

**DEED OF AMENDMENT**  
**OF**  
**A & T BARAKAT SUPER FUND**

Drawn By:  
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THIS DEED OF AMENDMENT is made the *20TH* day of *SEPT*, *2021*.

**BETWEEN:** SUPER AT PTY LTD  
A.C.N. 158-994-248  
of C/- L1, 1454 LOGAN ROAD, MOUNT GRAVATT QLD 4122  
(The 'Trustee')

**AND:** TERRIE BARAKAT and ANTHONY BARAKAT  
of 1 DICKSON TERRACE, HAMILTON QLD 4007  
(The 'Members')

**RECITALS:-**

- A. The Trustee is the duly appointed trustee of the A & T BARAKAT SUPER FUND (the 'Fund').
- B. The Fund commenced by deed executed on 16th JUNE, 2003, which deed was last amended on 22nd JUNE, 2012 (the 'Deed').
- C. Pursuant to Rule 12.8 of the governing rules of the Fund (the 'Governing Rules'), the Trustee has the power to amend the Fund's Deed and its Governing Rules for the purposes specified in that provision (the 'Amendment Provision').
- D. The Trustee of the Fund wish to amend the Fund's Deed and Governing Rules in accordance with the terms of this Deed.

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

**1. AMENDMENT**

The Governing Rules contained in all operative provisions shall be deleted and shall be replaced with the Rules contained in Part 1 to Schedule 2, inclusive, which are annexed to this Deed of Amendment.

**2. LIMIT ON AMENDMENTS**

Notwithstanding anything contained in this deed to the contrary, this deed does not and shall not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members;
- (c) alter the rights and benefits of existing Members in a manner such that, on the whole, equity between the Members is not maintained;  
or
- (d) offend the provisions of any relevant Act or Regulation as they exist, from time to time, or any amendment or variation of any relevant Act or Regulation made after the date of this deed.

**3. NO RE-SETTLEMENT**

The trusts and trust property in existence before the amendments, deletions, replacements and alterations made by this deed remain in existence and continue uninterrupted after the execution of this deed and where the consequence of one or more of the changes effected by this deed would be a re-settlement of the said trusts or trust property, to the extent necessary to avoid such a re-settlement that amendment, deletion, replacement or alteration is deemed void and of no effect.

**4. SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993**

This deed shall not take effect, to the extent that:

- (a) any one or more of the provisions of this deed are not able or allowed to take effect pursuant to the provisions of the Act and Regulations;
- (b) the provisions are not capable of amendment, pursuant to the rules governing the fund before the amendments made by this deed; or
- (c) the amendments are not allowed by reason of any other laws governing trusts in the jurisdiction to which the Fund is subject.

**5. MISCELLANEOUS**

The parties to this deed hereby confirm that the Deed, other than to the extent that it has been amended or varied in accordance with this deed remains in full force and effect.

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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 2)

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 and Schedule 3 (if included in this Deed);

**Dictionary** means the dictionary of terms and expressions in Schedule 2;

**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;

## 1.6 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 1.6(a) or 1.6(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 no more than the maximum number of members permissible for an SMSF, from time to time;
  - (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 1.6(a) or Rule 1.6(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 or a Director of a Corporate 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 or a Director of a Corporate Trustee is in force under section 134 of the Act.

## 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 1.6 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 CEASING TO BE A MEMBER

A person ceases to be a Member if the person's Benefit Account has a balance of nil and the remaining Trustees or Members determine that the person is no longer a Member.

## 2.5 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.

## 2.6 ALLOCATION OF ASSETS

Regardless of any other Rule, the Trustee may, to the extent permitted by the Relevant Law, designate or allocate specific assets of the Fund to specific accounts, Benefit Accounts, sub-plans or groups as determined by the Trustee in its discretion and may, without limiting that discretion, allocate specific assets or investments, including earnings derived from those assets or investments, to:

- (a) one or more Member's accounts;
- (b) one or more sub-plans;
- (c) any combination of the above.

## 2.7 RESTRICTIONS FOR MEMBER-CONTRIBUTED WA PROPERTY

Regardless of any other provision in this Deed, but subject to Rule 5.12, where the Fund acquires Member-contributed WA Property:

- (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 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 legal personal 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.

- (e) the amount of the contribution does not exceed \$300,000 or such other limit as is, from time to time, prescribed by the Relevant Law;
- (f) the contribution is made within 90 days, or such longer period as the Commissioner of Taxation allows, of the change of ownership of the Dwelling.
- (g) the Member notified the Trustee in the approved form that the contribution is to be treated as a Downsizer Contribution; and
- (h) the Member has not had a Downsizer Contribution made in respect of them for the disposal of an Ownership Interest in a previous Dwelling.

## 5. BENEFITS AND ENTITLEMENTS

### 5.1 PENSIONS AND CAPS

- (a) **Auto-Pension Commencement.** Subject to Rule 5.1(c), where the Trustee becomes aware that a Member has Unrestricted Non-preserved Benefits in the Fund which are not in Retirement Phase and that Member has Retired on or after attaining their Preservation Age or has attained the age of 65 years, the Trustee must commence an Account Based Pension with all of those Benefits as soon as possible.
- (b) **Effect of Non-concessional Contribution or Roll-in For Existing Pension Member.** Where a Non-concessional Contribution is made or a benefit is rolled into the Fund in respect of a Member in receipt of one or more Pensions, subject to Rule 5.1(c), the Trustee must commence an additional Pension on the same terms and conditions as the most recently commenced Pension, in the amount of the Non-concessional Contribution, from the day on which that contribution is made.
- (c) **Restriction on Auto-Pension Commencement.** Where a Trustee would otherwise be required to commence an Account Based Pension pursuant to Rule 5.1(a), or an additional Pension pursuant to Rule 5.1(b) and:
  - (i) the Member notifies the Trustee in writing that part or all of the amount is not to be used to commence a Pension; or
  - (ii) the Member notifies the Trustee in writing that the Pension, using part or all of the Member's Benefit or Non-concessional Contribution, as the case may be, is to commence on a different day; or
  - (iii) commencing a Pension using part or all of the Member's Benefit or Non-concessional Contribution, as the case may be, would cause the Member to exceed their Transfer Balance Cap,

to the extent that the Member does not wish the Member's Benefit or Non-concessional Contribution to be used in starting a Pension, or in respect of the amount which would cause the Member to exceed their Transfer Balance Cap, the Trustee must not use that amount to commence a Pension, and where the Member has specified a different day for the Pension's commencement, the Trustee must not commence the Pension until that day.

- (d) **Pension Auto-commutation at Transfer Balance Cap.** Where the Trustee becomes aware that a Member who is receiving one or more Pensions is presently or will, upon a certain date or the occurrence of a certain event, exceed their Transfer Balance Cap, unless instructed otherwise by the Member in writing, the Trustee must commute part or all of one or more Pensions being received by the Member to an accumulation account in respect of that Member, to the extent necessary to reduce their benefits in Retirement Phase to their Transfer Balance Cap, and the Trustee shall decide which Pension or Pensions are to be commuted. Where a Member affected by this Rule is being paid more than one Pension and unless the Member elects otherwise or unless the Trustee decides it would be in the Member's best interests to do

- (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) **Reversionary Pension.** A Member in receipt of a Pension may nominate in writing to the Trustee, either at the commencement of the Pension or at any subsequent time, one or more reversionary beneficiaries who are to continue to receive that Pension after the Member's death. A Member may, at any time by notice in writing to the Trustee, revoke their nomination of one or more reversionary beneficiaries.
- (h) **Reversionary Pension if Member Dies.** If a Member dies while receiving a Reversionary Pension from the Fund and the terms applying to that Pension nominate a reversionary beneficiary (however described), subject to the Relevant Law, the Trustee must continue to pay that Pension in favour of the reversionary beneficiary on the same terms and conditions as applied to the deceased Member.
- (i) **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. Where a Pension nominates a reversionary beneficiary (other than the Member's Spouse) or the payment of the Pension to the Member's Spouse would be contrary to a nomination under Rule 5.4 or 5.5, the Trustee cannot elect to continue the Pension in favour of the deceased Member's Spouse.
- (j) **No right to elect to receive Death Benefit as Pension.** Unless Rule 5.4 or 5.5 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.
- (k) **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 Benefit Account, subject to the restrictions imposed by Rules 5.9 to 5.11; or
  - (iv) have the balance of his or her Benefit Account transferred to another Regulated Superannuation Fund, Approved Deposit Fund, EPSSS or RSA, in accordance with Rule 6.
- (l) **Rejected Contributions.** Subject to the Relevant Law, if the Trustee receives:
  - (i) a request or direction for a Member to reject a contribution (wholly or partially);
  - (ii) a contribution in error;
  - (iii) a contribution which would cause the Member to exceed their Contributions Cap;
  - (iv) a contribution which does or may result in the Trustee's inability to comply with the Relevant Law;

- (iii) the expected investment earnings of the Fund to be attributable to the relevant Benefit 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 relevant Benefit 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) the terms of any agreement or other instrument containing the terms and conditions upon which the Pension is to be paid;
  - (vii) any restrictions placed upon the payment of annuities, Pensions and income streams by the Act and Regulations; and
  - (viii) any lump sum payment, or total or partial commutation in accordance with Rule 5.8.
- (c) **Benefit payable until nil balance.** A Member's Normal Retirement Benefit will:
- (i) be calculated to produce a nil balance in the Member's relevant Benefit 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 relevant Benefit Account is nil.
- (d) **Total and Permanent Disablement Benefit.** A Member's Total and Permanent Disablement Benefit will be an amount up to the balance of the total of the Member's Benefit Accounts less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (e) **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 total of the Member's Benefit Accounts, less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (f) **Terminal Illness Benefit.** A Member's Terminal Illness Benefit will be an amount up to the balance of the total of the Member's Benefit Accounts less any taxes or reasonable charges determined by the Trustee to be applicable to the payment of those benefits.
- (g) **Death Benefit.** A Member's Death Benefit will be an amount equal to the balance of the total of the Member's Benefit Accounts less:
- (i) any amount set aside to fund the payment of any reversionary Pension;
  - (ii) any taxes or reasonable charges determined by the Trustee to be applicable to the payment of that benefit; and
  - (iii) 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 after the Member's death,

- (iii) must contain a declaration signed by the witnesses stating that the notice was signed by the Member in their presence;
  - (iv) must be given to 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.
- (b) **Member may give.** A Member may, at any time, give the Trustee a Non-lapsing Binding Nomination directing the payment of:
- (i) the whole or any part of the Member's Death Benefit; and/or
  - (ii) the whole or any part of the proceeds of any insurance effected by the Trustee with respect to the Member and to which the Member is entitled under Rule 5.7,

to a person or persons named in the notice being the legal personal representative or a Dependant or Dependents of the Member. If the Trustee receives a Non-lapsing Binding Nomination, the Trustee will pay the amount specified, in accordance with that notice, unless it has been revoked by the Member.

- (c) **Preservation.** Where the Fund's governing rules have been amended and a valid nomination, which has not been revoked, would have been binding upon the Trustee in respect of a Member's death benefits under those previous rules, despite anything contained in this Deed that nomination will continue to bind the Trustee until such time as it is revoked or replaced in accordance with these Governing Rules.

## 5.6 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 5.3(g).
- (b) **Automatic revocation.** A Binding Death Benefit Nomination or a Non-lapsing Binding Nomination, will automatically revoke any earlier Binding Death Nomination or Non-lapsing Binding Nomination given by the Member.
- (c) **Reversionary Pensions.** Where a Member is in receipt of a Pension in respect of which a reversionary beneficiary has been named, unless the Member has revoked that reversion in accordance with this Deed, or the reversionary beneficiary is no longer entitled to receive a Reversionary Pension under the Relevant Law, the entitlement of the reversionary beneficiary has priority in respect of that Pension over any Binding Death Nomination or a Non-lapsing Binding Nomination given by the Member and binding on the Trustee unless the Act or Regulations require otherwise.

## 5.7 DEALING WITH INSURANCE

- (a) **Insurance relating to benefits.** The Trustee may take or hold 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 received by the Trustee under any insurance policy held by the Trustee, the payment will be applied:

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 total of the balances of the Member's Benefit Accounts 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 5.8(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 5.8 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.

## 5.9 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) **Account Based 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.

- (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 Member's 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 must be cashed as soon as practicable after a Member dies.

interest in any person other than the Transferor of the Member-contributed WA Property or Member-contributed NSW 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 Benefit 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

- (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 Benefit Account have been deducted; and
  - (ii) all income, gains and accretions required to be credited to the Member's Benefit 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

- (i) a sole Member, where the Fund only has 1 Member; or
- (ii) a resolution passed by a majority of the Members present at a meeting called for the purpose or by circular resolution signed by all of the Members, in all other cases, and

the legal personal representative of a Member who is deceased or under a Legal Disability will be treated as a Member and has the right of a Member for the purposes of this Rule.

- (c) **Consent to be in writing.** Any person appointed or to be appointed to be a Trustee or Director of a Corporate Trustee must consent in writing to the appointment and, upon acceptance, is deemed to accept and be bound by the terms, conditions, duties and obligations specified in this Deed.
- (d) **New Trustees or directors to sign declaration.** Where a person becomes a Trustee or a Director of a Corporate Trustee of the Fund after 30 June 2007, they must sign a declaration in a form approved by the Regulator, stating that they understand the obligations and responsibilities of a trustee of an SMSF. This declaration must be completed and signed within 21 days of their appointment and retained for not less than 10 years.
- (e) **How the Trustee may resign.** A Trustee may resign from the office of Trustee at any time, by giving notice in writing to the Members and to the legal personal representative of a Member who is deceased or under a Legal Disability.
- (f) **How the Trustee may be removed.** The Members have the right to remove a Trustee or a Director of a Corporate Trustee at any time. The right to remove a Trustee or Director of a Corporate Trustee, may be exercised by written notice given by:
  - (i) a sole Member, where the Fund only has 1 Member; or
  - (ii) a resolution passed by a majority of the Members present at a meeting called for the purpose or by circular resolution signed by all of the Members, in all other cases, and

the legal personal representative of a Member who is deceased or under a Legal Disability will be treated as a Member and has the right of a Member for the purposes of this Rule.

- (g) **Removal of the Trustee in other circumstances.** A Trustee ceases to be a Trustee upon the happening of any of the following events:
  - (i) the 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. becomes a Disqualified Person.
  - (ii) the Trustee, being a corporation:
    - A. has an application made, resolution passed or an order made for its liquidation or winding up;
    - B. is deemed to be insolvent, or any act or event constituting grounds for winding up by a court occurs;

- (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 and maintaining 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;
  - (iv) the ability of the Fund or sub-plan (as the case may be) to discharge its existing and prospective liabilities; and
  - (v) whether insurance on the life or disablement of one or more of the Members can or should be purchased,
- and the Trustee should review any investment strategies regularly to ensure that they remain current and in accordance with the Fund's present circumstances.
- (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

- (v) to grant any lease, sub-lease or other rights in relation to any property of the Fund for any term or terms and whether or not that term or terms exceeds 21 years or any other term allowable under the Relevant Law.
- (vi) to carry on a business, to the extent that it is allowable under the Relevant Law, from time to time.
- (vii) to appoint and/or remove or suspend, the Fund's Auditor, or any accountants, lawyers, 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.
- (viii) to appoint any person 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.
- (ix) 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.
- (x) 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.
- (xi) 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.
- (xii) to borrow moneys, incur liabilities, pledge or charge 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.
- (xiii) 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.
- (xiv) to revalue the Fund's assets, and to allocate the revaluation amount to the Members and Beneficiaries.
- (xv) to determine who will be entitled to sign, on the Fund's behalf, receipts, acceptances, endorsements, releases, contracts and documents.
- (xvi) to pay benefits and entitlements out of the Fund to persons entitled to them.
- (xvii) to decide, as and when required, who are Dependants for the purposes of this Deed.
- (xviii) 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.
- (xix) 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

- (iv) any Investment Manager.
- (j) **Trustee not liable.** Without prejudice to the indemnity in Rule 8.3(h) those persons listed in Rule 8.3(i) 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 engaged by the Trustee for the purposes of the Fund; or
  - (v) breach of duty or of trust, or any neglect or otherwise.
- (k) **Limited Recourse Borrowing Arrangements.** Subject to the investment strategy of the Fund, the Trustee has the power to borrow money under arrangements of the kind contemplated by Section 67A 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 Section 67A 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;

- (d) insure all Collectables in accordance with the Act and Regulations;
- (e) not permit any related party of the Fund to use any Collectable; and/or
- (f) not transfer any Collectable to any related party of the Fund other than in accordance with the Act and Regulations.

## 8.6 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' Benefit Accounts, in the proportions determined by the Trustee within 28 days after the end of the month in which any such amounts are received, even if such allocation occurs after the Year of Income in which the contribution was made.
- (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 Benefit Account, even if those contributions are of a type which would normally be allocated to the voluntary contribution reserve.

### 9.2 MEMBER BENEFIT ACCOUNTS

The Trustee must establish and keep, in respect of each Member, a Benefit Account or Accounts, 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 Benefit 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 Benefit 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;
- (f) the proceeds, or part proceeds, of any policies of insurance which the Trustee decides to allocate, or is obliged to allocate in respect of that Member;

- (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 Benefit Accounts or, where the reserve relates to a sub-plan, to the Benefit 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 Benefit 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 Benefit Account or other reserves, in a fair, reasonable and consistent manner.

#### **9.6 OTHER RESERVES**

Subject to the Act and Regulations, the Trustee may, in its discretion, establish other reserves, including an anti-detriment reserve, in respect of amounts not presently allocated to Members' Benefit 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 Benefit 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' Benefit 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' Benefit Accounts.

#### **9.8 TRUSTEE TO KEEP RECORDS OF TYPES OF BENEFITS**

In addition to maintaining details of the value of Benefit 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

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 not less than 7 days 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. No notice and no meeting is required in the case of a sole Trustee or a sole Director of a Corporate Trustee.
- (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 two or half of the total number of Trustees or Directors, whichever is greater.
- (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 a form approved by the Trustee.
  - (ii) a person may be nominated as a proxy for one meeting only. The same person may be nominated for any subsequent meeting.

(iv) **Funds where Members have small balances to be compulsorily rolled out.** If a Disputed Actions Notice has been given, and all of the Dissenters did not roll out as Members pursuant to paragraph (iii) above, then the Trustees or Directors who represent corresponding Members balances making up at least 80 per cent of the market value of the Fund's assets (the "**Majority Members**") may commence to compulsorily rollover any Member who is also a Dissenter and whose balance is 20% or less of the market value of the Fund's assets ("**Minority Members**"), subject to paragraph (f) of this Rule, as follows:

- A. if a Minority Member nominates an alternative regulated superannuation fund to accept the rollover – that fund; or
- B. if a Minority Member does not so nominate - an eligible rollover fund selected by the Trustees or Directors who are Majority Members.

Until the Minority Members have been rolled out of the Fund, the Disputed Actions will not be undertaken.

(v) **Mediation or court action as a remedy in other cases.** In all other cases, any one of the Trustees or Directors may request the Australian Mediation Association to select a mediator to resolve the matter and:

- A. All Trustees and Directors shall attend any mediation hearings scheduled.
- B. Any Trustee or Director who has been notified of, but does not attend a scheduled mediation:
  - I. shall be entitled to one alternative mediation date; and
  - II. should they fail to attend that alternative mediation date, shall be deemed to accept its outcome.
- C. In the event that the Trustees or Directors are not able to resolve the matters which are the subject of the mediation, one or more of the parties may apply to the relevant court in the State or Territory in which the Fund is based, for a determination of the matter.

(d) **Stay of decision while Minority Member rolled out.** For the avoidance of doubt, if a Minority Member is being compulsorily rolled out of the Fund, then the Majority Members may not cause the Fund to engage in the Disputed Actions until such time as all Minority Members have been rolled out of the Fund.

(e) **Requirement to prepare accounts prior to rollover.** Prior to any rollover, the Fund's administrators will prepare management accounts showing the best estimate of the Members' present account balances, less a provision for accrued income and capital gains taxes, and any other reasonable provisions relating to the income and expenses of the Fund, accrued and incurred up to the date of those accounts.

(f) **Stay of compulsory rollover during significant market declines.** If the All Ordinaries Index has declined by more than 20% during the 12 months preceding the Disputed Actions Notice being given, then the Minority Members are entitled to a 12 month deferral, before any compulsory rollover is initiated.

(g) **Stay of voluntary rollover during certain periods.** If a Member has requested a voluntary rollover of their benefits from the Fund in accordance with this Rule 10.2, then any other individual Trustee, or any other Director of a Corporate Trustee, may elect to defer the roll out:

- (i) If the All Ordinaries Index has declined by more than 20% during the 12 months prior to the rollover request – for 12 months, or the period taken for the All Ordinaries Index to regain its level from 12 months prior to the rollover request, whichever is the earlier; 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 not less than 7 days 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. No notice and no meeting is required in the case of a sole Member.
- (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 a form approved by the Trustee.
  - (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.

#### 10.4 MEMBER DIES OR BECOMES LEGALLY DISABLED

If a Member dies or becomes Legally Disabled, the Member's legal personal representative has a right to attend meetings of Members and to vote as a Member at any meeting of Members and:

- (a) upon the Member's legal personal representative becoming a Trustee where the Trustee of the Fund is or are natural persons, has a right to vote as a Trustee; and
- (b) upon the Member's legal personal representative becoming a Director of the Corporate Trustee where the Trustee is a Constitutional Corporation, has a right to vote as a Director of the Corporate Trustee.

#### 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.
- (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;

## **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 Governing Rules and/or 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 in accordance with their Member Benefit Account balances; or
- (d) where the Fund holds Member-contributed WA Property and/or Member-contributed NSW Property, alter the undertakings contained in Rule 2.6 or 2.8;
- (e) be contrary to or inconsistent with the Act and Regulations.

## **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. For the avoidance of doubt and regardless of the terms of this Deed:

- (a) the Trustee may act in accordance with the Relevant Law regardless of the terms of this Deed;
- (b) the Trustee must act in accordance with the Relevant Law where the provisions of the Relevant Law are mandatory;
- (c) the Trustee is authorised to do any act or thing which is permitted by the Relevant Law regardless of the terms of this Deed;
- (d) the Trustee is authorised to refrain from doing any act or thing which is restricted or prohibited by the Relevant Law regardless of the terms of this Deed.

## **12.10 SAVING PROVISION**

The exercise by the Trustee of the power in Rule 12.8 will not invalidate or alter the terms of any:

- (a) Binding Death Nomination given by a Member;
- (b) Non-lapsing Binding Nomination given by a Member;
- (c) Pension rules in respect of Pensions commenced to be paid prior to the exercise of that power;
- (d) Superannuation will or other testamentary instrument executed by a Member prior to the exercise of that power,

and whether or not the terms of, or provisions applicable to, any of them does not comply with the operative Governing Rules of the Fund applying after the exercise of that power.

#### **14.1 APPLICATION FOR QROPS STATUS**

With the agreement of the Trustee and at the request of a Member who is entitled to receive a transfer of a UK Accumulated Credit, the Trustee may apply to Her Majesty's Customs & Revenue (or such other body as is appropriate) for recognition of the Fund as a Qualified Recognized Overseas Pension Scheme ("QROPS") pursuant to the United Kingdom's Finance Act 2004 and any regulations made under it.

#### **14.2 TRANSFERS FROM UK PENSION SCHEMES**

The Trustee will not request a transfer from a UK pension scheme under this Rule until its QROPS status has been confirmed and all other regulatory and administrative guidelines have been complied with.

#### **14.3 RESTRICTIONS ON BENEFITS PAYABLE**

The Trustee must in all respects comply with the requirements, from time to time, applicable to the Member's UK Accumulated Credit, including but not limited to:

- (a) requirements to report to Her Majesty's Customs & Revenue all payments or transfers affecting the Member's UK Accumulated Credit; and
- (b) restrictions on the age at which, and circumstances under which, benefits arising from the Member's UK Accumulated Credit may be paid; and
- (c) restrictions on the form in which any such benefits may be paid and on the amount of any lump sums.

#### **14.4 TRANSFERS TO OTHER REGULATED SUPERANNUATION FUND**

To the extent that the requirements of the United Kingdom's Finance Act 2004 and any regulations made under it restrict or impose conditions upon the transfer of a Member's UK Accumulated Credit to another Regulated Superannuation Fund, the Trustee must comply with those requirements in respect of any rollovers or transfers of the UK Accumulated Credit, unless such requirements would result in the Trustee breaching the provisions of the Relevant Law.

#### **14.5 LIMITATION ON AMENDMENTS TO THIS RULE**

No amendments can be made to the UK Pension Division Provisions if such amendments would mean the rules applying to the Member's UK Accumulated Credit would not comply with the requirements of the United Kingdom Inland Revenue for the transfer of pension entitlements from the United Kingdom to Australia.

#### **14.6 SUPPLEMENTARY DEFINITION FOR THIS RULE**

The expression "**UK Accumulated Credit**" means the amount transferred in respect of the Member to this Fund or a previous superannuation arrangement from a UK pension arrangement.

- (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 1.07D, 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,

- (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 1.07D, 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) 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 5.7(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

**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;

## SCHEDULE 2

### Dictionary

Many of the terms you will encounter in this Deed are specifically defined in the Superannuation Industry (Supervision) Act 1993 (Cth) 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:

**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 5.7(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**

**Anti-detriment Payment**, means a payment made pursuant to Section 295-485 of the Tax Act;

**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:

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;

**Collectables** means:

- (a) artwork (within the meaning of the *Income Tax Assessment Act 1997*);
- (b) jewellery;
- (c) antiques;
- (d) artefacts;
- (e) coins, medallions or bank notes;
- (f) postage stamps or first day covers;
- (g) rare folios, manuscripts or books;
- (h) memorabilia;
- (i) wine or spirits;
- (j) motor vehicles;
- (k) recreational boats;
- (l) memberships of sporting or social clubs;

**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**

**Contributions Cap** means a Member's concessional contributions cap or non-concessional contributions cap for the purposes of the Income Tax Assessment Act 1997; **section 291-20 and section 292-85**

**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 5.3(g);

**Death Benefit Pension**, means a new pension which commences to be payable from the Fund to a beneficiary of a deceased Member, after that Member's death;

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 governing rules (as defined in the Act) of the Fund which include these 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).

**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 NSW Property** means dutiable property for the purposes of the Duties Act 1997 (New South Wales), which is transferred to the Trustee of the Fund by a Transferor and, in respect of which property, stamp duty has been assessed and paid under section 62A of the Duties Act 1997

**Payment Split**, means a payment split under Part VIII B 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;

**Preservation Age** means:

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

**Preserved Benefits** means the total of all benefits and entitlements standing to the credit of the Member's Benefit 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,

**Self Managed Superannuation Fund** or **SMSF**, has the meaning in Rule 1.6;

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

**Splitting Order** means a splitting order under Part VIII B 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 5.3(f);

**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 5.3(d);

**Total and Temporary Disablement Benefit** means a benefit payable under Rule 5.3(e);

**Transfer Balance Cap** has the meaning given in the Income Tax Assessment Act 1997; section 995-1 and section 294-35 and section 294-185

**Transferor** means a Member who transfers Member-contributed WA Property or Member-contributed NSW Property to the Trustee of the Fund;

**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;

IN WITNESS WHEREOF the parties have set their hands and seals on the day and year first hereinbefore mentioned.

**EXECUTED AS A DEED by  
SUPER AT PTY LTD  
A.C.N. 158-994-248  
Trustee  
by an authority of the Directors**

*T. Barakat*  
.....  
**TERRIE BARAKAT**  
Director

*Anthony Barakat*  
.....  
**ANTHONY BARAKAT**  
Director

**SIGNED SEALED AND DELIVERED by**

*T. Barakat*  
.....  
**TERRIE BARAKAT**  
Member

*Anthony Barakat*  
.....  
**ANTHONY BARAKAT**  
Member

Witness: *N. Thomas*  
.....

Witness Name: *ROD THOMAS*  
*15 BILAMBIL ST*  
*BANYO 4014*