the Trustee must keep records in a manner to enable the Trustee to determine the amounts of benefits and entitlements of individual Members which consist of:

- (a) Minimum Benefits;
- (b) Preserved Benefits;
- (c) Restricted Non-preserved Benefits; and
- (d) Unrestricted Non-preserved Benefits.

9.9 TRUSTEE TO KEEP ACCOUNTING RECORDS

The Trustee must:

- (a) keep accounting records in writing which correctly record and explain the transactions and financial position of the Fund; and
- (b) keep its accounting records to enable the preparation of:
 - (i) the accounts and statements required under Rule 9.10 and/or Rule 9.11; and
 - (ii) the returns of the Fund required under Rule 9.13; and

- (c) keep its accounting records to enable those accounts, statements and returns to be conveniently and properly audited in accordance with the Act; and
- (d) keep the accounting records of the Fund, or cause them to be kept, in Australia for at least 5 years after the end of the Year of Income to which they relate.

9.10 PREPARATION OF ACCOUNTS

Except where Rule 9.11 applies, the Trustee must, in respect of each Year of Income, prepare accounts and statements in respect of the Fund which consist of at least:

- (a) a statement of financial position of the Fund;
- (b) an operating statement of the Fund; and
- (c) other accounts and statements as the Act and Regulations specify,
- (d) and, where practicable, the Trustee will prepare those accounts and statements to ensure that the Auditor does not qualify the accounts of the Fund for lack of detail or non-compliance with relevant Australian Accounting Standards.

9.11 ACCOUNTS REQUIRED WHERE BENEFITS SOLELY LIFE ASSURANCE

Where the Fund is, at the end of any Year of Income, a Fund from which the benefits and entitlements paid to each Member are wholly determined by reference to policies of life assurance, the Trustee must prepare:

- (a) a statement that policies of life assurance are in place at the end of the Year of Income;
- (b) a statement as to whether those policies have been fully maintained as required by the relevant insurers;
- (c) a statement of the identities of those insurers;
- (d) a statement of the amounts contributed by Employers and Members in the Year of Income;
- (e) a statement of the amount of premiums paid on those policies; and
- (f) a statement of the expenses incurred by the Fund in respect of the Year of Income, other than amounts covered by premiums.

9.12 AUDIT OF THE ACCOUNTS

The Trustee must appoint, and has the power to dismiss, an Approved Auditor. The Trustee must ensure that each set of accounts and statements prepared in respect of a Year of Income is audited by the Auditor.

9.13 PREPARATION AND LODGEMENT OF RETURNS

The Trustee must, in respect of each Year of Income, prepare and lodge:

- (a) with the Regulator:
 - (i) an annual return, in the approved form, containing information which is required in relation to the Fund;
 - (ii) a certificate, in the approved form, in respect of that Year of Income; and

- (iii) the report given to the Trustee by the Auditor under Part 13 of the Act in respect of that Year of Income; and
- (b) with the Taxation Commissioner, an income tax return, in the approved form, containing information which is required in respect of that Year of Income.

10. MEETINGS OF TRUSTEES AND MEMBERS

10.1 TRUSTEES OR DIRECTORS MEETINGS

- (a) **How to call a meeting.** The Trustees, or the Directors of a Corporate Trustee, may convene a meeting of the Trustees, or of the Directors, as the case may be, by 1 of their number giving 1 month's notice in writing to each of the others, of the time, place and business to be conducted at the meeting. The notice period in this Rule may be waived by unanimous agreement of all Trustees and/or all Directors.
- (b) **Appointing a chair.** Before any business is discussed at a meeting of Trustees or Directors, they must appoint one of their number to chair the meeting, and the meeting must be conducted by that person in a fair and reasonable manner, but otherwise as that person determines.
- (c) **Meetings at least annually.** Meetings of Trustees or Directors may be convened at any time, but must be convened at least once in every calendar year, to consider:
- (i) the accounts of the Fund and the Approved Auditor's report relating to those accounts;
 - (ii) the returns and other documents specified in Rule 9.13;
 - (iii) any matters raised by the accounts and statements which require action or attention; and
 - (iv) any other matters which the Trustees or the Directors, consider appropriate.
- (d) **Quorum.** The quorum for meetings of Trustees or Directors is:
- (i) one, in the case of a single individual trustee or sole Director of a Corporate Trustee; or
 - (ii) two or half of the total number of Trustees or Directors, whichever is greater, in all other cases.
- (e) **Voting by proxy.** A Trustee and/or a Director who is unable to be present at a meeting of the Trustees or the Directors, as the case may be, may nominate another person to attend the meeting as their proxy, subject to the following requirements:
- (i) The person nominated as proxy must carry into and put before the meeting an authority, signed by the person in whose place the proxy is attending, in the following form:

"I,, being a Trustee / Director of the Trustee, of.....Superannuation Fund, authorise, who presents this document to the meeting, to act as my proxy for the purposes of the Trustees' / Directors' meeting to be held on / / .

Signed, dated / / "
 - (ii) A person may be nominated as a proxy for one meeting only. The same person may be nominated for any subsequent meeting.
 - (iii) A person nominated as proxy, who is not otherwise a Trustee or a Director of the Trustee, must be asked to leave the meeting if the chairperson considers that a subject to be discussed is of a sensitive or confidential nature.
 - (iv) A person nominated as proxy must be given an opportunity to read and to table any written statement from their appointor, and must vote strictly in accordance with the directions of that person, but a proxy, who is not otherwise a Trustee or a Director of

the Trustee, is not further entitled to participate in the discussions and conduct of the meeting.

10.2 MEMBERS' MEETINGS

- (a) **When to hold meetings.** Subject to Rule 11, a Members' meeting must be convened by the Trustee, when:
- (i) the Trustee considers it necessary; or
 - (ii) the Trustee or a Director, receives a meeting request, signed by not less than 25% of the current Members.
- (b) **How to call a meeting.** In order to convene a Members' meeting, the Trustees must give to each Member 1 month's notice in writing that a Members' meeting is to be held, specifying the time and place and a general description of the business to be conducted at the meeting. The notice period in this Rule may be waived by the agreement of all Members.
- (c) **Appointing a chair.** Before any business is conducted at a Members' meetings, the Trustees or the Directors must appoint one of their number to chair the meeting, and the meeting must be conducted by that person in a fair and reasonable manner, but otherwise as that person determines.
- (d) **Capacity of meetings.** Subject to the requirements of this Deed and to the Act and Regulations, the Trustees or the Directors of the Trustee, must use their best endeavours to comply with a resolution passed by a majority of the Members then present in person or by proxy at a Members' meeting.
- (e) **Quorum.** The quorum for Members' meetings is half of the total number of Members present in person or by proxy rounded up to the nearest whole number.
- (f) **Voting by proxy.** A Member who is unable to be present at a meeting of Members may nominate a person to attend the meeting as the Member's proxy, subject to the following requirements:
- (i) The person nominated as proxy must carry into and put before the meeting an authority, signed by the Member in whose place the proxy is attending, in the following form:

"I,, being a Member of the
 Superannuation Fund, authorise, who presents this
 document to the meeting, to act as my proxy for the purposes of the Members'
 meeting to be held on / / .
 Signed....., dated / / ."
 - (ii) A person may be nominated as a proxy for one meeting only. The same person may be nominated for any subsequent meeting.
 - (iii) A person nominated as proxy must vote strictly in accordance with the directions of the appointing Member. A proxy, who is not otherwise a Member, is not further entitled to participate in the discussions and conduct of the meeting.

11. INQUIRIES AND COMPLAINTS

- (a) **Dealing with complaints.** The Trustee must, within 90 days, consider any inquiry or complaint by one or more Members which has been raised either in a Members' meeting or in writing. Where an inquiry or complaint is not dealt with to the satisfaction of the Member or Members within that time, the parties must arrange for a convenient time and place to meet with each other, for the purpose of resolving the matter. Each party, or the representatives of each party, will be allowed approximately equal time to present the reasons for and to propose resolutions to their grievances.
- (b) **Conduct of meetings.** The parties present at a meeting under Rule 11(a):
- (i) may, by agreement, appoint a person to chair the meeting, but it is not necessary to do so;
 - (ii) must appoint a person to take and distribute, to all parties in attendance, written minutes of the proceedings; and
 - (iii) may agree to convene one or more further meetings to address the issues in dispute.

12. ADMINISTRATIVE MATTERS

12.1 INTERPRETATION OF THIS DEED

Except as otherwise expressly provided, the interpretation and application of this Deed will be determined by the Trustee and that determination will be binding and final.

12.2 HOW TO DESIGNATE A BENEFICIARY

In circumstances other than the giving of a Binding Death Nomination or a Non-lapsing Binding Nomination, a Member wishing to designate a Dependant or other person as a Beneficiary must do so in writing to the Trustee in the following form, or in any other form which the Trustee may approve:

"I,.....of..... acknowledge that the discretion vested in you as to the application of benefits in circumstances where I cannot receive them myself is an absolute, free and unfettered discretion, but I express the wish that in the exercise of that discretion you give consideration to paying any such benefits to the following persons, in the following proportions:

Name of Designated Beneficiary	Address	Relationship to Member	Proportion of Benefits

Dated this.....day of.....

Signed....."

12.3 LIMITS ON RIGHTS OF MEMBERS

No person, whether as a Member or otherwise, will have any claim, right or interest to, in respect of, or against the Trustee, the Fund, or any contributions made to the Fund, except under and in accordance with this Deed.

12.4 RIGHT TO INSPECT

Every Member has the right to inspect a copy of this Deed, at a time and a place which is convenient to the Trustee.

12.5 SECRECY

- (a) **Confidential Information.** No Member has any right to enquire, or to be given any information concerning the interest of another Member.
- (b) **Other confidential information.** The Trustee must observe strict secrecy with regard to the affairs, accounts and transactions of the Fund, but this does not prevent the publication of financial, statistical or other information to all Members, generally, whenever the Trustee decides.

12.6 RECEIPTS AND PAYMENTS WITH ASSETS

Subject to Rule 5.8 and to the Act and Regulations, where:

- (a) any benefits or entitlements of Members are payable, transferable or receivable by or to the Fund; or
 - (b) any liabilities incurred by or on behalf of the Fund are required to be satisfied; or
 - (c) any assets are owing to or are to be acquired by the Fund,
- the Trustee may, with the agreement of the other party, in lieu of money, and at its discretion, make or receive settlement of the amounts concerned by:
- (d) transferring assets of the Fund to; or
 - (e) receiving a transfer of assets from,
- another person, at the assets' Market Value.

12.7 MEMBERS TO PROVIDE INFORMATION

Every Member and every person claiming a benefit or entitlement, or in receipt of a Pension, or other benefit or entitlement, must give the Trustee any information or authorisation and produce any documents which the Trustee considers necessary for the purposes of giving effect to this Deed.

12.8 VARIATION OF TRUSTS OR DEED

The Trustee may at any time amend, revoke, replace or modify all or any of the provisions of this Deed by deed or other written instrument or by resolution in writing. Any amendment, revocation, replacement or modification must not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members without the prior written approval of the Members or the amendments are required to comply with the Relevant Law;
- (c) alter the rights and benefits of existing Members in any manner so that, on the whole, equity between Members is not maintained;
- (d) be contrary to or inconsistent with the Act and Regulations; or
- (e) invalidate or alter the terms of any Non-lapsing Binding Nomination given by one or more Members, unless the Relevant Law has changed in a manner which would invalidate or alter the terms of any Non-lapsing Binding Nominations and, in that case, the amendment, revocation or modification to the Deed is no greater than the change necessitated by the Relevant Law.

12.9 EFFECT OF CHANGES IN RELEVANT LAW

The Trustee is authorised and empowered to act in accordance with the Relevant Law (including the requirements for the Fund to be a complying superannuation fund and a Regulated Superannuation Fund) and, to the extent that there is any inconsistency between this Deed and the Relevant Law, the Relevant Law will prevail.

13. WINDING UP THE FUND

13.1 CONDITIONS FOR TERMINATION

The trusts created by this Deed will terminate:

- (a) where the Members, by unanimous resolution vote to wind up the Fund in a special meeting convened for that purpose, on the first day on which the membership of all Members has been terminated and all benefits and entitlements paid or transferred out of the Fund, so that all of the assets of the Fund are expended or distributed;
- (b) where the Trustee becomes aware that the Fund is insolvent, on the day on which the Regulator's permission to wind-up is obtained; or
- (c) in any other circumstances when there are no Members or Beneficiaries and the Trustee considers it to be unlikely that there will be any new Members, on the day determined by the Trustee.

13.2 STEPS TO TAKE ON WINDING-UP

When it becomes clear to the Trustee that Rule 13.1 will apply, the Trustee will take all necessary steps to distribute any remaining assets of the Fund and to satisfy any outstanding liabilities, and will then:

- (a) notify any remaining interested parties of its intention to wind-up the Fund;
- (b) notify the Regulator and the Taxation Commissioner of its intention to wind-up the Fund;
- (c) comply with any other requirements of the Act and the Regulations concerning the winding-up of Funds; and
- (d) take any further steps which, in the Trustee's opinion, are required to wind-up the Fund.

SCHEDULE 1

Description of Pensions

Rule 5.8

PART 1

MINIMUM ONLY PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(9A)(a), which included the following requirements at the date of this Deed:

- (a) payments are made at least annually;
- (b) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not smaller in total than the following amounts:

Account Balance x Percentage Factor

Where:

Account Balance means:

- (i) the value of the annuity or pension:
 - A. on 1 July in the financial year in which the payment is made; or
 - B. if that year is the year in which the annuity or pension payments commence - on the commencement day,
 being the total amount paid as consideration to purchase the annuity or pension, as increased by returns on investments and as decreased by fees, charges, applicable taxes, payments to the annuitant or pensioner and payments made under a Splitting Order; or
- (ii) if the value of the annuity or pension under paragraph (a) is less than the withdrawal benefit to which the beneficiary would be entitled if the annuity were to be fully commuted — the value of the withdrawal benefit.

Percentage Factor means the percentage factor specified in Table 1, below, that applies to the beneficiary because of the beneficiary's age on:

- (i) 1 July in the financial year in which the payment is made; or
- (ii) if that is the year in which the annuity or pension payments commence - the commencement day.

Table 1

Item	Age of Beneficiary	Percentage Factor
1	Under 65	4
2	65 – 74	5
3	75 – 79	6
4	80 – 84	7
5	85 – 89	9
6	90 – 94	11
7	95 or more	14

- (c) for the financial year commencing 1 July 2008 and any other year or years permitted under the Act and Regulations, the minimum payment will be not smaller than half the amount determined under the formula in paragraph (b), above;
- (d) if the Pension commences or is required to be re-calculated (for example, because it has been partially commuted) on a day other than 1 July of a year, the minimum payment specified in paragraph (b), above, is reduced to the following amount:

$$\text{minimum payment} \times \frac{\text{days remaining in financial year}}{\text{total days in financial year}}$$

- (e) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year;
- (f) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (g) if the primary beneficiary or a reversionary beneficiary dies, the Pension cannot be transferred to a Child of that person (but may be paid as a lump sum), unless the Child:
- (i) is less than 18 years of age; or
 - (ii) is greater than 18 years of age, but less than 25 years of age and is financially dependent on the Member; or
 - (iii) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*,

and, except in the case of a Child described in (iii) above, such a Pension must cease no later than the Child attaining 25 years of age;

- (h) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (i) if the Pension is commuted, at least the minimum amount, calculated in accordance with Regulation 1.07A, has been paid in the year of commutation.

PART 2

TRANSITION TO RETIREMENT PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(9A)(a), which included the following requirements at the date of this Deed:

- (a) payments are made at least annually;
- (b) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not smaller in total than the following amount:

$$\text{Account Balance} \times \text{Percentage Factor}$$

Where:

Account Balance means:

- (i) the value of the annuity or pension:
 - A. on 1 July in the financial year in which the payment is made; or
 - B. if that year is the year in which the annuity or pension payments commence - on the commencement day,

being the total amount paid as consideration to purchase the annuity or pension, as increased by returns on investments and as decreased by fees, charges, applicable taxes, payments to the annuitant or pensioner and payments made under a Splitting Order; or
- (ii) if the value of the annuity or pension under paragraph (a) is less than the withdrawal benefit to which the beneficiary would be entitled if the annuity were to be fully commuted — the value of the withdrawal benefit.

Percentage Factor means the percentage factor specified in Table 1, below, that applies to the beneficiary because of the beneficiary's age on:

- (i) 1 July in the financial year in which the payment is made; or
- (ii) if that is the year in which the annuity or pension payments commence - the commencement day.

Table 1

Item	Age of Beneficiary	Percentage Factor
1	Under 65	4
2	65 – 74	5
3	75 – 79	6
4	80 – 84	7
5	85 – 89	9
6	90 – 94	11
7	95 or more	14

- (c) for the financial year commencing 1 July 2008 and any other year or years permitted under the Act and Regulations, the minimum payment will be not smaller than half the amount determined under the formula in paragraph (b), above;
- (d) if the Pension commences or is required to be re-calculated (for example, because it has been partially commuted) on a day other than 1 July of a year, the minimum payment specified in paragraph (b), above, is reduced to the following amount:

$$\text{minimum payment} \times \frac{\text{days remaining in financial year}}{\text{total days in financial year}}$$

- (e) until the primary beneficiary Retires or reaches 65 years of age (whichever comes first), the payments in a year (including payments made under a Splitting Order) are not larger in total than the following amount:

$$\text{Account Balance} \times 10\%$$

- (f) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year;
- (g) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (h) if the primary beneficiary or a reversionary beneficiary dies, the Pension cannot be transferred to a Child of that person (but may be paid as a lump sum), unless the Child:
- (i) is less than 18 years of age; or
 - (ii) is greater than 18 years of age, but less than 25 years of age and is financially dependent on the Member; or

(iii) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*,

and, except in the case of a Child described in (iii) above, such a Pension must cease no later than the Child attaining 25 years of age;

- (i) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (j) if the pension is commuted, any resulting Superannuation Lump Sum cannot be cashed unless:
 - (i) the purpose of the commutation is:
 - A. to cash an unrestricted non-preserved benefit;
 - B. to pay a superannuation contributions surcharge; or
 - C. to give effect to an entitlement of a non-member spouse under a Splitting Order; or
 - (ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil';
- (k) if the Pension is commuted, at least the minimum amount, calculated in accordance with Regulation 1.07A, has been paid in the year of commutation.

PART 3

ALLOCATED PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(4), which included the following requirements at the date of this Deed:

- (a) payments are made at least annually;
- (b) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) for a Pension that has a commencement day on or after 22 December 1992 and before 1 January 2006 - the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the Regulations; and
- (e) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than the following:
 - (i) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006 – the respective maximum and minimum limits for the year calculated in accordance with one of the following Schedules to the Regulations:
 - A. Schedule 1A;
 - B. Schedule 1AAB;

- (ii) for payments made on or after 1 July 2006 – the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB;
- (f) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year; and
- (g) if the Pension is commuted, at least the minimum amount, calculated in accordance with Regulation 1.07A, has been paid in the year of commutation.

PART 4

PRE-20 SEPTEMBER 2007 MARKET LINKED PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(8), which included the following requirements at the date of this Deed:

- (a) the Pension must not commence before 20 September 2004;
- (b) payments are made to the primary beneficiary or a reversionary beneficiary at least annually throughout the Pension Period;
- (c) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a Splitting Order) is determined in accordance with Schedule 6 of the Regulations;
- (d) the Pension does not have a residual capital value;
- (e) the Pension cannot be commuted, except as authorised by Regulation 1.06(8);
- (f) if the Pension reverts, it does not have a reversionary component greater than the balance of the Member's Accumulation Account immediately before the reversion;
- (g) if the Pension is commuted, the commutation amount cannot exceed the balance of the Member's Accumulation Account immediately before the commutation;
- (h) the Pension can be transferred only as authorised by Regulation 1.06(8);
- (i) the capital value of the Pension, and the income from it, cannot be used as security for any borrowing; and
- (j) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year.

PART 5

LIFETIME PENSIONS (INCLUDED IN THE DEFINITION OF "DEFINED BENEFIT PENSION")

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(2), which included the following requirements at the date of this Deed:

- (a) the Pension is paid at least annually throughout the primary beneficiary's life and, if there is a reversionary beneficiary:
 - (i) throughout the reversionary beneficiary's life;
 - (ii) if he or she is a Child of the primary beneficiary or of a former reversionary beneficiary, at least until his or her 16th birthday; or

- (iii) if the person referred to in paragraph (ii) is a full-time student at age 16, at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs first);
- (b) the size of payments of benefit in a year is fixed, allowing for variation only:
 - (i) as specified in the Governing Rules;
 - (ii) to allow commutation to pay a superannuation contributions surcharge; or
 - (iii) to allow an amount to be paid under a Payment Split and reasonable fees in respect of a Splitting Order;
- (c) unless the Regulator otherwise approves, the sum payable as a benefit in each year to the primary beneficiary or to the reversionary beneficiary, is determined in accordance with the formula contained in Regulation 1.06(2)(c);
- (d) the Pension does not have a residual capital value;
- (e) the Pension cannot be commuted except as authorised by Regulation 1.06(2);
- (f) if the Pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation;
- (g) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (h) the capital value of the Pension and the income from it, cannot be used as security for any borrowing; and
- (i) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii), a surviving reversionary beneficiary may obtain a payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period; and
- (j) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii) and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been payable in the period, is payable to the primary beneficiary's estate; and
- (k) if the primary beneficiary dies within the period referred to in Regulation 1.06(2)(e)(ii) and there is a surviving reversionary beneficiary who also dies within that period, an amount is payable to the reversionary beneficiary's estate determined as described in Rule 5.6(b) as if that Rule applied to the reversionary beneficiary.

PART 6

LIFE EXPECTANCY PENSIONS (INCLUDED IN THE DEFINITION OF "DEFINED BENEFIT PENSION")

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(7), which included the following requirements at the date of this Deed:

- (a) if a Pension has a Pension Date before 20 September 2004 and:
 - (i) if the life expectancy of the primary beneficiary on the Pension Date day is less than 15 years, the Pension is paid at least annually to the primary beneficiary or to a

- reversionary beneficiary throughout the Pension Period provided that the Pension Period must not exceed 15 years; or
- (ii) if the life expectancy of the primary beneficiary on the Pension Date day is 15 years or more, the Pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a the Pension Period provided that the Pension Period must not exceed the primary beneficiary's life expectancy on the Pension Date;
- (b) if a Pension has a Pension Date on or after 20 September 2004 payments are made to the primary beneficiary or a reversionary beneficiary at least annually throughout the Pension Period;
- (c) the total amount of the payment, or payments, to be made in the first year after the Pension Date (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day the primary beneficiary became entitled to the Pension;
- (d) the total amount of the payments to be made in a year other than the first year after the Pension Date (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the "previous total"), and does not exceed the previous total by more than the amounts allowable under Regulation 1.06(7)(d)(i) or (ii);
- (e) the total amount of the payments to be made in a year in accordance with (c) or (d) may be varied only:
- (i) to allow commutation to pay a superannuation contributions surcharge; or
 - (ii) to allow an amount to be paid under a Payment Split and reasonable fees in respect of a Splitting Order;
- (f) the Pension does not have a residual capital value;
- (g) the Pension cannot be commuted except as authorised by Regulation 1.06(7);
- (h) if the Pension reverts, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
- (i) if the Pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and
- (j) the Pension can be transferred only as authorised by Regulation 1.06(7);
- (k) the capital value of the Pension, and the income from it, cannot be used as security for any borrowing.

PART 7

LIFETIME COMMUTABLE PENSIONS (INCLUDED IN THE DEFINITION OF "DEFINED BENEFIT PENSION")

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(6), which included the following requirements at the date of this Deed:

- (a) if the Pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation;

- (b) the Pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) the size of the payments of benefit in a year is fixed, allowing for variation only as specified in this Deed or as advised by or to allow payments to be made under a Splitting Order;
- (e) except in relation to payments, by way of commutation for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the consumer price index published by the Australian Bureau of Statistics in the preceding 3 years;
- (f) payments in accordance with the contracted size are made at least annually; and
- (g) where the Pension is commuted, except if conversion is in relation to a commutation to pay a superannuation contributions surcharge, the conversion to a lump sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under Schedule 1B of the Regulations to the Pension as if the Pension Date was the day on which the commutation occurs.

PART 8

NON-COMMUTABLE ALLOCATED PENSIONS

A Pension which meets the minimum terms and conditions contained in Regulations 1.06(4) and 6.01(2), which included the following requirements at the date of this Deed:

- (a) payments are made at least annually;
- (b) the Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary;
- (c) the capital value of the Pension and the income from it, cannot be used as security for any borrowing;
- (d) for a Pension that has a commencement day on or after 22 December 1992 and before 1 January 2006 - the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A of the Regulations;
- (e) the payments in a year (excluding payments by way of commutation but including payments made under a Splitting Order) are not larger or smaller in total than the following:
 - (i) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006 – the respective maximum and minimum limits for the year calculated in accordance with one of the following Schedules to the Regulations:
 - A. Schedule 1A;
 - B. Schedule 1AAB;
 - (ii) for payments made on or after 1 July 2006 – the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB;

- (f) if the pension is commuted, the resulting Superannuation Lump Sum cannot be cashed unless:
 - (i) the purpose of the commutation is:
 - A. to cash an unrestricted non-preserved benefit;
 - B. to pay a superannuation contributions surcharge; or
 - C. to give effect to an entitlement of a non-member spouse under a Splitting Order; or
 - (ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and
- (g) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year.

PART 9

POST-19 SEPTEMBER 2007 MARKET LINKED PENSION

A Pension which meets the minimum terms and conditions contained in Regulation 1.06(8), which included the following requirements at the date of this Deed:

- (a) payments are made to the primary beneficiary or a reversionary beneficiary at least annually throughout the Pension Period;
- (b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a Splitting Order) is determined in accordance with Schedule 6 of the Regulations;
- (c) the Pension does not have a residual capital value;
- (d) the Pension cannot be commuted, except as authorised by Regulation 1.06(8);
- (e) if the Pension reverts, it does not have a reversionary component greater than the balance of the Member's Accumulation Account immediately before the reversion;
- (f) if the Pension is commuted, the commutation amount cannot exceed the balance of the Member's Accumulation Account immediately before the commutation;
- (g) the Pension can be transferred only as authorised by Regulation 1.06(8);
- (h) the capital value of the Pension, and the income from it, cannot be used as security for any borrowing; and
- (i) if the Pension Date is on or after 1 June in a Year of Income, no payment is required to be made for that year.

SCHEDULE 2

Table for Non-lapsing Binding Nomination

Rule 5.4(a)

TO MY	AS A (Options include: Pension, Lump Sum, or Beneficiary Choice, except for Non-Dependant Children and Estate, where option is Lump Sum only)	ORDER OF PRIORITY OR PERCENTAGE*
Spouse		
Dependant Children		
Non-Dependant Children		
Estate		

* Where indicating an Order of Priority, place a number in this column. For example, placing a number "1" beside an option means that the Trustee will try to distribute in accordance with this option first. If it is not possible to meet the criteria of option "1" (eg. Because a beneficiary in that category has predeceased the Member), the Trustee will attempt to distribute in accordance with option "2", and so on. It is not necessary to complete more than one option.

Where indicating a percentage, ensure that the sum of all percentages add to 100% and that the "%" symbol is used. In the event that the sums add to less than 100%, the nomination is still valid in respect of the percentages and beneficiaries indicated.

This non-lapsing, binding death benefit nomination is made by me,
[Insert name of Member] on the day of,

.....
[Signature of Member]

We, the undersigned, certify that we witnessed the above-named person sign this document:

.....
[Signature of Witness 1]

.....
[Signature of Witness 2]

.....
[Full Name of Witness 1]

.....
[Full Name of Witness 2]

NOTE: This table is only part of the nomination process. Simply completing this table will not result in a legally binding nomination – see Rule 5.4(a) for details.

SCHEDULE 3

Dictionary

Many of the terms you will encounter in this Deed are specifically defined in the Superannuation Industry (Supervision) Act 1993 (Cwth) or any one of a number of other pieces of Commonwealth legislation. Due to the complex nature of superannuation, the definitions used by the legislation and by the documents establishing your Fund can be difficult to read and / or understand.

Please seek professional advice if you are unsure about any matter concerning your Superannuation Fund.

The Dictionary uses plain English versions of some definitions. These must be used as a guide to interpreting this Deed. **PLEASE NOTE** that the definitions set out in the Relevant Law will apply to this Deed regardless of the terms provided in the Dictionary.

Not all of the definitions in the legislation are included in this Dictionary. If you require clarification of any defined term or have any questions about this Deed or about anything you do not understand you should immediately contact your accountant or legal advisor.

PART 1

REFERENCES TO THE ACT

- (a) Unless otherwise stated, references to sections or regulations appearing after defined terms refer to sections of the Act or regulations made under the Act.
- (b) Any terms or expressions used in this Deed which are not defined in this Deed have the meanings given to them by the Act or the Regulations as the case requires.

PART 2

DEFINITIONS

In this Deed, unless the context or subject matter requires otherwise:

Accumulation Account means an account established and maintained under Rule 9.2;

Act means the Superannuation Industry (Supervision) Act 1993;

Actuary means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia; **section 10**

Additional Insurance means insurance effected by the Trustee to provide benefits in addition to the Trustee's liability to pay Total and Temporary Disablement Benefits, Total and Permanent Disablement Benefits or Death Benefits in accordance with Rule 5.6(b)(ii);

Adopted Child means a person adopted by another person under any law of (or recognised in) any state or territory of Australia relating to the adoption of children; **section 10**

Allocated Pension means a Pension which meets the standards of Regulation 1.06(4); **Reg 1.03 and 1.06**

Annuity means a benefit which meets the standards of Regulation 1.05; **Reg 1.05**

Approved Auditor means a person included in a class of persons specified in the Regulations, but excludes a person disqualified under the Act; **section 10**

Approved Deposit Fund means an indefinitely continuing fund that is maintained by an Approved Trustee solely for Approved Purposes and has approved rules; **section 10**

Approved Purposes means the purposes of:

- (a) receiving on deposit:
 - (i) Eligible Termination Payments under section 27D of the Tax Act as in force before 1 July 2007; and
 - (ii) amounts paid under Part 24 of the Act; and
 - (iii) amounts paid under section 65 of the Superannuation Guarantee (Administration) Act 1992; and
- (b) dealing with those amounts, in accordance with the Rules and in any way calculated directly or indirectly to enhance the value of, or render profitable, property of the Fund; and
- (c) paying to Beneficiaries (subject to any standards under section 32 of the Act) in accordance with the covenant referred to in section 53 of the Act, or to the legal personal representatives of Beneficiaries, amounts deposited with the Fund together with accumulated earnings on those amounts;
- (d) any other purposes approved by APRA; **section 10**

Approved Trustee means a Constitutional Corporation in relation to which an approval under section 26 of the Act is in force; **section 10 section 26**

APRA means the Australian Prudential Regulation Authority;

ASIC means the Australian Securities and Investments Commission;

Associate has the meaning given by section 12 of the Act; **section 10**

Beneficiary means a person who has a beneficial interest in the Fund; **section 10**

Benefit Payment Insurance means insurance effected by the Trustee to discharge the Trustee's liability to pay Total and Temporary Disablement Benefits, Total and Permanent Disablement Benefits or Death Benefits in accordance with Rule 5.6(b)(i);

Binding Death Nomination means a nomination which complies with Rule 5.3(a);

Business Real Property, in relation to an Entity, means:

- (a) any freehold or leasehold interest of the Entity in real property;
- (b) any interest of the Entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or

- (c) any other class of real property prescribed as Business Real Property by the Regulations;
- (d) where the property is used wholly and exclusively in one or more businesses (whether carried on by the Entity or not), but does not include any interest held in the capacity of beneficiary of a trust estate. For the purposes of this definition, real property used in one or more Primary Production Businesses does not cease to be used wholly and exclusively in that business or those businesses only because:
 - (i) an area of the real property, not exceeding 2 hectares, contains a dwelling used primarily for domestic or private purposes; and
 - (ii) the area is also used primarily for domestic or private purposes,
 - (iii) provided that the use for domestic or private purposes is not the predominant use of the real property;

Cashing Restriction means, in relation to a Condition of Release, the corresponding cashing restriction specified in Column 3 of Schedule 1 to the Regulations;

Child, in relation to a person, includes:

- (a) an Adopted Child, a step child or an ex nuptial child of the person; and
- (b) a child of the person's Spouse; and
- (c) a person who is a child of the person within the meaning of the Family Law Act 1975; **section 10**

Civil Penalty Provision has the meaning in section 193 of the Act;

Condition of Release means a condition of release specified in Column 2 of Schedule 1 to the Regulations;

Constitutional Corporation means a trading corporation or a financial corporation formed within the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); **section 10**

Control, for the purpose of Part 8 has the meaning given in section 70E of the Act;

Corporate Trustee means a Constitutional Corporation that is a Trustee; **section 10**

Corporations Act means the Corporations Act 2001;

Custodian means a person (other than a Trustee) who, under a contract with a Trustee or an Investment Manager, performs custodial functions in relation to any of the assets of the Fund; **section 10**

Death Benefit means a benefit payable under Rule 5.2(f);

Defined Benefit Pension means a Pension, other than:

- (a) a pension wholly determined by reference to policies of life assurance purchased or obtained by the Trustee solely to provide benefits to Members; or
- (b) an Allocated Pension;

Dependant includes a Spouse, any Child and any person with whom a person has an Interdependency Relationship; **section 10**

Designated Beneficiary means any Dependant of a Member who is named as a Designated Beneficiary in a Membership Application;

Director has the same meaning as in the Corporations Act;

Disqualified Person means:

- (a) an individual who:
 - (i) has been convicted of an offence in respect of dishonest conduct against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, or has had a civil penalty order made in relation to them and that individual has not been granted a waiver by the Regulator of their disqualified status;
 - (ii) is an Insolvent Under Administration; or
 - (iii) has been disqualified by the Regulator.
- (b) a corporation which:
 - (i) knows or has reasonable grounds to suspect that a responsible officer is a disqualified person under (i) above;
 - (ii) has a receiver, or a receiver and manager appointed in respect of property beneficially owned by the corporation;
 - (iii) has an official manager, deputy official manager or administrator appointed in respect of the corporation;
 - (iv) has a provisional liquidator appointed in respect of the corporation; or
 - (v) has begun to be wound up.

Eligible Employment means:

- (a) the holding of any office or appointment;
- (b) the performance of any functions or duties;
- (c) the engaging in of any work; or
- (d) the doing of any act or things,

that results in a person being treated as an employee for the purposes of section 12 of the Superannuation Guarantee (Administration) Act 1992 (but excluding section 12(11) of that Act);

Eligible Person means any person, except someone who is engaged in Eligible Employment during part or all of a Year of Income, unless the following formula applies to that year:

[Assessable income + reportable fringe benefits] from Eligible Employment

is less than 10% of

[Assessable income + exempt income + reportable fringe benefits] from all sources.

Eligible Termination Payment has the meaning in Subdivision AA of Division 2 of Part III of the Tax Act; **Reg 1.03**

Employee has its natural meaning as that meaning is contained and expanded by section 15A of the Act; **section 10 section 15A**

Employer has its natural meaning as that meaning is contained and expanded by section 15A of the Act; **section 10 section 15A**

Employer Sponsor means an Employer who does or would contribute to the Fund for the benefit of:

- (a) a Member who is an Employee of the Employer or its Associate; or
- (b) the Dependants of the Member on the death of the Member; **section 16**

Entity means an individual, a body corporate, a partnership, or a trust;

EPSSS means an exempt public sector superannuation scheme; **Reg 1.03**

Excluded Instalment Trust means a trust:

- (a) that arises because a Trustee or an Investment Manager makes an investment under which a listed security is held in trust until the purchase price of that security is paid in full;
- (b) where the underlying security, and property derived from the underlying security, is fully paid; and
- (c) where an investment in the underlying security held in trust would not be an In-house Asset of the Fund.

Family Law Act means the Family Law Act 1975;

Full-time means Gainfully Employed for at least 30 hours each week; **Reg 1.03**

Fund means the Superannuation Fund created upon the execution of this Deed;

Gainfully Employed or **Gainful Employment** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment; **Reg 1.03**

Governing Rules means the Rules and any provision applied to the Fund by any Relevant Law; **section 10**

Government Co-contributions means contributions made in respect of a Member by the Government under the Superannuation (Government Co-contribution for Low Income Earners) Act 2003;

Illiquid Investment in relation to a Member's interest in the Fund means an investment of a nature that produces either of the following outcomes:

- (a) It cannot be converted to cash in less than the time required to roll over or transfer a withdrawal benefit under Rule 6.2(e);
- (b) Converting it to cash within the time period specified under Rule 6.2(e) would be likely to have a significant adverse impact on the realisable value of the investment. **Reg 6.31**

Indexation Arrangement, in relation to a Pension, means an arrangement specified in the rules for the provision of the pension:

- (a) the purpose of which is to maintain over time the purchasing power of the pension relative to the CPI; and
- (b) that:
 - (i) ensures that an adjustment will be made at least annually to the amount of the pension payments; or
 - (ii) has been approved by APRA. **Reg 1.06**

Insolvent Under Administration means a person who:

- (a) is an undischarged bankrupt under the Bankruptcy Act 1966 or the law of an external Territory or a foreign country; or
- (b) has the status of an undischarged bankrupt under the law of any country other than Australia or of an external Territory;
and includes:
- (c) a person, any of whose property is subject to control under section 150 or 188 of the Bankruptcy Act 1966, or a corresponding provision of the law of an external Territory or of a foreign country; or
- (d) a person who has, at any time, executed a personal insolvency agreement under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or of a foreign country and the person has not been released from obligations under that Act or law; **section 10**

Interdependency Relationship means circumstances in which 2 persons (whether or not related by family):

- (a) have a close personal relationship, live together, one or each of them provides the other with financial support and one or each of them provides the other with domestic support and personal care; or
- (b) have a close personal relationship but do not satisfy paragraph (a) because either or both of them suffer from a physical, intellectual or psychiatric disability,

but excludes relationships which are excluded by the Regulations; **section 10 section 10A**

Invest or Investment means:

- (a) apply assets in any way; or
- (b) make a contract,

for the purpose of gaining interest, income, profit or gain; **section 10**

Investment Manager means a person appointed by a Trustee to Invest on behalf of the Trustee; **section 10**

In-house Asset has the meaning given in Part 8 of the Act and, unless otherwise stated in Part 8, includes a Loan to, or an investment in a Related Party of the Fund, an investment in a Related Trust of the Fund, or an asset of the Fund subject to a lease or Lease Arrangement between the Trustee of the Fund and a Related Party of the Fund;

Lease Arrangement means any agreement, arrangement or understanding in the nature of a lease (other than a lease) between the Trustee and another person, under which the other person is to use, or control the use of, property owned by the Fund, whether or not the agreement, arrangement or understanding is enforceable, or intended to be enforceable, by legal proceedings;

Legal Disability or Legally Disabled in relation to a natural person means a lack of legal capacity because the person is:

- (a) a minor;
- (b) an intellectually disabled person who is liable to have their affairs administered by another person under any law dealing with the intellectually disabled; or
- (c) suffering from a mental illness or is mentally disabled and who is liable to have their affairs administered by another person under any law dealing with mental health or the mentally disabled;

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;

Mandated Employer Contributions means contributions required to be made by, or on behalf of, an Employer that are equal to the sum of:

- (a) the contributions to be made by, or on behalf of, the Employer to the Fund in relation to a Member, that:
 - (i) reduce the Employer's potential liability under section 5 of the Superannuation Guarantee Charge Act 1992; or
 - (ii) are payments of shortfall components under the Superannuation Guarantee (Administration) Act 1992; and
- (b) the contributions (other than contributions specified in (i)) to be made by, or on behalf of, the Employer to the Fund in relation to a Member in or towards satisfaction of the Employer's obligation to make contributions for the Member under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority;

Market Value means the amount that a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale; and
 - (b) that the sale occurred after proper marketing of the asset; and
 - (c) that the buyer and the seller acted knowledgeably and prudentially in relation to the sale;
- section 10**

Member means any person who has become a member of the Fund in accordance with this Deed and who has not ceased to be a Member, and:

- (a) where the Fund is a Self Managed Superannuation Fund; or
- (b) in all other cases, unless the Trustee declares otherwise by resolution in writing,

includes a person who receives a Pension, or who has deferred his or her entitlement to receive a benefit from the Fund; **section 10**

Membership Application means an application to be admitted as a Member in a form which the Trustee approves;

Member-contributed WA Property means property to which the Stamp Act 1921 (Western Australia) or the Duties Act 2008 (Western Australia) applies, which is transferred (for consideration or otherwise) into the Fund by a Member or Members as a contribution by that Member or Members on their own behalf, which property was owned by the Member or Members prior to its contribution so that following the transfer no person other than the Member or Members contributing the Member-contributed WA Property will hold a beneficial interest in that property as contemplated by the Stamp Act 1921 (Western Australia) or the Duties Act 2008 (Western Australia), but does not include publicly-listed securities;

Minimum Benefit means all of a Member's benefits in the Fund;

Non-lapsing Binding Nomination means a nomination, the form of which is approved by the Trustee and which complies with Rule 5.4(a);

Non-commutable Income Stream means a benefit that:

- (a) cannot be commuted;
- (b) is paid at least monthly;
- (c) does not have a residual capital value; and
- (d) is such that the total amount paid each month is fixed or varies only:
 - (i) for the purpose of complying with the Act and Regulations; and
 - (ii) during any period of 12 months by a rate not exceeding either:
 - A. 5% per annum; or
 - B. the rate of increase in the last Consumer Price Index (All Capital Cities) for a quarter to be published by the Australian Statistician before the end of that period of 12 months compared with the Consumer Price Index (All Capital Cities) published for the same quarter in the preceding year;

Non-member Spouse means a person who is the non-member spouse in relation to a Payment Split; **Reg 1.03**

Normal Retirement Benefit is the benefit to which a Member who meets the criteria set out in Rules 5.1(a) or 5.1(b) is entitled and which is calculated in accordance with Rules 5.2(a) and 5.2(b);

Normal Retirement Date, subject to the Act or Regulations, means the earlier of:

- (a) the date on which the relevant Member ceases to be Gainfully Employed; or
- (b) the date on which the relevant Member attains the age of 65 years;

Old-age Pension has the meaning in paragraph 51(xxiii) of the Constitution; **section 10**

Part 8 Associate, in relation to an Entity has the meanings given in Subdivision B of Part 8 of the Act;

Part time Basis means Gainfully Employed for at least 40 hours in a period of 30 consecutive days during a Year of Income;

Part-time Equivalent Level means Gainfully Employed for at least 240 hours in the last preceding Year of Income;

Payment Split, means a payment split under Part VIIIB of the Family Law Act;

Pension, except in the expression **Old-age Pension**, includes a benefit provided by the Fund, if the benefit is taken, under the Regulations, to be a pension for the purposes of the Act; **section 10**

Pension Date means the date on which payment of a Pension commences;

Pension Period means a period in years, nominated by the primary beneficiary which is equal to one only of:

- (a) the primary beneficiary's life expectancy on the Pension Date;
- (b) if the Pension Date is after 19 September 2004 and before 1 January 2006, the primary beneficiary's life expectancy calculated, as if the primary beneficiary were up to 5 years younger on the Pension Date;
- (c) any amount up to and including the difference between the primary beneficiary's age in whole years at the Pension Date and 100, so long as that amount is not less than the primary beneficiary's life expectancy;
- (d) the life expectancy of the primary beneficiary's Spouse on the Pension Date, if the Pension is one that reverts to a surviving Spouse on the death of the primary beneficiary; or
- (e) the life expectancy of the primary beneficiary's Spouse calculated as if the spouse were up to 5 years younger on the Pension Date, if the Pension is one that reverts to a surviving Spouse on the death of the primary beneficiary,

rounded up to the nearest whole number;

Post-June 83 Component has the meaning given by Section 27A of the Income Tax Assessment Act 1936;

Preserved Benefits means the total of all benefits and entitlements standing to the credit of the Member's Accumulation Account, less the sum of:

- (a) Restricted Non-preserved Benefits; and
- (b) Unrestricted Non-preserved Benefits;

Primary Production Business has the meaning given by the Income Tax Assessment Act 1997;

PDS or Product Disclosure Statement has the meaning given by the Corporations Act;

Regulated Superannuation Fund means a Superannuation Fund which has a trustee and:

- (a) the trustee is a Constitutional Corporation as required by its trust deed or governing rules; or

- (b) the trust deed or governing rules provide that the sole or primary purpose of the fund is the provision of Old-age Pensions,
- (c) and in relation to which the trustee has elected in writing in a form approved by the Regulator that the Act will apply to the fund; **section 10 section 19**

Regulations means the Superannuation Industry (Supervision) Regulations 1994;

Regulator means the body having the responsibility for administering the Act and the activities of the Fund and includes APRA, ASIC or the Taxation Commissioner; **section 10**

Related Party means any of the following:

- (a) a Member;
- (b) a Standard Employer Sponsor;
- (c) a Part 8 Associate of a person or entity referred to in paragraph (a) or (b); or
- (d) a Non-member Spouse with a Superannuation Interest;

Related Trust means a trust over which a Member or a Standard Employer Sponsor has Control, other than an Excluded Instalment Trust;

Relative of an individual (except in Rule 1.5) means the following:

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or Adopted Child of the individual or of his or her Spouse;
- (b) the Spouse of the individual or of any other individual referred to in paragraph (a),

and for the purposes of paragraph (a), if one individual is the child of another individual because of the definition of Child in this Deed, relationships traced to, from or through the individual are to be determined in the same way as if the individual were the natural child of the other individual;

Relevant Law means the Act and Regulations, the Tax Act, the Corporations Act and any other laws governing the provision of superannuation and retirement benefits in Australia, from time to time and any regulations made under them;

Restricted Non-preserved Benefits means the total of the amount of any restricted non-preserved benefits that are received from another Regulated Superannuation Fund, a Retirement Savings Account established under the Retirement Savings Account Act 1997, or an EPSSS;

Retire means:

- (a) where a person is at least aged 55 years and less than 60 years, an arrangement under which the Member was Gainfully Employed has come to an end and the Trustee is reasonably satisfied that the Member intends never again to become Gainfully Employed on at least a Part time Basis;
- (b) where a person is at least aged 60 years and less than 65 years, an arrangement under which the Member was Gainfully Employed ceased on or after the Member's 60th birthday;

- (c) where a person is at least aged 65 years, this definition is not relevant, as other provisions govern the permissibility or compulsion to take superannuation benefits;

RSA or Retirement Savings Account has the meaning given in the Act; **section 10 and section 8 of the Retirement Savings Accounts Act 1997**

Self Managed Superannuation Fund or SMSF, has the meaning in Rule 1.5;

Splittable Contribution has the meaning given in Rule 6.4(a);

Splitting Order means a splitting order under Part VIIIB of the Family Law Act 1975;

Spouse of a person includes:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of Section 22B of the Acts Interpretation Act 1901 (Cth) as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple; **section 10**

Standard Employer Sponsor means, an Employer Sponsor who does or would contribute, wholly or partly pursuant to an arrangement between the Employer Sponsor and the Trustee;

Superannuation Fund means:

- (a) a fund that is:
 - (i) an indefinitely continuing fund; and
 - (ii) a provident, benefit, superannuation or retirement fund; or
- (b) a public sector superannuation scheme;

Superannuation Interest means a beneficial interest in the Fund; **section 10**

Superannuation Lump Sum has the meaning given by subsection 995-1(1) of the Tax Act;

Tax Act means, as the case requires, the Income Tax Assessment Act 1936, or the Income Tax Assessment Act 1997;

Taxation Commissioner means the person appointed or acting as the Commissioner of Taxation under the Taxation Administration Act 1953;

Temporary Incapacity means ill-health (whether physical or mental) that caused a Member to cease to be Gainfully Employed but does not constitute Total and Permanent Disablement;

Terminal Illness Benefit means a benefit payable under Rule 5.2(e);

Terminally Ill means a condition that the Member is suffering, which two medical practitioners (at least one of these a specialist) certify would, in the normal course, result in death within a period of 12 months;

Total and Permanent Disablement means ill-health (whether physical or mental), where the

Trustee is reasonably satisfied that the Member is unlikely, ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;

Total and Permanent Disablement Benefit means a benefit payable under Rule 5.2(c);

Total and Temporary Disablement Benefit means a benefit payable under Rule 5.2(d);

Trustee means the first Trustee of the Fund and / or any other person appointed as an addition to or replacement or substitute for that person. The Trustee may be one or more persons at any time;

Unrestricted Non-preserved Benefits means the sum of:

- (a) the total of the Member's Unrestricted Non-preserved Contributions;
- (b) the amount of the Member's Preserved Benefits and Restricted Non-preserved Benefits which have met a Condition of Release and have a nil Cashing Restriction;
- (c) the amount of unrestricted non-preserved benefits received by the Fund in respect of the Member on or after the day on which the Fund becomes a Regulated Superannuation Fund; and
- (d) the investment earnings on the amounts specified in paragraphs (a) and (c) for the period before 1 July 1999,

less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the amounts in (a) to (d) above at the relevant time;

Unrestricted Non-preserved Contributions means the amounts (other than an amount that is a CGT Exempt Component as defined in the Tax Act):

- (a) that will be taken by section 27D of the Tax Act as in force before 1 July 2007 to have been expended out of Eligible Termination Payments within the meaning of that section; and
- (b) that have been received from sources other than:
 - (i) superannuation funds;
 - (ii) Approved Deposit Funds within the meaning of the Act or the Occupational Superannuation Standards Act 1987 as in force immediately before the commencement of section 5 of the Occupational Superannuation Standards Amendment Act 1993; or
 - (iii) deferred annuities within the meaning of Rule 5 or the Occupational Superannuation Standards Regulations; or
 - (iv) Retirement Savings Accounts established in accordance with the Retirement Savings Accounts Act 1997;

Year of Income means the period from 1 July of a calendar year to 30 June of the following calendar year, unless any other period applicable to the Fund is, for the purposes of the Tax Act, a year of income of the Fund. **section 10**

For further information please contact your accountant, financial planner, lawyer or other advisor or go to

<http://www.ato.gov.au/>

SCHEDULE 4

DATE OF DEED: 23 / 06 / 2009

TRUSTEES: IPPOLITO MENNITI
JANELLE ROBYN MENNITI

NAME OF FUND: P & J MENNITI SUPER FUND

INCEPTION DATE: 23 / 06 / 2009

Client REF: 11548

SIGNED, SEALED AND DELIVERED by)
IPPOLITO MENNITI as Trustee in the)
presence of:)

P. Menniti

IPPOLITO MENNITI

P. Zanatta
Signature of Witness

Philippa Elaine Zanatta
Full Name of Witness

SIGNED, SEALED AND DELIVERED by)
JANELLE ROBYN MENNITI as Trustee in)
the presence of:)

J. Menniti

JANELLE ROBYN MENNITI

P. Zanatta
Signature of Witness

Philippa Elaine Zanatta
Full Name of Witness

Client REF: 11548

