

## **P & J MENNITI SUPER FUND**

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**THIS SUPERANNUATION FUND TRUST DEED** is made on the date specified in Schedule 4 by the Trustee named in Schedule 4.

**WHEREAS:-**

- A. The Trustee has agreed to act as the first Trustee of the Fund named in Schedule 4, which is established and is to be maintained as an indefinitely continuing superannuation fund (the 'Fund') for the purpose of providing superannuation benefits for Members.
- B. The Trustee has agreed to accept the trusts constituted under this Deed and to undertake the liabilities, duties and obligations imposed upon the Trustee by this Deed and by the laws applicable in the jurisdiction to which it is subject.

**NOW THIS DEED WITNESSES AS FOLLOWS:-**

- 1. This Deed will be governed and interpreted and will take effect in accordance with the Relevant Law.
- 2. The Fund will come into operation on the 'Inception Date' specified in Schedule 4.
- 3. Except to the extent that any interests of Members or Beneficiaries of the Fund are otherwise affected or circumscribed by the Relevant Law or by this Deed, the Fund will be vested in, controlled by and administered by the Trustee.
- 4. This Deed will be interpreted in accordance with the Rules.
- 5. If the Relevant Law does not exclude the operation of the rule against perpetuities in relation to those trusts, the trusts created by this Deed will terminate on the first to occur of:
  - (a) the day immediately preceding the day which is 80 years after the date of execution of this Deed;
  - (b) the day immediately preceding the day which is 21 years after the date of the death of the last survivor of the lineal descendants of Her Majesty Queen Elizabeth II living on the date of the execution of this Deed; or
  - (c) the date on which this Deed is terminated in accordance with its provisions.
- 6. (a) Where the Fund is currently subscribed to a system for the administration of superannuation fund governing rules conducted by or on behalf of Superdepot Pty Ltd ACN 122 036 248, the Trustee appoints its professional advisor for the time being and each principal, director and authorised employee of that professional advisor as its duly constituted attorney for the following purposes only:
  - (i) To accept on behalf of the Trustee any amendments to the Governing Rules of the Fund prepared or published by or on behalf of Superdepot Pty Ltd ACN 122 036 248 for the purposes of that system;
  - (ii) To execute on behalf of the Trustee a resolution accepting and adopting any amended Governing Rules for the Fund prepared or published by or on behalf of Superdepot Pty Ltd ACN 122 036 248 for the purposes of that system;
  - (iii) To confirm by electronic medium or otherwise the acceptance and/or adoption of such Governing Rules.





- (b) The Trustee will upon request execute an authority required in order to complete this appointment and put it into effect.
- (c) The Trustee may at any time revoke the power of attorney in this clause 6 by giving written notice to the Trustees attorney.



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## **RULES**

**PLEASE NOTE** that the material referred to in these Rules is constantly changing and you must keep up to date with those changes. If you are unsure about the currency of any information in the Rules, please contact us immediately or your accountant, financial planner or other advisor.

**YOU SHOULD NOT ATTEMPT TO MANAGE YOUR OWN SUPERANNUATION FUND WITHOUT CONSULTING YOUR ACCOUNTANT, FINANCIAL PLANNER, LAWYER OR OTHER ADVISER.**



## 1. INTERPRETATION PROVISIONS

### 1.1 TERMS DEFINED IN THE ACT

- (a) Any terms or expressions which have defined meanings in the Superannuation Industry (Supervision) Act 1993 have the same meanings when used in this Deed. If any term or expression defined in this Deed conflicts or is inconsistent with any term or expression defined in the Act, the term or expression will have the meaning set out in the Act.
- (b) If a definition used in this Deed expands any defined term contained in the Act, the expanded meaning does not, by itself, result in a conflict or inconsistency under Rule 1.1(a).

### 1.2 DICTIONARY (ALSO SEE SCHEDULE 3)

The terms and expressions defined in the Dictionary:

- (a) will apply to this Deed; and
- (b) will have those meanings when used in this Deed.

### 1.3 ADDITIONAL DEFINITIONS

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

**Act** means the Superannuation Industry (Supervision) Act 1993;

**Deed** means this Deed including all of its recitals, clauses, Rules, Schedule 1, Schedule 2, Schedule 3 and Schedule 4 (if included in this Deed);

**Dictionary** means the dictionary of terms and expressions in Schedule 3;

**Rules** means these rules contained in this Deed which regulate the Fund and **Rule** means any one of them.

### 1.4 INTERPRETATION

- (a) In this Deed, unless the context or subject matter requires otherwise, references to:
  - (i) **Singular** words includes the plural and vice versa;
  - (ii) any **gender** includes every gender;
  - (iii) a **person** includes natural persons, firms, companies, corporations, bodies corporate, trustees, trusts, associations, partnerships, government authorities, and other legal entities and includes successors and assigns from time to time;
  - (iv) **writing** includes printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
  - (v) **signature** and **signing** mean due execution of a document by a person, corporation or other relevant entity and include signing by an agent or attorney or representative (if a body corporate);
  - (vi) **months** mean calendar months;
  - (vii) **statutes** include statutes amending, modifying, rewriting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, orders in council and ordinances made under those statutes;
  - (viii) **sections** of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;



- (ix) **regulations** or terms defined in regulations refer to corresponding regulations or defined terms in amended, consolidated or replacement regulations;
  - (x) an **agreement** or **document** (including this Deed) means that agreement or document as amended, novated or supplemented and includes all parts of it including clauses, recitals, schedules, appendices and exhibits to it;
  - (xi) a **party** includes that party's executors, administrators, substitutes, successors and assigns;
  - (xii) **Rules, clauses** or **schedules** are references to the Rules, clauses or schedules contained in this Deed;
  - (xiii) Where a person is entitled to **vote** or holds the **right to vote** on any matter by virtue of this Deed, the person may vote by proxy or attorney or representative (if a body corporate). A reference to a person being present means present in person or by proxy.
- (b) In this Deed, the following rules apply unless the context or subject matter requires otherwise:
- (i) **headings** and the **table of contents** are used for convenience only and must be disregarded in the interpretation of this Deed;
  - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning;
  - (iii) a requirement to give a person **notice** in writing must be satisfied by posting the notice to that person's last known address;
  - (iv) no **rule of construction** of documents will apply to the disadvantage of a party, on the basis that the party put forward the document or any relevant part of it;
  - (v) **notes and references** to statutes (or sections of statutes) or other documents contained in bold text after any term defined in this Deed are used to assist in the reading of this Deed and must be disregarded in the legal interpretation of this Deed.

## 1.5 RULES FOR SELF MANAGED SUPERANNUATION FUNDS

Subject to the Act and Regulations, the Fund is a **Self Managed Superannuation Fund** or **SMSF** only if it satisfies all of the conditions in either Rule 1.5(a) or 1.5(b). **section 17A**

- (a) **Funds other than single member funds.** Where the Fund has more than one Member, the Fund is an SMSF if:
- (i) it has less than 5 Members;
  - (ii) where the Trustees are individuals - each Trustee is a Member;
  - (iii) where the Fund has a Corporate Trustee - each Director of the Corporate Trustee is a Member;
  - (iv) each Member is a Trustee or if the Fund has a Corporate Trustee, is a director of the Corporate Trustee;
  - (v) no Member is an Employee of another Member, unless they are a Relative of that Member; and
  - (vi) no Trustee receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.
- (b) **Single member funds.** Where the Fund has only one Member, the Fund is an SMSF if:

- (i) where the Fund has a Corporate Trustee:
    - A. the Member is the sole Director;
    - B. the Member and one Relative of the Member are the only Directors; or
    - C. the Member and one other person who is not the Member's Employer are the only Directors;
  - (ii) where the Trustees are individuals, the Member and one Relative of the Member are the only Trustees or the Member and one other person who is not the Member's Employer are the only Trustees; and
  - (iii) no Trustee receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund.
- (c) **Other persons may be Trustees.** The Fund does not fail to satisfy the conditions in either Rule 1.5(a) or Rule 1.5(b) simply because:
- (i) a Member has died and the Member's legal personal representative is a Trustee or a Director of a Corporate Trustee, in place of the Member from the time when the Member died and ending when the payment of Death Benefits commence for the Member; or
  - (ii) a Member's legal personal representative is a Trustee or a director of a Corporate Trustee, in place of the Member, during any period when the Member is under a Legal Disability or the legal personal representative has an enduring power of attorney from the Member; or
  - (iii) a Member's parent or guardian is a Trustee in place of the Member where the Member is under a Legal Disability because of age and does not have a legal personal representative; or
  - (iv) an appointment of an acting Trustee is in force under section 134 of the Act.
- (d) **Extended meaning of Employee.** For the purposes of this Rule 1.5, in addition to the meaning given in the Dictionary, a Member who is an Employee of an Employer is also an Employee of another person (the "**Other Person**") if the Employer is:
- (i) a Relative of the Other Person; or
  - (ii) a body corporate of which the Other Person, or a Relative of the Other Person, is a director or a body corporate related to that body corporate; or
  - (iii) the trustee of a trust of which the Other Person, or a Relative of the Other Person, is a beneficiary; or
  - (iv) a partnership, in which:
    - A. the Other Person, or a Relative of the Other Person, is a partner; or
    - B. the Other Person, or a Relative of the Other Person, is a director of a body corporate that is a partner; or
    - C. a trust of which the Other Person, or a Relative of the Other Person, is a beneficiary, is a partner.
- (e) **Meaning of Relative.** Relative, in relation to an individual, for the purposes of Rule 1.5, means:
- (i) a parent, Child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the individual or of his or her Spouse or former Spouse; or



- (ii) a Spouse or former Spouse of the individual, or of an individual referred to in paragraph (i),

and for the purposes of paragraph (i), 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.

## **1.6 SOLE PURPOSE**

Subject to Section 60 of the Superannuation Industry (Supervision) Act 1993, this Deed is subject to the requirement that:

- (a) where the Trustee is a natural person or persons, the sole or primary purpose of the Fund must always be the provision of Old-age Pensions; or
- (b) where the Trustee is a constitutional corporation, this Fund is subject to the requirement that the Trustee must always be a constitutional corporation.

## 2. MEMBERSHIP

### 2.1 WHO MAY APPLY

- (a) The Trustee may admit as a Member, any person who is or has at any time been an Employee, an Eligible Person or a Child of a Member and/or any other person acceptable to the Regulator.
- (b) Rule 2.1(a) is subject to the Relevant Law which may expand or restrict the persons or classes of persons who may be admitted as members of a superannuation fund.

### 2.2 BECOMING A MEMBER

- (a) **Submit application.** Any person may apply for membership of the Fund by completing and submitting a Membership Application to the Trustee.
- (b) **Applicant agrees to Deed.** A person who completes a Membership Application and is admitted as a Member, is deemed to be bound by this Deed.

### 2.3 SOME EX-SPOUSES TREATED AS MEMBERS

Where a Superannuation Interest is subject to a Splitting Order and the Non-member Spouse was not a Member immediately before the order is made, the Trustee must treat a Non-member Spouse as a Member for the purposes of:

- (a) Rule 1.5 and the definition of Self Managed Superannuation Fund;
- (b) Rule 8.4, which deals with In-house Assets and other restricted or prohibited investments; and
- (c) any other provisions which the Act may, from time to time, require.

### 2.4 CATEGORIES AND SUB-PLANS

- (a) **Trustee may divide Members into categories.** The Trustee may divide the Members and Beneficiaries into different categories for any purposes which it considers appropriate. The benefits and entitlements of each category, and the criteria for admission into each category must be determined by the Trustee in its absolute discretion. The benefits and entitlements of any Members or Beneficiaries affected by any division must not be reduced by the division without the prior written approval of the affected Members or Beneficiaries.
- (b) **Trustee may divide the Fund into sub-plans.** The Trustee may divide the Fund into one or more sub-plans for any purposes which it considers appropriate. The membership, contributions, assets, and liabilities for payment of benefits and entitlements or otherwise, in relation to each sub-plan must be maintained separately from the rest of the Fund. The criteria for admission into each sub-plan must be determined by the Trustee in its absolute discretion. The benefits and entitlements of any Members or Beneficiaries affected by any division must not be reduced by the division without the prior written approval of the affected Members or Beneficiaries.

## **2.5 RESTRICTIONS IF THE FUND HAS MEMBER-CONTRIBUTED WA PROPERTY**

- (a) Regardless of any other provision in this Deed but subject to Rule 5.12, where the Fund acquires Member-contributed WA Property:
- (i) jointly from all of the Members where the Fund has more than one Member; or
  - (ii) from a sole Member,

the Fund must not admit any further Members, so long as the Fund still owns the Member-contributed WA Property unless Rule 2.5(b) applies.

- (b) Regardless of any other provision in this Deed, where there is more than one Member and the Fund acquires or proposes to acquire Member-contributed WA Property:
- (i) from only some of the Members; or
  - (ii) from all of the Members and further Members are admitted to the Fund after the date of that acquisition,

the Trustee must, prior to the acquisition, create a sub-plan under Rule 2.4 for the Member or Members contributing the Member-contributed WA Property and the Member-contributed WA Property must be placed to the credit of that sub-plan which must be maintained separately from the rest of the Fund. The Member-contributed WA Property recorded in the sub-plan created under this Rule must not be transferred or removed from that sub-plan. No Members other than the Member or Members contributing the Member-contributed WA Property may be admitted as Members of the sub-plan.

- (c) The property held under Rule 2.5(b) must be held by the Fund specifically for the transferor of the Member-contributed WA Property and must not be combined or pooled with the contributions of assets of another Member or Members other than the Members transferring the Member-contributed WA Property to the Fund. No other Member or other person is entitled to obtain or make any claim any interest in the Member-contributed WA Property.
- (d) Any Member-contributed WA Property held under the preceding Rules can only be held in the Fund to be provided to the transferor as a retirement benefit.



### **3. INFORMATION WHICH TRUSTEE MUST GIVE**

#### **3.1 PRODUCT DISCLOSURE STATEMENTS**

The Trustee must consider whether or not an obligation exists to prepare a Product Disclosure Statement and, where necessary, must comply with Part 7.9 of the Corporations Act 2001 (Cth) as to the preparation, content and giving of such a statement.

#### **3.2 CIRCUMSTANCES REQUIRING INFORMATION**

The Trustee must consider whether or not an obligation exists under the Relevant Law to provide information concerning the Fund to Members, Beneficiaries, Employers, the Taxation Commissioner or other appropriate persons:

- (a) at or before the time a new Member applies for membership;
- (b) upon receiving a request from a person who is (or was within the preceding 12 months) a Member or Beneficiary;
- (c) upon receiving a request from an Employer;
- (d) upon a Member ceasing to be a Member;
- (e) at the end of each Year of Income;
- (f) before a Member enters into, or the Trustee accepts, a Binding Death Nomination or a Non-lapsing Binding Nomination;
- (g) upon the occurrence of any of the following events:
  - (i) the Governing Rules have been changed and, as a result, an adverse effect occurs in relation to:
    - A. a Member's accumulated benefits;
    - B. the benefits to which a Member may become entitled;
    - C. the circumstances in which a Member's benefits would become payable;
    - D. the manner in which a Member's benefits will be calculated; or
    - E. the security of the Member's benefits;
  - (ii) the Member's membership is transferred to a different fund;
  - (iii) a change occurs in the matters set out in any PDS which was or should have been issued under Rule 3.1;
- (h) upon receiving any notice of non-compliance of the Fund issued under the Relevant Law;
- (i) upon the winding up or termination of the Fund;
- (j) upon the occurrence of any event that the Trustee reasonably believes a Member would reasonably be expected to be informed of;
- (k) at the time of:
  - (i) paying benefits or entitlements at the direction of a Member;
  - (ii) rolling over or transferring benefits or entitlements to another entity; or



- (iii) any combination of the preceding paragraphs; or
- (l) at any other time or in any circumstances required by the Relevant Law.

### **3.3 HOW TO PROVIDE INFORMATION**

Where the Trustee considers that there is an obligation to provide information in accordance with this Rule, the Trustee must provide the appropriate information to Members, Beneficiaries, Employers or other appropriate persons in the manner prescribed in the Relevant Law.

### **3.4 INFORMATION ON DEATH OF MEMBER**

Upon the death of a Member, the Trustee must:

- (a) provide all appropriate information in accordance with this Rule to the Member's personal legal representative; and
- (b) notify each person to whom any benefits or entitlements are payable of the reasons why benefits and entitlements are payable to them, the amounts payable and the terms upon which they are to be paid.

### **3.5 INFORMATION PURSUANT TO FAMILY LAW ACT ORDERS**

- (a) **Information to be given.** If a Member's Superannuation Interest becomes subject to a Payment Split, or other action or restriction pursuant to an order under the Family Law Act, the Trustee will be required to give the information prescribed by the Relevant Law to the Non-member Spouse and to the Member.
- (b) **Cost of information.** Where the Trustee is obliged to give information under Rule 3.5(a) to the Non-member Spouse, the Trustee may levy reasonable charges against the Non-member Spouse's Superannuation Interest in respect of the provision of that information, including the cost of obtaining professional advice in relation to any requirement under this Rule.

## **4. CONTRIBUTIONS**

### **4.1 WHO MAY MAKE CONTRIBUTIONS**

The Trustee may accept contributions to the Fund that are made in respect of a Member:

- (a) who is under age 65;
- (b) who has reached age 65 but not age 75 only if the member has been Gainfully Employed at least on a Part time Basis during the financial year in which the contributions are made;
- (c) who has reached age 75 only if the contributions are Mandated Employer Contributions,

however the Trustee must not accept contributions from a Member after 30 June 2007 unless the Trustee has received the Member's tax file number.

### **4.2 SUBJECT TO RELEVANT LAW**

Rule 4.1 is subject to the Relevant Law which may expand or restrict the persons or classes of persons from whom contributions may be accepted.

### **4.3 GOVERNMENT CO-CONTRIBUTION**

The Trustee may accept Government Co-contributions to the Fund.

### **4.4 SPLITTABLE CONTRIBUTIONS**

Contributions which are Splittable Contributions are dealt with in Rule 6.4.

## 5. BENEFITS AND ENTITLEMENTS

### 5.1 BENEFITS A MEMBER MAY RECEIVE

- (a) **Retirement at the normal time.** A Member who Retires or attains the age of 65 years is entitled to receive a Normal Retirement Benefit, calculated in accordance with Rule 5.2.
- (b) **Benefits before the normal time.** A Member who has attained the age of 55 years but has not yet Retired is entitled to receive a Normal Retirement Benefit, calculated in accordance with Rule 5.2, but subject to the benefit being paid as a pension which cannot be commuted to a lump sum before the Member Retires or attains the age of 65 years, or in any other form allowable under the Relevant Law, from time to time.
- (c) **Total and Permanent Disablement.** A Member who ceases Gainful Employment because of Total and Permanent Disablement is entitled to receive a Total and Permanent Disablement Benefit, calculated in accordance with Rule 5.2.
- (d) **Total and Temporary Disablement.** Upon the Total and Temporary Disablement of a Member, the Member is entitled to receive a Total and Temporary Disablement Benefit, calculated in accordance with Rule 5.2.
- (e) **Terminal Illness Benefit.** Upon a Member being diagnosed as Terminally Ill, the Member is entitled to receive a Terminal Illness Benefit.
- (f) **Death Benefits.** A Death Benefit becomes payable upon the death of:
  - (i) a Member; or
  - (ii) a reversionary beneficiary in receipt of a Pension,
 to the extent that the type of Pension or other benefit being received allows for the calculation and payment of a Death Benefit from the Fund.
- (g) **Pension to Spouse if Member dies.** If a Member dies while receiving a Pension from the Fund, the Member's Spouse may apply to the Trustee to have that Pension continued. The Trustee may, in its absolute discretion, decide to continue that Pension. The amount of that Pension will not exceed the amount calculated in accordance with the Act and Regulations. A person will, unless the Trustee otherwise determines, be entitled to a continuation of the deceased Member's Pension only if the person was the Member's Spouse before the Member retired.
- (h) **No right to elect to receive Death Benefit as Pension.** Unless Rule 5.3 or 5.4 requires a payment in accordance with a Binding Death Nomination or a Non-lapsing Binding Nomination to be made by way of a Pension, a person entitled to receive a Death Benefit does not have a right to elect to receive that benefit by way of a Pension. However, the person entitled to receive a Death Benefit may apply to the Trustee for part or all of their Death Benefit entitlement be paid as one or more Pensions and the Trustee, in its absolute discretion, may decide to grant the request.
- (i) **Other cases.** A person who ceases to be a Member, otherwise than by death, and who is not entitled to a:
  - (i) Normal Retirement Benefit; or
  - (ii) Total and Permanent Disablement Benefit,
 will be entitled to:



- (iii) receive the balance of his or her Accumulation Account, subject to the restrictions imposed by Rules 5.8 to 5.11(a); or
  - (iv) have the balance of his or her Accumulation Account transferred to another Regulated Superannuation Fund, Approved Deposit Fund, EPSSS or RSA, in accordance with Rule 6.
- (j) **Early Release.** If the Trustee receives a written request for the early release of some or all of a Member's entitlements and if:
- (i) the Member's circumstances constitute grounds for early release; and
  - (ii) where required, the Trustee receives written approval from the Regulator,
- the Trustee may pay the benefits and entitlements to the Member, net of any taxes or reasonable charges applicable to the payment of those benefits and entitlements, and subject to any restrictions required as to the manner and amount of that payment.
- (k) **Effect of Family Law Act.** Where, pursuant to an order under the Family Law Act, a Superannuation Interest has been created in favour of a Non-member Spouse, a reference in this Rule 5.1 to a Member will be read as including a Non-member Spouse.

## 5.2 HOW TO CALCULATE BENEFITS

**NOTE:** While the primary form of benefit is a Pension, Lump Sum benefits may still be paid. See Rule 5.7 for details.

- (a) **Normal Retirement Benefit.** A Member's Normal Retirement Benefit will be a Pension of an amount determined by the Trustee, having regard to:
- (i) the balance of the Member's Accumulation Account at the date the Member Retires;
  - (ii) the period over which and the terms upon which the Pension is to be payable;
  - (iii) the expected investment earnings of the Fund to be attributable to the balance of the Member's Accumulation Account;
  - (iv) the operating costs of the Fund, costs associated with the termination of the Fund and any administrative, insurance and taxation costs relating to the operation and termination of the Fund, which are anticipated to be attributable to the balance of the Member's Accumulation Account;
  - (v) the cost of any annuities, Pensions and income streams purchased or to be purchased by the Trustee in respect of the Member or the Member's Beneficiaries;
  - (vi) any restrictions placed upon the payment of annuities, Pensions and income streams by the Act and Regulations; and
  - (vii) any lump sum payment, or total or partial commutation in accordance with Rule 5.7.
- (b) **Benefit payable until nil balance.** A Member's Normal Retirement Benefit will:
- (i) be calculated to produce a nil balance in the Member's Accumulation Account after satisfying the terms on which the Pension is to be paid; and
  - (ii) in any event, cease to be payable when the balance in the Member's Accumulation Account is nil.
- (c) **Total and Permanent Disablement Benefit.** A Member's Total and Permanent Disablement Benefit will be an amount up to the balance of the Member's Accumulation Account less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.



- (d) **Total and Temporary Disablement.** A Member's Total and Temporary Disablement Benefit will, subject to any requirements imposed by the Regulator on the payment of similar benefits, be a Non-commutable Income Stream cashed from the Fund for:
- (i) the purpose of continuing (in whole or in part) the gain or reward which the Member was receiving before the Temporary Incapacity; and
  - (ii) a period not exceeding the period during which the Member is prevented from undertaking Employment of the kind engaged in immediately before the Temporary Incapacity,
- but in any event must not exceed an amount equal to the balance of the Member's Accumulation Account, less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (e) **Terminal Illness Benefit.** A Member's Terminal Illness Benefit will be an amount up to the balance of the Member's Accumulation Account less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (f) **Death Benefit.** A Member's Death Benefit will be an amount equal to the balance of the Member's Accumulation Account less:
- (i) any taxes or reasonable charges determined by the Trustee to be applicable to the payment of that benefit; and
  - (ii) the amount necessary to meet any obligations with respect to a Pension or other payments required to be met from the Member's benefits and entitlements,
- and will be payable in any amounts and to any of the following persons as the Trustee reasonably considers to be appropriate in the circumstances:
- (iii) one or more of the Member's Designated Beneficiaries;
  - (iv) one or more of the Member's Dependants;
  - (v) the Member's legal personal representative,
- unless Rule 5.3 or 5.4 requires a payment in accordance with a Binding Death Nomination or a Non-lapsing Binding Nomination.

### 5.3 BINDING DEATH NOMINATIONS

- (a) **Requirements.** A Binding Death Nomination:
- (i) must be in writing;
  - (ii) must be signed and dated by the Member in the presence of 2 witnesses, each of whom has turned 18 and neither of whom is a person mentioned in the notice;
  - (iii) must contain a declaration, signed and dated, by the witnesses stating that the notice was signed by the Member in their presence;
  - (iv) must be accepted by the Trustee;
  - (v) will lapse and be of no further effect on the day which is 3 years after the day on which it was first signed or last confirmed or amended by the Member whichever is the later; and
  - (vi) may be revoked by the Member by written notice to the Trustee at any time.
- (b) **Member may give.** A Member may, at any time, give the Trustee a Binding Death Nomination directing the payment of any part of the Member's Death Benefit to a person or persons named in the notice. If the Trustee receives a Binding Death Nomination, the



Trustee will pay the amount of the Member's Death Benefit specified in accordance with that notice unless it has lapsed or been revoked by the Member.

- (c) **Information to Member.** Before the Trustee accepts a Binding Death Nomination, the Trustee must give to the Member a statement:
- (i) that the Trustee cannot alter the Member's properly made request, regardless of the consequences or circumstances which might arise subsequent to the Member making the request and so long as that request remains current;
  - (ii) that careful consideration should be given to the wording of the Member's request to ensure that the Member's intentions are clearly and legally binding and executable;
  - (iii) that the Member is advised to seek further information and professional advice as to the manner and consequences of the request prior to its being made;
  - (iv) containing all other information required by the Act and Regulations; and
  - (v) containing any other information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the Members rights under this Rule.

#### 5.4 NON-LAPSING BINDING NOMINATION

- (a) **Requirements.** A Non-lapsing Binding Nomination:
- (i) must be in writing;
  - (ii) must be signed, and dated, by the Member in the presence of 2 witnesses, each of whom has turned 18 and neither of whom is a person mentioned in the notice;
  - (iii) must contain a declaration signed and dated by the witnesses stating that the notice was signed by the Member in their presence;
  - (iv) must be considered in a meeting and accepted by the Trustee;
  - (v) will not lapse by the passing of time;
  - (vi) may be revoked by the Member by written notice to the Trustee at any time;
  - (vii) must contain sufficient details to identify the Member;
  - (viii) must contain sufficient details to identify one or more Beneficiaries for each category of benefits selected;
  - (ix) must contain a table which identifies benefit categories, beneficiary categories and manner of payment of Death Benefits in the format provided in Schedule 2, enabling the Member to select one or more options or percentages from the table which, once selected, are binding on the Trustee with respect to that Member's Death Benefit.
- (b) **Member may give.** A Member may at any time give the Trustee a Non-lapsing Binding Nomination directing the payment of any part of the Member's Death Benefit to a person or persons named in the notice. If the Trustee receives a Non-lapsing Binding Nomination, the Trustee will pay the amount of the Member's Death Benefit specified in accordance with that notice unless it has been revoked by the Member.
- (c) **Information to Member.** Before the Trustee accepts a Non-lapsing Binding Nomination, the Trustee must give to the Member a statement:
- (i) that the Trustee cannot alter the Member's properly made request, regardless of the consequences or circumstances which might arise subsequent to the Member making the request and so long as that request remains current;



- (ii) that careful consideration should be given to the wording of the Member's request to ensure that the Member's intentions are clearly and legally binding and executable;
- (iii) that the Member is advised to seek further information and professional advice as to the manner and consequences of the request prior to its being made;
- (iv) containing all other information required by the Act and Regulations; and
- (v) containing any other information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the Member's rights under this Rule.

## 5.5 ORDER OF PRIORITY

- (a) **Invalid Nomination.** Where a Binding Death Nomination or a Non-lapsing Binding Nomination is invalid in whole or in part, to the extent that it is invalid, the Trustee must pay the Member's Death Benefit in accordance with Rule 5.2(f).
- (b) **Automatic revocation.** If the Trustee accepts a Binding Death Benefit Nomination or a Non-lapsing Binding Nomination, it will automatically revoke any earlier Binding Death Nomination or Non-lapsing Binding Nomination accepted by the Trustee.

## 5.6 DEALING WITH INSURANCE

- (a) **Insurance relating to benefits.** The Trustee may effect one or more policies of insurance or assurance in relation to a Member as Benefit Payment Insurance or Additional Insurance.
- (b) **Insurance applied to liability.** Whenever a payment is to be made under any insurance, the payment will be applied:
  - (i) in the case of Benefit Payment Insurance, towards satisfaction of the Fund's liability to pay any one or more of a Member's benefits; or
  - (ii) in the case of Additional Insurance, in addition to the Fund's liability to pay any one or more of a Member's benefits,
 as agreed by the Member and the Trustee.
- (c) **Insurance not designated.** If a policy has been effected under Rule 5.6(a) and the policy is not designated as Benefit Payment Insurance or Additional Insurance, the policy will be deemed to be Benefit Payment Insurance.
- (d) **Treatment of Additional Insurance.** Where the Trustee has effected Additional Insurance and an amount becomes payable to the Trustee under it, the Trustee must add the amount payable, net of any reasonable fees, charges and taxes, to the Member's Accumulation Account prior to calculating the amount of the Member's benefits or entitlements payable in accordance with this Deed.
- (e) **Treatment of Benefit Payment Insurance.** Where the Trustee has effected Benefit Payment Insurance and an amount becomes payable to the Trustee under it, the Trustee must first apply that amount towards satisfaction of the Fund's liability to pay the Member's benefits or entitlements in accordance with this Deed and the Trustee will reduce the Member's Accumulation Account by the amount applied. Any amount remaining plus the balance of the Member's Accumulation Account will be dealt with by the Trustee in its discretion as follows:



- (i) where any amounts have been deducted from the Member's Accumulation Account to pay any premiums in relation to the insurance, by paying or applying similar amounts to or on behalf of the Member in addition to the Fund's liability to pay benefits or entitlements in accordance with this Deed;
- (ii) by paying amounts to or on behalf of the Member in addition to the amounts set out in Rule 5.6(b) and in addition to the Fund's liability to pay benefits or entitlements in accordance with this Deed; and / or
- (iii) by reallocating any amounts to a reserve to be dealt with as the Trustee sees fit.

## 5.7 HOW TO PAY A PENSION AND HOW TO PAY A LUMP SUM BENEFIT

- (a) **How to pay a Pension.** Any Pension payable under this Deed:
  - (i) must conform to Rule 5.8;
  - (ii) must comply with any minimum terms specified in the Act and the Regulations; and
  - (iii) will be payable on other terms decided by the Trustee.
- (b) **Terms to be given to Member.** A copy of the terms and conditions of a Pension is to be given to the Member or Beneficiary of that Pension at or before the Pension Date for that Pension.
- (c) **How to pay a lump sum benefit (or change a Pension to a lump sum).** Any person who is entitled to receive a Pension, Annuity or income stream from the Fund other than a Total and Temporary Disablement Benefit, may direct the Trustee in writing to:
  - (i) pay any amount as a lump sum; or
  - (ii) commute any amount to a lump sum,
 but only to the extent permitted by the terms of the Pension, Annuity or income stream. The amount of any lump sum will be equal to the balance of the Member's Accumulation Account related to the payment less any taxes and other reasonable charges which the Trustee considers are applicable to the payment or commutation.
- (d) **How to reduce a Pension when commuting to a lump sum benefit.** Where a person exercises the right in Rule 5.7(c)(ii), the Trustee must discount the amount to which the person is entitled to the extent which the Trustee considers necessary to take account of the commutation. The Fund and the Trustee will then be discharged and relieved of any further liability in respect of the amount of the discount.
- (e) **How to pay benefits to minors and certain other people.** Where any Beneficiary is under a Legal Disability, the Trustee will be entitled to pay or apply the Beneficiary's benefits or entitlements:
  - (i) to the Beneficiary; or
  - (ii) to another person for the sole purpose of that person paying or applying those benefits or entitlements for, or on behalf of, the Beneficiary or the Beneficiary's Dependants; or
  - (iii) to a trust established for the benefit of the Beneficiary or the Beneficiary's Dependants.

That payment or application will constitute an effective discharge to the Fund and the Trustee. The Trustee need not be concerned and is not liable to see to the application of those benefits or entitlements after the time of their payment or application.

- (f) **Effect of Family Law Act.** A reference to a Member in this Rule 5.7 includes a Non-member Spouse. If a Superannuation Interest is created in favour of a Non-member Spouse and the order creating that interest does not require the Non-member Spouse's benefits or entitlements to be paid as a Pension, the Trustee is not required to pay those benefits or entitlements as a Pension.

## 5.8 TYPES OF PENSIONS WHICH MAY BE PAID

The Trustee may pay any Pension allowable under the Act and Regulations. A Pension must be subject to the terms and conditions contained in the Act and Regulations in relation to that type of Pension. The following Pensions, and the descriptions of them in Schedule 1, are specific examples of the Pensions which may be paid:

- (a) Pensions commencing after 30 June 2007:
  - (i) **Minimum Only Pensions** described in Part 1 of Schedule 1.
  - (ii) **Transition to Retirement Pensions** described in Part 2 of Schedule 1.
- (b) Pensions commencing before 20 September 2007:
  - (i) **Allocated Pensions** described in Part 3 of Schedule 1.
  - (ii) **Pre-20 September 2007 Market Linked Pensions** described in Part 4 of Schedule 1.
  - (iii) **Lifetime Pensions** (included in the definition of Defined Benefit Pension) described in Part 5 of Schedule 1.
  - (iv) **Life Expectancy Pensions** (included in the definition of Defined Benefit Pension) described in Part 6 of Schedule 1.
  - (v) **Lifetime Commutable Pensions** (included in the definition of Defined Benefit Pension) described in Part 7 of Schedule 1.
  - (vi) **Non-Commutable Allocated Pensions** described in Part 8 of Schedule 1.
- (c) Pensions commencing after 19 September 2007, where the amount was purchased with a rollover superannuation benefit that resulted from the commutation of a pension or annuity of the type referred to in Regulation 1.06(1B):
  - (i) **Post-19 September 2007 Market Linked Pensions** described in Part 9 of Schedule 1.

## 5.9 ONLY SOME FUNDS MAY PAY DEFINED BENEFIT PENSIONS

Subject to the Act and Regulations, if the Fund is a Self Managed Superannuation Fund, the following provisions apply in relation to the Fund paying Defined Benefit Pensions to Members:

- (a) Where a Member was already receiving a Defined Benefit Pension on or before 11 May 2004, that Member may continue to receive that Pension, but any further Defined Benefit Pensions in respect of that or other Members are only payable in the circumstances set out in this Rule 5.9.
- (b) Where the Fund was in existence on 11 May 2004 and the Governing Rules provided for the payment of Defined Benefit Pensions at that time, the Fund may continue to provide Defined Benefit Pensions for the Members.



- (c) Where the Fund was in existence on 11 May 2004 and the Governing Rules did not provide for the payment of a Defined Benefit Pension, the Fund may pay one or more Defined Benefit Pensions to a Member if:
- (i) the Member was a Member on 11 May 2004;
  - (ii) before 31 December 2005, the Member:
    - A. retires on or after attaining age 55; or
    - B. attains age 65; and
  - (iii) a Defined Benefit Pension is commenced for that Member before 1 July 2005 in respect of which the first payment is made within 12 months after the Pension Date for that Pension.

#### 5.10 RESTRICTIONS ON WHEN AND HOW BENEFITS MAY BE PAID

This Rule is subject to any amendments, modifications, re-enactments, or substitutions of the Act and Regulations, from time to time, which may impose any requirement on the payment of benefits and entitlements and must be read and interpreted accordingly.

- (a) **Restrictions on how benefits may be paid.** Subject to the Regulations, a Member's benefits and entitlements in the Fund may only be paid:
- (i) by being cashed in accordance with Rule 5;
  - (ii) by being rolled over or transferred in accordance with this Deed; or
  - (iii) when, and to the extent that, the Fund is required or permitted to pay them in accordance with this Deed.
- (b) **Payment of Unrestricted Non-Preserved Benefits.** Subject to this Deed and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, the whole or a part of a Member's Unrestricted Non-preserved Benefits may be cashed at any time in any one or any combination of the following:
- (i) one or more lump sums;
  - (ii) one or more Pensions; and/or
  - (iii) the purchase of one or more Annuities,
- less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the Member's Unrestricted Non-preserved Benefits at the relevant time.
- (c) **Payment of Restricted Non-Preserved Benefits.** Subject to this Deed, the whole or a part of a Member's Restricted Non-preserved Benefits:
- (i) may only be cashed on or after the satisfaction of a Condition of Release; and
  - (ii) must not exceed the Member's Restricted Non-preserved Benefits that had accrued at the time when the Condition of Release was satisfied,
- less administrative, insurance and taxation costs and other direct costs relating to the establishment, operation and termination of the Fund applicable to the Restricted Non-preserved Benefits at the relevant time. The form in which Restricted Non-preserved Benefits may be cashed is:
- (iii) the form, if any, specified in the Cashing Restriction for Restricted Non-preserved Benefits in relation to the relevant Condition of Release; or

- (iv) if the Cashing Restriction is "Nil" then, subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, in any one or any combination of the following forms:
  - A. one or more lump sums;
  - B. one or more Pensions; and/or
  - C. the purchase of one or more Annuities.
- (d) **Payment of Preserved Benefits.** Subject to this Deed, the whole or any part of a Member's Preserved Benefits may only be cashed on or after the satisfaction of a Condition of Release and must not exceed the sum of:
  - (i) the Member's Preserved Benefits that had accrued at the time when the Condition of Release was satisfied; and
  - (ii) any investment earnings accruing on those benefits from that time, 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 (i) and (ii) above at the relevant time. The form in which Preserved Benefits may be cashed is:
    - (iii) the form, if any, specified in the Cashing Restriction for Preserved Benefits in relation to the relevant Condition of Release; or
    - (iv) if the Cashing Restriction is "Nil" then, subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, in any one or any combination of the following forms:
      - A. one or more lump sums;
      - B. one or more Pensions; and/or
      - C. the purchase of one or more Annuities.
- (e) **When it is compulsory to pay benefits.** A Member's benefits and entitlements in a Regulated Superannuation Fund must be cashed as soon as practicable after a Member dies.
- (f) **Payment of compulsory benefits.** Subject to this Deed and subject to compliance with any restrictions or procedures relating to the commutation of part or all of a Pension to a lump sum, the form in which benefits and entitlements may be cashed under Rule 5.10(e) is any one or any combination of the following forms:
  - (i) a single lump sum;
  - (ii) one or more Pensions; and/or
  - (iii) the purchase of one or more Annuities,

except where that benefit is to be paid to a Child of the deceased Member, in which case it is subject to the restrictions contained in Rule 5.10(g).
- (g) **Restriction on Death Benefit Pensions to Children.** Subject to the Act and Regulations, from time to time, if a Member dies after 30 June 2007 and part or all of that Member's Death Benefit is to be paid to a Dependant who is a Child of the Member, the Death Benefit may only be paid as a Pension if 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 paragraph (iii), above, such a Pension must cease no later than the Child attaining 25 years of age.

- (h) **Effect of Family Law Act.** A reference to a Member in this Rule 5.10 includes a Non-member Spouse. If a Superannuation Interest is created in favour of a Non-member Spouse and the order creating that interest does not require the Non-member Spouse's benefits or entitlements to be paid as a Pension, the Trustee is not required to pay those benefits or entitlements as a Pension.

## 5.11 OTHER MATTERS AFFECTING PAYMENT OF BENEFITS

- (a) **When benefits are suspended or terminated.** Subject to this Deed and to the Act and Regulations, the benefits payable out of the Fund to or in respect of a Beneficiary will be suspended while or terminated if the Beneficiary:
  - (i) owing to Legal Disability or for any reason requires care, treatment or control and is, in the Trustee's opinion, incapable of managing himself or herself, or his or her affairs;
  - (ii) commits an act of bankruptcy leading to the Beneficiary being declared bankrupt; or
  - (iii) either by the Beneficiary's own act, operation of law, order of any court or tribunal, or otherwise, has had or may have their benefits or entitlements vested in or made payable to any other person, company, government or other public authority.
- (b) **How suspended benefits are dealt with.** Where a Beneficiary's benefits and entitlements have been suspended or terminated under Rule 5.11(a) and those benefits and entitlements or any part of them are or become payable while the circumstances of the suspension or termination remain current, the Trustee may, in its absolute and unfettered discretion, pay or apply the Beneficiary's benefits or entitlements to:
  - (i) the Beneficiary; or
  - (ii) another person for the sole purpose of that person paying or applying those benefits or entitlements for, or on behalf of, the Beneficiary or the Beneficiary's Dependents.

That payment or application will constitute an effective discharge to the Fund and the Trustee. The Trustee need not be concerned and is not liable to see to the application of those benefits or entitlements after the time of their payment or application.

- (c) **Some benefits may be re-allocated on request.** Subject to the Act and Regulations, a Member may, by written notice signed by the Member and witnessed by an independent witness, request the Trustee to re-allocate part or all of the Member's benefits and entitlements to one or more other Members or to one or more reserves. The Trustee will give due consideration to any request and will make its decision having regard to the wishes of the Member making the request, and to the best interests of the Members as a whole.

## 5.12 RESTRICTIONS WHEN THE FUND HAS MEMBER-CONTRIBUTED WA PROPERTY

- (a) **Member-contributed WA Property subject to different payment rules.** Despite any provision to the contrary in this Deed, where the Fund has Member-contributed WA Property, any provisions in this Deed purporting to enable a beneficial interest to be obtained by any person other than the Member or Members contributing the Member-contributed WA Property do not apply to that Member-contributed WA Property.



- (b) **Options for Trustee in relation to Member-contributed WA Property.** Where an event occurs which would normally entitle the Trustee to create a beneficial interest in the Member-contributed WA Property in another person other than the Member or Members contributing the Member-contributed WA Property, the Trustee must deal with the Member-contributed WA Property only in one of the following ways:
- (i) by selling the Member-contributed WA Property and dealing with the proceeds in any manner otherwise acceptable under this Deed and the Relevant Law.
  - (ii) by separating the Member-contributed WA Property from all other assets supporting the Member's Accumulation Account and dealing with the Member-contributed WA Property in such a manner that the beneficial interest in that property remains with the Member or Members contributing the Member-contributed WA Property or, if the Member or Members have died, the Member's or Members' estate.
  - (iii) after taking such professional advice as is considered prudent by the Trustee, in such other manner as the Trustee considers appropriate, but not so as to create a beneficial interest in any person other than the Member or Members contributing the Member-contributed WA Property.
- (c) **Member-contributed WA Property affect by Family Law Act Orders.** Where the Fund has Member-contributed WA Property and an order is made pursuant to the Family Law Act 1975, which order has or is likely to have the effect of someone other than the Member or Members contributing Member-contributed WA Property acquiring a beneficial interest in that property, the Trustee must sell the property as soon as possible and, in any event, prior to another person gaining a beneficial interest in that property.

## 6. ROLLOVERS AND TRANSFERS OF BENEFITS

### 6.1 INTO THE FUND

- (a) **Members may.** A Member may request that the Trustee accept a rollover or transfer into the Fund of any existing superannuation benefits or entitlements which are able to be rolled over or transferred into the Fund under the Relevant Law. Those benefits or entitlements may include:
- (i) any Superannuation Lump Sums being held with another superannuation fund, Approved Deposit Fund, EPSSS, RSA or pooled superannuation trust; and/or
  - (ii) any Superannuation Lump Sums from other sources which are able to be rolled over or transferred into the Fund under the Relevant Law.
- (b) **Trustee to decide.** The Trustee must consider a request made in accordance with Rule 6.1(a) and may:
- (i) accept a rollover or transfer of the entire amount of the benefits or entitlements;
  - (ii) accept a rollover or transfer of part of the benefits or entitlements; or
  - (iii) reject a rollover or transfer of the whole or any part of the benefits or entitlements,
- and in reaching that decision, the Trustee may consider the limits on benefits payable to the Member, the balance of the Member's Accumulation Account before and after the proposed rollover or transfer, the terms under which the benefits or entitlements are currently being held and any other matters which the Trustee considers relevant.
- (c) **Some rollovers and transfers cannot be accepted.** The Trustee must not accept a rollover or transfer of any benefits or entitlements which would or would be likely to cause a breach of a Civil Penalty Provision or constitute an offence under the Act.
- (d) **Condition of rollover or transfer in.** Where the Trustee accepts a rollover or transfer of benefits or entitlements under this Rule 6.1, those benefits or entitlements must be maintained and will only be payable:
- (i) in accordance with the terms of the trust deed or governing rules, if any, of the transferring entity at the date of rollover or transfer, as advised to the Trustee; or
  - (ii) on other terms approved by the Regulator.
- (e) **Most benefits rolled over or transferred into the Fund retain the same status.** Except as otherwise provided by the Act and Regulations, for the purpose of determining the status of benefits or entitlements under this Deed, any benefits or entitlements rolled over or transferred into the Fund will retain the same character in the Fund as they had in the superannuation fund, Approved Deposit Fund, EPSSS, RSA or pooled superannuation trust from which they were transferred.

### 6.2 OUT OF THE FUND

- (a) **Who may request.** A request to roll over or transfer any benefits or entitlements out of the Fund may only be made by:
- (i) a Member;
  - (ii) in the case of a Member's death or Total and Permanent Disablement, the person or persons otherwise entitled to receive a benefit or entitlement; or
  - (iii) a Member's legal personal representative.



- (b) **Trustee must notify others.** Upon receiving a request to roll over or transfer benefits out of the Fund, the Trustee must give notice in writing of the proposed rollover or transfer to all other interested persons who at that time are entitled to make a similar request.
- (c) **Trustee must not rollover or transfer benefits with objections.** If a person notified under Rule 6.2(b) objects to the rollover or transfer by notice to the Trustee containing reasons, the Trustee must not roll over or transfer those benefits and must give notice of the objection and of the identity of the objector to the person making the request.
- (d) **Conditions of rollover or transfer out.** The Trustee will roll over or transfer benefits or entitlements in accordance with a request under Rule 6.2(a) if:
  - (i) no person is required to be notified of a request for a rollover or transfer;
  - (ii) no objection has been received from an interested person within 7 days of giving notice; or
  - (iii) the Trustee is satisfied that any objection received has been removed.
- (e) **Time for rolling over or transferring out.** Unless another provision of this Part applies to a request to roll over or transfer benefits or entitlements, the Trustee must roll over or transfer the amounts within 30 days of receiving such a request containing the information required by Rule 6.2(f).
- (f) **Information required to process rollover or transfer.** Schedule 2A of the Regulations sets out the information which must be provided by a Member to a Trustee prior to a request to roll over or transfer benefits or entitlements is processed.
- (g) **Dealing with rollovers or transfers of Illiquid Investments.** If the Fund presently has an Illiquid Investment and before that investment was made, the Trustee informed the Members:
  - (i) that the investment was an Illiquid Investment;
  - (ii) that the Regulations allow for longer than 30 days to process requests for rollovers or transfers out where the Fund holds Illiquid Investments;
  - (iii) the maximum period in which the transfer must be effected; and
  - (iv) the Trustee has obtained written confirmation from the Members that they understand and consent to the longer period,

the Trustee is not obliged to comply with the 30 day period for rolling over or transferring benefits or entitlements out of the Fund.
- (h) **Non-member Spouse benefits.** Where a Superannuation Interest has been created in favour of a Non-member Spouse under a Family Law Act order and that order does not restrict the transfer or roll over of the Non-member Spouse's Superannuation Interest, that interest may be rolled over or transferred out of the Fund:
  - (i) upon the request of the Non-member Spouse, subject to the request complying with the terms of this Rule 6.2; or
  - (ii) if the Trustee, in its absolute and unfettered discretion, decides to do so and the Trustee complies with all conditions imposed by the order,

and after all reasonable costs of rolling over or transferring that interest out of the Fund have been deducted from the Non-member Spouse's Superannuation Interest.



### 6.3 TRUSTEE'S DUTIES

- (a) **Duty to ensure transferee is regulated.** When the Trustee receives a request under Rule 6.2(a), the Trustee must, before allowing any rollover or transfer, ensure that the entity accepting the benefits or entitlements is:
- (i) a Regulated Superannuation Fund;
  - (ii) an Approved Deposit Fund;
  - (iii) a RSA; or
  - (iv) an EPSSS,
- and it is sufficient for the Trustee to receive from the entity accepting the benefits or entitlements, confirmation in writing of its status.
- (b) **Duty to ensure proper deductions made.** Where a rollover, transfer or payment of benefits or entitlements out of the Fund is to be made, the Trustee must ensure that:
- (i) all taxes, expenses, accrued and actual liabilities required to be deducted from the Member's Accumulation Account have been deducted; and
  - (ii) all income, gains and accretions required to be credited to the Member's Accumulation Account have been credited,
- prior to determining the amount of benefits or entitlements available for rollover, transfer or payment to the Member.
- (c) **People to be notified if Member has died.** If a Member dies and benefits or entitlements become payable to any person other than the Member's legal personal representative, the Trustee must notify each person to whom benefits or entitlements are payable of the reasons why benefits or entitlements are payable to them, the amounts payable and the terms upon which they are to be paid.
- (d) **Dealing with Death Benefits if Beneficiaries cannot be located.** If the Trustee cannot, after making all reasonable attempts, locate a person to whom any benefits or entitlements are payable in accordance with Rule 6.3(c), the Trustee may pay those benefits or entitlements, to the Member's legal personal representative, or to any one or more of the remaining Designated Beneficiaries, if any, in any proportions as the Trustee decides. No person will have any claim or cause of action against the Trustee or the Fund as a result of the Trustee exercising its discretion in accordance with this Rule.
- (e) **Information to the Taxation Commissioner.** When the Trustee pays benefits or entitlements out of the Fund and the entire amount of those benefits or entitlements are not rolled over or transferred into a Regulated Superannuation Fund, Approved Deposit Fund, EPSSS or RSA, the Trustee must, within the prescribed time, provide to the Taxation Commissioner, in the form prescribed by the Relevant Law, information required by the Taxation Commissioner in relation to those benefits or entitlements and in relation to the recipients.

### 6.4 SPLITTING CONTRIBUTIONS

- (a) **Contributions that may be split.** Where contributions are made in respect of a Member after 1 January 2006, the following contributions (called "**Splittable Contributions**") may be split:
- (i) if the contributions will be included in the Fund's taxable income for a Year of Income – up to 85% of the contributions; and



- (ii) if the contributions will not be included in the Fund's taxable income for a Year of Income and the contributions are made on or before 5 April 2007 – up to 100% of the contributions.

(b) **Spouse cannot receive Splittable Contributions.** If the Member's Spouse is either:

- (i) over age 55 years and retired; or
- (ii) over age 65 years,

at the time the Member applies to the Trustee to split their contributions, the Trustee may not accept that application and may not split their contributions pursuant to this Rule 6.4.

(c) **Manner of splitting contributions.** Contributions are split by the Trustee rolling over, transferring or crediting an amount of benefits, for the benefit of the Member's Spouse, in an amount no greater than the Splittable Contributions referred to in Rule 6.4(a).

(d) **Trustee may create Spouse Member account.** If the Spouse who will be receiving a Splittable Contribution does not already have a Member account, the Member must apply for Membership, in accordance with Part 2 of this Deed. A Trustee cannot accept an application to split contributions in respect of a Member until the Trustee has accepted the Member's Spouse as a Member.

(e) **Application for contributions split.** A Member may apply to the Trustee to split their Splittable Contributions, in a form approved by the Trustee, either:

- (i) after the end of a Year of Income in relation to Splittable Contributions made in the previous Year of Income; or
- (ii) if the entire amount of a Member's Splittable Contributions for that year are to be rolled over, transferred or credited to the Member's Spouse, during the Year of Income in respect of which the Splittable Contributions are made,

and the application must sufficiently identify the amounts and types of contributions referred to in Rule 6.4(a) which are to be split.

(f) **Invalid contribution split application.** An application from a Member to split their Splittable Contributions is invalid if:

- (i) in relation to the Year of Income to which the splitting application applies, the Member has already made an application which the Trustee is either still considering, or has already put into effect;
- (ii) the amount of benefits to which the splitting application relates exceeds the maximum amount of Splittable Contributions, referred to in Rule 6.4(a); or
- (iii) the benefits which would remain in the Member's account after the split would exceed the value of the Post-June 83 Component of the Member's account balance, as calculated at the time the split would be made.

(g) **Trustee's discretion.** The decision to offer the option to split contributions and the decision to accept a particular application to split contributions under this Rule 6.4 is entirely at the discretion of the Trustee.

(h) **This Rule does not affect Family Law Act splits.** For the avoidance of doubt, this Rule 6.4 does not apply to benefits which are split, pursuant to the operation of the Family Law Act 1975.

## 7. EMPLOYERS WHO MAY CONTRIBUTE TO THE FUND

Subject to Rule 4.1, the Trustee may accept contributions from an Employer or past Employer whether or not the Employer has agreed in writing to the terms and conditions of this Deed.



## 8. THE TRUSTEE

### 8.1 APPOINTMENT, RESIGNATION AND REMOVAL

- (a) **Not Disqualified Person.** A Disqualified Person cannot be a Trustee.
- (b) **Appointment.** The sole right and entitlement to appoint one or more Trustees and, where the Trustee is a Constitutional Corporation, to appoint one or more directors of the Trustee may be exercised by the Members, by resolution passed by more than 50% of the Members present at a meeting called for the purpose.
- (c) **Acceptance to be in writing.** The form of acceptance of trusteeship and/or directorship, where the Trustee is a Constitutional Corporation, must be in writing and:
  - (i) upon acceptance of a trusteeship, the Trustee, and if a Corporate Trustee, each of its Directors and officers; or
  - (ii) upon acceptance of a directorship, the Director,
 is deemed, as a condition of appointment, to accept and be bound by the terms, conditions, duties and obligations specified in this Deed.
- (d) **Unwritten acceptance not invalid.** The acceptance and appointment to the office of Trustee and, where the Trustee is a Constitutional Corporation, of a director of the Trustee, will not be invalidated because it is not in writing, but any acceptance of the appointment in a form other than in accordance with Rule 8.1(c) will be deemed to be on the same terms and conditions as set out in that Rule.
- (e) **New Trustees or directors to sign declaration of understanding.** Where a person becomes a Trustee or a Director of a Corporate Trustee of a SMSF after 30 June 2007, they must sign a declaration in a form approved by the Regulator, stating that they understand their duties as a trustee of a SMSF. This declaration must be signed within 21 days of their appointment and retained for either 10 years or the period that they hold office, whichever is the longer.
- (f) **How the Trustee may resign.** A Trustee may resign from the office of Trustee at any time, by giving 1 month's notice in writing to the Members.
- (g) **How the Trustee may be dismissed.** A Trustee may be dismissed from the office of Trustee at any time, by written notice given by any Member, after a resolution to dismiss the Trustee, passed by a majority of the Members, at a meeting called for that purpose.
- (h) **Removal of the Trustee in other circumstances.** A Trustee ceases to be a Trustee upon the happening of any of the following events:
  - (i) Subject to (i) below, where a Trustee, being a natural person:
    - A. dies;
    - B. becomes incapable of dealing with his or her own affairs;
    - C. is convicted of an offence of dishonesty or otherwise becomes disqualified from office by operation of law;
    - D. commits an act of bankruptcy or threatens to call any meeting with a view to entering into a composition or agreement with creditors;
    - E. makes an assignment to or enters into a composition with his or her creditors, or seeks the protection of any statute for relief from creditors;

- F. has any floating security become fixed in respect of the whole or part of the Trustee's assets; or
  - G. becomes a Disqualified Person.
- (ii) Where a Trustee, being a corporation:
- A. has an application made, resolution passed or an order made for its liquidation or winding up (except for the purposes of amalgamation or reconstruction);
  - B. is deemed to be insolvent, or any act or event constituting grounds for winding up by a court occurs;
  - C. is struck off, de-registered or otherwise ceases to exist or to have full capacity;
  - D. has a receiver or official manager appointed to the whole or any part of its undertaking;
  - E. becomes disqualified from office by operation of law; or
  - F. becomes a Disqualified Person.
- (i) **Trustee/Member dies or becomes Legally Disabled.** Where the Fund is an SMSF and a person who is a Trustee and a Member dies or becomes Legally Disabled, the Member's legal personal representative will become a Trustee during the period:
- (i) where the Member dies, beginning at the date of the Member's death and ending when death benefits first commence to be paid in respect of the Member; or
  - (ii) where the Member becomes Legally Disabled, beginning at the date when the Member's legal personal representative assumes control of the Member's affairs and ending either when that person ceases to act in the capacity of legal personal representative for the Member, or in other circumstances allowed or required by this Deed or the Relevant Law.

## 8.2 GENERAL TRUSTEE MATTERS

**The Trustee may be a Member.** Where a proposed Trustee is a natural person, that person is not, by their status as a Member, excluded or otherwise restricted from being appointed as a Trustee and may vote as a Member in all circumstances in which Members are entitled to vote, including resolutions for the appointment or dismissal of that person as Trustee.

## 8.3 COVENANTS, POWERS, AUTHORITIES AND RESTRICTIONS

- (a) **Trustee's covenants.** By accepting the appointment to the office of Trustee, the Trustee covenants:
- (i) to act honestly in all matters concerning the Fund;
  - (ii) to exercise, in relation to all matters affecting the Fund, the same degree of diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
  - (iii) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Beneficiaries;
  - (iv) to keep the money and other assets of the Fund separate from any money and assets respectively that are held by the Trustee personally or in any other capacity;



- (v) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
  - (vi) to formulate and give effect to an investment strategy for the Fund;
  - (vii) if the Fund has any reserves, to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
  - (viii) to allow any Beneficiary access to information or documents which are prescribed by a Relevant Law to be accessible by them.
- (b) **Trustee may authorise others to act.** A covenant in Rule 8.3(a) does not prevent the Trustee from engaging, or authorising persons to do, acts or things on behalf of the Trustee.
- (c) **Matters to be considered in formulating investment strategy.** In formulating one or more investment strategies for the purposes of Rule 8.3(a), the Trustee must ensure that each strategy has regard to all the circumstances of the Fund or sub-plan (as the case may be), including but not limited to:
- (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments, having regard to the Fund's or sub-plan's (as the case may be) objectives and expected cash flow requirements;
  - (ii) the composition of the investments as a whole, including the extent to which they are diverse or involve exposure of the Fund or sub-plan (as the case may be) to risks from inadequate diversification;
  - (iii) the liquidity of the investments, having regard to the Fund's or sub-plan's (as the case may be) expected cashflow requirements; and
  - (iv) the ability of the Fund or sub-plan (as the case may be) to discharge its existing and prospective liabilities.
- (d) **Beneficiaries may direct Trustee.** An investment strategy made in accordance with Rule 8.3(a) may provide for a specified Beneficiary or class of Beneficiaries to give directions to the Trustee, where:
- (i) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund; and
  - (ii) the directions are given in circumstances where:
    - A. the Trustee gives to the Beneficiary, or to each member of a class of Beneficiaries, a choice of two or more investment strategies from which the Beneficiary, or class of Beneficiaries, may choose a strategy or combination of strategies;
    - B. the Beneficiary, or each member of the class of Beneficiaries, is given the investment objectives of each of the strategies mentioned in A. and all information the Trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of those strategies;
    - C. the Beneficiary, or each member of the class of Beneficiaries, is fully informed of the range of directions that may be given and the circumstances in which they may be changed;



- D. the Trustee clearly identifies, when the Beneficiary, or each member of the class of Beneficiaries, is given a choice of two or more investment strategies, the strategy the Trustee will adopt if no direction is given;
  - E. the direction from the Beneficiary, or each member of the class of Beneficiaries, to the Trustee is given after compliance with the above paragraphs and the direction specifies which of the strategies, or which combination of strategies referred to in A, is to be followed and any other matters applicable to the choice offered in accordance with the above paragraphs; and
  - F. it conforms with any other matters prescribed by the Regulations for the purposes of section 52(4) of the Act.
- (e) **General powers of Trustee.** Subject to the Relevant Law, the Trustee has all the rights of a natural person to do any thing, or to engage in any transaction or dealing, on behalf of the Fund as it could do if it were the beneficial owner of the Fund and absolutely entitled to it.
- (f) **Specific powers of Trustee.** The following powers are specific examples of the Trustee's powers in Rule 8.3(e) and should not be interpreted as limiting those powers:
- (i) Subject to the other provisions of this Deed and the Act and Regulations to invest in such corporeal or incorporeal property, rights, currency, or other things of value as the Trustee decides.
  - (ii) To purchase, acquire, hold, rent, lease, license, sell or otherwise dispose of investments in any property, rights or privileges which the Trustee is authorised by law to acquire or dispose of, on terms and conditions as the Trustee decides.
  - (iii) To appoint and/or remove or suspend, the Fund's Auditor, or any accountants, Custodians, managers, secretaries, clerks, agents and other servants or consultants, and may appoint any of them permanently, temporarily or for special services and may determine the scope and extent of their powers and duties, on terms as to remuneration or salaries as the Trustee decides.
  - (iv) To appoint any person (other than a Trustee) to be a Custodian for the purpose of holding or retaining the legal title of or to any asset, property, investment or other thing acquired or to be acquired by or for the benefit of the Fund.
  - (v) To institute, conduct, defend, compound, compromise or abandon any legal or other proceedings by or against the Fund or its officers or otherwise, concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands made by or against the Fund.
  - (vi) To make and give receipts, releases and other discharges for money payable to the Fund and for any claims and demands against the Fund and to pay expenses as it considers properly relate to the Fund, including any income tax liability which may attach to income of the Fund or contributions made to it.
  - (vii) To open accounts and to retain on current or deposit account at any bank or financial institution, any moneys as it considers proper and to make regulations for the operation of those accounts, including the signing and endorsement of cheques in connection with them.
  - (viii) To borrow moneys, incur liabilities or pledge the assets of the Fund as security, but only to the extent allowed or allowable in accordance with the Act and Regulations. Any borrowing or raising may include (without limitation):
    - A. the drawing, endorsing, accepting, negotiation or other dealing in bills of exchange, promissory notes, cheques or other negotiable instruments;



- B. any other form of borrowing or raising of money which is authorised by the Act.
- (ix) To purchase annuities, pensions and income streams, and to effect policies of insurance or assurance in relation to Members for the purpose of providing benefits under this Deed.
  - (x) To revalue the Fund's assets, and to allocate the revaluation amount to the Members and Beneficiaries in a manner consistent with the terms of this Deed.
  - (xi) To determine who will be entitled to sign, on the Fund's behalf, receipts, acceptances, endorsements, releases, contracts and documents.
  - (xii) To pay benefits and entitlements out of the Fund to persons entitled to them.
  - (xiii) To decide, as and when required, who are Dependants for the purposes of this Deed.
  - (xiv) To enter into any negotiations and contracts, to rescind and vary all contracts, to execute any deeds, and to do all or any things in the name of and on behalf of the Fund as it may consider expedient for or in relation to any of the matters referred to in this Deed or otherwise for the purposes of the Fund.
  - (xv) To enter into an agreement with a Member varying the benefits or entitlements, or the contributions otherwise payable in respect of that Member, in any manner which the Trustee decides, subject to the terms of this Deed and to the consent of affected Members.
  - (xvi) To enter into contracts, transactions or agreements, whether they be for sale, lease or any other purpose, with one or more individual trustees, with one or more Directors of a Corporate Trustee, or with a Corporate Trustee itself, notwithstanding that they have or may obtain an interest or benefit in their own or other capacities.
  - (xvii) To enter into contracts, transactions or agreements, whether they be for sale, lease or any other purpose, in respect of another trust where one or more individual trustees or the Corporate Trustee itself, is a trustee of that trust.
  - (xviii) Generally to exercise or concur in exercising all the Trustee's powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any Trustee or any director or shareholder of a corporate Trustee has or may have a direct or personal interest (whether as trustee of any other settlement or in his or her personal capacity or as a shareholder or director or member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.
- (g) **Trustee may delegate.** Regardless of any other provision of this Deed but subject to the Relevant Law, the Trustee may delegate, in writing, any of its powers or discretions to one or more other persons.
- (h) **Trustee's indemnity.** The persons listed in Rule 8.3(i) have a right of indemnity out of the assets of the Fund in respect of any expenses incurred or liabilities resulting from any activities carried out by those persons in the exercise or purported exercise of the powers, duties, responsibilities and discretions imposed or authorised by the trusts constituted by this Deed. Those persons will not be liable for any loss or damage arising from any:
- (i) act or omission in the exercise of any powers, duties, responsibilities or discretions;
  - (ii) contract entered into or document executed in relation to the Fund;



- (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;