

23/1/13

**MADGWICKS**  
*Lawyers*



# Trust Deed of First Super

ABN: 56 286 625 181  
RSE: R1067385

---

**First Super Pty Limited**  
**ABN: 42 053 498 472**  
**(Trustee)**

**Dated: 11 December 2012**

Madgwicks  
LAWYERS  
ABN 82 199 611 971  
Level 33, 140 William Street  
Melbourne VIC 3000  
Australia  
© Copyright



Telephone: +61 3 9242 4744  
Facsimile: +61 3 9242 4777  
[www.madgwicks.com.au](http://www.madgwicks.com.au)  
[madgwicks@madgwicks.com.au](mailto:madgwicks@madgwicks.com.au)  
Ref: RGG:08195:009139  
CM:469315v2

## Table of Contents

Clause	Page
<b>1. Definitions .....</b>	<b>9</b>
1.1 Defined Terms in this Deed .....	9
1.2 Defined Terms in a Relevant Act.....	19
<b>2. Interpretation.....</b>	<b>19</b>
<b>3. Fund is Subject to Requirements of the Law .....</b>	<b>19</b>
3.1 Deemed Inclusion of Law and Powers of the Law .....	19
3.2 Trustee's Compliance with Law .....	20
3.3 Inconsistency between Deed and Law.....	20
3.4 Certain Provisions Void .....	20
<b>4. Election to be a Complying Superannuation Fund .....</b>	<b>21</b>
4.1 Corporate Trustee.....	21
4.2 No Amendment to Change Purpose .....	21
4.3 Fund to be Complying Superannuation Fund - Trustee's Obligation .....	21
<b>5. Trustee Holds Fund on Trust .....</b>	<b>22</b>
<b>6. Composition of the Fund .....</b>	<b>22</b>
<b>7. Details of the Trustee .....</b>	<b>22</b>
7.1 Qualifications and Requirements .....	22
7.2 Appointment and Retirement of Trustee and Directors to comply with Law .....	22
7.3 Cessation of Trustee .....	23
7.4 Continuity of Office .....	23
7.5 Notification to Responsible Authority .....	23
<b>8. Proceedings of the Trustee .....</b>	<b>23</b>
8.1 Meetings .....	23
8.2 Passing of Resolutions at Meetings .....	23
8.3 Appointment of Chairperson.....	23
8.4 Chairperson's Duty .....	24
8.5 Voting Entitlement and Required Majority.....	24
8.6 Minutes of Meeting .....	24
<b>9. General Powers of the Trustee .....</b>	<b>24</b>
9.1 Trustee has Complete Management and Control.....	24
9.2 Trustee May do all Acts in Exercise of Powers/Obligations .....	25
9.3 Powers Additional to Powers Given under the Law.....	25
9.4 Conflicts of Interest.....	25
<b>10. Specific Management Powers of the Trustee.....</b>	<b>25</b>
<b>11. Investment Powers of the Trustee.....</b>	<b>28</b>
11.1 General Investment Powers of the Trustee .....	28
11.2 Specific Investment Powers of the Trustee.....	28

11.3	Dealing with Investments as Beneficial Owner .....	29
11.4	The Trustee may have Interest in Investments .....	29
11.5	Policies of Insurance .....	29
11.6	Prudent Investment Rules .....	30
<b>12.</b>	<b>Compliance with the Law - Investments .....</b>	<b>31</b>
12.1	General Requirement .....	31
12.2	Borrowing by the Trustee .....	31
12.3	Lending to Members .....	31
12.4	Acquisition of Certain Assets from Members or a Related Party .....	31
12.5	Investments Involving 'In-house Assets' .....	31
12.6	Investments to be made at Arm's Length .....	31
12.7	Statement of Investment Strategy .....	31
12.8	Member Investment Choice .....	31
12.9	Derivative Transactions .....	33
<b>13.</b>	<b>Covenants by the Trustee .....</b>	<b>33</b>
<b>14.</b>	<b>Covenants by the Directors .....</b>	<b>33</b>
<b>15.</b>	<b>Trustee's Discretion .....</b>	<b>34</b>
15.1	Exercise of Power .....	34
15.2	Absolute Discretion .....	34
15.3	No Requirement to Give Reasons .....	34
15.4	Trustee's Decision Final .....	34
15.5	Exercise of Discretion by Person Other than Trustee .....	34
15.6	Continuity of the Fund, Mergers and Successor Fund Transfers .....	34
<b>16.</b>	<b>Delegation by Trustee .....</b>	<b>35</b>
16.1	Trustee's Right to Delegate .....	35
16.2	Variation or Revocation to Delegation .....	35
16.3	Delegation Subject to the Law .....	35
16.4	Scope of Delegation .....	35
16.5	Delegation to Member .....	35
<b>17.</b>	<b>Remuneration of Trustee and Reimbursement for Expenses .....</b>	<b>35</b>
17.1	Right to Charge Fees and Receive Remuneration .....	35
17.2	Indemnity and Reimbursement .....	35
<b>18.</b>	<b>Protection and Indemnity of the Trustee .....</b>	<b>36</b>
18.1	Limitation of Liability - General .....	36
18.2	Liability for Certain Conduct .....	36
18.3	Indemnity of Trustee .....	36
18.4	Indemnity of Director .....	36
18.5	Lien on Fund to Satisfy Indemnity .....	36
18.6	Limitation of Indemnity for Operation Risk .....	37

<b>19.</b>	<b>Appointment of Actuary, Auditor, Custodian, Investment Managers and Qualified Advisors</b> .....	<b>37</b>
19.1	Actuary.....	37
19.2	Auditor.....	37
19.3	Custodian.....	37
19.4	Investment Managers .....	37
19.5	Qualified Advisors.....	38
19.6	Revocation of Appointment .....	38
<b>20.</b>	<b>Accounting Records</b> .....	<b>38</b>
20.1	Form of Accounting Records.....	38
20.2	Retention of Accounting Records.....	38
<b>21.</b>	<b>Valuation of the Fund</b> .....	<b>39</b>
<b>22.</b>	<b>Calculation of Investment Return and Earnings</b> .....	<b>39</b>
<b>23.</b>	<b>Financial Statements</b> .....	<b>39</b>
23.1	Preparation .....	39
23.2	Signature.....	39
23.3	Retention.....	39
<b>24.</b>	<b>Audit of the Fund</b> .....	<b>39</b>
24.1	Audit to be Conducted each Financial Year.....	39
24.2	Auditor to be Given Access to Documents/Information .....	40
<b>25.</b>	<b>Annual Returns etc to the Responsible Authority</b> .....	<b>40</b>
<b>26.</b>	<b>Notice to the Responsible Authority</b> .....	<b>40</b>
26.1	Trustee's Responsibility to Notify of Significant Adverse Events .....	40
26.2	Meaning of Significant Adverse Event .....	40
26.3	Change of Fund Details.....	40
26.4	Material Changes and Omissions in Information Previously Given .....	41
<b>27.</b>	<b>Retention of Records, Consents of Trustee and Member Reports</b> .....	<b>41</b>
27.1	Changes of Trustee and Trustee Consents and Declarations .....	41
27.2	Reports to Members .....	41
<b>28.</b>	<b>Eligibility and Procedure for Membership</b> .....	<b>41</b>
28.1	Eligible Person may Apply.....	41
28.2	Application Form.....	41
28.3	Acceptance of Membership Application .....	41
28.4	Deemed Acceptance of Application .....	42
28.5	Members Bound by Deed.....	42
28.6	Trustee to Notify Members of their Rights .....	42
28.7	Trustee May Impose Conditions on Members .....	42
28.8	Classification of Different Classes of Members .....	42

<b>29.</b>	<b>Cessation of Membership</b> .....	<b>42</b>
29.1	How it Occurs .....	42
29.2	When it Occurs .....	43
29.3	Member's Rights not Affected .....	43
<b>30.</b>	<b>Members Providing Information to the Trustee</b> .....	<b>43</b>
30.1	Upon Request by Trustee .....	43
30.2	Members' Failure to Comply .....	43
30.3	Information Incorrect or Misleading .....	43
30.4	Tax File Numbers of Members .....	43
30.5	Members Updated Information to Trustee .....	44
<b>31.</b>	<b>Disclosure and Reporting to Members</b> .....	<b>44</b>
31.1	General Requirement .....	44
31.2	Specific Requirements.....	44
31.3	Limitation on Disclosure .....	45
31.4	What, When and How Information is Provided .....	45
<b>32.</b>	<b>Participation of Employers</b> .....	<b>45</b>
32.1	Application to Participate .....	45
32.2	Approval by Trustee .....	45
32.3	Execution of Participating Employer Admission Form .....	45
32.4	Employer May Contribute .....	45
32.5	Deemed Admission .....	45
<b>33.</b>	<b>Contributions</b> .....	<b>46</b>
33.1	Member Contributions .....	46
33.2	Employer may Contribute Employer Contributions.....	46
33.3	Employer Contributions Pursuant to Agreement with Trustee .....	46
33.4	Other Contributions .....	46
33.5	No Obligation to Contribute .....	46
33.6	Contributions may be made in Cash or by Transfer of Assets In Specie .....	46
33.7	Limitation on Accepting Contributions .....	47
33.8	Shortfall Component.....	47
33.9	Spouse Membership.....	47
33.10	Contribution Splitting .....	47
33.11	Excessive Contributions .....	47
33.12	Employer to remit Contributions Promptly .....	48
33.13	Allocation of Contributions.....	48
<b>34.</b>	<b>Accumulation Accounts</b> .....	<b>48</b>
34.1	Separate Member Accumulation Accounts.....	48
34.2	Credits to Accumulation Accounts .....	49
34.3	Debits to Accumulation Accounts.....	49

34.4	Separate Accounts and Parts of the Fund .....	50
<b>35.</b>	<b>Income Account .....</b>	<b>50</b>
35.1	Establishment .....	50
35.2	Credits.....	50
35.3	Debits.....	50
<b>36.</b>	<b>Reserve Account .....</b>	<b>51</b>
36.1	Establishment and Type .....	51
36.2	Credits.....	51
36.3	Investment Return on Reserve Account .....	51
36.4	Purpose and Use .....	51
<b>37.</b>	<b>Pension Account .....</b>	<b>52</b>
<b>38.</b>	<b>Fund to Provide Benefits .....</b>	<b>52</b>
38.1	Purpose.....	52
38.2	Compliance with the Act when paying Benefits .....	52
38.3	Trustee's Procedural and Information Requirements for Paying Benefits .....	52
<b>39.</b>	<b>Entitlement to Payment of Benefits .....</b>	<b>53</b>
39.1	Generally on satisfying Prescribed Event .....	53
39.2	Retirement Benefit.....	53
39.3	Preservation Age Benefit.....	53
39.4	Death Benefit .....	54
39.5	Permanent Incapacity Benefit .....	54
39.6	Temporary Incapacity Benefit.....	54
39.7	Temporary Resident Permanently Departing Australia .....	54
39.8	Severe Financial Hardship or Compassionate Grounds .....	54
39.9	Terminal Medical Condition .....	54
<b>40.</b>	<b>Amount of Benefit.....</b>	<b>54</b>
40.1	Member's Accumulation Account Balance .....	54
40.2	Insured Component on Death and Incapacity Benefits .....	54
<b>41.</b>	<b>Manner of Payment of Benefits .....</b>	<b>55</b>
41.1	Lump Sum, Pension, or Annuity.....	55
41.2	Preservation Age Benefit.....	55
41.3	Death Benefits and Beneficiary Nominations.....	55
41.4	Death Benefits and Pensions .....	57
41.5	Permanent Incapacity Benefit - Lump Sum or Pension.....	57
41.6	Temporary Incapacity Benefit - Non-commutable Income Stream.....	57
41.7	Other Benefit Payments .....	57
<b>42.</b>	<b>Benefits Payable as a Pension.....</b>	<b>57</b>
42.1	Type of Available Pensions, Agreed Pension and Pension Agreement.....	57
42.2	Amount of Pension .....	58

42.3	Segregation of Pension Assets .....	58
42.4	Conditions Applicable to All Pensions .....	58
42.5	Variation to Pension Amount.....	58
42.6	Limitation on Pension Amount.....	59
42.7	Death of Pensioner .....	59
42.8	Commutation of Pension to a Lump Sum .....	59
42.9	Purchase of Annuity from Third Party .....	59
42.10	Allocated Pension .....	60
42.11	Account Based Pension .....	60
42.12	Lifetime Pension .....	60
42.13	Fixed Term Pension .....	60
42.14	Market Linked Pension .....	60
42.15	Flexi Pension .....	60
42.16	Transition to Retirement Income Stream .....	60
42.17	Non-commutable Allocated Pension .....	60
42.18	Non-commutable Pension .....	61
42.19	Non-commutable Income Stream .....	61
42.20	Actuarial Certificates.....	61
<b>43.</b>	<b>Postponement of Benefit Payments .....</b>	<b>61</b>
43.1	To Facilitate Administration .....	61
43.2	At Request of Beneficiary .....	61
<b>44.</b>	<b>Unclaimed Benefits .....</b>	<b>61</b>
<b>45.</b>	<b>Transfers from Approved Superannuation Entities .....</b>	<b>62</b>
45.1	Trustee May Take Superannuation Interest.....	62
45.2	Trustee To Hold Subject to this Deed .....	62
45.3	Payment of Special Unpreserved Benefits .....	62
45.4	Member Subject to Fund .....	62
45.5	Trustee to assist Transfer.....	62
<b>46.</b>	<b>Transfers to Approved Superannuation Entities .....</b>	<b>62</b>
46.1	Trustee May Transfer with Member's Consent .....	62
46.2	Trustee May Transfer without Member's Consent .....	62
46.3	Trustee must Transfer upon Member's Request .....	62
46.4	Receipt of Transferred Amount .....	63
46.5	Power of Attorney .....	63
46.6	Extinguishment of Rights.....	63
46.7	Adjustment of Other Benefits upon Transfer.....	63
46.8	Compliance with the Law.....	63

<b>47.</b>	<b>Transfers within the Fund</b> .....	<b>63</b>
<b>48.</b>	<b>Members May Request Rollover Payment</b> .....	<b>64</b>
<b>49.</b>	<b>Availability of Deed</b> .....	<b>64</b>
<b>50.</b>	<b>Amendment of Deed</b> .....	<b>64</b>
50.1	Who may Amend .....	64
50.2	How Amendment Effected.....	64
50.3	Date of Amendment.....	64
50.4	No Adverse Amendment .....	64
50.5	Notice to Members.....	64
50.6	Notice to Responsible Authority .....	64
50.7	Employer Sponsor .....	65
50.8	Amendments concerning Compliance with the Law .....	65
50.9	Restriction on Amendments .....	65
50.10	Amendment Binding .....	65
50.11	MySuper Product Amendments .....	65
<b>51.</b>	<b>Procedure for Giving Notices</b> .....	<b>65</b>
<b>52.</b>	<b>Complaints Procedure and Dispute Resolution</b> .....	<b>66</b>
52.1	If Required under the Law .....	66
52.2	Rights of Beneficiaries.....	66
52.3	Trustee to Deal within Prescribed Time .....	66
52.4	Dispute as to Deed Interpretation .....	66
<b>53.</b>	<b>Tax</b> .....	<b>66</b>
<b>54.</b>	<b>Termination and Closure of the Fund</b> .....	<b>68</b>
54.1	Grounds for Termination.....	68
54.2	Notice of Termination .....	68
54.3	Winding up of the Fund .....	68
54.4	Priority of Distribution .....	68
54.5	Method of Payment on Wind Up .....	69
54.6	Dissolution and Closure of the Fund .....	69
<b>55.</b>	<b>Proof of Entitlement by Beneficiaries</b> .....	<b>69</b>
<b>56.</b>	<b>No Personal Claim of Members or Dependants For Interest</b> .....	<b>69</b>
<b>57.</b>	<b>Employment Compensation Rights of Members Not Restricted</b> .....	<b>70</b>
<b>58.</b>	<b>Family Law Proceedings</b> .....	<b>70</b>
58.1	Operation and Application of this Clause .....	70
58.2	Superannuation Agreement .....	70
58.3	Court Order .....	70
58.4	Request for Information .....	71
58.5	Dealing with Spouse's entitlement .....	71
58.6	Calculation of interests in the Fund .....	71



58.7	Family Law Fees.....	71
59.	<b>Governing Law .....</b>	<b>72</b>

## Trust Deed of First Super

---

This Trust Deed is made as a deed poll on:

11 December 2012

By:

**First Super Pty Limited**

ABN 42 053 498 472

of Level 3, 192-200 Arden Street, North Melbourne, Victoria 3051

(Trustee)

### Introduction:

- A. First Super is an indefinitely continuing superannuation fund that is registered with APRA as a registered superannuation entity and regulated under the SIS Act.
- B. The Trustee is the trustee of First Super.
- C. This Deed contains the operative governing rules of First Super and is effective on and from the Effective Date.
- D. This Deed requires that the Trustee of First Super must always be a Constitutional Corporation.
- E. This Deed requires that the Trustee maintains, and operates, First Super as a Complying Superannuation Fund and in order that First Super obtains Concessional Taxation Treatment.

### This Deed Witnesses:

#### 1. Definitions

---

##### 1.1 Defined Terms in this Deed

In this Deed, unless the context otherwise requires:

**Account** means any account established and maintained by the Trustee under this Deed for administering the Fund on behalf of Members, and includes any Accumulation Account, Reserve Account, Income Account, or Pension Account, as described in this Deed, or any other account that the Trustee determines to operate subject to the Law.

**Account-based Pension** means a pension that meets the definition, description and standards of an account-based pension under the SIS Regulations, and specifically Regulations 1.03(1) and 1.06(9A).

**Accumulation Account** means any accumulation account established and maintained by the Trustee under clause 34 of this Deed.

**Actuary** means a person who is fellow or an accredited member of the Institute of Actuaries of Australia (**Institute**) or any body which replaces or succeeds the Institute (**Fellow**), or a partnership where at least one of the partners is a Fellow; or a company which employs a Fellow; for the purpose of providing actuarial advice.

**AFS Licence** means an Australian financial services licence as defined in section 9 of the Corporations Act.

**Allocated Pension** means a pension that meets the definition, description and standards of an allocated pension under the SIS Regulations, and specifically Regulations 1.06(4) and 1.07A.

**Approved Superannuation Entity** means any superannuation entity, annuity, RSA, eligible rollover fund, eligible non-resident non-complying superannuation fund, or any other superannuation fund or benefit arrangement, into which or from which a Member's Superannuation Interest can be transferred, rolled over or allocated into, or from, the Fund, without contravening the Law.

**Auditor** means a person who is an approved auditor, and appointed by the Trustee to be the auditor of the Fund.

**Balance Date** means 30 June in each year or any other date that the Trustee determines for accounting purposes to be the balance date for the end of a 12 month financial year of the Fund.

**Beneficiary** means a Member, a Dependant, a trustee for a Dependant, the Member's Legal Personal Representative, a Reversionary Beneficiary, or any other person who is entitled under the Law to be paid a Benefit in respect of the Member's Superannuation Interest in the Fund.

**Beneficiary Nomination** means a Three Year Binding Nomination; a Beneficiary Statement of Wishes; or any other form of written nomination given by a Member to the Trustee stating how the Member directs or wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member.

**Beneficiary Statement of Wishes** means any written nomination howsoever called in a form prescribed by the Trustee given by a Member to the Trustee stating how the Member wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member.

**Benefit** means any benefit, pension or monetary amount which is paid, or may become payable, by the Trustee to a Beneficiary as a Superannuation Benefit from the Fund under this Deed, subject to the Trustee being satisfied of the Beneficiary's entitlement to the amount or to receive the payment under the Law.

**Board** means the board of Directors of the Trustee as constituted from time to time in accordance with the Trustee's constitution.

**Child**, in relation to a Member or a former Member, includes:

- (a) a child (whether legitimate or illegitimate) being the Member or former Member's issue or the issue of the Member or former Member's Spouse;
- (b) a step-child;
- (c) a lawfully adopted child; and
- (d) a child whom a Member or former Member gave up for adoption but who has not been lawfully adopted by another Member,

but, for the avoidance of doubt, does not include a child whom the Member gave up for adoption and who has been lawfully adopted by another person;

**Child Contribution** means a payment made to the Fund as a Contribution on behalf of a Member by a parent, grandparent or other relative of that Member, and permitted under the Law.

**Co-contribution Act** means the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003 (Cth)*.

**Complying Superannuation Fund** means a trust or fund that is a:

- (a) superannuation fund within the meaning of section 10 of the SIS Act;
- (b) regulated superannuation fund within the meaning of section 19 of the SIS Act;
- (c) complying superannuation fund within the meaning of section 45 of the SIS Act; and
- (d) Australian superannuation fund within the meaning given by section 295-95 of the Income Tax Act.

**Concessional Taxation Treatment** means any and all of the most favourable concessions under the Income Tax Act that are available to superannuation funds or relating to superannuation, including taxation concessions in respect of:

- (a) Contributions accepted by the Fund;
- (b) income and earnings derived from the investments of the Fund;
- (c) Benefits paid out of the Fund; and
- (d) any other matter concerning the Fund, Trustee or Beneficiaries as governed under this Deed.

**Condition of Release** means a condition of release as defined in regulation 6.01(2) of the SIS Regulations.

**Constitutional Corporation** means a body corporate that is:

- (a) a trading corporation; or
- (b) a financial corporation,

formed within the limits of the Commonwealth and within the meaning of paragraph 51(xx) of the Australian Constitution.

**Contribution** means a gross payment made to the Fund (prior to deduction of any Taxation payable in respect of the payment) and accepted by the Trustee as a contribution to the Fund by or on behalf of a Member in accordance with this Deed, including any Child Contribution, Employer Contribution, Government Contribution, Member Contribution, or Spouse Contribution or payment that is otherwise permitted as, or deemed to be, a contribution under the Law, and includes a Rollover Payment or any other amounts which are transferred or rolled over to the Fund from an Approved Superannuation Entity.

**Contributions Splitting Superannuation Benefit** means a contributions splitting superannuation benefit as defined in s.995-1(1) of the Income Tax Act.

**Corporate Trustee** means a Trustee that is a Constitutional Corporation and a company incorporated under the Corporations Act and which company complies with any relevant requirement under the Law.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Death Benefits Dependant** in relation to a Member who has died has the meaning in Section 302-195 of the Income Tax Act.

**Deed** means this Trust Deed as amended from time to time and includes any schedule, annexure or appendix to this Trust Deed.

**Dependant** means in relation to a Member (whether living or deceased) any of the following persons:

- (a) the spouse, widow or widower of the Member whether married, in a defacto relationship or otherwise and regardless of the gender of either person in the relationship;
- (b) a child of the Member including a child of the Member born after the death of the Member;
- (c) a person who in the opinion of the Trustee is at the relevant time (or in the case of a deceased Member, was at the time of death of that Member) wholly or partially dependent on the Member for that person's maintenance and support or who has or had at the relevant time a legal right to maintenance and support from that Member; or
- (d) a person who is, or was at the time of death of the Member, in an interdependency relationship with the Member within the meaning of section 302-200 of the Income Tax Act; and
- (e) includes a Death Benefits Dependant; and

**Provided That:**

- (f) the person is a dependant as defined by or within the meaning of the SIS Act.

**Directors** means the directors of the Trustee and **Director** means one of them.

**Effective Date** means the date of this Deed.

**Eligible Person** means any individual who is permitted under the Law to be admitted as a member of a Complying Superannuation Fund.

**Employee** means a person who is an employee within the meaning of section 12 of the SGA Act.

**Employer** means any employer or its associates as defined in the Income Tax Act of an Employee who is accepted by the Trustee to participate as an Employer Sponsor or from whom the Trustee accepts an Employer Contribution.

**Employer Contribution** means a gross payment to the Fund made as an employer contribution on behalf of a Member by the Member's Employer.

**Employer Sponsor** has the same meaning given to it under the SIS Act and, for the avoidance of doubt, includes a Standard Employer Sponsor and an employer that is not a Standard Employer Sponsor.

**Family Law Act** means the *Family Law Act 1975* (Cth).

**Family Law Superannuation Payment** means a family law superannuation payment as defined in s.307-5 of the Income Tax Act.

**Financial Year** means a period of twelve months ending on the Balance Date.

**First Super (or Fund)** means the superannuation fund known by the name First Super and registered with ABN: 56 286 625 181; and RSER R1067385.

**Fixed Term Pension** means a pension (also known as a **life expectancy pension**) payable for a fixed term based on the life expectancy of the primary Pensioner or his or her Spouse that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(7) and 1.07B.

**Flexi Pension** means a pension (also known as a **commutable lifetime pension**) that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(6) and 1.07B.

**Gainfully Employed** means in respect of a person, employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment, and includes:

- (a) for a person who has reached age 65, if the person is at a relevant time in a Financial Year so employed or self employed on at least a part time basis during that Financial Year by having worked at least 40 hours in a period of not more than 30 consecutive days prior to the relevant time in that Financial Year;
- (b) a person who is an Employee; and
- (c) any other meaning of **gainfully employed** given under the Law.

**Government Contribution** means a co-contribution made by the Commonwealth of Australia on behalf of a Member under the Co-contribution Act.

**Income Account** means any income account established and maintained by the Trustee under clause 35 of this Deed.

**Income Tax Act** means the *Income Tax Assessment Act 1936 (Cth)* and/or *Income Tax Assessment Act 1997 (Cth)* as the context requires.

**Insured Component** means the amount (if any) paid to or received by the Trustee under a Policy of Insurance to provide for funding the payment of a Member's Benefit or for any other purpose in relation to a Member less any part of that amount that the Trustee determines in its discretion to credit to a Reserve Account or to any other Account in respect of the Member in accordance with this Deed.

**Insurer** means any insurer or assurer selected by the Trustee to provide a Policy of Insurance under this Deed.

**Investment Strategy** means an investment strategy as required under the Law.

**Law** means:

- (a) any standard, covenant or other requirement, under a Relevant Act; or
- (b) any declaration, determination, direction, ruling or guideline made by any Responsible Authority;

which:

- (c) is imposed on the Trustee; or
- (d) is imposed in relation to the Fund or any part of the Fund; or
- (e) the Fund must satisfy to qualify for Concessional Taxation Treatment; or

- (f) the Trustee or the Fund must satisfy to avoid any penalty, detriment or disadvantage which is or may be incurred or become payable in connection with the Fund or anything done or to be done under this Deed;
- (g) the Trustee or the Fund must comply with to ensure that the Trustee remains an approved trustee for the Fund or continues to hold an RSE Licence; or
- (h) the Trustee or the Fund must satisfy in order for the Trustee to be authorised to offer a MySuper Product.

**Legal Personal Representative** means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

**Lifetime Pension** means a pension (also known as a **non-commutable complying pension**) payable for the lifetime of the primary Pensioner that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(2) and 1.07B.

**Market-Linked Pension** means a market linked pension (also known as a **Term Allocated Pension** or **Growth Pension**) as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulations 1.06(8) and 1.07C.

**Member** means an Eligible Person who is admitted to membership of the Fund by the Trustee under this Deed and **Membership** means membership of the Fund.

**Member Contribution** means a gross payment to the Fund made by a Member as a contribution.

**Minimum Benefits** means the minimum benefits of a Member within the meaning of the Benefit Protection Standards contained in Part 5 of the SIS Regulations.

**MySuper Product** means a class of beneficial interest in the Fund that is a "MySuper product" as defined in section 10(1) of the SIS Act (**MySuper product**) because:

- (a) in relation to that class, this Deed satisfies the characteristics of a MySuper product in section 29TC (**Characteristics of a MySuper product**) of the SIS Act and the requirements of any other relevant requirement of the Law; and
- (b) the Trustee is authorised under section 29T of the SIS Act to offer that class as a MySuper product.

**Nominated Beneficiary** means a person, including Legal Personal Representative, nominated in writing by a Member under a Beneficiary Nomination as the desired recipient of a Benefit that is or becomes payable following the death of that Member.

**Non-commutable Allocated Pension** means a non-commutable allocated pension as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

**Non-commutable Income Stream** means a non-commutable income stream as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

**Non-commutable Pension** means a non-commutable pension (including pensions known as a **Non-commutable Market Linked Pension** or a **Non-commutable Term Allocated Pension**) as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

**Non-concessional Contributions Cap** has the meaning given by section 292-85 of the Income Tax Act.

**Old-Age Pension** means an old-age pension as defined under paragraph 51(xxiii) of the Constitution of the Commonwealth of Australia.

**Pension** means a Benefit that is provided by the Fund as a pension or superannuation income stream, and payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner, and that the Trustee determines in its discretion to offer to Members and pay from the Fund, and may include any of the following pensions as described in this Deed:

- (a) Account Based Pension;
- (b) Allocated Pension;
- (c) Fixed Term Pension;
- (d) Flexi Pension;
- (e) Lifetime Pension;
- (f) Market-Linked Pension;
- (g) Non-commutable Allocated Pension;
- (h) Non-commutable Income Stream;
- (i) Non-commutable Pension;
- (j) Old-Age Pension;
- (k) Transition to Retirement Income Stream; or

any other commutable or non-commutable pension or other income stream that the Law permits the Trustee to pay from the Fund.

**Pension Account** means any pension account established and maintained by the Trustee under clause 37 of this Deed.

**Pensioner** means a Member or Beneficiary who is entitled to receive or has applied to receive a Pension and is in receipt of a Pension under this Deed, including a primary pensioner and, following the death of the primary pensioner, any Reversionary Pensioner.

**Permanent Incapacity** in relation to a Member:

- (a) who has ceased to be Gainfully Employed, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term Permanent Incapacity (or the term Total and Permanent Disability or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or
- (c) means permanent incapacity as defined in regulation 6.01(2) of the SIS Regulations;

and **Permanently Incapacitated** has a corresponding meaning.



**Policy of Insurance** means any policy of insurance or assurance obtained by the Trustee on behalf of a Member for the life, endowment, term, disablement, accident, income protection or sickness of a Member, including an individual policy, a group policy, and a policy under which the proceeds will be payable to the Trustee on the occurrence of an insured event in respect of the Member.

**Prescribed Event** means a Condition of Release or other event being satisfied in relation to a Member that entitles the Trustee to pay all or part of a Benefit to or in respect of the Member without contravening the Law.

**Preservation Age** has the same meaning as given by Part 6 of the SIS Regulations and the Income Tax Act.

**Privacy Act** means the *Privacy Act 1998* (Cth).

**Qualified Advisor** means an accountant, auditor, barrister, solicitor, actuary, medical practitioner or other professional person who the Trustee considers is capable of giving advice in relation to any matter that concerns the Fund or this Deed.

**Relevant Act** means:

- (a) Co-contribution Act;
- (b) Corporations Act;
- (c) Family Law Act;
- (d) Income Tax Act;
- (e) Privacy Act;
- (f) RSA Act;
- (g) SGA Act;
- (h) SIS Act;
- (i) Social Security Act;
- (j) SSA Act;
- (k) Trustee Act;
- (l) Unclaimed Money Act;
- (m) all amendments to, and regulations made under, the abovementioned Acts, including the SIS Regulations; and
- (n) any other law of the Commonwealth of Australia or State or Territory of Australia with which the Fund or the Trustee must comply in order for the Fund to obtain and maintain Concessional Taxation Treatment.

**Reserve Account** means any reserve account established and maintained by the Trustee under clause 36 of this Deed.

**Responsible Authority** means the Australian Prudential Regulation Authority (**APRA**), Australian Securities and Investment Commission (**ASIC**), the Australian Transaction Reports and Analysis Centre (**AUSTRAC**), the Australian Privacy Commissioner, the Australian Taxation Office (**ATO**), the Commissioner of Taxation, the Department of Family and

Community Services (**Centrelink**), the Superannuation Complaints Tribunal (**SCT**) and any other government or statutory authority or office which is responsible for administering or regulating the Law.

**Responsible Officer** means a director, secretary or other executive officer as defined by the Corporations Act of a Corporate Trustee.

**Reversionary Beneficiary** means a Beneficiary who succeeds a Member to the entitlement of the Member to the payment of a Benefit, including a person who is nominated by a primary pensioner, or appointed by the Trustee in the Trustee's discretion, as a reversionary pensioner to continue receiving a Pension established for the primary pensioner following the death of the primary pensioner and **reversionary pensioner** has a corresponding meaning.

**Rollover Payment** means any payment of a Member's Benefit rolled over by the Trustee within the Fund or to any other Approved Superannuation Entity or payment rolled over to the Trustee on behalf of a Member from any Approved Superannuation Entity and includes any roll-over superannuation benefit within the meaning of section 306-10 of the Income Tax Act.

**RSA Act** means the *Retirement Savings Account Act 1997* (Cth).

**RSE Licence** has the same meaning as given in section 10 of the SIS Act.

**SGA Act** means the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Shortfall Component** has the same meaning as under the SGA Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**SIS Regulations** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Social Security Act** means the *Social Security Act 1991* (Cth).

**Spouse** of a person means:

- (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; or
- (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; or
- (c) any other person who is recognised by the Law as a spouse of the first-mentioned person.

**Spouse Contribution** means a gross payment made to the Fund as an eligible spouse contribution on behalf of a Member by a Spouse of that Member as permitted under the Law.

**SSA Act** means the *Small Superannuation Accounts Act 1995* (Cth).

**Standard Employer Sponsor** has the meaning set out in the SIS Act.

**Superannuation Benefit** means a superannuation fund payment made from the Fund as described in Item 1 of the Table in section 307-5(1) of the Income Tax Act and includes any Superannuation Death Benefit or any Superannuation Member Benefit.

**Superannuation Death Benefit** means a superannuation death benefit as described in section 307-5 of the Income Tax Act and includes any payment to a Beneficiary from the Fund after another person's death, because the other person was a Member of the Fund.

**Superannuation Income Stream Benefit** means a superannuation income stream benefit that is paid from a superannuation income stream within the meaning of section 307-70 of the Income Tax Act to a Beneficiary from the Fund because the Beneficiary is a Member of the Fund.

**Superannuation Interest** means a superannuation interest as defined in section 995-1(1) of the Income Tax Act.

**Superannuation Lump Sum** means a Superannuation Benefit that is not a Superannuation Income Stream Benefit.

**Superannuation Member Benefit** means a superannuation member benefit as described in section 307-5 of the Income Tax Act and includes any payment to a Beneficiary from the Fund because the Beneficiary is a Member of the Fund.

**Surcharge Debt Account** means an account by that name as described in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997 (Cth)*.

**Tax** means any tax, surcharge, levy, impost or duty, that is paid or payable by, or allowable taxation deduction to, the Trustee on behalf of the Fund or any Member or any Beneficiary in respect of any Benefit, or any person in respect of any Contribution, including income tax, capital gains tax, payroll tax, land tax, goods and services tax, and stamp duty.

**Temporary Incapacity** in relation to a Member:

- (a) who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental), that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term **Temporary Incapacity** (or the term **Temporary Disability** or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or
- (c) means temporary incapacity as defined in regulation 6.01(2) of the SIS Regulations;

and **Temporarily Incapacitated** has a corresponding meaning.

**Three Year Binding Nomination** means any written nomination howsoever called in a form prescribed by the Trustee given by a Member to the Trustee directing how the Trustee is to pay all or part of a Benefit in respect of the Member on the death of the Member, and which expressly indicates that the nomination will lapse, expire, or terminate automatically on a date or upon expiration of a period which is three years from the date of the **nomination**.

**Transition to Retirement Income Stream** means a pension that meets the definition, description and standards of a transition to retirement income stream under the SIS Regulations, and specifically Regulations 1.06(9A) and 6.01(2).

**Trustee** means the party named as the Trustee in this Deed or any person who subsequently assumes the role of the trustee of the Fund under this Deed.

**Trustee Act** means the *Trustee Act 1958 (Vic)* or the equivalent legislation of any other State or Territory of Australia relating to trustees and which is applicable to the Trustee.

**Unclaimed Money Act** means the *Superannuation (Unclaimed Money and Lost Members) Act 1999 (Cth)*.

## **1.2 Defined Terms in a Relevant Act**

An expression used in this Deed which is defined in a Relevant Act but is not otherwise defined in this Deed, is deemed to have the same meaning in this Deed as it has in the Relevant Act unless the context otherwise requires.

## **2. Interpretation**

---

In this Deed, unless the context otherwise requires:

- (a) Headings and underlinings are only for convenience and emphasis respectively and do not affect the interpretation of this Deed;
- (b) A reference to the singular include the plural and vice versa;
- (c) A reference to a gender includes any gender;
- (d) A reference to a natural person includes any company, partnership, joint venture, association, trust or other body corporate;
- (e) A reference to any thing includes a part of that thing;
- (f) A reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed;
- (g) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) A reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (i) A reference to a party to any document includes that party's successors and permitted assigns;
- (j) A covenant or agreement on the part of two or more persons binds them jointly and individually; and
- (k) A reference to \$ or Dollars means the lawful currency of the Commonwealth of Australia.

## **3. Fund is Subject to Requirements of the Law**

---

### **3.1 Deemed Inclusion of Law and Powers of the Law**

This Deed must be read and construed as if it is deemed to also include in addition to the clauses in this Deed:

- (a) all relevant imposed prohibitions, requirements of, and standards prescribed in, the Law with which the Fund or the Trustee must comply; and
- (b) all relevant discretions, powers, and authority conferred by the Law on the Trustee under which the Trustee may act;

in order for the Fund:

- (c) to obtain or maintain the status of a Complying Superannuation Fund; or
- (d) to qualify for Concessional Taxation Treatment; or
- (e) and/or the Trustee to not become liable for any penalty or obligation under the Law for which they would not otherwise be liable; or
- (f) to offer, and/or the Trustee to be authorised by the relevant Responsible Authority to offer, a MySuper Product.

### **3.2 Trustee's Compliance with Law**

Without limitation to the operation of clause 3.1, in relation to the Trustee's exercise of its powers, discretions, authority and obligations relevant to the management, administration and control of the Fund under this Deed, the Trustee:

- (a) may do anything that it is permitted to do or not restricted from doing under the Law;
- (b) must do everything that it is required to do under the Law in order to satisfy the requirements of the Law, including complying with any direction by a Responsible Authority in relation to a MySuper Product; and
- (c) must refrain from doing anything that it is prohibited from doing under the Law, or which would cause a breach of, or non-compliance with, a relevant requirement of the Law.

### **3.3 Inconsistency between Deed and Law**

Despite anything to the contrary in this Deed, if there is any inconsistency or conflict between a provision of this Deed and a relevant provision of the Law, the Law will prevail over this Deed to the extent of that inconsistency or conflict.

### **3.4 Certain Provisions Void**

Without limitation to the operation of clause 3.3, a provision of this Deed is void to the extent that it:

- (a) would prevent this Deed from satisfying the requirements of section 29TC (Authority to offer a MySuper product) of the SIS Act;
- (b) is inconsistent with:
  - (i) the obligations that apply to the Trustee under section 29VN (Additional obligations of a trustee in relation to a MySuper product) of the SIS Act; or
  - (ii) the obligations that apply to the Directors under section 29VO (Additional obligations of a director of a corporate trustee in relation to a MySuper product) of the SIS Act;
- (c) would prevent the Trustee from giving effect to an election made in accordance with sections 29SAA (Election to transfer accrued default amounts) to a MySuper product or 29SAB (Election to transfer assets attributed to a MySuper product if authorisation cancelled) of the SIS Act, or a requirement in regulations made for the purposes of sub-section 29SAA(3) of the SIS Act;
- (d) would have the effect of allowing the Trustee:

- (i) to indemnify itself out of the assets of the Fund for any amount expended out of capital of the Trustee managed and maintained by the Trustee to cover the operational risk of the Fund;
  - (ii) to indemnify itself out of any assets of the Fund that do not form part of a reserve maintained for the purpose of covering the operational risk relating to the Fund, any amount that relates to that risk, without first exhausting the reserve and any other financial resources managed and maintained by the Trustee to cover the risk;
- (e) specifies:
- (i) a person or persons (whether by name or in any other way, directly or indirectly) from who the Trustee may or must acquire a service;
  - (ii) an entity or entities (whether by name or in any other way, directly or indirectly) in which one or more of the assets of the Fund may or must be invested;
  - (iii) (whether by name or by reference to an entity) a financial product or financial products:
    - (A) in or through which one or more of the assets of the Fund may or must be invested; or
    - (B) in relation to which one or more assets of the Fund may or must be used to make payments,

provided that sub-clauses (i), (ii) and (iii) above do not apply if the relevant person, entity or financial product is specified, or is required to be specified, in the law of the Commonwealth of Australia, or State or Territory of Australia;
- (f) purports to preclude a Director from voting on a matter relating to the Fund, other than in circumstances described in section 68C(3) (Voting by a director of a corporate trustee – governing rules) of the SIS Act; or
- (g) relates to any other matter expressed by Law to be void.

#### **4. Election to be a Complying Superannuation Fund**

---

##### **4.1 Corporate Trustee**

At all times the Fund must have a Corporate Trustee as the Trustee of the Fund.

##### **4.2 No Amendment to Change Purpose**

Notwithstanding any other provision in this Deed to the contrary, the Trustee must not make or allow to be made any amendment to this Deed which would have the effect, expressly or implicitly, that the Fund no longer has or will not continue to have a Corporate Trustee.

##### **4.3 Fund to be Complying Superannuation Fund - Trustee's Obligation**

- (a) The Trustee intends that the Fund is and will at all relevant times operate as a Complying Superannuation Fund.

- (b) The Trustee must use all reasonable endeavours to ensure that any relevant requirements of the Law for a Complying Superannuation Fund are satisfied and complied with.

## **5. Trustee Holds Fund on Trust**

---

The Trustee must hold the Fund upon trust for the Beneficiaries subject to the trusts, powers, authorities, discretions and obligations contained in this Deed.

## **6. Composition of the Fund**

---

The Fund consists of all cash, monies, investments and other property held by or on account of the Trustee under this Deed including:

- (a) Contributions made to the Fund under this Deed;
- (b) any other monies or assets (including Rollover Payments) paid or transferred to the Trustee under this Deed;
- (c) income arising from investments of the Fund;
- (d) any accretions to or profits arising from investments of the Fund;
- (e) any other distribution, dividend or gift paid to and accepted by the Trustee as an accretion to the Fund;
- (f) the proceeds (including bonuses) of any Policy of Insurance received by the Fund; and
- (g) any other monies property or investments which are or become held by or on account of the Trustee on the trusts of this Deed.

## **7. Details of the Trustee**

---

### **7.1 Qualifications and Requirements**

The Trustee of the Fund must at all times:

- (a) be a Constitutional Corporation; and
- (b) not be a disqualified person within the meaning of section 120(2) of the SIS Act;
- (c) be an approved trustee and hold an RSE Licence in accordance with the Law; and
- (d) be the holder of an AFS Licence.

### **7.2 Appointment and Retirement of Trustee and Directors to comply with Law**

- (a) If the Fund does not have a Trustee at any time then the former Trustee (if it has the capacity), and otherwise at least two thirds in number of the shareholders of the former Trustee at the time when it ceased to be the Trustee of the Fund, may appoint the new Trustee by instrument made in writing.

- (b) The appointment, retirement or removal of a Trustee and Director must comply with the Law.

### **7.3 Cessation of Trustee**

The Trustee ceases to be the Trustee when:

- (a) the Trustee retires at the same time as appointing a new Trustee as the replacement of the former Trustee; or
- (b) it is disqualified or removed from the office of Trustee by operation of the Law.

### **7.4 Continuity of Office**

A Trustee that ceases to be the Trustee of the Fund must do everything reasonably necessary or required to vest the Fund in the new Trustee and to deliver all records and other books in the outgoing Trustee's possession or control to the new Trustee.

### **7.5 Notification to Responsible Authority**

- (a) The Trustee must give notice in writing to the appropriate Responsible Authority of any matters that constitute a notifiable event in accordance with the Law.
- (b) The Trustee must inform APRA in writing of any event that may affect the Trustee's ability to perform, in a proper manner, its duties as trustee of the Fund within the number of days prescribed within the SIS Act and/or SIS Regulations.

## **8. Proceedings of the Trustee**

---

### **8.1 Meetings**

- (a) Subject to the terms of this Deed, and the terms of the Trustee's Constitution, the Trustee may meet, adjourn and regulate its meetings as the Trustee sees fit.
- (b) If the terms of the Trustee's Constitution are inconsistent with the terms of this Deed, the terms of the Trustee's Constitution will prevail to the extent of the inconsistency.

### **8.2 Passing of Resolutions at Meetings**

- (a) All matters affecting the Fund requiring a decision of the Trustee must be determined by resolution.
- (b) A written resolution signed by a Chairperson of the Trustee will be prima facie evidence of an effective resolution passed at a meeting of the Trustee duly convened and held.
- (c) A copy of that written resolution must be given to each Director of the Trustee who was not present at the meeting at which that resolution was passed as soon as reasonably practicable after that resolution is made.

### **8.3 Appointment of Chairperson**

- (a) The Trustee may by resolution appoint a person holding office as a Director of the Trustee to be the Chairperson of the Trustee.
- (b) The Chairperson will hold office as Chairperson until:



- (i) he retires as Chairperson by written notice given to the Trustee;
- (ii) he ceases to be a Director of the Trustee; or
- (iii) he is removed as Chairperson by a written notice given to him pursuant to a resolution passed by the Trustee.

#### **8.4 Chairperson's Duty**

The Chairperson may act as Chairperson of each meeting of the Trustee at which the Chairperson is present. If the Chairperson is not present in person at a meeting or if at the time of a meeting there is no Chairperson a person shall be appointed by a resolution of the Trustee to act as Chairperson of that meeting.

#### **8.5 Voting Entitlement and Required Majority**

- (a) Each person holding office as a Director of the Trustee has one vote on any resolution.
- (b) The Chairperson does not have a casting vote on any resolution.
- (c) No resolution will be effective unless carried by a simple majority, or if the Law requires a particular majority, by that majority.

#### **8.6 Minutes of Meeting**

- (a) The Trustee must keep or cause to be kept proper minutes of meetings of the Trustee that are entered in a minute book maintained for that purpose.
- (b) The Trustee must endeavour to ensure that all minutes of meetings of the Trustee:
  - (i) are dated;
  - (ii) are sufficiently detailed and accurate to record the nature of business discussed, the decisions of the Trustee and the reasons for those decisions;
  - (iii) identify any documents that have been presented to the Trustee and considered by the Trustee before the making of any decision; and
  - (iv) record attendance, non-attendance and voting at meetings, particularly in relation to any decision which needs a voting requirement other than a simple majority.
- (c) The minutes of any meeting once signed by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting will be prima facie evidence of the matters stated in those minutes.
- (d) The Trustee must retain the minutes of meeting for at least the minimum period required by the Law.

### **9. General Powers of the Trustee**

---

#### **9.1 Trustee has Complete Management and Control**

The Trustee has complete management and control of all matters concerning the Fund, subject to this Deed and the requirements of the Law.

## **9.2 Trustee May do all Acts in Exercise of Powers/Obligations**

Subject to clause 3.2, the Trustee may do all acts and things, including without limitation, accepting Contributions and paying Benefits, which the Trustee considers necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund and in the exercise and performance of the Trustee's discretions, powers and obligations under the Deed.

## **9.3 Powers Additional to Powers Given under the Law**

Subject to clause 3.3, the Trustee's powers and discretions under this Deed are in addition to, and not in substitution for, the powers and discretions vested in or exercisable by the Trustee under the Law.

## **9.4 Conflicts of Interest**

- (a) The Trustee may exercise or concur in exercising all the powers and discretions contained in this Deed or otherwise conferred by the Law notwithstanding that any person who is a Director or shareholder of the Trustee:
  - (i) has or may have a direct or personal interest (whether as trustee of any other settlement or in his personal capacity or as a shareholder or director or member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or otherwise howsoever) in the mode or result of exercising such power or discretion; or
  - (ii) may benefit either directly or indirectly as a result of the exercise of any such power or discretion; and
  - (iii) notwithstanding that the Trustee for the time being is the sole Trustee;
- (b) The Trustee may prevent a Director from voting on any resolution if:
  - (i) that Director has a material personal interest in relation to the resolution; or
  - (ii) that Director has a conflict of a kind described by the Law in relation to the resolution; or
  - (iii) necessary to ensure compliance by the Trustee, Board or that Director. with the Law or any Trustee policy or guideline dealing with conflicts of interest or duty.

## **10. Specific Management Powers of the Trustee**

---

Subject to clause 12, the Trustee has the following powers:

### **(a) Appoint and Pay Managers and Others**

To appoint, remove or suspend employees custodians, investment managers, administrators, clerks, agents, representatives, nominees and other servants and delegates as the Trustee considers appropriate, whether they be appointed for permanent, temporary or special services, and to determine their powers and duties and fix and pay from the Fund their salaries, fees and charges.

### **(b) Legal Proceedings**

- (i) To settle, compromise or submit to arbitration or to a court of law, any doubts, disputes, claims, controversies or difficulties whatsoever arising out of or relating to this Deed or the construction of any provision in this Deed, the Fund or the rights of Members and Beneficiaries and to act on the award or determination of the arbitrator or court, or where a Member submits a dispute to the relevant Responsible Authority, on a determination of that Responsible Authority; and
  - (ii) To commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members and Beneficiaries.
- (c) **Compound Debts**

To compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund.
- (d) **Arbitration**

To refer any claim or demand by or against the Trustee to arbitration and observe and perform the award of the arbitrator.
- (e) **Receipts and Discharges**

To make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund.
- (f) **Bank Accounts**

To open and maintain bank accounts for the Fund and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques.
- (g) **Seek Advice**

To act on the advice of any Qualified Advisor (whether or not that advice was obtained by the Trustee) in relation to any matter concerning the Fund without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on that advice.
- (h) **Disclose Information**

To disclose information relating to the Fund, including information it has about any Member and the interest of any Member in the Fund, subject to any restriction imposed by any Law.
- (i) **Signatories**

To determine who shall be entitled to give and sign in respect of the Fund or any part of the Fund for receipts, acceptances, endorsements, releases, contracts and other documents.
- (j) **Borrow Money, Give Indemnity and Security**
  - (i) To give undertakings and indemnities, enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit, including but without limitation, borrowing money, giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee in connection with the Fund and to secure such obligation by charge or mortgage or any other form of encumbrance over all or part of the Fund; and

- (ii) To indemnify, or undertake to indemnify, any person in respect of any claim, matters or things relating to the Fund or to the rights of Members or Beneficiaries in respect of the Fund.
- (k) **Receive Distributions, Dividends & Gifts**

To receive any distribution, dividend or gift which is tendered to the Fund.
- (l) **Anti-Money Laundering/Counter-Terrorism Financing**

To develop and maintain an Anti-Money Laundering/Counter-Terrorism Financing Program in the format required by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or as otherwise required by the Law and adopt appropriate Member identification procedures, transaction reporting and suspicious matter reporting as required by the Law.
- (m) **Maintain Property**

To repair, paint, alter, rebuild, improve and generally maintain any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund.
- (n) **To Pay Rates and Taxes**

To pay all rates taxes costs charges insurance premiums expenses and outgoings of whatever nature payable in connection with the maintenance upkeep and management of the property comprising the Fund.
- (o) **Lease Property**

To lease or sub-lease any property (whether real or personal) forming part of the Fund for such period and at such rent and subject to such terms and conditions as the Trustee may consider desirable and to accept surrenders of or otherwise determine such leases or sub-leases.
- (p) **Sell Property**

To sell or otherwise dispose of any property forming part of the Fund at such price and upon such terms and conditions and in such manner as the Trustee thinks fit.
- (q) **Undertaking and Contracts**

To give undertakings and enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit.
- (r) **Insurance and Premiums**

To effect Policies of Insurance for all or any part of the Benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies and to surrender vary or assign or otherwise deal with any Policy of Insurance as the Trustee thinks fit.
- (s) **Proxies and Powers of Attorney**

To give proxies and powers of attorney (with or without powers of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to the Fund and any property comprising part of the Fund.
- (t) **Purchase Annuity**

To purchase an Annuity to provide all or a part of the Pension payable in respect of a Member.

(u) Insurance of Property

To insure and keep insured any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund.

(v) Insurance of Trustee and Directors

To insure and keep insured any liability of the Trustee or any Directors of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or Directors, as the case may be.

(w) MySuper Product

To apply for and maintain authorisation from the relevant Responsible Authority to offer a MySuper Product.

## 11. Investment Powers of the Trustee

---

### 11.1 General Investment Powers of the Trustee

- (a) Subject to clause 12, the Trustee may in the name of the Trustee or in the name of any custodian or nominee selected by the Trustee, invest the whole or any part of the Fund in any investment and in any manner (whether in Australia or elsewhere or whether involving liability or not) which the Trustee considers to be a suitable investment for the Fund having regard to the Investment Strategy, this Deed and the Law.
- (b) For the avoidance of doubt, the Trustee may, but is not obliged to, in its absolute discretion, arrange the investments of the Fund so that they form a single common scheme or more than one investment option.

### 11.2 Specific Investment Powers of the Trustee

The Trustee may, subject to any requirements under the Law, invest the assets of the Fund in any one or more of the following:

- (a) **Authorised Trustee investments:** any investment from time to time authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust monies.
- (b) **On deposit:** on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution or with any other person approved by the Responsible Authority or any Employer in any type of account either with or without security at such rate of interest and on such terms as the Trustee may determine.
- (c) **Acquisition of securities:** in the acquisition by subscription or by purchase or otherwise of fully or partly paid shares, stock, debentures, bonds, notes or other securities, obligations or other financial instruments howsoever called in any company (including any Employer).
- (d) **Acquisition of units: in the acquisition of units, sub-units or other fractional interests** howsoever called whether divided or undivided in or of any unit trust

(whether fixed or flexible), managed investment scheme (as defined under section 9 of the Corporations Act) or such other scheme that is in the nature of a unit trust.

- (e) **Acquisition of property:** in the acquisition of any property (whether real or personal) or any interest in property whether or not such property or interest in property is subject to any mortgage, charge or other encumbrance or is acquired or purchased for profit or is producing income at the date it is acquired or purchased.
- (f) **Acquisition of mortgages:** in the acquisition of mortgages over freehold or leasehold property either by direct loan or by purchase at a discount or otherwise.
- (g) **Acquisition of businesses:** in the acquisition of an interest in any business (including a business of primary production).
- (h) **Derivative transactions, options and warrants:** in derivative contracts including, but not limited to, options and warrants in compliance with clause 12.

### **11.3 Dealing with Investments as Beneficial Owner**

The Trustee may deal with any investment of the Fund as authorised by this Deed as fully and effectively as a person absolutely and beneficially entitled to do so as if it is dealing with its own property.

### **11.4 The Trustee may have Interest in Investments**

- (a) The Trustee may make or vary any of the investments authorised under this Deed even if the Trustee may directly or indirectly have an interest in or may benefit from the investment.
- (b) The Trustee and any Directors must disclose details of their interest in any investment in any manner that is required under the Law.

### **11.5 Policies of Insurance**

- (a) The Trustee may obtain and maintain insurance over risks and liabilities in respect of the Fund including:
  - (i) Policies of Insurance on behalf of a Member to secure the Benefit of a Member; and
  - (ii) insurance in respect of the Fund's assets and/or Trustee's liabilities.
- (b) A Member may request the Trustee to obtain a Policy of Insurance and may specify the type of Policy of Insurance to be obtained. The Trustee has no responsibility to the Member or the Dependents of the Member to obtain that Policy of Insurance.
- (c) The Trustee may debit the premiums or any part thereof for any Policy of Insurance to:
  - (i) the Income Account;
  - (ii) the Reserve Account; or
  - (iii) the Accumulation Account of the Member for whom the Policy of Insurance is obtained,
  - (iv) in such proportions and manner as the Trustee may determine from time to time.

- (d) The Trustee is at liberty to reduce or abandon insurance cover in relation to a Member with the Member's consent or if the Member's age, ill-health or other circumstances makes it too costly or impracticable to effect or continue that insurance cover.
- (e) Unless the Trustee determines otherwise, the Insured Component for funding the payment of a Member's Benefit or for any other purpose in relation to a Member shall, subject to the Law, be equal to the amount (if any) paid to, or received by, the Trustee under the Policy of Insurance in order to provide the Insured Component less any part of that amount that the Trustee determines in its discretion to credit to a Reserve Account or to any other Account applicable to the Member.
- (f) The Trustee is not liable for any loss suffered by the Fund or any Member or Beneficiary as a result of:
  - (i) no, insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not; or
  - (ii) an Insurer failing to pay out on a Policy of Insurance in whole or in part for whatever reason.

#### **11.6 Prudent Investment Rules**

Subject to clause 12, and without limiting the matters that the Trustee may take into account when exercising a power of investment, the Trustee may, so far as it considers it is appropriate to do so in respect of the Fund, have regard to the:

- (a) purpose of the Fund and the needs and circumstances of the Beneficiaries;
- (b) desirability of diversifying the Fund's investments;
- (c) nature of and risk associated with the existing investments and property of the Fund;
- (d) need to maintain the real value of the capital or income of the Fund;
- (e) risk of capital or income loss or depreciation;
- (f) potential for capital appreciation;
- (g) likely income return and timing of income return;
- (h) length of the term of the proposed investment;
- (i) liquidity and marketability of the proposed investment during, and on the determination of the term of the proposed investment;
- (j) aggregate value of the Fund;
- (k) effect of the proposed investment in relation to the tax liability of the Fund;
- (l) likelihood of inflation affecting the value of the proposed investment or other property of the Fund; or
- (m) costs (including commissions, fees, charges and duties payable) of making the proposed investment.

## **12. Compliance with the Law - Investments**

---

### **12.1 General Requirement**

The Fund may only be invested in a manner that will not cause the Fund or the Trustee to be in breach of any relevant requirement under the Law.

### **12.2 Borrowing by the Trustee**

The Trustee may borrow money or maintain an existing borrowing of money, including borrowing for the purposes of an instalment warrant under s.67(4A) of the SIS Act only in a manner that is not prohibited under the Law.

### **12.3 Lending to Members**

The Trustee may only allow any money of the Fund to be lent, or any financial assistance using the resources of the Fund to be given, to a Member or a relative of a Member in a manner that is not prohibited under the Law.

### **12.4 Acquisition of Certain Assets from Members or a Related Party**

The Trustee may only intentionally acquire or allow to be acquired on behalf of the Fund an asset from a related party of the Fund in a manner that is not prohibited under the Law.

### **12.5 Investments Involving 'In-house Assets'**

Without limitation to clause 12.1, the Trustee must ensure that the value of the Fund's in-house assets as determined under the Law does not exceed more than the allowable percentage of the Fund's total assets (calculated on market value) prescribed under the Law.

### **12.6 Investments to be made at Arm's Length**

The Trustee must not invest or allow to be invested any money or other part of the Fund unless:

- (a) all parties to the relevant transaction are dealing at arm's length in respect of the transaction; or
- (b) if the parties are not dealing with each other at arm's length, the terms and conditions of the transaction are no more favourable to the other party than those which it would be reasonable to expect would apply if the parties were dealing with each other at arm's length.

### **12.7 Statement of Investment Strategy**

The Trustee must, if required by the Law, formulate and prepare an Investment Strategy that sets out the investment objectives of the Fund and the policy to achieve those objectives and incorporates any other matters which are necessary for the Trustee to comply with the Deed and the Law.

### **12.8 Member Investment Choice**

- (a) The Trustee may choose in the Trustee's absolute discretion to adopt and offer to Members (or a specific class of Members) a choice of two or more individual Investment Strategies from which a Member (or a class of Members) may choose one Investment Strategy or a combination of individual Investment Strategies (Member Investment Choice).



- (b) The Trustee must give directions to the Members (or each Member of the class of Members):
- (i) identifying the investment objectives of each Investment Strategy;
  - (ii) providing all information which the Trustee reasonably believes a person would reasonably need for the purpose of understanding the objectives, effect of, and any risk involved in, each of those Investment Strategies, as if each Investment Strategy offered was the Investment Strategy for the Fund as a whole;
  - (iii) providing full information of the range of directions that can be given by the Trustee and the circumstances in which they can be changed;
  - (iv) identifying the particular Investment Strategy the Trustee will adopt for a Member (or each Member of a class of Members) if no choice is made by the Member (or each Member of the class of Members), unless it is a condition of membership that the Member must choose a particular Investment Strategy or combination of Investment Strategies.
- (c) If determining two or more individual Investment Strategies to offer as a choice to Members, the Trustee must give proper consideration to:
- (v) all matters contained in the Trustee's covenants in clause 13; and
  - (vi) the circumstances of the Fund as a whole in making the Member Investment Choice available as part of the Fund's Investment Strategy; and
  - (vii) a continued and regular monitoring of changes in circumstances of the Fund as a whole to assess whether it remains appropriate.
- (d) If the Trustee offers Member Investment Choice, the Trustee must if required under the Law advise the Responsible Authority of the number of Investment Strategies which are offered as choices.
- (e) The Trustee may cease to offer or make any variation to the offering of Member Investment Choice. If so, the Trustee must:
- (viii) give Members the opportunity to provide further directions to the Trustee; and
  - (ix) advise Members of the default Investment Strategy that will be adopted unless the Member instructs otherwise.
- (f) Subject to the Law, the Trustee may from time to time:
- (x) alter the Member Investment Choice investment options in respect of the Fund or any investment option within the Fund;
  - (xi) restrict or limit the class of Members who may invest in an investment option;
  - (xii) close an investment option to either new Members or to additional investments of existing Members in the investment option;
  - (xiii) combine two or more investment options;
  - (xiv) split an investment option into two or more investment options;

- (xv) terminate an investment option by cashing the investments of the investment option and reinvesting those monies into one or more other investment options or a single common fund; or
- (xvi) undertake such other action as the Trustee considers appropriate, desirable or necessary.

## **12.9 Derivative Transactions**

The Trustee may invest in derivative transactions provided that:

- (a) the proposed derivative transaction complies with an Investment Strategy of the Fund;
- (b) if required under the Law, the Trustee has adopted an appropriate risk management statement; and
- (c) if the derivative transaction involves the creation of a charge over the assets of the Fund, then the Trustee must prepare a risk management statement if required under the Law.

## **13. Covenants by the Trustee**

---

The Trustee covenants:

- (a) to comply and act in accordance with each of the covenants prescribed under the Law that are applicable to the Trustee or the Fund, including
  - (i) the general covenants in section 52(2);
  - (ii) the investment covenants in section 52(6);
  - (iii) the insurance covenants in section 52(7); and
  - (iv) the covenants relating to risk in section 52(8);of the SIS Act, as if those covenants were contained in this Deed; and
- (b) if the Trustee offers a MySuper Product, to comply with any additional obligations imposed on the Trustee by Law in relation to the MySuper Product.

## **14. Covenants by the Directors**

---

- (a) This clause shall be deemed to operate as if the Directors were parties to this Deed.
- (b) Each of the Directors covenant to comply and act in accordance with each of the covenants prescribed under the Law that are applicable to the Directors, including the covenants in section 52A of the SIS Act, as if those covenants were contained in this Deed.
- (c) If the Trustee offers a MySuper Product, each Director must exercise a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out the obligations in section 29VN of the SIS Act.

- (d) The reference in this clause to a exercising a reasonable degree of care and diligence refers to the degree of care and diligence that a superannuation entity director would exercise in the Trustee's circumstances.
- (e) In clause 14(d), a **superannuation entity director** is a person whose profession, business or employment is or includes acting as director of a corporate trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.

## **15. Trustee's Discretion**

---

### **15.1 Exercise of Power**

Subject to the Law:

- (a) the Trustee has the complete management and control of all proceedings, investments and any other matter in connection with the Fund; and
- (b) the Trustee may, without derogating from any other provision of this Deed, do all things that it considers necessary, desirable or expedient for the proper application, administration, maintenance and preservation of the Fund or any part of the Fund;

### **15.2 Absolute Discretion**

The Trustee, and any delegate of the Trustee under clause 15.1 has, in the exercise, non-exercise or partial exercise of such power, an absolute, unfettered and uncontrolled discretion in its exercise, non-exercise or partial exercise of any such power. The Trustee is not bound to act subject to the direction of any other person (unless otherwise expressly required by the Law) in the exercise or non-exercise or partial exercise of any power or discretion by the Trustee.

### **15.3 No Requirement to Give Reasons**

The Trustee is not bound to give to any person any reason for or explanation of the Trustee's exercise, non-exercise or partial exercise of any power or discretion by the Trustee.

### **15.4 Trustee's Decision Final**

The decision of the Trustee in relation to any dispute on the interpretation of this Deed or the rights or obligations of a Member or the Trustee or any other person under this Deed will be final and binding on all interested persons.

### **15.5 Exercise of Discretion by Person Other than Trustee**

Subject to clause 15.1 and unless permitted under the Law, a discretion given to the Trustee must not be exercised by any other person without the consent of the Trustee.

### **15.6 Continuity of the Fund, Mergers and Successor Fund Transfers**

Notwithstanding any provision in this Deed and subject to the requirements of the Law, the Trustee cannot:

- (a) merge the Fund with another Complying Superannuation Fund;
- (b) takeover another Complying Superannuation Fund; or
- (c) allow the Fund to be taken over by another Complying Superannuation Fund;

without a special resolution of the Board of the Trustee and a special resolution of the shareholders of the Trustee carried out in the manner prescribed in the Trustee's Constitution.

## **16. Delegation by Trustee**

---

### **16.1 Trustee's Right to Delegate**

Subject to clause 16.3, the Trustee may delegate any power, discretion or obligation exercisable by the Trustee (including any power or obligation which the Trustee has a duty to exercise and the power of delegation) to any person (**the Delegate**) in a manner and on terms that the Trustee thinks fit.

### **16.2 Variation or Revocation to Delegation**

The Trustee may vary or revoke any delegation and may exercise any power in conjunction with, or to the temporary or permanent exclusion of, the Delegate.

### **16.3 Delegation Subject to the Law**

The Trustee must not make any delegation or allow any delegation to remain where the delegation contravenes this Deed or the Law.

### **16.4 Scope of Delegation**

The Delegate may only perform those duties and only has those powers that the Trustee expressly delegates to the Delegate.

### **16.5 Delegation to Member**

A Member may be a delegate of the Trustee under Clause 15.1 and may exercise any power vested in the Member in that position without prejudice to the Member's rights as a Member of the Fund.

## **17. Remuneration of Trustee and Reimbursement for Expenses**

---

### **17.1 Right to Charge Fees and Receive Remuneration**

- (a) Subject to clause 17.1(c), the Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund for any trustee duties or services performed by the Trustee in that capacity in relation to the Fund as set out under this Deed or in any Product Disclosure Statement or other disclosure document provided by the Trustee to the Members.
- (b) A Director of the Trustee is entitled to receive remuneration from the Fund for any duties or services performed by the Director in that capacity in relation to the Fund.
- (c) Any fees charged by the Trustee in relation to a MySuper Product must comply with any relevant requirement of the Law including section 29V of the SIS Act.

### **17.2 Indemnity and Reimbursement**

The Trustee is entitled to be indemnified by and reimbursed from the Fund for and in respect of:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with the investments of the Fund;

- (b) all fees, wages and expenses of any Auditor, Actuary, Qualified Advisor, Investment Manager, custodian, administrator or other advisor, from time to time engaged by the Trustee under this Deed;
- (c) all Tax paid or payable by the Trustee in connection with the Fund and any Member on any account whatsoever;
- (d) all costs, charges and expenses incurred or to be incurred in relation to the preparation, maintenance and distribution of any accounting records, returns, reports or other documents in relation to the Fund; and
- (e) any other costs, charges and expenses incurred or to be incurred in relation to the management or administration of the Fund.

## **18. Protection and Indemnity of the Trustee**

---

### **18.1 Limitation of Liability - General**

Subject to clause 18.2, the Trustee will not personally be liable for any claim, liability, cost, loss, damage or expense incurred by or arising out of any act or omission in connection with this Deed or the Fund or the exercise or performance of the Trustee's powers, discretions and duties.

### **18.2 Liability for Certain Conduct**

Clause 18.1 does not exempt the Trustee from, and the Trustee will be liable for, any claim, liability, cost, loss, damage or expense which is a direct result of an act or omission by the Trustee involving:

- (a) the Trustee failing to act honestly in any matter concerning the Fund;
- (b) the Trustee intentionally or recklessly failing to exercise, in relation to any matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (c) the Trustee incurring liability for a monetary penalty under a civil penalty order.

### **18.3 Indemnity of Trustee**

- (a) The Trustee must be indemnified out of the Fund for all liabilities incurred by the Trustee in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions given to the Trustee in this Deed or by the Law.
- (b) This indemnity does not extend to any liability of the Trustee arising in circumstances described in clause 18.2.

### **18.4 Indemnity of Director**

If a Director incurs a liability in respect of conduct or circumstances for which the Trustee is or would be entitled to be indemnified out of the Fund, the Director must also be indemnified out of the Fund in respect of that liability.

### **18.5 Lien on Fund to Satisfy Indemnity**

The Trustee may exercise a lien on and use any assets of the Fund for the purposes of satisfying the indemnity given to the Trustee provided that the existence or exercise of the lien does not contravene the Law.

## 18.6 Limitation of Indemnity for Operation Risk

Notwithstanding clauses 18.1 and 18.3, the Trustee is not entitled to be indemnified out of the assets of the Fund:

- (a) for any amount expended out of capital of the Trustee managed and maintained by the Trustee to cover the operational risk of the Fund; or
- (b) that do not form part of a reserve maintained for the purpose of covering the operational risk related to the Fund, any amount that relates to that risk, without first exhausting the reserve and any other financial resources managed and maintained by the Trustee to cover the risk.

## 19. Appointment of Actuary, Auditor, Custodian, Investment Managers and Qualified Advisors

---

### 19.1 Actuary

- (a) When required by the Law to do so, the Trustee must appoint an Actuary to the Fund to conduct an actuarial investigation of the Fund, in the form and to the extent required by the Law.
- (b) The Trustee may remove and/or replace the Actuary as and when the Trustee sees fit.

### 19.2 Auditor

- (a) The Trustee must appoint an Auditor to perform an audit of the Fund as prescribed under the Law.
- (b) The Trustee must agree with the Auditor on the scope and form of the audit to be conducted which should include:
  - (i) the Auditor's reporting obligations under the Law;
  - (ii) verification of the Fund's assets, their legal title and their valuation; and
  - (iii) verification of Members' Benefits.

### 19.3 Custodian

The Trustee may appoint in writing a custodian to carry out custodial services on behalf of the Fund subject to compliance with the Law.

### 19.4 Investment Managers

- (a) The Trustee may appoint in writing one or more investment managers (**Investment Manager**) to carry out the management of the investments of the Fund subject to compliance with this Deed and the Law.
- (b) If the Trustee enters into an agreement with an Investment Manager under which all or any part of the Fund will be placed under the control of the Investment Manager, the Trustee must ensure that the agreement contains adequate provisions to enable the Trustee to require the Investment Manager to provide to the Trustee appropriate information on the making of, and return on, the investments and to provide any other information that is necessary to enable the Trustee to assess the performance and capability of the Investment Manager in managing the investments of the Fund.

- (c) The Trustee must use reasonable endeavours to ensure that any agreement with an Investment Manager includes, as a minimum, the following obligations on the Investment Manager:
- (i) to manage assets in accordance with set investment restrictions;
  - (ii) to keep the investment portfolio under review and to confer with and advise the Trustee regularly;
  - (iii) to exercise all due diligence and care;
  - (iv) to have appropriately qualified staff in charge at all times;
  - (v) to ensure assets are vested in the Trustee (or a custodian, if applicable) as soon as possible;
  - (vi) to provide upon request information to the Auditor of the Fund; and
  - (vii) to do such other things as requested by the Trustee to ensure its compliance with the Law.

#### **19.5 Qualified Advisors**

The Trustee may from time to time appoint any advisor under this clause to give advice that the Trustee considers desirable for the proper management and administration of the Fund.

#### **19.6 Revocation of Appointment**

The Trustee may revoke and remove from office any person appointed to any position under this clause.

### **20. Accounting Records**

---

#### **20.1 Form of Accounting Records**

The Trustee must establish and maintain accounting records in a form that:

- (a) correctly records and explains the transactions and financial position of the Fund;
- (b) enables the annual financial statements of the Fund to be prepared;
- (c) enables those accounting records to be conveniently and properly audited in accordance with this Deed and the Law; and
- (d) enables the annual returns of the Fund to be prepared and lodged in accordance with the Law.

#### **20.2 Retention of Accounting Records**

The Trustee must retain the accounting records for at least the minimum period required by the Law, and if the Law does not prescribe a minimum retention period, at least 10 years, after the end of the Financial Year to which the accounting records relate.

## **21. Valuation of the Fund**

---

Following each Balance Date and any other date that the Trustee considers appropriate or is required under the Law, the Trustee must obtain a valuation of the Fund. The valuation must be reflected in the accounts of the Fund.

## **22. Calculation of Investment Return and Earnings**

---

- (a) Following each Balance Date, the Trustee may determine the investment return and investment earnings of the Fund for that Financial Year.
- (b) Subject to the requirements under the Law, the Trustee must determine the investment return to be credited or debited to a Member's Benefit in a way that is fair and reasonable as between all the Members of the Fund and the various kinds of Benefit of each Member of the Fund.
- (c) At any point in time during a Financial Year the Trustee may calculate and determine as it sees fit in a way that is fair and reasonable as between all Members of the Fund the investment return and investment earnings of the Fund for the purpose of applying that investment return in calculating the withdrawal benefit of a Member at that time.

## **23. Financial Statements**

---

### **23.1 Preparation**

The Trustee must in respect of each Financial Year prepare the following financial statements in respect of the Fund:

- (a) a statement of financial position;
- (b) an operating statement;
- (c) any other financial statements that are required under the Law.

### **23.2 Signature**

The financial statements must be signed by or on behalf of the Trustee in a manner required by the Law or as otherwise permitted by law.

### **23.3 Retention**

The Trustee must retain the financial statements for the minimum period required by the Law after the end of the Financial Year to which the financial statements relate and if the Law does not prescribe a minimum retention period, at least 10 years from the date of the financial statements.

## **24. Audit of the Fund**

---

### **24.1 Audit to be Conducted each Financial Year**

As required under the Law, the financial statements of the Fund prepared in respect of each Financial Year must be audited by an Auditor appointed by the Trustee.



## **24.2 Auditor to be Given Access to Documents/Information**

The Trustee must give the Auditor access to any accounting records and accounting statements and other documents and information connected with the Fund as requested by the Auditor to enable the Auditor to complete the audit.

## **25. Annual Returns etc to the Responsible Authority**

---

The Trustee must in respect of each Financial Year (or other period determined under the Law) and within the time required under the Law give to the Responsible Authority:

- (a) **Annual Return:** an annual return in a form prescribed under the Law;
- (b) **Trustee Certificate:** a trustee certificate in a form prescribed under the Law;
- (c) **Audit Certificate:** the audit certificate given to the Trustee by the Auditor;
- (d) **Contribution Statement:** a statement in relation to the Contributions received by the Fund as required under s.390-5 of the Income Tax Act; and
- (e) **Other Documents or Information:** any other documents or information which may be required under the Law, or are requested by the Responsible Authority, to be given to the Responsible Authority.

## **26. Notice to the Responsible Authority**

---

### **26.1 Trustee's Responsibility to Notify of Significant Adverse Events**

If the Trustee becomes aware of an event having a significant adverse effect on the financial position of the Fund, the Trustee must if required and within the time prescribed under the Law give written notice to the Responsible Authority setting out particulars of the event.

### **26.2 Meaning of Significant Adverse Event**

For the purpose of this clause, an event has a significant adverse effect on the financial position of the Fund if, as a result of the event, the Trustee will not, or may not, at a time before the next annual report by the Trustee to the Members, be able to make payments to the Members as and when the obligation to make those payments arises.

### **26.3 Change of Fund Details**

The Trustee must give notice in writing to the Responsible Authority using the approved form specified in the SIS Regulations of any change in:

- (a) the name of the Fund;
- (b) the postal address, registered address or address for service of notices of the Fund;
- (c) details of the contact person, and contact telephone number and facsimile number for the Fund;
- (d) the membership of the Fund;
- (e) the Trustee, including any change to the Trustee or Directors of the Trustee;

within the timeframe prescribed under the Law.

## **26.4 Material Changes and Omissions in Information Previously Given**

If the Trustee becomes aware of a material change or material omission in any information given to the Responsible Authority, the Trustee must, if required and within the time prescribed under the Law (including under s.390-115 of the Income Tax Act) give written notice to the Responsible Authority setting out particulars of the change or omission.

## **27. Retention of Records, Consents of Trustee and Member Reports**

---

### **27.1 Changes of Trustee and Trustee Consents and Declarations**

The Trustee must keep, and retain for at least the minimum period required under the Law, up to date records of:

- (a) all changes in respect of the Trustee and Directors; and
- (b) all consents to act given by the Trustee and the Directors.

### **27.2 Reports to Members**

The Trustee must keep, and retain for as long relevant and for at least the minimum period required under the Law, copies of reports that were given to all Members if the reports were given under the Law or this Deed. The Trustee must, if requested, make those copies available for inspection by the Responsible Authority.

## **28. Eligibility and Procedure for Membership**

---

### **28.1 Eligible Person may Apply**

An Eligible Person may apply to the Trustee to become a Member of the Fund or the Trustee may invite an Eligible Person to become a Member of the Fund. The Trustee has discretion in deciding whether or not to accept an Eligible Person as a Member.

### **28.2 Application Form**

The Trustee may require as a condition of accepting an Eligible Person as a Member that the Eligible Person completes a written application in the form that the Trustee determines. The application form may make provision for:

- (a) all information which is required under the Law to be provided by the Trustee to the applicant and to be provided by the applicant to the Trustee;
- (b) the applicant providing (if the applicant chooses to do so) the Tax File Number of the applicant and an acknowledgement by the Trustee and/or Employer; and
- (c) the applicant providing the nomination of a Nominated Beneficiary.

### **28.3 Acceptance of Membership Application**

- (a) If the Trustee accepts an application for membership, the applicant becomes a Member of the Fund on a date determined by the Trustee or, if the Trustee does not make a determination, on the date the application for membership is accepted by the Trustee.
- (b) The Trustee may accept an application for membership notwithstanding that the Member has at that time a nil balance in the Fund if the Trustee is reasonably

satisfied that the Fund may receive a Contribution made by or on behalf of the Member or the Member may become entitled to a Benefit on the death of another Member.

#### **28.4 Deemed Acceptance of Application**

Notwithstanding clauses 28.2 or 28.3, even if a completed written application form for membership is not requested by the Trustee or not provided by the Eligible Person, the acceptance by the Trustee of the payment of a Contribution made by or on behalf of the Eligible Person will be deemed to be acceptance of that the Eligible Person as a Member on the date that the Contribution is accepted by the Trustee.

#### **28.5 Members Bound by Deed**

Each person, on admission as a Member, is deemed to have approved of, and becomes bound by, this Deed as it relates to the rights and obligations of the Member.

#### **28.6 Trustee to Notify Members of their Rights**

The Trustee must notify each Member in writing of that Member's rights to receive Benefits from the Fund and of any other information in the form and at the times required under the Law.

#### **28.7 Trustee May Impose Conditions on Members**

The Trustee may impose, remove or vary any conditions on the rights and obligations of a Member.

#### **28.8 Classification of Different Classes of Members**

- (a) The Trustee may classify Members into different classes of membership with rights and entitlements pertaining to each class as the Trustee may determine from time to time.
- (b) The Trustee must advise a Member of any class of membership to which that Member belongs and of the rights pertaining to that class and of any subsequent change to that class or rights.
- (c) If the Trustee does not create different classes of membership, then all Members will be classified as ordinary Members in one class of membership.
- (d) The Trustee may offer a MySuper Product as a class of membership of the Fund if the Trustee is authorised to do so by the appropriate Responsible Authority.

### **29. Cessation of Membership**

---

#### **29.1 How it Occurs**

Subject to the Law and the Trustee's discretion to determine otherwise, each of the following events is a trigger event having the effect of causing a Member to cease its membership in the Fund:

- (a) when the Trustee requires that a Member cease membership of the Fund to comply with the Law including the Family Law Act or any agreement made under that Act;

- (b) when the Member makes a request to the Trustee for a transfer or rollover of the Member's Benefit in accordance with this Deed and the Trustee completes that request; or
- (c) when the Trustee determines to cease the Member's membership in accordance with this Deed.

## **29.2 When it Occurs**

A person ceases to be a Member of the Fund on:

- (a) the date on which Trustee pays out of the Fund all the Member's Benefit to or on behalf of the Member, whether by rollover, transfer or payment of Benefit; and
- (b) in the case of a Member who has died, the date on which the Trustee pays, or commences the payment of, a Death Benefit in respect of the Member.

## **29.3 Member's Rights not Affected**

A Member's cessation of Membership will not affect or exclude any rights or obligations of that Member:

- (a) which accrued prior to the date of cessation; and
- (b) as a former Member on and from the date of cessation.

## **30. Members Providing Information to the Trustee**

---

### **30.1 Upon Request by Trustee**

A Member must provide to the Trustee any information that the Trustee requests of the Member if the Trustee considers the information necessary or desirable in connection with the administration of the Fund, including information about the Member's medical history or a request to undergo a medical examination by a medical practitioner acceptable to the Trustee.

### **30.2 Members' Failure to Comply**

If a Member fails to comply with the request by the Trustee, the Trustee may suspend the acceptance of any Contributions in respect of that Member or withhold any Benefits payable in respect of that Member or impose any other conditions on the membership of that Member as the Trustee considers necessary or appropriate, but subject to the requirements under the Law.

### **30.3 Information Incorrect or Misleading**

If a Member provides information to the Trustee which **affects** or is likely to affect the Benefit payable to or in respect of the Member and the information supplied is incorrect or misleading or any relevant information is in the opinion of the Trustee deliberately withheld by the Member, the Trustee may alter or amend the Benefit of that Member in a manner that the Trustee considers necessary or appropriate, but subject to the requirements under the Law.

### **30.4 Tax File Numbers of Members**

The Trustee may request a Member's Tax File Number in a manner permitted under the Law or by the Responsible Authority. The Member is not obliged to provide the Member's Tax File Number. If a Member quotes his or her Tax File Number to the Trustee, the Trustee must

record, retain, use and later destroy the record of the Tax File Number only in accordance with the requirements under the Law. However the Trustee must not accept any Contribution if the Member has not quoted the Member's Tax File Number to the Trustee.

### 30.5 **Members Updated Information to Trustee**

Members may at any time give the Trustee updated information about their details such as address, marital status, status of employment, Dependants and/or Nominated Beneficiaries.

## 31. **Disclosure and Reporting to Members**

---

### 31.1 **General Requirement**

The Trustee must provide each Member with information in writing that the Trustee determines is required under the Law to be provided to the Member in relation to the main features, benefits, risks and conduct of the Fund, the financial condition and investment performance of the Fund, the Benefit of the Member, Contributions to the Fund in respect of the Member, and any other matters that the Trustee determines is required to be provided.

### 31.2 **Specific Requirements**

If required under the Law, the information that the Trustee is to provide may include:

- (a) **New Members:** information to a person on applying to become or becoming a Member;
- (b) **For each Financial Year:** information to each Member in respect of each Financial Year of their membership;
- (c) **Significant Events and Material Changes:** information to each Member in respect of any significant event and material changes in relation to the Fund;
- (d) **Information on Request:** information to a Beneficiary on request by the Beneficiary if the Beneficiary reasonably requires the information for the purposes of:
  - (i) understanding any Benefit that the Beneficiary may have, has or used to have;
  - (ii) understanding the main features of the Fund;
  - (iii) making an informed judgment about the management and financial condition of the Fund;
  - (iv) making an informed judgment about the investment performance of the Fund; or
  - (v) understanding the particular investments of the Fund;
- (e) **Cessation of Membership:** information to a Member, or if the Member has died, to each Beneficiary receiving a Benefit as a result of the death of the Member, in respect of the Member's cessation of membership; and
- (f) **Roll-over Payment Statement:** a statement in relation to any rollover superannuation benefit paid by the Fund to an Approved Superannuation Entity on behalf of the Member as required under s.390-10 of the Income Tax Act; and

- (g) **Superannuation Splitting under Family Law Act:** information in respect of any splitting of a Member's Benefit under the Family Law Act.

### **31.3 Limitation on Disclosure**

Unless required under the Law, the Trustee is not required to disclose:

- (a) internal working documents of the Fund; or
- (b) information or documents that would disclose personal information of another person if, in the circumstances, the disclosure would be inappropriate or unreasonable; or
- (c) trade secrets or confidential information having commercial value that would be reduced by the disclosure; or
- (d) information or documents for which the Fund owes another person a duty of non-disclosure.

### **31.4 What, When and How Information is Provided**

The Trustee must comply with the Law in relation to any information that is required to be disclosed as to:

- (a) what information is provided;
- (b) when the information is provided; and
- (c) how the information is provided.

## **32. Participation of Employers**

---

### **32.1 Application to Participate**

Any person who is an employer-sponsor may on request to, or on the invitation from, the Trustee make application to the Trustee to be admitted as an Employer for the purposes of participating in the Fund.

### **32.2 Approval by Trustee**

An application by a proposed Employer to participate must be in a form that the Trustee determines and the acceptance or rejection of the application is at the discretion of the Trustee.

### **32.3 Execution of Participating Employer Admission Form**

The Trustee may require as a condition of accepting a proposed Employer's application to participate in the Fund, that the Employer sign a Participating Employer Admission Form in a form determined by the Trustee. Upon acceptance by the Trustee, the proposed Employer is admitted as an Employer subject to the terms of this Deed and the Form.

### **32.4 Employer May Contribute**

Any Employer may make Employer Contributions to the Fund on behalf of such of the Employees of the Employer who become Members.

### **32.5 Deemed Admission**

The acceptance by the Trustee of an Employer Contribution from a proposed Employer will be deemed to constitute the Employer's admission as a participating employer-sponsor of the Fund.

### **33. Contributions**

---

#### **33.1 Member Contributions**

The Trustee may accept any Member Contribution if acceptance of the Member Contribution is permitted under the Law.

#### **33.2 Employer may Contribute Employer Contributions**

The Trustee may accept any Employer Contribution in respect of a Member if acceptance of the Employer Contribution is permitted under the Law.

#### **33.3 Employer Contributions Pursuant to Agreement with Trustee**

If an Employer contributes to the Fund in respect of a Member under any agreement with the Trustee under which the Employer agrees, or is required, to pay Contributions to the Fund, the Employer must separately specify to the Trustee the amount of those Contributions under the agreement and the amount of Contributions (if any) made pursuant to this clause 33.

#### **33.4 Other Contributions**

The Trustee may accept any other Contributions to the Fund made by or in respect of a Member, including any Child Contribution, Government Contribution, or Spouse Contribution if acceptance of the Contribution is permitted under the Law.

#### **33.5 No Obligation to Contribute**

A Member does not have any obligation to make a Contribution to the Fund and may remain a Member of the Fund even if a Contribution is not made by or in respect of that Member.

#### **33.6 Contributions may be made in Cash or by Transfer of Assets In Specie**

Subject to the Law, the Trustee may in its absolute discretion accept any Contribution being paid either in cash or by the transfer of an asset to the Fund provided that:

- (a) the **asset** is an authorised investment pursuant to this Deed and the Investment Strategy;
- (b) acceptance of the asset as a Contribution is acceptable to the Trustee and not prohibited under the Law;
- (c) the amount of the Contribution which is satisfied by the transfer is or includes the market value of the asset so transferred;
- (d) the market value is reduced by the value of any consideration given for the transfer of the **asset**;
- (e) the Trustee is satisfied that the transfer is permitted under the Law; and
- (f) unless the Trustee otherwise determines, the value of any assets to be transferred must be based on the current market value of those assets.

### 33.7 Limitation on Accepting Contributions

- (a) The Trustee must not accept any Contribution if the acceptance of the Contribution would contravene a requirement of the Law or this Deed.
- (b) In addition to the Trustee's obligations under paragraph (a), the Trustee must not accept a Contribution if:
  - (i) the Member has not quoted the Member's Tax File Number to the Trustee; and
  - (ii) that Contribution exceeds the amount of the Non-concessional Contributions Cap applicable to the Member.

### 33.8 Shortfall Component

The Trustee may accept a Shortfall Component as a Contribution in respect of a Member.

### 33.9 Spouse Membership

- (a) When a person has become a Member in respect of whom Spouse Contributions may be made, the Spouse must satisfy the Trustee of that status at each time a Spouse Contribution is made by that Spouse.
- (b) If Contributions are made under this Deed by an Employer Sponsor of a Member in respect of whom Spouse Contributions are also made, a second account must be established in the Member's Accumulation Account to receive the Contributions by the Employer Sponsor.

### 33.10 Contribution Splitting

After the end of each Financial Year, the Trustee may allow a Member to request the Trustee to split the Contributions made in respect of that Member in the previous Financial Year, with the split amount transferred or rolled over as a Rollover Superannuation Benefit to the benefit of the Member's Spouse, as long as the contribution split is made in a manner and form that is permitted under the Law.

### 33.11 Excessive Contributions

- (a) If the Trustee becomes aware that a Contribution (or aggregate of Contributions) has been accepted by the Trustee on behalf of a Member in respect of a relevant Financial Year and the Trustee's acceptance of that Contribution (or aggregate of Contributions) causes either:
  - (i) a breach of this clause or the Law; or
  - (ii) the Member to exceed either the Member's Concessional Contributions Cap or Non-concessional Contributions Cap within the meaning of the Law for that relevant Financial Year (**Excessive Contribution**);

then in respect of the Excessive Contribution the Trustee:

- (iii) must if required to do so by under the Law; or
- (iv) may on request of the Member, and if permitted to do so or if not prohibited from doing so, under the Law;



refund the Contribution (or such part or aggregate of the Contribution or Contributions) that either:

- (v) the Trustee was not permitted to accept under the Law; or
- (vi) exceeded either the Member's Concessional Contributions Cap or Non-concessional Contributions Cap within the meaning of the Law for that relevant Financial Year;

in a manner that is not inconsistent with the Law,

- (b) The amount of the Excessive Contribution that is refunded may be:
  - (i) adjusted to take account of any increase or decrease in the value of the Excessive Contribution attributable to the investment of the Excessive Contribution in the Fund during the period from acceptance to refund of the Excessive Contribution; and
  - (ii) reduced to account for any reasonable administration costs and transaction costs that are reasonably related to the acceptance of the Excessive Contribution and do not exceed the true cost of an arm's length transaction.
- (c) If the Trustee has accepted an Excessive Contribution and, subject to paragraph (b), elects not to refund the Excessive Contribution, or the Trustee is prohibited by the Law from refunding the Excessive Contribution, to the Member, the Trustee:
  - (i) must, if required to do so under the Law; or
  - (ii) may, if permitted to do so or if not prohibited from doing so, under the Law;

use and release, in accordance with a release authority under the Income Tax Act given to the Trustee, so much of the Excessive Contribution from the Member's Accumulation Account balance as is necessary to pay the Fund's liability for the additional tax (including Medicare levy) that is payable in respect of the Excessive Contribution. The balance of the Excessive Contribution must remain in the Member's Accumulation Account in the Fund.

### **33.12 Employer to remit Contributions Promptly**

All Contributions made on behalf of a Member (including by an Employer deducting an amount from the salary or wages payable to the Member) must be paid to the Trustee in the manner and within the timeframe required under the Law.

### **33.13 Allocation of Contributions**

If required by the Law, all Contributions in respect of a Member received by the Trustee in a calendar month must be allocated to that Member by crediting the Accumulation Account of the Member within 28 days after the end of the relevant month, or if that is not reasonably practicable, within such longer period as is reasonable in the circumstances.

## **34. Accumulation Accounts**

---

### **34.1 Separate Member Accumulation Accounts**

The Trustee must establish and maintain an Accumulation Account in respect of each Member.

### **34.2 Credits to Accumulation Accounts**

The following amounts may be credited to the appropriate Accumulation Account of a Member:

- (a) Contributions made by or on behalf of the Member;
- (b) the proceeds of any Policy of Insurance or Annuity in respect of the Member which are paid to the Trustee and which the Trustee determines to credit to the Member's Accumulation Account;
- (c) any amount transferred or rolled over to the Fund from another Approved Superannuation Entity in respect of the Member;
- (d) the investment return (if positive) of the Member's Benefit as determined by the Trustee and transferred from the Income Account;
- (e) any amounts transferred from a Pension Account in respect of a Member; and
- (f) any other amounts as the Trustee may from time to time determine.

### **34.3 Debits to Accumulation Accounts**

The following amounts may be debited to the appropriate Accumulation Account of a Member:

- (a) any Benefit paid to a Member or a Beneficiary in respect of the Member;
- (b) any amount transferred or rolled over from the Fund in respect of the Member to another Approved Superannuation Entity;
- (c) the investment return (if negative) of the Member's Benefit as determined by the Trustee;
- (d) the costs of any Policy of Insurance or Annuity obtained in respect of the Member and which the Trustee determines to debit to the Member's Accumulation Account;
- (e) the proportion of any amount payable as Taxation in respect of Contributions to the Fund or income of the Fund credited to the Member's Accumulation Account or arising as a result of a Rollover Payment to or from another Approved Superannuation Entity as the Trustee may determine;
- (f) the proportion of any amount representing the reimbursement to the Trustee of costs, charges, or expenses incurred by the Trustee pursuant to this Deed as the Trustee may determine;
- (g) any amount payable to the Trustee in respect of the Trustee's indemnity contained in this Deed;
- (h) any amount transferred from an Accumulation Account to a Pension Account in respect of a Member;
- (i) any amount that the Trustee has mistakenly credited into a Member's Accumulation Account including, but not limited to, instances where the amount is applicable to an Account other than the Accumulation Account of the Member; and
- (j) any other amounts as the Trustee may from time to time determine.

#### **34.4 Separate Accounts and Parts of the Fund**

- (a) The Trustee may maintain sub-accounts within a Member's Accumulation Account for any purpose including, without limitation, a Surcharge Debt Account, for any period and upon any conditions that the Trustee considers appropriate.
- (b) Each Member of the Fund may be identified in the books and records relating to the Fund as a Member of a particular part of the Fund.
- (c) A Member may, with the consent of the Trustee and on the terms specified by the Trustee, cease to be a Member of one or more parts of the Fund and instead become a Member of another part of the Fund.
- (d) If a Member ceases, or commences, to be a Member of one part of the Fund, the date of that cessation or commencement shall be shown in the books and records of the Fund.
- (e) A Member may at any time be a Member of more than one part of the Fund.

#### **35. Income Account**

---

##### **35.1 Establishment**

The Trustee may establish and maintain an Income Account for the Fund as the Trustee sees fit.

##### **35.2 Credits**

The Income Account may be credited with the following:

- (a) all income, investment earnings and profits of the Fund in each Financial Year;
- (b) any credits arising out of any adjustment made by the Trustee pursuant to this Deed;
- (c) the proceeds of any Policy of Insurance if and to the extent that the Trustee determines that the proceeds should not be credited to a Member's Accumulation Account or a Reserve Account;
- (d) any distribution, dividend or gift paid to the Fund and accepted by the Trustee; and
- (e) any other amount as the Trustee may from time to time determine.

##### **35.3 Debits**

The Trustee may debit the Income Account with the following amounts:

- (a) any loss arising from the disposal or dealing with any investment of the Fund;
- (b) any debits arising from an adjustment made by the Trustee pursuant to this Deed;
- (c) the cost of any Policy of Insurance if and to the extent that the Trustee determines that the costs should not be debited to a Member's Accumulation Account or a Reserve Account;
- (d) any amount representing the reimbursement to the Trustee of any costs or charges incurred by the Trustee pursuant to this Deed which amount is not otherwise debited to a Member's Accumulation Account;

- (e) any amount which is payable or may become payable by way of Taxation in respect of the Contributions or income of the Fund which is not otherwise debited to a Member's Accumulation Account;
- (f) any income transferred to the Reserve Account;
- (g) any amount that the Trustee has mistakenly credited into the Income Account including, but not limited to, instances where the amount is applicable to an Account other than the Income Account; and
- (h) any other amount as the Trustee may from time to time determine.

## **36. Reserve Account**

---

### **36.1 Establishment and Type**

- (a) The Trustee may establish and maintain a Reserve Account as the Trustee sees fit.
- (b) The Trustee may create and operate separate Reserve Accounts dealing with:
  - (i) investment reserves;
  - (ii) contribution reserves;
  - (iii) miscellaneous reserves;
  - (iv) pension reserves; or
  - (v) any other reserve that is permitted under the Law.

### **36.2 Credits**

Subject to the requirements under the Law, the Trustee may credit the Reserve Account with:

- (a) an amount transferred from the Income Account;
- (b) any part of an Insured Component that the Trustee determines to credit to the Reserve Account; or
- (c) any reserves or any other amount which the Trustee so determines in the Trustee's discretion.

### **36.3 Investment Return on Reserve Account**

Any amount held in the Reserve Account does not form part of any Accumulation Account or Pension Account and any investment return (positive or negative) derived by the Fund on the Reserve Account shall be credited or debited to the Reserve Account from the Income Account.

### **36.4 Purpose and Use**

- (a) The Reserve Account may be used by the Trustee for the purpose of:
  - (i) giving effect to any reserving strategy established by the Trustee; or
  - (ii) stabilising investment earnings of the Fund in accordance with the Fund's Investment Strategy; or

- (iii) the benefit of any Member or Beneficiary or former Member or Beneficiary, including augmenting any Accumulation Account on any basis that does not breach the Law; or
  - (iv) assisting the Trustee to identify the value of assets that may have been exchanged or segregated as current pension assets or non-current pension assets or that are dealt with as a sub-fund, segment or partition; or
  - (v) such other purposes and contingencies that the Trustee may determine in its discretion.
- (b) The Trustee may from time to time:
- (i) alter the purpose for which it established a Reserve Account;
  - (ii) restrict or limit the use of moneys held within a Reserve Account;
  - (iii) close a Reserve Account;
  - (iv) combine two or more Reserve Accounts;
  - (v) invest moneys held within a Reserve Account; or
  - (vi) otherwise deal with any matter relating to one or more Reserve Accounts as the Trustee see fit.

## **37. Pension Account**

---

- (a) The Trustee may establish a Pension Account in respect of each Pensioner for whom a Pension is payable under this Deed.
- (b) The Pension Account may be operated by the Trustee as the Trustee sees fit, subject to the requirements under the Law.

## **38. Fund to Provide Benefits**

---

### **38.1 Purpose**

The Trustee must ensure that the Fund is maintained solely for the purpose of providing the Benefits described in this Deed.

### **38.2 Compliance with the Act when paying Benefits**

- (a) Subject to subclause 38.2(b), the Trustee may pay or deal with any Benefit to or in respect of a Member if the Trustee's action is permitted under this Deed or under the Law in respect to a member of a Complying Superannuation Fund.
- (b) The Trustee must not pay or deal with any Benefit to or in respect of a Member under this Deed if the Law prohibits the Benefit to be so paid or dealt with in respect to a member of a Complying Superannuation Fund.

### **38.3 Trustee's Procedural and Information Requirements for Paying Benefits**

- (a) Subject to the Law, all Benefits shall be determined by the Trustee in accordance with the Deed and only become payable after application by the person claiming the

Benefit made in the form and within the period as the Trustee may prescribe either generally or in a particular case.

- (b) Subject to the Deed and the Law, any decision of the Trustee as to whether a Benefit is payable and regarding the amount and application of any Benefit is final and conclusive against all persons.
- (c) The Trustee may require any person who is entitled to receive, or makes a claim for, a Benefit to provide the Trustee with such information and evidence in order to satisfy the Trustee that the person is entitled to the Benefit in accordance with the Deed. The Trustee may withhold or suspend payment of a Benefit or refuse to consider any claim for a Benefit until such time as that person provides such information and evidence to the Trustee's satisfaction.

## **39. Entitlement to Payment of Benefits**

---

### **39.1 Generally on satisfying Prescribed Event**

The Trustee is entitled to pay any Benefit that the Trustee is permitted under the Law to pay to or in respect of a Member upon the Member satisfying a Prescribed Event, including a Condition of Release.

### **39.2 Retirement Benefit**

A Member is entitled to receive payment from the Fund of a Retirement Benefit when:

- (a) in the case of a Member who has reached a Preservation Age that is less than 60 – if:
  - (i) an arrangement under which the Member was Gainfully Employed has come to an end; and
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed, either on a full-time or part-time basis; or
- (b) in the case of a Member who has attained age 60 -
  - (i) an arrangement under which the Member was Gainfully Employed has come to an end on or after the Member attained that age; or
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed, either on a full-time or part-time basis; or
- (c) the Member attains age 65, regardless of whether the Member is or continues to be Gainfully Employed; or
- (d) the Member satisfies any relevant requirements under the Law for the payment of a Benefit in connection with the Member's Gainful Employment notwithstanding that the Member may otherwise continue in Gainful Employment.

### **39.3 Preservation Age Benefit**

A Member is entitled to receive payment from the Fund of a Preservation Age Benefit when the Member attains the Member's Preservation Age.

#### **39.4 Death Benefit**

A Death Benefit is payable from the Fund in respect of a Member when the Member dies.

#### **39.5 Permanent Incapacity Benefit**

A Member is entitled to receive payment from the Fund of a Permanent Incapacity Benefit if the Member suffers Permanent Incapacity or is otherwise entitled under the Act to the payment of a disability superannuation benefit as defined in section 995-1(1) of the Income Tax Act.

#### **39.6 Temporary Incapacity Benefit**

A Member is entitled to receive payment from the Fund of a Temporary Incapacity Benefit if the Member suffers Temporary Incapacity.

#### **39.7 Temporary Resident Permanently Departing Australia**

If a Member was the holder of an eligible temporary resident visa within the meaning of the Law that has expired or that has been cancelled and the Member has departed from Australia, the Member is entitled to receive payment from the Fund of a Benefit (including a departing Australia superannuation payment within the meaning of section 301-170 of the Income Tax Act) and the Trustee must upon receiving a request from the Member and being satisfied of the foregoing pay that Member's Benefit to that Member as a superannuation lump sum in a time and manner as permitted under the Law and after withholding or deducting any Taxation or other charges that the Trustee is required or entitled to withhold or deduct.

#### **39.8 Severe Financial Hardship or Compassionate Grounds**

A Member is entitled to receive payment from the Fund of a Benefit on account of the Member suffering severe financial hardship or on compassionate grounds within the meaning of the SIS Regulations.

#### **39.9 Terminal Medical Condition**

A Member is entitled to receive payment from the Fund of a Benefit on account of the Member suffering a terminal medical condition within the meaning of the SIS Regulations.

### **40. Amount of Benefit**

---

#### **40.1 Member's Accumulation Account Balance**

Unless otherwise expressly provided in this Deed or required or prohibited under the Law, the amount of the Benefit that is payable to or in respect of a Member will be determined by the Trustee subject to the requirements under the Law but must not exceed the balance of the Member's Accumulation Account as advised to the Member by the Trustee.

#### **40.2 Insured Component on Death and Incapacity Benefits**

- (a) The amount of a Death Benefit, Permanent Incapacity Benefit or Temporary Incapacity Benefit includes, in addition to the balance of the Member's Accumulation Account, all or such part of any Insured Component as the Trustee determines effected on behalf of the Member under this Deed and a Policy of insurance that becomes payable by the Insurer and is received by the Trustee upon the Member dying or suffering Permanent Incapacity or Temporary Incapacity, as the case may be.

- (b) The amount of any Insured Component received by the Trustee that does not form part of the Benefit payable to or in respect of the Member may be credited by the Trustee to the Reserve Account.

## **41. Manner of Payment of Benefits**

---

### **41.1 Lump Sum, Pension, or Annuity**

Unless otherwise expressly provided in this Deed or required or prohibited under the Law, the Trustee may determine to pay a Benefit to a Beneficiary at the request of the Beneficiary in any one or more of the following forms:

- (a) one or more lump sums; or
- (b) one or more Pensions; or
- (c) the purchase of one or more Annuities.

### **41.2 Preservation Age Benefit**

Subject to the conditions of preservation and any other relevant requirements under the Law, the Trustee may allow a Member to elect to receive the Preservation Age Benefit as any one or more of the following forms (as they are defined under the Law):

- (a) a Transition to Retirement Income Stream;
- (b) a non-commutable allocated annuity;
- (c) a Non-commutable Allocated Pension;
- (d) a non-commutable annuity; or
- (e) a Non-commutable Pension.

### **41.3 Death Benefits and Beneficiary Nominations**

- (a) The Trustee may allow a Member to make a Beneficiary Nomination in accordance with this Deed.
- (b) A Member who wishes to make a Beneficiary Nomination may request the Trustee to provide to the Member the information that the Trustee reasonably believes that Member reasonably needs for the purpose of understanding the Member's rights to make a Beneficiary Nomination in accordance with this Deed. The Trustee must comply with that request.
- (c) A Member who has given a Beneficiary Nomination to the Trustee may:
  - (i) amend or revoke the Beneficiary Nomination by giving to the Trustee a notice of amendment or revocation of that Beneficiary Nomination; or
  - (ii) replace the existing Beneficiary Nomination by giving to the Trustee a new Beneficiary Nomination made after the date of the existing Beneficiary Nomination
- (d) Unless sooner revoked by the Member, a Three Year Binding Nomination given to the Trustee ceases to have effect at the end of the period of 3 years after the day it was first signed, or last confirmed or amended, by the Member.



- (e) If it appears to the Trustee at the time of receiving a Beneficiary Nomination that an item of information given by the Member in the Beneficiary Nomination is not sufficiently clear to allow the Trustee to pay the Death Benefit in accordance with the Beneficiary Nomination, the Trustee must seek from the Member a written statement to clarify the item as soon as practicable after the Trustee receives the Beneficiary Nomination.
- (f) The Trustee is not responsible or liable to a Member or that Member's Dependants, Legal Personal Representatives, or any other person for anything arising from the Member's Beneficiary Nomination being invalid or ineffective due to the Beneficiary Nomination:
  - (i) having ceased to have effect; or
  - (ii) nominating a Nominated Beneficiary who at the time of the Member's death is not the Legal Personal Representative or a Dependant of the Member or otherwise not permitted under the Law to be the recipient of the Member's Death Benefit.
- (g) If the Trustee holds a Three Year Binding Nomination in respect of a deceased Member, the Trustee must pay the Death Benefit to the person or persons referred to as the Nominated Beneficiary in the Beneficiary Nomination if:
  - (i) the person, or each of the persons, are the Legal Personal Representative or a Dependant of the deceased Member; and
  - (ii) the proportion of the Death Benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the Beneficiary Nomination; and
  - (iii) the Beneficiary Nomination is in effect.
- (h) If the Trustee holds a Beneficiary Nomination which is not valid because it has lapsed or otherwise does not conform to the relevant requirements of this Deed or the Law, the Trustee must pay or apply the Death Benefit to or for the benefit of:
  - (i) a person nominated in writing as a Nominated Beneficiary by the deceased Member in the Beneficiary Nomination provided that the Trustee is satisfied that the person was a Dependant of the deceased Member at the time of death of the Member; or
  - (ii) any one or more of the Dependants of the deceased Member; or
  - (iii) the Legal Personal Representatives of the deceased Member;

in such proportions between all or any of the above persons or categories of persons as the Trustee may determine in its discretion, but in so doing the Trustee may have regard to the wishes of the deceased Member as to the intended recipient of the Death Benefit evidenced by the Beneficiary Nomination.
- (i) If the Trustee does not hold a Beneficiary Nomination, the Trustee must pay or apply the Death Benefit to or for the benefit of:
  - (i) any one or more of the Dependants of the deceased Member; or
  - (ii) the Legal Personal Representatives of the deceased Member;

in such proportions between all or any of the above persons or categories of persons as the Trustee may determine in its discretion.

- (j) If after reasonable inquiry the Trustee determines that the deceased Member left no Dependants or that there are no Dependants whose existence, identity and whereabouts are satisfactorily known to the Trustee and the Trustee is unable to locate any Legal Personal Representative of the deceased Member, then subject to the requirements under the Law, the Trustee must determine that the Death Benefit ceases to be payable in respect of that deceased Member and shall be transferred to the Reserve Account of the Fund.

#### **41.4 Death Benefits and Pensions**

The Trustee must not pay a Death Benefit to a Dependant of a deceased Member as a Pension if doing so is prohibited under the Law.

#### **41.5 Permanent Incapacity Benefit - Lump Sum or Pension**

If a Member is incapable of making an election to receive the Permanent Incapacity Benefit as a lump sum or as a Pension or in the purchase of an Annuity or partly as one or more of those forms, the election may be made on behalf of the Member by the Member's legally appointed attorney or guardian.

#### **41.6 Temporary Incapacity Benefit - Non-commutable Income Stream**

A Temporary Incapacity Benefit may only be paid by the Trustee to a Member as a Non-commutable Income Stream in a manner that is required or permitted under the Law.

#### **41.7 Other Benefit Payments**

The amount of any other Benefit and the manner in which it is paid to the Member may be determined by the Trustee subject to the requirements under the Law.

### **42. Benefits Payable as a Pension**

---

#### **42.1 Type of Available Pensions, Agreed Pension and Pension Agreement**

- (a) The Trustee may determine the type, manner or form of Pensions that are available to be provided from the Fund under this Deed, subject to the requirements of the Law (**Available Pension**) and may specify any additional or ancillary terms, conditions or governing rules applicable to the Available Pension (**Pension Rules**).
- (b) The Trustee and a Member (**Pensioner**) may agree in writing in a form prescribed by the Trustee on a particular Available Pension to be provided to the Pensioner (**Agreed Pension**) and that completed form together with the Pension Rules applicable to the Agreed Pension constitutes the agreement in writing between the Trustee and the Pensioner for the payment of the Agreed Pension from the Fund (**Pension Agreement**).
- (c) Any Pension Agreement made under this clause must be read and construed in conjunction with, and will be deemed to form part of, this Deed as between the Trustee and the Pensioner but does not otherwise constitute an amendment to this Deed.
- (d) If there is any inconsistency between any provision or requirement of the Pension Agreement and:

- (i) any provision or requirement of this Deed - then the provision or requirement of the Pension Agreement prevails; or
- (ii) any relevant provision or requirement under the Law - then the provision or requirement under the Law prevails;

to the extent of that inconsistency.

#### **42.2 Amount of Pension**

The Trustee will determine the amount of any Pension in accordance with the Pension Agreement and may take account of:

- (a) the wishes of the Pensioner; and
- (b) if required for the purpose of that Pension, actuarial advice obtained from an Actuary as to the appropriate amount and manner of the payments of the Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, the Investment Strategy guidelines for that Pension, and any prudential requirements imposed on the Trustee under the Law; and
- (c) any other relevant requirements under the Law .

#### **42.3 Segregation of Pension Assets**

The Trustee may, and will if required under the Law, in relation to each Pension:

- (a) segregate and set apart assets of the Fund for each Pensioner for the sole purpose of enabling the Fund to discharge the whole or part of any current or non-current liability in relation to the payment of the Pension as those liabilities fall due for payment; and
- (b) obtain actuarial certificates from an Actuary in relation to the adequacy of the segregated assets to meet the current and non-current liabilities as the Trustee considers necessary to satisfy the Law.

#### **42.4 Conditions Applicable to All Pensions**

The following conditions apply to the payment of any Pension from the Fund:

- (a) the Pension must be paid from the balance of the Pension Account of the Pensioner;
- (b) the payments of the Pension are made at least annually;
- (c) the Pension must not be able to be transferred to any person unless the Law permits; and
- (d) the capital value of the Pension and the income from the Pension must not be used as security for any borrowing unless the Law permits.

#### **42.5 Variation to Pension Amount**

The Trustee may vary the Pension from time to time as long as the variation:

- (a) complies with any relevant requirement under the Law;
- (b) is in accordance with any on-going actuarial advice that is required to be obtained or maintained; and/or

- (c) complies with any Pension Agreement for that Pension.

#### **42.6 Limitation on Pension Amount**

The total instalments of a Pension payable in respect of a Pensioner must not exceed the balance of the Pensioner's Pension Account at the relevant time.

#### **42.7 Death of Pensioner**

Subject to any applicable Pension Rules made in a Pension Agreement and the requirements under the Law, if a Pensioner dies leaving an amount in credit in the Pension Account of the Pensioner:

- (a) if a Nominated Beneficiary has been nominated by the Pensioner, the Trustee must, unless otherwise requested to the contrary by the Nominated Beneficiary, pay to the Nominated Beneficiary the balance of the Pension Account (either as a Available Pension or commuted to a lump sum) provided that the amount does not exceed an amount calculated in accordance with the requirements under the Law; or
- (b) if no Nominated Beneficiary has been nominated, the balance of the Pension Account must be paid to any one or more of the Dependants of the Pensioner as the Trustee may determine and/or to the Legal Personal Representative of the Pensioner, subject to the requirements under the Law; and
- (c) if no Nominated Beneficiary or Reversionary Beneficiary has been nominated, the Trustee may determine in its discretion, to appoint a Reversionary Beneficiary and continue paying the Pension to that Reversionary Beneficiary using segregated pension assets under clause 42.3.

#### **42.8 Commutation of Pension to a Lump Sum**

- (a) On the written application of a Pensioner, or Nominated Beneficiary of a deceased Pensioner, the Trustee must commute the whole or any part of the Agreed Pension payable from the Fund to the Pensioner or Nominated Beneficiary, as the case may be, provided that the commutation would not cause the Trustee or the Fund to breach any relevant requirement under the Law. The Trustee must not commute the Agreed Pension if a relevant requirement under the Law prohibits its commutation.
- (b) The Trustee may apply the amount of the commuted Agreed Pension by either:
  - (i) retaining the amount in the Fund as a credit to an Accumulation Account for the Pensioner or Nominated Beneficiary; or
  - (ii) paying the amount as a Benefit in the form of a lump sum or other form of Available Pension in accordance with the provisions of this Deed.
- (c) If part of an Agreed Pension is commuted, the Trustee may reduce the total amount of the instalments in respect of the balance of the Agreed Pension payable to the Pensioner by an amount that the Trustee considers appropriate subject to the compliance with any relevant requirement under the Law.

#### **42.9 Purchase of Annuity from Third Party**

The Trustee may allow a Member to request that the Trustee apply the Benefit payable to the Member to purchase an Annuity for or in respect of the Member from a third party.

#### **42.10 Allocated Pension**

If the Agreed Pension is an Allocated Pension, then the Pension Rules in the Pension Agreement that apply to that Allocated Pension must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as an Allocated Pension.

#### **42.11 Account Based Pension**

If the Agreed Pension is a Account Based Pension, then the Pension Rules in the Pension Agreement that apply to that Account Based Pension must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Account Based Pension.

#### **42.12 Lifetime Pension**

If the Agreed Pension is a Lifetime Pension, then the Pension Rules in the Pension Agreement that apply to that Lifetime Pension must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Lifetime Pension.

#### **42.13 Fixed Term Pension**

If the Agreed Pension is a Fixed Term Pension, then Pension Rules in the Pension Agreement that apply to that Fixed Term Pension must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Fixed Term Pension.

#### **42.14 Market Linked Pension**

If the Agreed Pension is a Market Linked Pension, then the Pension Rules in the Pension Agreement that apply to that Market Linked Pension must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Market Linked Pension.

#### **42.15 Flexi Pension**

If the Agreed Pension is a Flexi Pension, then the Pension Rules in the Pension Agreement that apply to that Flexi Pension must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Flexi Pension.

#### **42.16 Transition to Retirement Income Stream**

If the Agreed Pension is a Transition to Retirement Income Stream, then the Pension Rules in the Pension Agreement that apply to that Transition to Retirement Income Stream must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Transition to Retirement Income Stream.

#### **42.17 Non-commutable Allocated Pension**

If the Agreed Pension is a Non-commutable Allocated Pension, then the Pension Rules in the Pension Agreement that apply to that Non-commutable Allocated Pension must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Non-commutable Allocated Pension.

#### **42.18 Non-commutable Pension**

If the Agreed Pension is a Non-commutable Pension, then the Pension Rules in the Pension Agreement that apply to that Non-commutable Pension must also specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Non-commutable Pension.

#### **42.19 Non-commutable Income Stream**

If the Agreed Pension is a Non-commutable Income Stream, then the Pension Rules in the Pension Agreement that apply to that Non-commutable Income Stream must also specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify as a Non-commutable Income Stream.

#### **42.20 Actuarial Certificates**

The Trustee must, if necessary, obtain and act upon an actuarial certificate obtained from an Actuary as to the appropriate amount and manner of the payments of the Agreed Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for that Pension, the balance of the Pensioner's Pension Account, and any prudential requirements imposed on the Trustee under the Law in order that the Trustee can meet the minimum pension standards as required under the Law.

### **43. Postponement of Benefit Payments**

---

#### **43.1 To Facilitate Administration**

Subject to the compliance with the Law, the Trustee may for the purpose of facilitating the administration of the Fund postpone the commencement of the payment of any Benefit for any period not exceeding six months or, with the approval of the Beneficiary to which the Benefit is payable, a longer period after the happening of the event upon which the Benefit becomes payable.

#### **43.2 At Request of Beneficiary**

Subject to the compliance with the Law, the Trustee may at the request in writing of any Beneficiary entitled to receive payment of a Benefit withhold payment of that Benefit for any a period of time that is agreed between the Trustee and the Beneficiary.

### **44. Unclaimed Benefits**

---

- (a) Where the Trustee is unable to locate a Beneficiary to whom a Benefit is payable the Trustee may, subject to the Law, pay all or part of that Benefit to another Approved Superannuation Entity without the consent of the person entitled to it.
- (b) The Trustee must comply with the Law in relation to any Benefits that the Law:
  - (i) treats as unclaimed money; or
  - (ii) requires to be transferred to an Approved Superannuation Entity.

## **45. Transfers from Approved Superannuation Entities**

---

### **45.1 Trustee May Take Superannuation Interest**

If a Member is or was a member of or a beneficiary under any other Approved Superannuation Entity, the Trustee may at the request of that Member receive from the trustee of the other Approved Superannuation Entity the whole or any part of the superannuation interest of that Member in the other Approved Superannuation Entity.

### **45.2 Trustee To Hold Subject to this Deed**

The Trustee must hold any superannuation interest transferred to the Trustee under this clause as part of the Fund in an Accumulation Account for that Member.

### **45.3 Payment of Special Unpreserved Benefits**

If an interest which is transferred to the Fund from an Approved Superannuation Entity was not a preserved Benefit in the Approved Superannuation Entity, then subject to the compliance with the Law and any other conditions pertaining to the payment of that interest, that interest may be paid by the Trustee to the Beneficiary of that interest at the request of that Beneficiary.

### **45.4 Member Subject to Fund**

A person whose interest in another Approved Superannuation Entity is transferred to the Fund under this clause becomes a Member and is subject to the rights and obligations of a Member under this Deed. If the Trustee so determines, the person becomes a Member of the Fund effective from the date on which the person's interest was transferred to the Fund.

### **45.5 Trustee to assist Transfer**

The Trustee will if requested by the Member or the trustee of the other Approved Superannuation Entity provide a statement under regulation 6.34 of the SIS Regulations to the trustee of the other Approved Superannuation Entity.

## **46. Transfers to Approved Superannuation Entities**

---

### **46.1 Trustee May Transfer with Member's Consent**

The Trustee may if the Member consents subject to any conditions that the Trustee determines, transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate the whole or any part of any Benefit of that Member as at the date of transfer (the **Transferred Amount**).

### **46.2 Trustee May Transfer without Member's Consent**

Subject to the requirements under the Law, the Trustee may, and where required under the Law must, without the Member's request or consent, transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate the whole or any part of any Benefit of that Member as at the date of transfer (the **Transferred Amount**).

### **46.3 Trustee must Transfer upon Member's Request**

- (a) The Trustee must if requested by a Member, but subject to any requirements under the Law, transfer to any Approved Superannuation Entity in which the Member is or

will be a participant or eligible to participate the whole or any part of any Benefit of that Member as at the date of transfer (the **Transferred Amount**).

- (b) If the Trustee requires further information in relation to the request, the Trustee must within 10 working days after receiving the request, ask the Member for the information. If the Trustee has not received the information within 10 working days after making the request, the Trustee must make reasonable further inquiries of the Member to obtain the information.

#### **46.4 Receipt of Transferred Amount**

The receipt by the proper officer of the other Approved Superannuation Entity of the Transferred Amount will be a sufficient discharge to the Trustee. Neither the Trustee nor any Employer is responsible for the payment or disposal by the trustees of the other Approved Superannuation Entity of the Transferred Amount.

#### **46.5 Power of Attorney**

The Member will be deemed to have irrevocably appointed the Trustee as the attorney for that Member for the purpose of securing that Member's participation in the Approved Superannuation Entity to which the transfer of the Transferred Amount is made and the Trustee may act unilaterally in the name of the Member for that purpose.

#### **46.6 Extinguishment of Rights**

Upon the Trustee completing the transfer of the Transferred Amount in respect of a Member all of the rights and interests of that Member in the Fund and under this Deed (and all rights and interests of any Beneficiary entitled to claim in respect of the Member) in respect of the Transferred Amount will come to an end.

#### **46.7 Adjustment of Other Benefits upon Transfer**

The Trustee may make any adjustments to the Benefit of the other Members of the Fund as the Trustee considers appropriate in the circumstances of any transfer but subject to the requirements under the Law.

#### **46.8 Compliance with the Law**

No Benefit may be transferred to another Approved Superannuation Entity if the Trustee or the Fund would breach a relevant requirement under the Law.

### **47. Transfers within the Fund**

---

- (a) The Trustee must, if requested by a Member but subject to any requirements of the Law and this Deed, makes transfers between the different Accounts in which the Member is, or will be, a participant or eligible to participate, of the whole or any part of any Benefit of that Member as requested by the Member as at the date of transfer.
- (b) For the avoidance of doubt, subject to the requirements of the Law and this Deed, the Trustee may, and where required by the Law must, without the Member's request or consent, transfer to any Account in which the Member is or will be a participant or eligible to participate the whole or any part of any Benefit of that Member as at the date of transfer (the **Transferred Amount**).



#### **48. Members May Request Rollover Payment**

---

If a Member wishes to make a Rollover Payment of all or any of the Member's Benefit, the Member must complete and provide to the Trustee all documentation required under the Law to enable the Rollover Payment to be completed in accordance with the requirements under the Law.

#### **49. Availability of Deed**

---

The Trustee must keep a copy of this Deed and make it available for inspection during normal business hours by any person who is, or was within the preceding 12 months, a Beneficiary.

#### **50. Amendment of Deed**

---

##### **50.1 Who may Amend**

The Trustee may at any time amend, add to, vary or rescind any of the provisions of this Deed (including this clause) (the **Amendment**) subject to this clause and the compliance with the Law.

##### **50.2 How Amendment Effected**

The Amendment must be made by a deed executed by the Trustee.

##### **50.3 Date of Amendment**

The Amendment may be effective from the date on which the Amendment is made or from any earlier or later date that is specified for that purpose in the deed effecting the Amendment.

##### **50.4 No Adverse Amendment**

If a proposed Amendment would adversely affect, or has the potential to adversely affect, the right or claim to accrued Benefits, or the amount of those accrued Benefits of any Beneficiary, the proposed Amendment must not be made or become effective unless:

- (a) the Trustee has obtained that Beneficiary's consent in writing to the Amendment by following the procedure specified in the Law; or
- (b) the Law permits the proposed Amendment to be made by the Trustee without that Beneficiary's consent.

##### **50.5 Notice to Members**

As soon as practicable after the Deed has been amended, the Trustee must give to each Member a written statement explaining the nature and purpose of the Amendment and the effect of the Amendment on the entitlement of the Members.

##### **50.6 Notice to Responsible Authority**

If required under the Law, the Trustee must lodge a copy of the deed effecting the Amendment with the Responsible Authority.

## **50.7 Employer Sponsor**

Notwithstanding clause 50.1, no Amendment may authorise or permit the making of any payment out of the Fund to an Employer Sponsor.

## **50.8 Amendments concerning Compliance with the Law**

If the proposed Amendment is to be made to enable the Fund to comply with any relevant requirement under the Law, the Amendment may be made without the consent of any Member even if the Member's Benefit may be adversely altered by the Amendment.

## **50.9 Restriction on Amendments**

An Amendment must not be made to this Deed (including an Amendment to this clause) if it would have the effect or result that the Fund does not have or will not continue to have a Constitutional Corporation as the Trustee of the Fund.

## **50.10 Amendment Binding**

Each Amendment is binding on an Employer, Beneficiary and any other person who is bound or who claims to be bound by this Deed.

## **50.11 MySuper Product Amendments**

If the Trustee is authorised to offer a MySuper Product, no Amendment may be made that has the effect that section 29TC (Characteristics of a MySuper product) of the SIS Act is no longer satisfied in relation to that MySuper Product.

## **51. Procedure for Giving Notices**

---

Any notice to be given under or for the purpose of the Deed:

- (a) may be given in any way permitted by the Law including but not limited to by ordinary post, facsimile, email or other electronic means; and
- (b) may be given to a person at the option of the Trustee:
  - (i) at his or her place of employment;
  - (ii) at such other address last notified to the Trustee;
  - (iii) to the person's Employer on behalf of the person; or
  - (iv) at an internet, intranet, email or other electronic address;and is deemed to be received by the person on the earlier of:
  - (v) 3 business days after the notice is sent by ordinary mail; and
  - (vi) in all other cases, the day that the notice is received at or, in the case of electronic media, becomes accessible at the above address.

## **52. Complaints Procedure and Dispute Resolution**

---

### **52.1 If Required under the Law**

The Trustee must, if required under the Law, establish and maintain arrangements for complaints and enquiries by Members in a manner prescribed under the Law.

### **52.2 Rights of Beneficiaries**

A Beneficiary has the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to that Beneficiary.

### **52.3 Trustee to Deal within Prescribed Time**

The Trustee must deal with any enquiries or complaints within the time of 90 days after they were made and in the manner as prescribed under the Law and its internal complaints handling system.

### **52.4 Dispute as to Deed Interpretation**

If any dispute arises as to the interpretation of this Deed or as to the rights of:

- (a) a Beneficiary;
- (b) a Employer; or
- (c) any other person specified in this Deed or who has an interest in the Fund,

then, except to the extent provided in this Deed, the decision of the Trustee is final and conclusive against all those persons subject only to any overriding powers of a court or tribunal of competent jurisdiction.

## **53. Tax**

---

(a) If the Trustee is, or believes that it will become, liable for any Tax in respect of:

- (i) the receipt of Contributions (including any excess Contributions and Contributions made without a Tax File Number) or transfers to the Fund;
- (ii) the holding or disposal of the assets of the Fund;
- (iii) the receipt of income or gains of the Fund;
- (iv) any transaction or document concerning the Fund; or
- (v) any payment out of the Fund;

then the Trustee may:

- (vi) deduct an amount equal to the Tax or an amount which is a fair and reasonable estimate of the Tax from those Contributions, transfers, assets, income, gains or payment as the Trustee thinks proper; and
- (vii) set aside and retain the Tax in the Fund upon trust for ultimate payment, or pay the Tax, to the relevant Responsible Authority.

- (b) Any amount which would otherwise be or deemed to be contributed, transferred, credited, allocated or otherwise set apart in respect of a Member or other person shall be reduced or otherwise adjusted in the manner and to the extent that the Trustee determines to be appropriate in taking account of the Tax referred to in (a).
- (c) The Trustee may at any time recalculate the Tax in respect of a Member or former Member.
- (d) If the Tax in respect of a Member or former Member as recalculated is less than the Tax in respect of that person as previously determined, the Trustee may:
  - (viii) if the person remains a Member on the recalculation date, allocate the difference to the Member's Accumulation Account; or
  - (ix) if the person is not a Member on the recalculation date, pay an amount equal to the difference to the person from the Fund.
- (e) If the Tax in respect of a Member as recalculated exceeds the Tax in respect of the person as previously determined, the Trustee may:
  - (x) if the Member's Accumulation Account at the recalculation date is equal to or greater than the additional Tax deduct the amount of the additional Tax from the Member's Accumulation Account; or
  - (xi) if the Member's Accumulation Account at the recalculation date is less than the additional Tax deduct the amount of the additional Tax from the Member's Accumulation Account and the shortfall constitutes a debt immediately due and payable by that person to the Trustee, and the Trustee may claim and if necessary, issue proceedings, against that person in respect of that debt; or
  - (xii) if the person is not a Member on the recalculation date and there is an amount of additional Tax owing that constitutes a debt due and payable by the person to the Trustee, the Trustee may claim and if necessary, issue proceedings, against that person in respect of that debt.
- (f) If a person fails to provide the required information within fourteen (14) days of a request under clause (a), the Trustee may determine the Tax in respect of the person on the basis of any assumptions which in the circumstances are reasonable and the person has no claim against the Trustee or the Fund for any loss suffered as a result of any such assumptions being incorrect.
- (g) Where a person makes or has made a statement to the Trustee that is:
  - (xiii) in the opinion of the Trustee, relevant to the Trustee's determination of Tax in respect of the person; and
  - (xiv) reasonably believed by the Trustee to be untrue or misleading either by misstatement or omission,

then the Trustee may recalculate the Tax in respect of the person having regard to what the Trustee reasonably considers to be the true circumstances of the person or matter.

## **54. Termination and Closure of the Fund**

---

### **54.1 Grounds for Termination**

The Fund must be terminated if:

- (a) a resolution of the Members determines to terminate the Fund and they give notice in writing of the determination to the Trustee;
- (b) there are no Members in the Fund and no Beneficiary with any interest in the Fund; or
- (c) the Trustee resolves to terminate the Fund.

### **54.2 Notice of Termination**

Upon the termination of the Fund the Trustee must give notice in writing to the Responsible Authority, each Employer and each of the Members, that the Fund has or is to be terminated as from a specified date (**Termination Date**).

### **54.3 Winding up of the Fund**

On and from the Termination Date:

- (a) no further Contributions may be made or accepted other than any arrears of Contributions due prior to the Termination Date;
- (b) the Trustee must call up and collect any arrears of Contributions;
- (c) the Trustee must pay out of the Fund any expenses incurred by or on behalf of the Fund;
- (d) the Trustee must distribute the balance of the Fund in a manner that the Trustee considers appropriate in accordance with the Deed until all Benefits which are or could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (e) the Trustee must otherwise continue to administer the Fund in accordance with the Deed; and
- (f) the Trustee must take all other necessary steps, including lodging a final return with the Responsible Authority, to wind up the Fund in accordance with the requirements under the Law.

### **54.4 Priority of Distribution**

- (a) As soon as practicable after the Termination Date and after making such allowance as the Trustee considers appropriate for the costs and expenses incurred and likely to be incurred in terminating the Fund, to the extent that the Fund is sufficient to do so, the Trustee must make such provisions from or within the Fund as it considers necessary to provide for payment in full of the following Benefits and in the following order of priority:
  - (i) all Benefits which had become payable to or in respect of any person prior to the Termination Date but which have not yet been fully paid;
  - (ii) Benefits which were required to be preserved in the Fund in respect of Members who ceased service prior to the Termination Date;

- (iii) Minimum Benefits;
  - (iv) all Benefits (excluding any amount payable under 54.4(a)(iii)) which would be payable in respect of Members assuming all Members were eligible to retire on the Termination Date; and
  - (v) such additional Benefits (if any) as the Trustee determines.
- (b) Any amount remaining in the Fund after the abovementioned provisions have been made including the satisfaction of all Taxes, liabilities, costs and expenses shall be realised and the proceeds distributed by the Trustee to the Members or at the Trustee's sole discretion to such former Members, any Dependants of those Members or former Members, or the Legal Personal Representatives of any such Members, former Members, or Dependants, as the Trustee deems to be fair and equitable.
- (c) Notwithstanding any provision made in accordance with clause 54.4(a), should the Fund, at any time, prove to be insufficient to provide in full for the Benefits described in 54.4(a), all Benefits then remaining unpaid shall be reduced in such manner and proportions as the Trustee, deems to be fair and equitable;

#### **54.5 Method of Payment on Wind Up**

Subject to compliance with the preservation requirements of the Law, any Benefit provided pursuant to this clause:

- (a) may be provided in such form (whether deferred or other annuity, the right of participation in an Approved Superannuation Entity, cash, life Insurance policies or in any other form whatsoever) as the Trustee determines; and
- (b) is in lieu of, and in full satisfaction of, any Benefit which, but for this clause would otherwise have been or become payable under this Deed; and

all decisions of the Trustee as to the amount, form and method of provision of Benefits pursuant to this clause are final and binding on all persons.

#### **54.6 Dissolution and Closure of the Fund**

Upon the satisfactory winding up of the Fund by the Trustee pursuant to this clause, the Fund will be deemed to be dissolved and closed.

#### **55. Proof of Entitlement by Beneficiaries**

---

Any person claiming to be entitled to any Benefit must, if requested by the Trustee produce to the Trustee satisfactory evidence of that entitlement and do the acts and execute the documents that the Trustee may reasonably require.

#### **56. No Personal Claim of Members or Dependants For Interest**

---

No Beneficiary or person claiming through or on behalf of a Beneficiary is entitled to claim payment of any interest in the Fund, except as provided in this Deed.

## **57. Employment Compensation Rights of Members Not Restricted**

---

This Deed does not affect any rights of a Member or the Legal Personal Representative of a Member arising under any statutory enactment or at common law in circumstances where the Member is injured or dies as a result of an event arising in the course of the employment of the Member.

## **58. Family Law Proceedings**

---

### **58.1 Operation and Application of this Clause**

- (a) Without limitation to clause 3 of this Deed, the Trustee may act in conformity with any obligations imposed on the Trustee under the Family Law Act even if this Deed does not authorise that act or prohibits that act.
- (b) A word or expression that is defined in the Family Law Act will have the same meaning when that expression is used in this clause.
- (c) This clause will apply in respect of a Member and their Spouse if they are or have been legally married to each other, or are within the jurisdiction of the Family Court of Australia in respect of property settlements, or the making of superannuation agreements, and:
  - (i) a superannuation agreement (which provides for a payment flag or a payment split) or a flag lifting agreement, has been entered into by the Member or their Spouse and such agreement has taken effect; or
  - (ii) a splitting order or a flagging order has been made by a court of competent jurisdiction in respect of the Member and their Spouse.

### **58.2 Superannuation Agreement**

- (a) The Trustee must comply with the Family Law Act in giving effect to a superannuation agreement that is in force and made under the Family Law Act between a Member and a non-member spouse of that Member.
- (b) Whenever any splittable payment becomes payable in respect of a superannuation interest identified in the superannuation agreement which is not an unsplitable interest:
  - (i) the Trustee may pay to the non-member spouse the amount (if any) calculated in accordance with the Family Law Act; and
  - (ii) the Trustee may make a corresponding reduction in the Benefit of the Member to whom the splittable payment would have been made but for the payment split.
- (c) The payment of the entitlement of the non-member spouse under a payment split must, if required by the SIS Act, be made by the Trustee to a regulated superannuation fund or retirement savings account for the benefit of the non-member spouse.

### **58.3 Court Order**

The Trustee must comply with any order made by a court that imposes obligations on the Trustee under the Family Law Act.

#### **58.4 Request for Information**

- (a) The Trustee must comply in the manner prescribed by the Family Law Act with any proper application made to the Trustee under the Family Law Act by an eligible person for information about the superannuation interest of a Member.
- (b) The Trustee may charge reasonable expenses for the provision of such information in accordance with the Family Law Act.
- (c) A Member and/or their Spouse must provide information, declarations, proofs and documents as the Trustee may require under the Family Law Act.

#### **58.5 Dealing with Spouse's entitlement**

- (a) The Trustee will deal with a Spouse's entitlement in respect of the Member's interest in the Fund under the superannuation agreement, flag lifting agreement or court order (the **Spouse's Benefit**) in accordance with this clause. This clause does not apply while a Member's interest in the Fund is subject to a payment flag or flagging order. The Spouse's Benefit is net of any Family Law Fees charged under sub-clause 58.7.
- (b) At the written request of the Spouse (in a form prescribed and acceptable to the Trustee) and subject to the Family Law Act, the Trustee may:
  - (i) in the case of a Spouse for whom an Accumulation Account is established under this Deed or who is a Pensioner and has a Pension Account, credit the Spouse's Benefit to one or more of those accounts;
  - (ii) in the case of a Spouse for whom an Accumulation Account has not been established under this Deed, credit the Spouse's Benefit to an Accumulation Account to be established for the Spouse in accordance with this Deed;
  - (iii) transfer or rollover the Spouse's Benefit to another regulated superannuation fund; or
  - (iv) agree to deal with the Spouse's Benefit by applying one or more of the options specified in this clause (b).
- (c) In the absence of any valid request from the Spouse under clause (b), the Trustee will transfer the Spouse's Benefit to an eligible rollover fund after deduction of all relevant costs and expenses payable by the Spouse.

#### **58.6 Calculation of interests in the Fund**

The Trustee may adjust the Member's interest in the Fund, and calculate the Spouse's Benefit in the Fund, in accordance with any relevant superannuation agreement, flag lifting agreement, court order or the Law.

#### **58.7 Family Law Fees**

- (a) The Trustee may charge Family Law Fees in respect of any matter arising under this clause and allocate the costs and expenses incurred between the Member and the Spouse as the Trustee determines.
- (b) The Trustee may deduct the allocation of the Family Law Fees relating to the Member, as determined by the Trustee, from any Accumulation Account maintained by the Trustee in respect of the Member.



## **59. Governing Law**

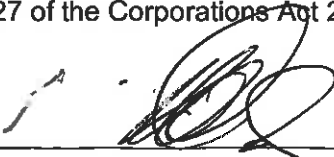
---

This Deed is governed by the laws of the State of Victoria and all interested persons accept the jurisdiction of the Courts of Victoria.

**Signature Page**

**Signed by the Trustee as a Deed with effect from the Date of this Deed specified on page 9 of this Deed:**

**Executed by First Super Pty Limited )  
(ABN 42 053 498 472) in accordance with )  
Section 127 of the Corporations Act 2001: )**

  
\_\_\_\_\_  
Director

Michael O'Connor  
\_\_\_\_\_  
Name (please print)

  
\_\_\_\_\_  
Director/Secretary

Graeme Russell  
\_\_\_\_\_  
Name (please print)