

Dated 31 March 2006

Deed of Amendment for AET Small APRA Fund

Trustee

Australian Executor Trustees Ltd
ACN 007 869 794

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DATED 31 March 2006

BY Australian Executor Trustees Ltd
ACN 007 869 794 (**Trustee**)

INTRODUCTION

- A. The Trustee currently acts as Trustee for the Small APRA Fund (the **Fund**) identified in Schedule 1 to this Deed of Amendment.
- B. The Trustee wishes to amend the Trust Deed of the Fund to the standard trust deed in use by the Trustee, the provisions of which form Schedule 2 to this Deed of Amendment.
- C. Clause 29 of the Trust Deed provides that, subject to the Act, the Trustee with the consent of any Member whose Benefit would be affected adversely, may by supplemental deed make any modification, addition or deletion to the Trust Deed.
- D. The Trustee considers that the amendments do not adversely affect the Benefits of Members.
- E. The Trustee is further of the opinion that the amendments do not breach any of the provisions of the Act.
- F. This Deed of Amendment shall be construed only as operating to amend the provisions of the Trust Deed and not as establishing a new or different trust or superannuation fund.

OPERATIVE PART

- 1. Replace all provisions of the Trust Deed with the provisions of Schedule 2 to this Deed of Amendment.
- 2. The amendment made by clause 1 of this Deed of Amendment operates on and from 31 March 2006 or such later date as is determined by the Trustee, but, for the avoidance of doubt, does not affect

determinations made by the Trustee prior to the date of commencement of the amendments, nor the payment of benefits on or after that date, in accordance with such determinations.

EXECUTED as a deed poll

Australian Executor Trustees Ltd
ACN 007 869 794 by its Attorney who
certifies that he/she has not received
notice of any revocation of the Power
of Attorney dated 24 December 2004.





Witness

Schedule 1

Name of Fund: THE MANZ SUPERANNUATION FUND

Schedule 2

Small APRA Funds Trust Deed

1. **The Superannuation Fund:** The Fund is a superannuation fund to be managed in accordance with this Deed for the benefit of Members and their Dependants (as defined by the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations 1994 (SIS)*) all of whom shall be bound by this Deed.
 - (a) that provision (or part of a provision) must be read down, changed, construed or severed to avoid such conflict; and
 - (b) to the extent that such conflict cannot be avoided, the provision (or part of that provision) will be of no effect.
2. **Compliance**
 - 2.1 The Trustee is fully empowered (without being obliged) to comply with any provision or standard of the Relevant Law which is not a requirement. Relevant Law means:
 - (a) SIS;
 - (b) the *Corporations Act 2001* (Cth);
 - (c) the *Income Tax Assessment Act 1936* (Cth);
 - (d) the *Income Tax Assessment Act 1997* (Cth); and
 - (e) any other, replacement or additional Commonwealth or State law or regulations, administrative rulings, circulars, guidelines or instruments which relate to superannuation arrangements and which apply to the Fund or any other present, future or proposed legal requirements which the Trustee is legally obliged to comply with, or which the Trustee must comply with to obtain the maximum tax concessions available to the Fund;

including any proposed requirements which the Trustee believes will have retrospective effect and any provisions of the above items which are necessary to be complied with in order for any pensions paid by the Fund to satisfy any applicable statutory requirements.
 - 2.2 The Trustee is deemed to have complied with the Relevant Law and this Deed if:
 - (a) the Regulator (as defined in SIS) is satisfied that the Trustee has complied with the Relevant Law;
 - (b) the Regulator determines that the Fund will be treated as if it had complied with the Relevant Law; or
 - (c) the Regulator has advised the Trustee that it will not take action against the Trustee or the Fund in respect of a failure to comply with the Relevant Law.
 - 2.3 To the extent that any provision (or part of that provision) in this Deed conflicts with Part 6 of SIS:
 - 2.4 Where a provision of the Relevant Law is required to be included in this Deed in order to comply with the Relevant Law, such provision is deemed to be included in this Deed for so long as the provision is required to be so included.
 - 2.5 Without limiting paragraphs 2.3 and 2.4, the following provisions of the Relevant Law (and any corresponding regulations) apply despite any other provisions of this Deed, for so long as the provision of the Relevant Law is required to so apply:
 - (a) section 52 of SIS (Covenants to be included in governing rules);
 - (b) section 56 of SIS (Indemnification of trustee from assets of entity);
 - (c) section 57 of SIS (Indemnification of directors of trustee from assets of entity);
 - (d) section 58 of SIS (Trustee not to be subject to direction);
 - (e) section 59 of SIS (Exercise of discretion by person other than trustee);
 - (f) section 60 of SIS (Amendment of governing rules); and
 - (g) section 60A of SIS (Dismissal of trustee of public offer entity).
 - 2.6 The Trustee must hold all relevant licenses and authorities as required under the Relevant Law.
3. **Vesting:** All property, rights and income of the Fund (**Fund Property**) vest in the Trustee on trust for Members. **Fund Liabilities** include (without limitation) liabilities, borrowings, accrued costs, charges, expenses and outgoings, contingent liabilities, provisions, liability to Tax, and unpaid amounts due and payable to Members or Dependants in respect of benefits. A Member may neither interfere with, nor exercise powers of, the Trustee in respect of any Fund Property or Fund Liability or obligation.

4. **Fund:** The Trustee must account for all Fund Property as a separate fund which is not available to meet liabilities of any other entity. The Trustee at any time may divide the Fund into two or more sub-funds (**Sub-Funds**) relating to the interests of different members or as different accounts for the same Member.
5. **Membership:** The Trustee may admit as a Member of the Fund and, if there are any, of one or more Sub-Funds, any person eligible under SIS who applies in writing. The Trustee may reject any application for membership without giving a reason.
6. **Contributions:** If the Trustee agrees, any Member, or other person in respect of a Member (whether the Member, an employer, a spouse, the Government or otherwise) may contribute any amount (**Contribution**) to the Fund or to a Sub-Fund (to which that Member has been admitted) in respect of that Member.
7. **Powers:** Subject to this Deed, the Trustee has within and outside Australia all the powers in relation to the Fund, Fund Property and Fund Liabilities, that it is legally possible for a natural person or corporation to have, including (but not limited to) to invest in real or personal property of any nature (including, but not limited to, the purchase or acquisition in any way of shares of any class or description in the Trustee or a body corporate related to it) and to incur liabilities and obligations of any kind, as if it were the absolute and beneficial owner of all Fund Property or to effect any life assurance policy on the life of any Member (**Life Policy**). In addition the Trustee shall be entitled to exercise any power able to be exercised by trustees generally subject to the exercise of such power being prohibited by this Deed or constituting a breach of SIS.
8. **Attorneys, Custodian Trustee and Agents**
 - 8.1 The Trustee may effect execution of this Deed or any other document in the course of administering the Fund by its duly appointed attorney/s.
 - 8.2 The Trustee may in its absolute discretion appoint a custodian trustee for purposes including holding the legal title to the Fund property from time to time subject to the requirements of SIS.
 - 8.3 The Trustee may in its absolute discretion appoint any legal practitioner, accountant, auditor, actuary, administrator, valuer, Australian Financial Services Licensee (including any authorised representative of such a licensee) or other service provider as its agent (whether or not any such agent may be related or not to the Trustee) in the course of administration of the Fund and shall be entitled to pay out of the Fund's assets the reasonable fees and charges of any such duly appointed agent.
9. **Discretion:** The Trustee may determine the manner, mode and time of exercise of its powers in its absolute discretion.
10. **Outgoings:** All costs, charges, expenses and outgoings reasonably and properly incurred by the Trustee in connection with the performance of its duties or the exercise of its rights or powers or administration or termination of the Fund are payable or reimbursable out of Fund Property (and, if referable to more than one Sub-Fund, apportioned in a manner determined by the Trustee).
11. **Valuations:** The Trustee is not to be regarded as having any special expertise in valuation. The Trustee may cause Fund Property to be revalued whenever it thinks fit. The value of any property must be determined by, or by a method determined by, a qualified valuer or other qualified person appointed and instructed by the Trustee or by such other method as the Trustee may reasonably determine.
12. **Net Value:** **Net Value** is the value of Fund Property in the Fund (or in any Sub-Fund) less Fund Liabilities (or referable to the Sub-Fund). The Trustee may calculate Net Value as at any time (**Valuation Time**) (not limited to once a day), on the basis of the most recent valuation of each item of Fund Property and determination of Fund Liabilities, as at the Valuation Time.
13. **Accounts:** The Trustee will keep accounts for the Fund in accordance with SIS.
14. **Member Accounts:** The Trustee will keep a separate Member Account for each Member to which it will credit all Contributions in respect of that Member. On 30 June each year and on each other date the Trustee chooses (**Review Date**) the Trustee must determine the Net Value of the Fund and each Sub-Fund and determine the gain (or loss) since the preceding Review Date. The Trustee will credit (or debit) each Member's Account with the appropriate proportion of the gain (or loss) on such basis as the Trustee considers equitable, including (without limitation) proceeds of life Policies effected for the Member's benefit. The Trustee may create and keep other accounts, that comply with applicable standards under SIS.
15. **Liabilities:** All Tax liabilities of the Trustee on account of the Fund shall be borne out of the Fund Property and shall either be taken into account for the purposes of determining the Fund Net Value in accordance with clause 12 or shall be debited against the Member Account of the Member or Members in respect of whom the Trustee may determine the Tax relates. **Taxes** means all income, capital gains, debits, goods and services, land and other taxes, superannuation surcharge, stamp documentary, financial institutions, registration and other duties, excise and any other levies, imposts, deductions and charges, related interest and penalties. The Trustee may withhold payment of any money payable to a Member until the liability is discharged, or may meet the liability and recover the amount from any money or property held for the Member. Without limiting the generality of this paragraph, the Trustee may debit a Member Account directly with Taxes, or an estimate of Taxes which in the opinion of the Trustee will be incurred on acceptance of the Member's Contributions or incurred in relation to the Member or Member Account, those Taxes being excluded from any calculation of Net Value of the Fund or any Sub-Fund.
16. **Auditor:** The Trustee must appoint and may at any time replace as **Fund Auditor** an approved auditor.
17. **Benefits:** At any time after satisfaction by the Member of any condition of release within the meaning of SIS, and no later than SIS permits, the Trustee will provide, when requested by the Member (or where applicable, a Dependant of that Member) all or any part of that Member's benefit (**Benefit**) in any one or more of the forms which

the Member (or the Dependant, subject to any contrary written nomination from the Member as to the form of the Benefit) nominates, which the Trustee approves and which are permitted, and comply with all applicable standards required, by SIS. If SIS does not require the Member's Benefit to be cashed at that time, the Trustee may decide not to provide a Benefit or part of it if it is less than \$5,000 and, if the Trustee decides to do so, the Trustee may charge a fee for doing so, calculated on a reasonable basis and not exceeding the amount then most recently advised to the Members in writing. The Trustee will choose a Review Date for the Fund and any relevant Sub-Fund on the latest practicable date prior to the date on which the Benefit is provided. The amount of the Benefit is the amount standing to the credit of the Member's Account following that Review Date. Without limiting the above where a Member enters into an agreement pursuant to which the Trustee is to pay any pension other than an allocated pension or market linked pension within the meaning of SIS (**Defined Benefit Pension**), the Trustee will transfer the amount of the Member's Benefit to a Sub-Fund from which the pension liability will be funded.

18. **Death:**

18.1 If a Member dies (in a case other than a Member in receipt of a pension, in which case clause 18.2 or clause 18.3 will apply) the Trustee shall pay or apply the Member's Benefit to any one or more of the Member's legal personal representatives or Dependants in accordance with the Member's written nomination and which may be by way of a pension payable to Dependants and/or a lump sum.

If the Member has not made a nomination, then the Trustee shall pay the Member's Benefit to the Member's legal personal representatives except that, if after making reasonable inquiry, the Trustee has not been able to identify any legal personal representatives, then the Trustee shall pay the Benefit as a lump sum or a pension to any one or more of the Member's Dependants in its absolute discretion, and if there are no Dependants then the Trustee shall pay the Benefit to any one or more individuals.

18.2 If a Member in receipt of an allocated or market linked pension dies, then the Trustee shall pay or apply the balance of the Member's account to any one or more of the Member's legal personal representatives or Dependants in accordance with the member's written nomination which may be by way of lump sum and/or reversionary pension as nominated by the Member, except that, to the extent permitted under SIS, the Trustee may in its absolute discretion apply the Member's benefit by way of reversionary pension, notwithstanding that the Trustee may not have established the Member's pension as a reversionary pension.

If the Member has not made a nomination, then the Trustee shall pay the balance of the Member's account to the Member's legal personal representatives except that, if after making reasonable inquiry, the Trustee has not been able to identify any legal personal representatives, then the Trustee shall pay the benefit as a lump sum or a pension to any one or more of the Member's Dependants in its absolute discretion and if

there are no Dependants then the Trustee shall pay the Benefit to any one or more individuals.

18.3 If a Member in receipt of a Defined Benefit Pension dies then:

(a) subject to clause 18.3(b), upon the death of the Member the remaining balance (if any) of the Sub-Fund from which the pension has been paid shall be transferred to an unallocated reserve (unless a commutation of the benefit is authorised by SIS, in whole or in part, in which case the benefit shall be commuted to the extent permitted under SIS and shall be paid to the Member's legal personal representatives) within the Fund and the Trustee may pay or otherwise deal with that balance in any way permitted by SIS, including, but without imposing any limitation on the Trustee whatsoever, by:

- (i) paying the balance as a lump sum to the Member's legal personal representatives;
- (ii) allocating the balance to a Member Account for the deceased Member and dealing with the balance in accordance with clause 18.1; or
- (iii) allocating the balance to another Member or former Member of the Fund.

(b) If there is a reversionary beneficiary in relation to the pension and the reversionary beneficiary survives the Member, then upon the death of the Member, the Defined Benefit Pension shall continue to be paid to the reversionary beneficiary. If SIS permits the commutation of the pension, in whole or in part, on the death of the reversionary beneficiary, then the benefit shall be commuted to the extent authorised by SIS and the balance shall be paid to the reversionary beneficiary's legal personal representatives but otherwise the remaining balance (if any) in the Sub-Fund from which the pension has been funded shall be transferred to an unallocated reserve within the Fund and the Trustee may pay or otherwise deal with that balance in accordance with clause 18.3(a) as if a reference to the Member in that clause was a reference to the reversionary beneficiary.

18.4 Subject to SIS the Trustee may increase the Benefit payable to any Dependants or legal personal representatives of a deceased Member by crediting an amount to the Member Account of the deceased Member which amount shall be equivalent to such amount (if any) which is a tax deduction to the Fund.

19. **Insolvency:** All rights of a Member in respect of the Fund Property (to the extent the Member does not have a presently existing entitlement to claim the same as against the Trustee) and any other entitlement under the Fund likewise not being in the nature of a present entitlement to claim as against the Trustee shall be forfeited (to the extent that is possible under SIS) upon the Member committing an

act of bankruptcy but only to the extent that the amount to be forfeited if paid to the Member would be liable to be assessed as being in excess of the pension reasonable benefit limit as it applies at the time.

20. **Transfers:** The Trustee may, and when required under SIS will, in relation to a Member receive from, or pay to, another regulated superannuation fund or arrangement, approved deposit fund, eligible rollover fund or annuity any amount (**Rollover Amount**) as requested by the Member on such conditions as the Trustee may consistently with SIS require, and the Member may approve. The Trustee will ensure that any such transaction is appropriately reflected in the Member Account for the Member.
21. **Payments:** Any money payable by the Trustee to any Member may be deposited into an account with a bank or other financial institution nominated by the Member, or applied in any other manner which the Member in writing directs or paid by cheque posted to the Member. If agreed between the Trustee and any Member, any payment by the Trustee or the Member to the other may be satisfied by the transfer, at market value, of any valuable right or property.
22. **Independent Rights:** The Trustee and any related company or associate of the Trustee may, subject always to acting in good faith to Members, deal in any capacity with the Fund or act in any capacity in relation to any other trusts, without in any such case being liable to account to the Fund or to any Member.
23. **Indemnity:** Except if the Trustee or **Director** of the Trustee (as the case may be) fails to act honestly in a matter concerning the Fund or intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or the Director (as the case may be) was required to exercise or unless the liability is for a monetary penalty under a civil penalty order imposed under SIS:
 - 23.1 the Trustee or the Director (as the case may be) shall not be liable for any loss or breach of trust; and
 - 23.2 the Trustee and each Director is indemnified out of Fund Property against all Fund liabilities, losses, costs and expenses incurred in the proper exercise or purported exercise of the Trustee's powers.
24. **Limitation:** The Trustee is not required to do anything for which it does not have a full right of indemnity out of Fund Property. Any indemnity to which the Trustee is entitled under this Deed is in addition to any indemnity allowed by law.
25. **Liability of Member:** The liability of each Member is limited to the amount of that Member's Contributions contributed or agreed to be contributed. No Dependant shall be under any liability. Recourse of the Trustee and Fund creditors is limited to Fund Property. Any relationship of agency between the Trustee and any Member or Dependant is expressly excluded.
26. **Trustee's Fees:** The Trustee shall be entitled to charge Trustee fees, including charging fees to Members on a basis that differs from that applying to other Members who hold interests of the same class, as disclosed to the Members from time to time in the Fund's disclosure documentation.

The Trustee's fees as disclosed from time to time may be varied by the Trustee in its discretion subject to providing 3 months written notice to the Members of any change, or to providing such shorter period of notice to the Members as is properly disclosed to Members under Relevant Law.

27. **Duration:** The Fund begins on the Commencement Date and ends when the Trustee decides to terminate the Fund. On termination, the Trustee will make such arrangements in relation to any remaining Fund Property and Fund Liabilities, and the rights and obligations of Members, as it may determine consistent with SIS.
28. **Trustee's Retirement:** The Trustee may retire as Trustee of the Fund by giving three month's notice to the Members or any shorter notice the Members unanimously may accept. The Trustee may, by deed, appoint a new Trustee.
29. **Deed Amendments:** Subject to SIS, the Trustee, with the consent of any Member whose Benefit would be affected adversely, may by supplemental deed make any modification, addition or deletion to this Deed. Section 35B of the *Trustee Act 1936* (South Australia) or any other equivalent provision of legislation of a State, has no application.
30. **Meanings:** Unless a contrary intention appears, words and phrases used in this Deed have the same meanings as in SIS. The singular includes the plural and vice versa. **Trustee** means the trustee of the Fund from time to time. **Deed** means this deed as amended from time to time. Legislation is referred to as amended or replaced from time to time.
31. **Family Law Provisions:**
 - 31.1 Notwithstanding any other provision of this Deed but subject to clause 31.2 and SIS the Trustee may create a new interest in the Fund for a non-member spouse (**new interest**) as contemplated by SIS in which case:
 - (a) when creating a new interest the Trustee may determine the terms and conditions which will apply to the new interest;
 - (b) the Trustee may adjust the Member Account balance of the member spouse in such manner as it determines to effect the creation of the new interest;
 - (c) if the non-member spouse is already a Member the amount to otherwise be applied to the new interest shall be credited to the non-member spouse's Member Account;
 - (d) the Trustee may make rules from time to time to apply in respect of a non-member spouse who has become a Member.
 - 31.2 A non-member spouse is not permitted to become a Member if;
 - (a) the value of the new interest as at the date of creating the new interest would be less than the Minimum Investment Amount (if any) at that date;

- (b) the member spouse requests that the Trustee transfer the amount of the new interest in respect of the non-member spouse to another regulated superannuation fund; or
- (c) permitting the non-member spouse to become a Member would increase the number of Members in the Fund to 5 or more.

31.3 The Trustee shall be bound and give effect, notwithstanding any provision of this Deed, to any family court order, superannuation splitting agreement or a payment flag which relates to the Member Account of any Member.

31.4 In this clause 31:

- (a) member spouse and non-member spouse have the same meanings as in the *Family Law Act 1975*; and
- (b) minimum Investment Amount means the minimum one off initial contribution that a Member must make in order to become a Member of the Fund determined by the Trustee for the purposes of this clause 31 from time to time.