

# **DEED OF VARIATION**

**IAN PHILLIP ROBERTSON**

**and**

**MARGARET MARY ROBERTSON**

**("the Trustee")**

**THE I & M ROBERTSON  
SUPERFUND**

**MORROWS LEGAL PTY LTD**

ABN 44 114 947 963

Lawyers

Level 13, Freshwater Place

2 Southbank Boulevard

SOUTHBANK VIC 3006

Tel: 03 9690 5700

Fax: 03 9690 6509

**THE I & M ROBERTSON SUPERFUND**

**DEED OF VARIATION**

**THIS DEED** is made on *10th June 2009*

**BY:**

**IAN PHILLIP ROBERTSON**  
**and**  
**MARGARET MARY ROBERTSON**  
**("the Trustee")**

**WHEREAS:**

- A. **THE I & M ROBERTSON SUPERFUND** (the "Fund") was established by Deed dated 17 June 1998 (the "Deed").
- B. Clause 12.8 of the Deed provides that the Trustee may at any time amend all or any of the provisions of the Deed.
- C. The Trustee desires to amend the Deed in the manner set out in the Schedule, which amendment is in accordance with the requirements of Clause 12.8 of the Deed.


**NOW THIS DEED WITNESSES AS FOLLOWS:**

- 1 The Trustee amends the Deed by substituting the clauses set out in the Schedule for clauses and provisions of the Deed.
- 2 The Trustee agrees to maintain the Fund that was established by the Deed.
- 3 The Trustee confirms that it holds the assets of the Fund on the trusts specified in the Deed as amended by this Deed.

**EXECUTED AS A DEED**


*The Trustee*

**SIGNED SEALED AND DELIVERED** by the said  
**IAN PHILLIP ROBERTSON** in the presence of:

)  
)   
) .....  
) **IAN PHILLIP ROBERTSON**

.....  ..... Witness

**SIGNED SEALED AND DELIVERED** by the said  
**MARGARET MARY ROBERTSON** in the presence of:

)  
)  
)   
) .....  
) **MARGARET MARY  
ROBERTSON**

.....  ..... Witness

**SCHEDULE****THE I & M ROBERTSON SUPERFUND****INDEX**

8	1. Fund Establishment
8	(1) Fund an Indefinitely Continuing Superannuation Fund
8	(2) Fund Purpose
8	2. Definitions and Interpretations
8	(1) Definitions
10	(2) Rules of Interpretation
10	(3) Headings
10	(4) State Trustee Acts
10	3. Governing Law
11	4. Compliance With Relevant Law
11	(1) Covenants and Operating Standards Incorporated in Deed
11	(2) Severance
11	(3) Relevant Law Applies Where Inconsistency
11	(4) Compliance with Relevant Law
11	5. Fund To Be A Regulated Superannuation Fund
11	6. Appointment, Removal And Number Of Trustees
11	(1) The Trustee
12	(2) Resignation of Trustee
12	(3) Trustee to Appoint Replacement Trustee
12	(4) Retiring Trustee to Execute Transfers
12	(5) Removal of Trustee
12	(6) Disqualified Persons
12	(7) Death of Member
12	7. Trustee's Powers Of Management
12	(1) Trustee to Manage Fund
12	(2) Trustee Discretion
13	(3) Trustee Powers
13	(4) Trustee Action Notwithstanding Interest
13	(5) Delegation
13	(6) Professional Services by Trustee
13	(7) Trustee Powers Inclusions
14	8. Remuneration Of Trustee
14	9. Costs, Charges and Expenses
14	10. Limitation Of Liability
14	(1) Liability of Trustee

14	(2) Indemnity of Trustee
14	(3) Insurance
15	(4) Members not Liable for Indemnity
15	<b>11. Trustee Subject To Direction</b>
15	<b>12. Trustee Meetings</b>
15	(1) Trustee Meetings
16	(2) Trustee Resolution where not Corporation
16	<b>13. Assets And Investments</b>
16	(1) Assets held on Trust
16	(2) Investment Strategy
16	(3) Fund Assets to be Invested
16	(4) Trustee Power to Deal with Investments
17	(5) Trustee may Borrow
17	(6) Trustee Empowered to Receive all Income etc
17	(7) Name in which Assets Held
17	(8) Investment Choice
17	(9) Trustee may Invest Separately for Member
17	<b>14. Sub-Plans</b>
17	(1) Trustee may make Sub-plan
17	(2) Rules may Govern Sub-plan
18	(3) Sub-plan may be Sub-Fund
18	<b>15. Membership Disclosure</b>
18	(1) Disclosure to Members
18	(2) Inspection of Documents
18	(3) Service
18	<b>16. Membership Of Fund</b>
18	(1) Application for Membership
18	(2) Date of Membership
19	(3) Members right to interest under Deed
19	(4) Member Ceases to be Member
19	(5) Transfers to Fund
19	(6) Transfers from Fund
20	<b>17. Member To Provide Information</b>
20	(1) Information to be Provided on Request
20	(2) Trustee may refuse to Accept Contributions
20	<b>18. Arbitration</b>
20	<b>19. Fund Records</b>
20	(1) Trustee to Keep Records
20	(2) Record and Custody of Investments
20	(3) Trustee Receipt
21	(4) Each Member to have an Account

21	20. Reserve Account
21	(1) Trustee may Establish Reserve Account
21	(2) Reserve Account Separate from Other Accounts
21	(3) Use of Reserve Account
22	21. Contributions
22	(1) Contributions by Employer
22	(2) Member Contributions
22	(3) Refund of Contributions
22	(4) Splitable Contributions
22	22. Benefits
22	(1) Member entitled to Pension
22	(2) Trustee may Purchase Annuity
23	(3) Benefit as a Lump Sum
23	(4) Lump Sum may be Determined
23	(5) Amounts to be Preserved
23	(6) Payment of Death Benefit
23	(7) Trustee may Effect Policy of Insurance
23	(8) Payment in Specie
24	23. Pension Conditions
24	(1) Trustee and Member may Agree on Pension
24	(2) Pension may not be Assigned
24	(3) Pension may not be used as Security
24	(4) Pension Account
24	24. Account-Based Pension
24	(1) Pension must be Paid Annually
24	(2) Amount of Pension
24	(3) Payment dates
25	(4) Commutation
25	(5) Pension to be Paid to Reversionary Beneficiary
25	(6) Reversionary beneficiary Pension Conditions
25	(7) When Pension Ceases
25	(8) Pension on Death of a Member
26	(9) Trustee may Determine who to receive a Pension
26	25. Allocated Pension
26	26. Market Linked Pension
26	(1) Pension to be Paid at Least Annually
26	(2) Period of Pension
26	(3) Amount of Pension
26	(4) Commutation
26	(5) Pension Conditions
27	(6) Transfer of Pension

27	(7) Assets Funding Pension may be held on Death
27	(8) Trustee may Determine who to receive a Pension
27	<b>27. Appointment Of Auditor</b>
27	(1) Appointment of Auditor
27	(2) Audit to be Arranged
27	<b>28. Amendment Of Deed</b>
27	(1) Trustee may Vary Deed
28	(2) Member's right to Accrued benefits
28	<b>29. Termination Of Fund</b>
28	(1) Fund to be Terminated
28	(2) Further Contributions not to be Received
28	(3) Application of Fund on Termination

THE I & M ROBERTSON SUPERFUND

FUND ESTABLISHMENT

- Fund an Indefinitely Continuing Superannuation Fund**
1. (1) The fund that is known and identified by the name **THE I & M ROBERTSON SUPERFUND** ("the Fund") is established as an indefinitely continuing superannuation fund.

**Fund Purpose**  
(2)

The Fund is established and maintained solely for the purpose of providing old age pensions for Members in the event of their retirement or in the other circumstances approved under the Relevant Law.

DEFINITIONS AND INTERPRETATIONS

**Definitions**  
2. (1)

Unless the contrary intention appears:

**"Auditor"** means the auditor for the time being of the Fund appointed by the Trustee and who is an approved auditor under the Relevant Law.

**"Beneficiary"** means a person presently and absolutely entitled to receive a Benefit at the relevant time.

**"Benefit"** means any benefit payable by the Trustee out of the Fund pursuant to this Deed in respect of a Member.

**"Complying Superannuation Fund"** in relation to a year of income means a fund which is a Complying Superannuation Fund in accordance with the Relevant Law.

**"Contributions"** means gross payments, deposits or contributions of money or other assets to the Fund for and in respect of Members prior to the deduction of any Taxation payable in respect of those Contributions.

**"Deed"** means this Deed, anything deemed to be included under the Relevant Law and any Rules made under this Deed.



**"Dependant"** means the spouse and children of a Member, any person with whom the Member has an interdependency relationship and any other person who, in the opinion of the Trustee in its absolute discretion, is or was at the relevant time wholly or partially dependent upon the Member for their maintenance and support.

**"Financial year"** means a period of twelve calendar months ending on 30 June or such other substituted annual balance date as the Trustee may determine, or any part of such a period that may occur at the commencement or termination of the Fund.

**"Fund"** means the entire Fund as constituted by this Deed and the Relevant Law.

**"Member"** means a person who has been admitted to membership of the Fund in accordance with this Deed and who has not ceased to be a Member and includes a Beneficiary in receipt of a pension from the Fund.

**"Members Account"** in respect of a Member means his or her interest in the fund determined in accordance with this Deed.

**"Relevant Law"** means any requirements under the Superannuation Industry (Supervision) Act 1998 and any other present or future legislation and requirements of a Regulator;

(a) Imposed on the Trustee; or

(b) Which the Fund must satisfy to qualify as a Complying Superannuation Fund.

**"Reversionary Beneficiary"** means a death benefits dependant nominated by a Member and in default of a nomination by the Member, a death benefits dependant nominated by the Trustee who is eligible to receive a Benefit upon the death of a Member.

**"Rules"** means rules made pursuant to this Deed.

**"Total and Permanent Disablement":**

(a) has the same meaning as contained in any policy effected by the Trustee with an insurer for this purpose in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member; or

(b) such other meaning as is determined from time to time by resolution of the Trustee -

provided that Total and Permanent Disablement will only be regarded as having occurred in respect of any preserved benefits component of any Benefits payable on Total and Permanent Disablement pursuant to this Deed if the Member concerned provides sufficient evidence to the Trustee to satisfy the Relevant Law.

“Trustee” means the Trustee or Trustees of the Fund.

## Rules of Interpretation

(2) Unless the context indicates otherwise:-

- (a) words indicating the singular include the plural and vice versa;
- (b) words indicating a gender include the other gender;
- (c) references to a person are construed as references to an individual, company, firm, partnership, joint venture, trust, body corporate, club, association, government or governmental authority and their successors; permitted assigns, substitutes, executors and administrators;
- (d) words and expressions used in this Deed have the same meaning as prescribed in the Relevant Law;
- (e) references to statutes or regulations (including any section thereof) include all statutes or regulations amending, consolidating or replacing any of them.

## Headings

(3)

Headings inserted in any clause are for convenience only and do not affect the interpretation of the Deed.

## State Trustee Acts

(4)

Unless the Trustee otherwise determines, to the extent that it is legally possible this Deed is not subject to the Trustee Act of the State or Territory in which this Deed is executed or any of its equivalents in any of the States or Territories of Australia.

## GOVERNING LAW

3.

This Deed will be governed by or construed according to the law of the Commonwealth of Australia and, where applicable, the State in which the Trustee is resident.

## COMPLIANCE WITH RELEVANT LAW

### Covenants and Operating Standards Incorporated in Deed

4. (1) To the extent that they are not otherwise incorporated in this Deed, the covenants and the operating standards applicable to this Fund, as prescribed in the Relevant Law, are deemed to be incorporated in this Deed.

### Severance

- (2) In order to avoid any provision of this Deed being made invalid by law, the provisions must be read down or changed or severed to avoid the invalidity.

### Relevant Law Applies Where Inconsistency

- (3) Notwithstanding any other provision of this Deed, in the event of any inconsistency between the Relevant Law and the express provisions of this Deed, the Relevant Law prevails to the extent of the inconsistency.

### Compliance with Relevant Law

- (4) The Trustee must do or procure to be done all acts as are necessary for the Fund to be a self managed superannuation fund and to comply with the Relevant Law in relation to self managed superannuation funds.

## FUND TO BE A REGULATED SUPERANNUATION FUND

- 5 The Trustee, whether original or substituted, is empowered to make any election required by the Relevant Law for the Fund to become a Regulated Superannuation Fund.

## APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES

### The Trustee

6. (1) The Trustee must be appointed and comprised in compliance with the requirements of the Relevant Law relating to self managed superannuation funds.

### Resignation of Trustee

- (2) A Trustee may cease to act as Trustee of the Fund if it resigns as Trustee after giving 30 days notice to Members or such lesser period as the Members agree, provided that a natural person who is a trustee of the fund must cease to be a Trustee on ceasing to be a member of the Fund.

**Trustee to Appoint Replacement Trustee**

- (3) Where the Trustee is a constitutional corporation and that corporation resigns as Trustee of the Fund, the corporation must appoint a replacement Trustee but if the retiring Trustee is unable or unwilling to do so, a majority of Members must take such steps as are necessary to appoint a Trustee.

**Retiring Trustee to Execute Trusts**

- (4) Upon a change of Trustee, the retiring Trustee or Trustees must execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name of the new Trustee or Trustees.

**Removal of Trustee**

- (5) The Members may remove the Trustee and appoint a substitute Trustee.

**Disqualified Persons**

- (6) An individual trustee, a director of a corporate trustee or a corporate trustee that becomes a disqualified person must immediately cease to be a Member and a trustee or director, as the case requires.

**Death of Member**

- (7) If a Member dies, the legal personal representative of that Member is an individual trustee or a director of a corporate trustee, as the case requires, in place of the Member during the period commencing when the Member died and ending when death benefits commence to be paid in respect of that Member.

**TRUSTEE'S POWERS OF MANAGEMENT****Trustee to Manage Fund**

7. (1) The Trustee must manage the Fund in compliance with the Relevant Law for the benefit of the members with full and complete power of management for the proper administration and maintenance of the Fund.

**Trustee Discretion**

- (2) The Trustee in the exercise of any powers conferred in it by this Deed or at law has an absolute and uncontrolled discretion as to their exercise, the exercise of which is final and binding provided that the Trustee must not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination.

**Trustee Powers**

- (3) In addition to the powers that it may have by law and which are otherwise granted by this Deed, the Trustee has the power to do all acts and things the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed or at law and is not bound to provide a reason for any action it takes.

**Trustee Action Notwithstanding Interest**

- (4) All the powers and discretions conferred upon the Trustee by this Deed or by law may be exercised notwithstanding that the Trustee or, if the Trustee is a corporation, any director may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and details of that interest must be disclosed in the manner prescribed by the Relevant Law.

**Delegation**

- (5) The Trustee may delegate to any person any of the powers, duties and discretions conferred on the Trustee under this Deed upon terms and conditions as the Trustee determines and the Trustee may vary, limit or revoke any delegation provided that any delegation may only be undertaken in accordance with the Relevant Law.

**Professional Services by Trustee**

- (6) Any person who is an Accountant, Solicitor, Barrister, Investment Adviser, or other professional person and is also a Trustee or a director of a corporation acting as Trustee who is called upon or whose firm is called upon to perform any service in relation to the Fund is entitled to make a charge for professional services as he or she would have made had he or she not been a Trustee or a director of a company acting as Trustee.

**Trustee Powers Inclusions**

- (7) To remove doubt, the powers and discretions conferred upon the Trustee by this Deed or by law include:

- (a) The power to open any account or accounts with any financial institution and to operate that account or those accounts and to draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable instrument or

- transferable instrument;
- (b) The power to delegate in writing the exercise of all or any of the powers or discretionary authorities conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate that purpose; and
- (c) The power to appoint any person as custodian to hold legal title for any asset acquired or to be acquired by the Trustee on terms as the Trustee thinks fit.

## REMUNERATION OF TRUSTEE

8. The Trustee is not entitled to receive from the Fund remuneration for any duties or services performed by the Trustee in relation to the Fund.

## COSTS, CHARGES AND EXPENSES

9. The Trustee will attend to payment out of the Fund, (or be indemnified and be entitled to be reimbursed out of the Fund) in respect of all costs, charges and expenses that it may reasonably and properly incur in the course of its office or in relation to the administration, management and preservation of the Fund.

## LIMITATION OF LIABILITY

10. (1) Subject to the Relevant Law providing otherwise, neither the Trustee nor any of its Directors or officers are liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund and may be indemnified by the Fund in respect of all liability except if that person:
- (a) fails to act honestly; or
- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- (c) incurs a monetary penalty under the Relevant Law.
- Indemnity of Trustee (2) The indemnity provided by sub-clause (1) extends to:

- (a) any payments made in good faith to any person whom the Trustee bona fide believes to be entitled although it may be subsequently found that the person was not in fact entitled.

- (b) where the Trustee acts upon the opinion or advice of or statement of lawyers who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.
- (c) where any person or corporation failed to carry out any agreement made with the Trustee and the omission is on the part of that person or corporation.
- (d) where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

**Insurance**

(3)

The Trustee may effect insurance in respect of any potential cost or liability of the Trustee or a director, officer or employee of the Trustee, including a liability under an indemnity granted by the Trustee to one of its directors, officers or employees.

**Members not Liable for Indemnity**

(4)

The Trustee is not entitled to indemnity reimbursement or payment of expenses from the Members or any of them or any other person entitled to a benefit from the Fund and the Members likewise are not to be personally liable for the debts of the Fund.

**TRUSTEE SUBJECT TO DIRECTION**

11.

The Trustee exercises its powers subject to any written direction signed by a Member in respect of:

(a)

a nominated beneficiary;

(b)

investments, provided that the direction is not, in the opinion of the Trustee,

(c)

inconsistent with the investment strategy determined under this Deed; and any other matter permitted by the Relevant Law.

**TRUSTEE MEETINGS**

**Trustee Meetings**

12

(1)

The Trustees, or in the case of a constitutional corporation being Trustee, the directors;

(a) may meet together for the dispatch of business;

- (b) may adjourn and otherwise regulate their meetings as they think fit;
- (c) may appoint a chairman for the time being or from time to time or of each meeting;
- (d) may determine the quorum necessary for the transaction of business provided it is no less than two-thirds of Trustees or directors, as the case requires; and
- (e) may act on any resolution approved by two-thirds of the Trustees or directors, as the case requires.

#### **Trustee Resolution where not a Corporation**

- (2) Where the Trustee is not a corporation, a resolution in writing, signed by all the Trustees for the time being, is as valid and effectual as if it had been duly passed at a meeting of the Trustees duly convened and held and any resolution may consist of several documents in like form, each signed by one or more Trustees.

### **ASSETS AND INVESTMENTS**

#### **Assets held on Trust**

13. (1) All assets of the Fund are to be held by the Trustee upon trust to be applied in accordance with the provisions of this Deed.

#### **Investment Strategy**

- (2) The Trustee must formulate and give effect to one or more investment strategies that have regard to the whole of the circumstances of the Fund and those strategies may be reviewed from time to time and must be formulated and effected in accordance with the Relevant Law.

#### **Fund Assets to be Invested**

- (3) All assets of the Fund received by the Trustee but not required to meet current payments must, in the absolute discretion of the Trustee, be invested in any manner or form that the Trustee may consider suitable that is in accordance with the investment strategy of the Fund as determined under sub-clause (2).

#### **Trustee Power to Deal with Investments**

- (4) The Trustee may deal with the investment of the assets of the Fund, any related borrowing and any related documents as fully and effectively as a person with absolute legal and beneficial ownership of those assets.



**Trustee may Borrow**

- (5) The Trustee may borrow to acquire an asset as an investment in a manner permitted by the Relevant Law upon terms with or without security or interest as the Trustee deems fit and to give or to authorize the giving of security by mortgage, charge, whether fixed or floating, or otherwise over the asset acquired and the rights of the mortgagee or charge will take priority in all respects over the rights of beneficiaries and all other persons.

**Trustee Empowered to Receive all Income etc**

- (6) Without limiting any other power, the Trustee is empowered to receive all income, moneys or increases in value on and from investments or assets or being entitled howsoever to other moneys or value and the income, moneys or value are to form part of this Fund.

**Name in which Assets Held**

- (7) Subject to the Relevant Law, any investments may be held in names including the name of a nominee (whether an individual or a corporation) as the Trustee may from time to time determine.

**Investment Choice**

- (8) The Trustee may in its absolute discretion determine to provide investment choice either generally or in respect of certain Members or Beneficiaries of the Fund and where the Trustee has determined to provide investment choice, the Trustee may permit a Member or Beneficiary to select or change investment strategy choices at times determined by the Trustee.

**Trustee may Invest Separately for a Member**

- (9) Notwithstanding any of the provisions of this Deed, the Trustee in its absolute discretion may undertake to invest separately in respect of certain Members or classes of Members of the Fund as determined from time to time and the Trustee must record on whose behalf such specific investments are made.

**SUB-PLANS****Trustee may make Sub-plan**

14. (1) The Trustee may in respect of the Fund determine in its absolute discretion to make a sub-plan for the Fund in respect of a member or members of the Fund.

**Rules may Govern Sub-plan**

- (2) The Trustee may make rules to govern the operation of the sub-plan and

those rules may at the discretion of the Trustee operate instead of the clauses of this Deed.

#### **Sub-plan may be Sub-fund**

- (3) The Trustee may determine whether a sub-plan is a sub-fund for the purposes of the Relevant Law.

### **MEMBERSHIP DISCLOSURE**

#### **Disclosure to Members**

15. (1) Except as required by the Relevant Law, no Member or Dependant of a Member are entitled to obtain Fund information that in the opinion of the Trustee would be inappropriate to disclose.

#### **Inspection of Documents**

- (2) A copy of this Deed and any other documents as required by the Relevant Law must be made available for inspection by any Member or Beneficiary at their request and unless otherwise required by the Relevant Law, it is sufficient to make a copy of this Deed or other documents available to the Member or Beneficiary for inspection at a place nominated by the Trustee.

#### **Service**

- (3) Any information to be given under this Deed will be deemed to have been validly given if handed to the party to be served or if posted by prepaid post and duly addressed to the party to be served at the last known address of such party or by electronic communication.

### **MEMBERSHIP OF FUND**

#### **Application for Membership**

16. (1) Any person may make application in writing to the Trustee to join the Fund and the Trustee may accept, accept subject to conditions that may be varied or removed or refuse any application for membership in its absolute discretion.

#### **Date of Membership**

- (2) A person becomes a Member from the date upon which the Trustee accepts his or her application and the application is deemed to be an agreement by the person to be bound by this Deed and an appointment by the Member of the Trustee as his or her attorney to do everything permitted by this Deed.

## **Member's right to interest under Deed**

- (3) No person whether as the Member or otherwise will have any claim right or interest to or in respect of the Fund or any contributions or any interest or any claim upon or against the Trustee except under and in accordance with the provisions of this Deed and the Relevant Law.

## **Members Ceases to be Member**

- (4) A person ceases to be a Member:

- (a) when he or she dies;
- (b) when the total amount of all amounts payable under the Deed in respect of his or her membership has been paid or transferred; or
- (c) when under the Deed any benefit payable to him or her or any person on his or her account ceases to be payable.

## **Transfers to Fund**

- (5) The Trustee may, in consultation with the Actuary (if any), make such arrangements as it thinks proper with:-

- (a) the Member, or
- (b) any previous employer of the Member, or
- (c) the Trustees of any superannuation fund of which the Member was or is a Member, or
- (d) any of them,

for any transfer of assets to the Fund, and may make arrangements about any other matter which in the opinion of the Trustee is incidental to or consequent upon the transfer of such assets to the Fund.

## **Transfers from Fund**

- (6) Should the Member become eligible to join another Regulated Superannuation Fund the Trustee may, if requested by the Member and authorised by the Relevant Law, in lieu of part or all of any Benefit to which the Member may be entitled under this Deed, transfer to the trustees of the fund such portion of the assets of the Fund as the Trustee, if necessary acting on the advice of the Actuary (if any), considers equitable having regard to the Member's accrued benefit at the date of transfer.

## MEMBER TO PROVIDE INFORMATION

### Information to be Provided on Request

17. (1) Every Member and every person claiming a benefit may be required, from time to time, to give to the Trustee information and produce to it documents, as the Trustee considers are required for the purpose of putting this Deed into effect, and for arranging insurances for the purposes of the Fund.

### Trustee may refuse to Accept Contributions

- (2) The Trustee need not verify any information given under this clause but may in its absolute discretion refuse to accept contributions or further contributions and may refuse to pay benefits to or in respect of a Member or Beneficiary if information is not given by the employer, Member or Beneficiary, as the case may be.

## ARBITRATION

18. If any question or dispute arises with respect to the Fund or this Deed, and if the Trustee so requires, the question or dispute may be referred to a single arbitrator agreed to by the parties to the question or dispute, or in default of agreement, to an arbitrator appointed pursuant to the statutory provisions applicable to arbitration in the State or Territory of the Commonwealth of Australia in which this Deed was executed.

## FUND RECORDS

### Trustee to Keep Records

19. (1) The Trustee must keep or cause to be kept a complete record of all persons who become Members of the Fund and of the income and expenditure of the Fund and all other matters essential for the working of the Fund, including any records required to be kept by the Relevant Law and may establish and maintain any accounts it considers suitable.

### Record and Custody of Investments

- (2) The Trustee must keep appropriate records and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments and must retain the appropriate records and accounts for the time and in the manner prescribed under the Relevant Law.

### Trustee Receipt

- (3) A receipt given on behalf of the Fund by the Trustee or by any other person who may from time to time be authorised by the Trustee in writing to receive

any moneys of the Fund is a sufficient discharge to the person by whom the moneys are paid.

#### Each Member to have an Account

- (4) The Trustee must establish a Members Account in respect of each Member and such accounts as are considered necessary to which the Trustee must credit and debit amounts as the Trustee may from time to time determine.

### RESERVE ACCOUNT

#### Trustee may Establish Reserve Account

20. (1) The Trustee may establish reserve accounts in respect of the Fund and may transfer to the credit of a reserve account any amount not credited to the Members Accounts as earnings.

#### Reserve Account separate from Other Accounts

- (2) Whilst any moneys are held in a reserve account, they do not form any part of any Members Account and any income earned and expenses incurred by the Fund on the moneys held in a reserve account must be credited or debited to the reserve account.

#### Use of Reserve Account

- (3) A reserve account may at the discretion of the Trustee be used for the following purposes:

- (a) To generally give effect to the reserving strategy established by the Trustee to smoothen the investment earnings of the Fund;
- (b) To provide for such contingencies as the Trustee determines;
- (c) To augment the fund earning rate;
- (d) To meet any Taxation payments payable by the Fund;
- (e) To pay any expenses, charges, commission or brokerage payable by the Fund;
- (f) To or for the benefit of a Member, Pensioner, Beneficiary or former Member including augmentation of the Accumulation Account or Pension Account on a basis that does not breach the Relevant Law; or
- (g) For any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.

## CONTRIBUTIONS

### Contributions by Employer

21. (1) Subject to this clause and as authorised by the Relevant Law, an employer may contribute to the Fund in respect of the Member at a rate as may be agreed from time to time between the employer, the Member and the Trustee or as required by the Relevant Law.

### Member Contributions

- (2) The Trustee may accept contributions by or in respect of a Member that are not contributions by an employer.

### Refund of Contributions

- (3) As soon as reasonably possible after becoming aware that particular contributions may not be accepted in respect of a Member the Trustee must refund those contributions and for the purpose of determining the Member's interest in the Fund it is assumed that these contributions were not made to the Fund.

### Splitable Contributions

- (4) The Trustee may if requested by a Member roll over, transfer or allot an amount of benefits, for the benefit of the Member's spouse, that is equal to an amount of splitable contributions made in respect of that Member in a manner permitted by the Relevant Law.

## BENEFITS

### Member entitled to Pension

22. (1) A Member who is entitled to receive a Pension in circumstances approved under the Relevant Law that can be supported by an amount equal to the Members Account standing in his or her name and may commute a pension in circumstances approved under the Relevant Law to enable the Member to commence a pension provided by this Deed.

### Trustee may Purchase Annuity

- (2) The Trustee may, at the request of a person entitled, pay all or part of any benefit payable pursuant to the provisions of the Deed to such regulated superannuation fund, or for the purchase of such annuity or pension (of any type and including a complying pension) as the person so entitled may request.

**Benefit as a Lump Sum**

- (3) The Member may at any time elect to receive part or all of his or her benefit as a lump sum rather than as a pension to which the Member has an entitlement.

**Lump Sum may be Determined**

- (4) On the written application of a Member or a Beneficiary, the Trustee will determine the amount of the lump sum payable and will commute to a lump sum benefit the whole or any part of any pension payable from the Fund to a Member or a Beneficiary, provided that:

- (a) the commutation of the benefit is permitted by the Relevant Law; or  
 (b) the amount of the commuted benefit including the value of any remaining pension is permitted by the Relevant Law.

**Amounts to be Preserved**

- (5) No amount that the Relevant Law requires to be preserved may be paid to a Member unless the payment is permitted by the Relevant Law.

**Payment of Death Benefit**

- (6) Except where a direction has been given under this Deed, any death benefit will be paid as the Trustee in its absolute discretion decides by way of purchased annuities, pensions (of any type) or other periodical payments (in each such case upon such terms as the Trustee may decide) or lump sum payments or any combination of such methods of payment, to any of:

- (a) one or more of the Dependants of the Member and in proportions as the Trustee in its absolute discretion decides; and  
 (b) the legal personal representative of a Member -

and may take into account any specific instructions as to the payment of the death benefit that are included in a beneficiary nomination by the former Member or the last Will of the former Member.

**Trustee may Effect Policy of Insurance**

- (7) The Trustee may effect any policy or policies of insurance on terms that the Trustee in its absolute discretion decides in respect of a Member for the purpose of providing a sum or sums on death or disableness of a Member.

**Payment in Specie**

- (8) The Trustee may with the consent of a Member or Beneficiary to whom a Benefit is payable transfer investments of the Fund of equivalent value to the

Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of this Deed provided however that the Trustee is satisfied that the transfer is permitted by the Relevant Law.

## PENSION CONDITIONS

### Trustee and Member may Agree on Pension

23. (1) The Trustee and the Member may agree that a pension be paid as provided by this Deed and in the absence of agreement, the Trustee may determine the basis on which the pension is paid.

### Pension may not be Assigned

- (2) Pensions payable to a person from the Fund must not be assigned or otherwise transferred by that person (except to the extent permitted by this Deed) and must not be mortgaged or encumbered in any manner.

### Pension may not be used as Security

- (3) Neither the capital value of any pension payable from the Fund nor any income from it, may be used as a security for a borrowing.

### Pension Account

- (4) The Trustee may in relation to Members being paid a Pension separate the assets of the Members into a Pension Account for the purpose of enabling the payment of all or part of any liability in relation to the payment of the Pension as those liabilities fall due.

## ACCOUNT-BASED PENSION

### Pension must be paid Annually

24. (1) A pension payable under this clause must be paid at least annually to the Member or to a Reversionary Beneficiary.

### Amount of Pension

- (2) The annual amount of the pension must not be less than the minimum amounts stated in the Relevant Law and the pension payment must comply with the requirements of the Relevant Law.

### Payment Dates

- (3) The pension may be paid on such dates and by installments of such amounts as the Trustee and the Member agree or, in the absence of agreement, as the Trustee determines and will cease to be payable if the Member's Benefit is



## **Commutation**

- (4) The Trustee must not permit a person in receipt of the pension to commute part or the whole of the Pension to a lump sum payment unless all requirements of the Relevant Law are satisfied.

## **Pension to be Paid to Reversionary Beneficiary**

- (5) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine that, on the death of a Member to whom the pension is being paid, a pension may be paid to one or more reversionary beneficiaries. The Trustee may pay the pension to any of the reversionary beneficiaries as it, in its absolute discretion, determines.

## **Reversionary Beneficiary Pension Conditions**

- (6) The amount and the terms and conditions of the pension paid to a reversionary beneficiary under this clause may, in accordance with the Relevant Law, be agreed on by the reversionary beneficiary and the Trustee, but in the absence of agreement, the amount and the terms and conditions of the pension will be determined by the Trustee.

## **When Pension Ceases**

- (7) The pension payable under this sub-clause ceases to be payable:

- (a) if the Member's Benefit is reduced to nil; or  
(b) on the death of the Reversionary Beneficiary.

## **Pension on Death of a Member**

- (8) When, in respect of a deceased Member, the pension:

- (a) ceases to be payable to all of the Member's Reversionary Beneficiary under paragraph(7); or  
(b) is not payable because the Member has no Reversionary Beneficiary; or  
(c) is not payable because the Trustee has determined to not pay the pension to any of the Member's Reversionary Beneficiaries-

subject to any written direction signed by a Member, the balance of that Member's Benefit (if any) may be:

- (d) held by the Trustee on trust for the benefit of such one or more of the Member's Dependents, to be paid in a lump sum in such shares and

proportions as the Trustee, in its absolute discretion, determines; or (c) paid to the Member's legal personal representative.

**Trustee may Determine who to receive the Pension** (9) If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependents or a legal personal representative of the deceased Member, the Trustee may at its discretion pay the benefit to a person or persons selected by the Trustee.

## ALLOCATED PENSION

25. If at the commencement of this Deed, a Member is in receipt of an Allocated Pension, that pension may continue to be paid under the terms and conditions that operated before the commencement of this Deed or, subject to the Relevant Law, may be converted to an Account-Based Pension payable pursuant to the preceding clause of this Deed.

## MARKET LINKED PENSION

**Pension only to Commence if Permitted** (1) A market linked pension (in this clause called "the pension") may not be commenced unless permitted by the Relevant Law.

**Payment and Period of Pension** (2) The pension must be paid at least annually to the Member or to a Reversionary Beneficiary during the period selected by the Member as allowed by the Relevant Law.

**Amount of Pension** (3) The annual amount of the pension must be determined in accordance with the Relevant Law.

**Commutation** (4) The Trustee must not permit a person in receipt of the Pension to commute part or the whole of the Pension to a lump sum payment unless permitted by the Relevant Law and all requirements of the Relevant Law are satisfied.

## Pension Conditions

(5) The pension payable under this clause:

- (a) does not have a residual capital value; and
- (b) if it reverts, it must not have a reversionary component greater than

- 100% of the benefit that was payable before the reversion; and
- (c) if it is commuted, the commuted amount must not exceed the account balance immediately before the commutation.

#### **Transfer of Pension**

- (6) The Trustee, at its discretion, may determine to transfer the pension only as permitted by the Relevant Law.

#### **Assets Funding Pension may be held on Death**

- (7) If on the death of the Member or Reversionary Beneficiary, a pension is not transferred as provided in this clause, any assets of the Fund that were funding the pension will be held by the Trustee on trust for the benefit of:

- (a) such one or more of the Member's Dependants, to be paid in a lump sum in such shares and proportions as the Trustee, in its absolute discretion, determines; or
- (b) paid to the Member's legal personal representative.

#### **Trustee may Determine who to receive the Pension**

- (8) If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative of the deceased Member, the Trustee may at its discretion pay the benefit to a person or persons selected by the Trustee.

#### **APPOINTMENT OF AUDITOR**

##### **Auditor Appointment**

27. (1) The Trustee must, when appropriate, appoint or remove an auditor to the fund.

##### **Audit to be Arranged**

- (2) The Trustee must each financial year make suitable arrangement for the audit of the accounts, books, relevant records and financial statements of the Fund in a manner that complies with Relevant Law, and within any time limits specified by Relevant Law.

#### **AMENDMENT OF DEED**

##### **Trustee may Vary Deed**

28. (1) Subject to this clause, the Trustee may at any time by resolution, or by instrument in writing, add to, amend, alter, modify, rescind or vary either

prospectively or retrospectively all or any of the provisions of the Deed including this clause.

#### **Member's right to Accrued Benefits may not be Reduced without Consent**

- (2) No reduction of the claim or right to an accrued benefit of a Member may be made without his or her prior consent in writing.

### **TERMINATION OF FUND**

#### **Fund to be Terminated**

29. (1) The Fund will be terminated upon the happening of any of the following events:

- (a) if the Fund becomes a non-resident;
- (b) if for any reason the Trustee thinks it is appropriate to and does resolve to terminate the Fund;
- (c) if there are no Members in the Fund;
- (d) upon the order of any Court of competent jurisdiction or when obliged so to do under the Relevant Law.

#### **Further Contributions not to be Received**

- (2) As from the closing date:-

- (a) no further contributions made by any employer or any Member will be accepted, other than arrears of contributions due at the closing date; and
- (b) arrears of contributions, if any, will be called in immediately.

#### **Application of Fund on Termination**

- (3) After the sale and realisation of the Fund the Trustee shall after paying costs of the Fund and its winding up distribute the monies as follows:

- (a) Where the proceeds of the assets of the Fund are required to be preserved under the Relevant Law, the Trustee shall notify each Member of this requirement and request them to nominate in writing within one month a fund approved under the Relevant Law for the receipt of the proceeds;
- (b) Where the proceeds are not required to be preserved under the Relevant Law, as directed by the Member or if a Member fails to make such a direction, in such manner as the Trustee, subject to the Relevant Law, determines is reasonable in all the circumstances.