



Consolidation Trust Deed

Adopted October 2022

This Consolidated Trust Deed includes all the amendments made to the Trust Deed for the CARE Super Fund dated 18 December 1986. It includes amendments by the:

1. Consolidation as at 25 February 2003
2. Deed of Variation dated 3 March 2009
3. Deed of Amendment dated 13 March 2012
4. Deed of Amendment dated 28 August 2012
5. MySuper Amendment January 2013
6. MySuper Amendment April 2013
7. Deed of Amendment dated 24 March 2020
8. Deed of Amendment dated 14 September 2022
9. Deed of Amendment dated 17 October 2022

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Operative provisions of the Care Super* Trust Deed

1. Interpretation

1.1 INTERPRETATION

In this Deed:

- a) if there is an inconsistency between them and the Relevant Law, the latter will prevail;
- b) the headings are for convenience of reference only and shall not affect the interpretation of this Deed;
- c) words importing the singular number include the plural and vice versa and words importing the masculine, feminine or neuter genders include all genders as the case may require;
- d) the words and expressions defined are indicated by capital letters for convenience. The absence of a capital letter shall not alone imply that the word or expression is used with a meaning different from that given by its definition; and
- e) the law applicable to the Fund shall be the laws of the State of Victoria.

1.2 DEFINITIONS

In this Deed, the following words and expressions shall, unless the context otherwise requires, have the following meanings:

"Actuary" means any person appointed by the Trustee who is a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries at least one member or director is such a Fellow.

"Annuity" means an annuity as defined for the purposes of the Relevant Law.

"Approved Benefit Arrangement" means a fund or benefit arrangement other than the Fund including without limitation another complying Superannuation Fund, a Retirement Savings Account, an Eligible Rollover Fund, an Approved Deposit Fund and an Annuity arrangement into which or from which assets of the Fund can be transferred without causing the Fund to be in breach of or fail to comply with the Relevant Law.

"Approved Deposit Fund" in relation to a year of income means a fund which is a complying ADF pursuant to the Relevant Law.

"Auditor" means an approved auditor within the meaning of SIS appointed pursuant to sub-clause 7.12(c).

"Beneficiary" means a person presently and absolutely entitled to receive a Benefit at the relevant time but shall not include a person who is a Member at that time unless the Benefit has arisen in relation to another Member.

"Benefit" means any amount which is payable by the Trustee out of the Fund in accordance with this Deed to or in respect of a Member or a Beneficiary.

"Benefit Entitlement" means any amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled and it shall include a contingent right to payment of an amount.

"Board of Directors" means the Directors or Board of Management for the time being of the Trustee, and **"Director"** has a corresponding meaning.

* Establishment of Fund

An indefinitely continuing superannuation fund known as CARE Super (formerly known as the "Clerical Administrative & Related Employees Superannuation Plan") is:

- established with effect from 1 January 1987;
- governed by the terms of this Deed; and
- subject to the Relevant Law.

"Child", in relation to a Member and subject to the Relevant Law, includes:

- a) an adopted child, a step-child, an ex-nuptial child, a foster child or a ward either of a Member or of a Spouse of a Member or a person in respect of whom, in the opinion of the Trustee, a Member or a Spouse of a Member stands in loco parentis; and
- b) if, at any time, the Member was in a relationship as a couple with another person (whether the persons are the same sex or different sexes) – a child who is the product of the Member's relationship with that other person.

"Committee" means the Committee established pursuant to sub-clause 2.5 of the Deed.

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

"Constitutional Corporation" has the same meaning as defined for the purposes of the Relevant Law.

"Contributions" means gross payments to the Fund by Members, Employers and Contributors in accordance with the provisions of this Deed prior to the deduction of any Taxation payable in respect of those Contributions.

"Contributor" means a person who makes a Contribution to the Fund on behalf or for the benefit of a Member and the Contribution can be accepted by the Trustee under the Relevant Law.

"Date of Commencement" means the 1st day of January 1987 being the date on which the Fund is deemed to have commenced.

"Date of Entry" means the date upon which the Trustee admits the Employer to participate in the Fund.

"Deed" means the Trust Deed (as amended from time to time) by which the Fund has been established.

"Dependant" means:

- a) any person who is a dependant, within the meaning of the *Superannuation Industry (Supervision) Act 1993*, in relation to a Member; or
- b) to the extent that the application of the definition in paragraph a) on or after 7 September 2022 would reduce the amount of the benefits presently or prospectively payable in respect of any Member or Beneficiary of the Fund to the extent that such benefits have accrued in respect of the period prior to that date, or would adversely affect the basis for calculation of retirement Benefits of Members with respect to the period of membership prior to that date, means the spouse, widow, widower and any Child of the Member and any other person who, in the opinion of the Trustee and in accordance with the Relevant Law, is or was at the relevant date substantially dependent on the Member.

"Eligible Rollover Fund" has the same meaning as contained in Part 24 of SIS.

"Employee" means a person who is eligible to become a member of the Fund and who is employed by the Employer.

"Employee Member" means an Employee who has become a Member of the Fund.

"Employer" means a corporation, firm, organisation or person which with the approval of the Trustee is admitted as a participant in the Fund in accordance with the provisions of sub-clause 4 and which has not ceased to be an Employer in accordance with the provisions of that clause.

Where the word "Employer" is used in relation to a Member, it means the corporation, firm, organisation or person by whom or which the Member is, for the time being, employed.

"Employer Application" means the application referred to in sub-clause 4.1, and where that word is used in relation to a Member means the application by which that Member's Employer applied to join the Fund.

"Financial Assistance" means financial assistance granted to the Fund under Part 23 of the *Superannuation Industry (Supervision) Act 1993*.

"Fund" means the superannuation fund established in accordance with terms of the Deed and known as CARE Super.

"Fund Administrator" means the company, person or organisation appointed from time to time to act as the Fund Administrator of the Fund pursuant to sub-clause 3.3 of the Deed.

"Fund Year" means the 12 months immediately preceding the Review Date in respect of each year of income.

"Gainful Employment", in relation to a Member, includes engagement in any business, trade, profession, vocation, calling, occupation or employment for gain to the extent required by the Relevant Law.

"Guarantee Act" means the *Superannuation Guarantee (Administration) Act 1992* and any regulations made under that Act.

"Insured Benefit" in respect of a Member means the amount (if any) in addition to the Member's Account (if payable) which is payable on the death, Total and Permanent Disablement or sickness or illness of the Member and arising from any Policy effected by the Trustee.

"Insurer" means the organisation with which the Trustee effects a Policy or Policies pursuant to the provisions of the Fund.

"Legal Personal Representative" means the executor or administrator of the estate of a deceased Member.

"Levy" includes a levy payable by the Fund to the Regulator in accordance with the *Superannuation Supervisory Levy Act 1991*, the *Superannuation (Financial Assistance Levy) Act 1993* and any other legislation or regulations which impose a levy or levies on the Fund.

"Member" means any person eligible under the Relevant Law to be admitted and who has been admitted as a Member of the Fund or a person in respect of whom a Benefit is payable in accordance with this Deed and **"Membership"** will have a like meaning.

"Member Account" in relation to a Member means one or more accounts:

- a) to which the following credits shall be made:
 - i. all contributions made by a Member, an Employer or a Contributor on behalf or for the benefit of a Member;
 - ii. such Fund earnings as shall be allocated in respect of a Member as represented, consistent with unitisation if applicable, by a change in relevant Unit Prices;
 - iii. any Shortfall Component received by the Fund in respect of the Member;
 - iv. such other amounts as the Trustee shall from time to time determine; and
- b) to which the following debits shall be made:
 - i. any Benefit payments made to or in respect of the Member;
 - ii. such amount as the Trustee shall determine as represents any earnings deficiency in the Fund computed in accordance with sub-clause 3.9 as represented, consistent with unitisation if applicable, by a change in relevant Unit Prices;
 - iii. such of the costs, charges and expenses incurred in respect of the Member or an appropriate proportion thereof as the Trustee shall determine which costs, charges and expenses, including the provision for the cost of the Insured Benefit, shall be credited to the Reserve Account;
 - iv. such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Fund or earnings of the Fund credited to the Member Account or arising as a result of a roll over payment as the Trustee may determine;
 - v. such other amounts as the Trustee shall from time to time determine.

"Member Application" means the application for membership made by a person pursuant to sub-clause 5.2.

"MySuper Product" means a class of beneficial interests in a regulated superannuation fund that an RSE Licensee is authorised to offer under the *Superannuation Industry (Supervision) Act 1993*.

"Non-Preserved Amount" means an amount payable to or in respect of a Member which is not required to be preserved or at the time of payment is no longer required to be preserved under the Relevant Law.

"Normal Retirement Date" means 65 years of age or such other age being not less than 55 years as is specified by the Relevant Law.

"Officer" means an officer or employee of the Trustee.

"Pension" means any form of pension payable under the Relevant Law including an allocated pension under sub-clause 8.6.

"Pensioner" means a Member who is entitled to receive, or has applied to receive, Benefits as a Pension and includes a Reversionary Beneficiary in receipt of a Pension.

"Permanent Incapacity or Permanent Invalidity" means permanent incapacity or permanent invalidity not amounting to Total and Permanent Disablement, in respect of which the Trustee has been given a certificate signed by two registered medical practitioners certifying that, in the opinion of those medical practitioners, the Member is unlikely ever to be able to work in a job for which the Member is reasonably qualified by education, training or experience.

"Policy" means any policy of assurance including a policy on the life of a Member or endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy and includes any policy covering any two or more of the foregoing risks and it further includes any policy which provides that benefits shall be payable to the Trustee on the death or disablement of a Member.

"Preservation Age" means such age in respect of a Member as may be fixed by the Relevant Law.

"Regulator" means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Taxation Office, the Australian Transaction Reports and Analysis Centre (AUSTRAC) or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

"Relevant Law" means:

- a) any requirements under the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Guarantee Act*, the *Corporations Act 2001*, the *Corporations Regulations 2001*, the *Financial Sector (Collection of Data) Act 2001*, the former *Occupational Superannuation Standards Act 1987*, the former *Occupational Superannuation Standards Regulations 1987*, the *Superannuation (Resolution of Complaints) Act 1993*, the *Family Law Act 1975*, the *Income Tax Assessment Acts 1936 and 1997*, the *Anti Money Laundering and Counter Terrorism Financing Act 2006* and any other present or future legislation which the Trustee must comply with in order for the Fund:
 - i. to qualify for concessional Taxation treatment as a Complying Superannuation Fund;
 - ii. to be authorised to offer and provide a MySuper product;
 - iii. avoid any penalty, detriment or disadvantage which is or may become payable or imposed in connection with the Fund or anything done or to be done under this Deed;
 - iv. to meet any other requirements of the Regulator; and
- b) in relation to a Pension payable or which may become payable from the Fund which the Trustee and the Pensioner have agreed will meet the requirements of an assets test exempt pension under the *Social Security Act 1991* – the relevant provisions of that Act; and

- c) in relation to the collection, holding, use and disclosure of personal information as defined in the *Privacy Act 1988*, the National Privacy Principles and any other provisions of that Act,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively.

"Reserve Account" means an account established, administered and maintained by the Trustee in accordance with sub-clause 7.1(b) of this Deed.

"Retirement Savings Account" means an account into which contributions in respect of a Member, or transferred amounts are paid pursuant to the *Retirement Savings Accounts Act 1997* and dealt with in accordance with the Relevant Law.

"Retiring Employer" means an Employer which has ceased to participate in the Fund in accordance with sub-clause 4.9.

"Reversionary Beneficiary" means a Dependant nominated by the Pensioner as the person who is to receive the Pension upon the death of the Pensioner.

"Review Date" means the first day of July in each year or such other dates as shall be determined by the Trustee from time to time.

"RSE Licensee" has the meaning as set out in the Relevant Law.

"Self Employed Member" means a Self Employed Person who has become a Member of the Fund.

"Self Employed Person" means a person who is not then an Employee but who is in Gainful Employment.

"Shortfall Component" has the same meaning as contained in section 64 of the Guarantee Act.

"Spouse", in relation to a Member or former Member, means a person who, in the opinion of the Trustee, is (or, in the case of a deceased Member, was at the date of death of the Member):

- a) legally married to the Member or former Member; or
- b) ordinarily living with the Member (although not legally married to the Member) on a permanent, genuine and bona fide domestic basis in a relationship as a couple (whether the persons are the same sex or different sexes); or
- c) in any other case, a person defined as a "spouse" under the Relevant Law.

"Successor Employer" means an Employer as defined in sub-clause 4.11.

"Taxation" includes income tax, any surcharge or other amount of whatever description levied on the Fund, the Trustee, any Member, former Member or Beneficiary pursuant to the *Superannuation Contributions Tax Imposition Act 1997* and related legislation (including provisional or advance payments required under that legislation), capital gains tax, tax on eligible termination payments (as defined under the Relevant Law), payroll tax, land tax, stamp duty and any other taxes or duties of whatever description paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member, Dependant or Beneficiary.

"Total and Permanent Disablement" in relation to a Member means Total and Permanent Disablement as defined in any Policy effected by the Trustee and in force for the time being in respect of the Member or agreed upon from time to time by the Trustee and the Insurer for the purposes of the Policy and **"Totally and Permanently Disabled"** shall have a corresponding meaning.

"Tribunal" means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993*.

"Trustee" means CARE Super Pty Ltd (formerly "Clerical Administrative & Related Employees Superannuation Pty Ltd") or such other or substituted corporations as may become Trustee under the provisions of this Deed.

"Unclaimed Benefits" means those Benefits described as "unclaimed money" under Part 22 of the *Superannuation Industry (Supervision) Act 1993*.

“Unit” means a part or share of the Fund created by the Trustee under sub-clause 3.11 of this Deed.

“Unit Class” means a class of Units referable to a particular investment strategy, as particular sub-fund or a particular part of the Fund.

“Unit Price” means the price of a Unit as determined by the Trustee.

“Unit Rules” means the rules made by the Trustee under sub-clause 3.12.

2. Trustee

2.1 ELIGIBILITY

The Fund shall be administered by the Trustee or by some other corporation (having the power to administer the trusts hereof and complying with any rules as to equal representation of Members and Employers as are approved from time to time for the purposes of the Relevant Law relating to the Fund) which shall replace the Trustee under the Fund as hereinafter provided.

2.2 VACATION OF OFFICE

The Office of Trustee shall become vacant if:

- a) it is removed from office by a majority vote of the Members for the time being; or
- b) an order is made or an effective resolution is passed for its winding up, or it is placed in liquidation or receivership; or
- c) if the Trustee gives 90 days notice to the Members of its intention to retire as Trustee of the Fund;
- d) it becomes disqualified from holding the office of Trustee by operation of law;
- e) it is suspended or removed by the Regulator in accordance with the Relevant Requirements; or
- f) after 14 days of the Trustee becoming aware a director of the Trustee is or has become disqualified from holding office and that person does not cease to be a director within that time.

2.3 OBLIGATIONS ON VACATION

a) **New Trustee**

If the office of Trustee is vacated in accordance with sub-clause 2.2, the outgoing Trustee shall appoint a new Trustee which new Trustee shall be constituted such that it satisfies the Relevant Law provided however that if the Trustee is suspended or removed by the Regulator, a new Trustee shall be appointed by the Regulator.

b) **Vest Assets**

A Trustee shall, on vacating office in accordance with sub-clause 2.2, do everything necessary to vest the assets of the Fund in the new Trustee and shall deliver all records and other books held by such Trustee in relation to the Fund to the new Trustee.

c) **Outgoing Trustee**

The office of Trustee shall be filled at all times and in the event that the office of Trustee shall become vacant in accordance with sub-clause 2.2 then the outgoing Trustee shall remain Trustee for the purpose of arranging for itself, and failing itself, the Members to appoint a new Trustee and the outgoing Trustee shall continue to undertake the duties of the Trustee to the extent that this is necessary in order to appoint a new Trustee.

2.4 MEETINGS

a) **Resolution**

The Trustee may act by resolution of its Board of Directors in accordance with the Relevant Law or through any person or committee appointed under sub-clause 2.7(b).

b) **Minutes**

The Board of Directors of the Trustee shall cause proper minutes to be kept and entered in a book provided for the purpose of recording all their resolutions and proceedings relating to the carrying out of the provisions of this Deed.

2.5 COMMITTEES

a) **Appointment**

For the purposes of advising the Trustee and for the better management of the Fund, the Trustee may appoint one or more Committees.

b) **Equal Representation**

The Trustee may nominate and appoint the members of a Committee such that any Committee shall be constituted as a minimum by equal numbers of directors who are representative of the Members of the Fund and of those who are representative of the Employers of Members.

c) **Membership Determined by Trustee**

A member of a Committee shall hold office at the discretion of the Trustee and the Trustee shall have the right to remove and appoint any or all of the members of a Committee and a vacancy will be filled within sixty (60) days of it arising.

d) **Quorum**

Each Committee may, subject to the Relevant Law, regulate its meetings as it thinks fit and may determine the quorum necessary for the transaction of business provided that a quorum shall be an equal number of representatives who are appointed by the Members and of representatives appointed by the Employers of Members. A resolution signed by all of the members of a Committee shall have the same effect and validity as a resolution of a Committee passed at a duly convened meeting.

e) **Trustee Consultation**

In addition to all matters which by this Deed are to be determined or exercised or authorised by a Committee (if any), the Trustee shall be entitled to consult a Committee on such other matters as it determines. If, in respect of the exercise of a power, authority or discretion that is required by this Deed to be exercised by a Committee, there is no Committee or a Committee fails to agree, then that power, authority or discretion shall be exercised by the Trustee.

2.6 LIABILITY AND INDEMNITY

a) **Liability of Trustees, Directors and Officers**

Neither the Trustee nor any of its directors or Officers shall be liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund except if that person:

- i. fails to act honestly; or
- ii. intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- iii. incurs a monetary penalty in respect of a civil penalty order under the Relevant Law.

b) **Loss, Default, Bona Fide Acts, Mistake**

Without limiting the generality of the exemption from liability under sub-clause 2.6(a), the Trustee shall not incur any liability for:

- i. any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- ii. any act or default of any former Trustee or any director or Officer of a former Trustee, of any Member or of any agent employed in good faith by the Trustee;
- iii. any acts done or omitted to be done which any person reasonably believes to be in conformity with any decision of the Trustee;
- iv. any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at that time.

c) **Limitation of Exemption from Liability**

This clause shall only operate to exempt a person from liability to the extent that the provision of such an exemption is not limited by or would be inoperative under the Relevant Law.

d) **Indemnity and Lien**

The Trustee and where applicable its directors and Officers shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them under this Deed or at law except if that person:

- i. fails to act honestly; or
- ii. intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- iii. incurs a monetary penalty in respect of a civil penalty order under the Relevant Law,

and the Trustee shall have a lien on and may use the moneys representing the assets of the Fund for the purposes of this indemnity.

e) **Payments in Good Faith**

This indemnity shall extend to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

f) **Opinion or Advice**

This indemnity shall extend to the circumstances where the Trustee acts upon the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.

g) **Failure to carry out Agreement**

This indemnity shall extend to the circumstances of the failure of any person or corporation to carry out any agreement made with the Trustee and to the circumstances of any act or omission on the part of such person or corporation.

h) **Agents and Servants of Trustee**

This indemnity shall extend to the circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

i) **Limitation of Indemnity**

The indemnity provided under this clause in respect of the Trustee or any directors, Officers, agents or servants of the Trustee shall not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

2.7 DISCRETION AND DELEGATION

a) **Powers and Discretions**

The Trustee in the exercise of the powers, authorities and discretions vested in it by this Deed shall have an absolute and uncontrolled discretion and may exercise, enforce or delegate or refrain from exercising, enforcing or delegating all of any of those powers, authorities or discretions from time to time.

b) **Delegation of Powers to Individuals and Committees**

- i. The Trustee may act by an Officer or other person appointed for the purpose by resolution of its directors, whether or not the exercise of a discretion is involved provided that the resolution pursuant to which such person is appointed shall define the circumstances in which the person is empowered to act.

- ii. Without limiting the generality of sub-clause 2.7(b)(i), and without prejudice to any of the powers, authorities or discretions vested in a Committee the Trustee may delegate powers vested in it to a Committee provided that at all times each such Committee shall be and remain subject to and shall conform with any direction given to it by the Trustee.

c) **Disputes as to Interpretation**

The decisions as to the interpretation and effect of this Deed by the Trustee shall be final.

2.8 POWERS

a) **Specific Powers**

Without prejudice to the powers vested in the Trustee by this Deed or otherwise the Trustee shall have the following powers:

- i. to purchase or otherwise acquire and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised to acquire or dispose of on such terms and conditions as it shall think fit;
- ii. to appoint and at its discretion, remove or suspend auditors, managers, secretaries, clerks, agents and other servants, appoint them for permanent, temporary or special services as they from time to time think fit, determine their powers and duties and fix their salaries or emoluments and require security in such instances and to such amount as they may think fit and any person so employed shall be deemed for the purposes of this Deed to be employed by the Trustee;
- iii. to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its Officers or otherwise concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;
- iv. to make and give receipts, release and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- v. if permitted by the Relevant Law, to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- vi. to act on the advice or opinion of any accountant, actuary, barrister, solicitor or medical practitioner or other professional person or expert (whether or not such advice or opinion was obtained by the Trustee) in relation to any relevant matter or question without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on such advice or opinion;
- vii. to determine who shall be entitled to sign on the Fund's behalf, receipts, acceptances, endorsements, releases, contracts and documents;
- viii. to pay Benefits out of the Fund to persons entitled thereto;
- ix. to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or Complying Superannuation Fund;
- x. to determine the nature and type of any Pension payable or to be payable in respect of a Member;
- xi. to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members or former Members in respect of the Fund provided that an indemnity shall only be provided to the extent that the provision of such indemnity is not limited by or would be inoperative under the Relevant Law;

- xii. to seek modifications of or exemptions from the application of the Relevant Law to the Fund provided that the Trustee shall be relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted;
- xiii. generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed;
- xiv. to formulate and give effect to one or more investment strategies having regard to the whole of the circumstances of the Fund which strategy will be reviewed from time to time and which strategy must be formulated and given effect to in accordance with the Relevant Law;
- xv. to pay commission or brokerage in such circumstances as the Trustee considers appropriate subject to any restrictions imposed by the Relevant Law;
- xvi. to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund; and
- xvii. to establish and/or maintain benefit trusts on behalf of Members, Beneficiaries or their Dependants where the intended recipient of some or all of the Benefit is then under a legal disability and the Trustee is of the opinion that it is in the interests of the intended recipient that a benefit trust be established on such terms and in such form as the Trustee determines.

b) Trustee Indemnity Insurance

The Trustee shall have the power to insure and keep insured as it sees fit any liability of the Trustee or any director or Officer of the Trustee and/or the liability of the Fund to indemnify or reimburse the Trustee or any director or Officer of the Trustee pursuant to sub-clause 2.6(b) hereof and for the purposes of the Deed any such costs shall be an expense of the Fund.

c) Trustee Direction

Except in those circumstances which are acceptable within the Relevant Law the Trustee shall not be subject to direction by any person in the exercise of any of its powers.

d) Remuneration of Trustee and Directors

The Trustee, any person on the Board of Directors of the Trustee and any member of a Committee appointed pursuant to sub-clause 2.5 hereof may be remunerated for the bona fide provision of services to the Fund on such basis as the Trustee determines to be fair and reasonable.

e) Mergers

- i. Subject to the Relevant Law, the Trustee may make such arrangements and execute such deeds as will allow the Fund to merge with other superannuation funds and under the continuing trusteeship of the Trustee or under a new trustee and for this purpose the Trustee may resolve upon and give effect to or agree to such alterations and modifications of the terms provided in this Deed as may be required so that under the New Deed the Members will become entitled to benefits of a similar kind but no less favourable than those provided under this Deed.
- ii. Subject to the Relevant Law, the Trustee may make such further arrangements and execute such other deeds for the carrying on of another fund under this Deed and under the trusteeship of the Trustee and for this purpose the Trustee may give effect to or give to such alterations or modifications of the terms provided in this Deed as may be required so that the members of the other fund become entitled to benefits of a similar kind but no less favourable than those provided under the deed of the other fund.
- iii. Any agreement made or deed executed or alteration or modification made or agreed to under sub-clause 2.8(e) will bind all Members.

f) **Strategic Alliances**

The Trustee may enter into any partnership, joint venture, arrangement, strategic alliance or other such arrangement with any of its service providers or agents appointed pursuant to this Deed or such other persons considered appropriate by the Trustee. The Trustee is further empowered to receive fees from such an arrangement which fees will be allocated to the Reserve Account.

g) **Sub-Funds**

i. **Different Sub-Funds**

The Trustee may create sub-funds, which sub-funds will contain such rights and provide such benefits as the Trustee in its absolute discretion will determine.

ii. **Transfer of Sub-Funds**

The Trustee is empowered to transfer a sub-fund to an Approved Benefit Arrangement and may execute such deeds and make such arrangements for the transfer of Members from a particular sub-fund to another Approved Benefit Arrangement provided that the Members will become entitled to benefits of a similar kind but no less favourable than those provided under the transferred sub-fund.

h) **Marketing and Promoting Fund**

i. **Activity**

For the purposes of this clause, an "Activity" shall mean any act directly or indirectly related to or incidental to the marketing, promoting, advertising or educating of any person or the creation of awareness for any person.

ii. **Promotion to Increase Membership**

The Trustee may, subject to the Relevant Law, engage in any Activity which the Trustee determines will promote:

- A. the concept of industry based superannuation generally; and/or
- B. the Fund specifically

in order to limit the reduction in the level of membership, to increase the level of membership or for any other purpose which the Trustee believes is in the best interests of the Members.

iii. **Defence of Fund Contribution Base**

The Trustee may, subject to the Relevant Law, engage in any Activity which the Trustee determines will protect the contributions base or membership base of the Fund and which the Trustee believes is in the best interests of Members.

iv. **Exercise of Powers of Marketing and Promotion**

The Trustee may only exercise the powers under this clause where the Trustee has determined that:

- A. the Activity is in the best interests of the present and future membership of the Fund;
- B. the expense of the Activity is reasonable having regard to the likely benefits to the present and future membership;
- C. the expense is reasonable having regard to the total value of the assets of the Fund.

v. **Engagement of Advisors**

The Trustee may engage the services of any suitably qualified persons to advise on, be involved in or to implement any Activity and may remunerate those persons in respect of any advice, involvement or implementation in accordance with the powers set out in this Deed.

3. The Fund and Assets

3.1 INVESTMENT MANAGERS AND CUSTODIANS

- a) The Trustee shall have power to appoint in writing one or more companies to act as investment manager for the Fund for such period and on such terms and conditions as the Trustee shall determine provided that the company is qualified to act and the terms and conditions of appointment are in accordance with and include all the Relevant Law.
- b) The Trustee may delegate to each investment manager such powers, discretions and authorities relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to such investment manager as the Trustee shall determine and may reallocate the assets of the Fund being invested by that investment manager.
- c) The Trustee shall have power to appoint one or more companies to act as a custodian for the Fund for such period and on such terms and conditions as the Trustee shall determine and may delegate and confer upon such custodian such powers, discretions and authorities relating to the holding of legal title, the custody of title deeds and documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund as the Trustee shall determine provided that the company appointed to act as custodian is not prohibited from so acting under the Relevant Law.

3.2 INSURER

The Trustee may effect a Policy or Policies of insurance or reinsurance with an Insurer for the provision of Benefits, including income protection, payable on the death, disablement or sickness or illness of a Member by means of an individual Policy or a group Policy upon such terms and conditions as the Trustee in its absolute discretion may determine and the Trustee will pay the premiums and other outgoings in respect of any Policy so effected.

3.3 FUND ADMINISTRATOR

Without limiting the generality of the powers conferred on the Trustee under the Deed, the Trustee may appoint a Fund Administrator of the Fund on such terms and conditions as the Trustee shall think fit and the Trustee may remove any such Fund Administrator and appoint another in its stead.

3.4 DUTIES AND POWERS OF FUND ADMINISTRATOR

The Trustee may vest in a Fund Administrator such duties and powers in relation to administration and management of the Fund as it thinks fit and may likewise alter or extend the duties and powers of a Fund Administrator. Subject to the foregoing and to any directions by the Trustee a Fund Administrator may have the following duties and powers:

- a) the collection of amounts contributed or to be contributed to the Fund and the transfer of money and assets to and from any investment manager or custodian trustee appointed pursuant to this Deed;
- b) the collection, recording and dissemination of membership, information, Contributions and other information for the purposes of the Fund;
- c) the establishment and maintenance of accounts, membership, Contribution records and other necessary records including the separate accounts specified in sub-clause 7.1(a);
- d) the calculation of Benefits as required by the Trustee or an Employer and the payment of Benefits in accordance with this Deed and where more than one Fund Administrator is appointed, they shall each have the particular powers and duties determined by the Trustee; and
- e) the provision and maintenance of any computer network and associated enquiry facilities necessary to support the administration of the Fund.

3.5 AUTHORISED INVESTMENTS

The Trustee may, in its name or under its control, invest the whole or any part of the moneys or assets of the Fund not required for the immediate purposes of the Fund in any one or more of the following forms of investment either within or outside Australia with power from time to time to sell, vary, transpose or convert any of the investments of the Fund:

- a) any investment authorised by law for the investment of trust funds;
- b) the purchase of or subscription for shares, or securities of any kind;
- c) deposits at call or otherwise with any bank, Insurer or financial institution;
- d) any Policy or Annuity whether by proposal, purchase or otherwise and the payment of any premiums on any Policy or Annuity;
- e) the acquisition or purchase of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible) or other schemes in the nature of a unit trust;
- f) mortgages over freehold or leasehold property either by direct loan or by purchase at discount or otherwise of existing mortgages;
- g) purchases of freehold or leasehold property for rental purposes, occupation or otherwise either as sole owner or joint owner and the improvement or extension of any such freehold or leasehold property acquired;
- h) acquisition of any futures, options or other synthetic investment and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any property forming part of the Fund; and
- i) acquisition of foreign currencies, hedging contracts, commodity contracts including by way of options or futures contracts of any kind which are quoted on a recognised stock exchange,

provided that the Trustee shall not:

- i. make any loans to or payment of any Benefits to any Member in advance of entitlements arising as a result of the application of the provisions of the Deed; or
- ii. undertake any investment which shall be in contravention of the Relevant Law; or
- iii. borrow otherwise than may be provided in the Relevant Law.

3.6 ADDITIONAL POWERS

Without in any way limiting the generality of the powers of the Trustee apart from this sub-clause the Trustee may:

- a) institute, prosecute and execute legal proceedings of any kind and in any court including but not limited to proceedings to recover possession of all or any part of any property or to sue for and recover rent or damages or to enforce any contract with power to abandon, settle, compromise and release those proceedings when deemed expedient;
- b) employ such managers, staff and servants and engage such contractors and professional services as may be necessary or desirable; and
- c) in relation to any freehold or leasehold property for the time being forming part of the Fund, the Trustee may:
 - i. erect, alter, remove or pull down any buildings, walls, fences, drains and make other improvements;
 - ii. pay all rates, taxes and other outgoings and effect and maintain such insurances as the Trustee may consider expedient;
 - iii. carry out such repairs, painting and other acts of preservation as the Trustee may consider expedient;
 - iv. lease or occupy the said property or any part or parts thereof for such period or periods at such rent or rents and with such powers, rights and privileges and subject to such conditions and stipulations as the Trustee may consider expedient

and to accept surrenders of or otherwise determine such leases or to determine any such occupancy;

- v. sell or otherwise dispose of the said property at such price or prices upon such terms and conditions and subject to such restrictions or rights and in such manner and by such means as the Trustee may consider expedient and upon any such sale or apart there from to grant easements and other rights; and
- vi. exercise such acts of management or ownership of the said property as may be incidental or ancillary to any of the Trustee's powers.

3.6A MYSUPER PRODUCTS

Notwithstanding any other provision in this Deed:

- a) The Trustee may seek authority to offer one or more classes of beneficial interest in the Fund as one or more MySuper Products.
- b) Subject to sub-clause 7.20, but notwithstanding anything else in this Deed, the Trustee may do all acts, matters and things as in the opinion of the Trustee are necessary or desirable to maintain an authorisation to offer a class of beneficial interest in the Fund as a MySuper Product.
- c) If necessary to comply with the Relevant Law, the Trustee must in relation to a MySuper Product:
 - i. adopt a single diversified investment strategy in relation to the assets of the Fund to the extent that those assets are attributed to that MySuper Product;
 - ii. provide all Members who hold that MySuper Product with access to the same options, benefits and facilities in respect of that interest as required by the Relevant Law;
 - iii. not attribute amounts to Members who hold that MySuper Product in a way that streams gains or losses that relate to any asset of the Fund to only some of those Members, provided that where consistent with the Relevant Law gains and losses from different classes of assets of the Fund may be streamed to different subclasses of Members who hold that MySuper Product:
 - A. on the basis, and only on the basis, of the age of those Members; or
 - B. on the basis of the age of those Members and other factors prescribed under the Relevant Law; or
 - C. on the basis of the age of those members and other factors prescribed under the Relevant Law in circumstances prescribed under the Relevant Law.
 - iv. use the same process to attribute amounts to Members who hold that MySuper Product, except where a different process is permitted under the Relevant Law;
 - v. if fee subsidisation is permitted, permit an Employer ("Subsidising Employer") to subsidise the fees payable by Members in relation to that MySuper Product provided that subsidisation does not favour one Member holding that MySuper Product employed by the Subsidising Employer over another such member who is employed by that Subsidising Employer;
 - vi. not limit the source or kind of contributions that may be made by or on behalf of a Member who holds that MySuper Product, other than as required or permitted by the Relevant Law;
 - vii. comply with any applicable requirement under the Relevant Law with respect to the charging of fees in relation to that MySuper Product;
 - viii. not replace a Member's interest in that MySuper Product with a beneficial interest of another class in the Fund unless:
 - A. the replacement is with an interest in another MySuper Product within the Fund;
 - B. the Member who holds the MySuper Product consents in writing to that replacement; or

- C. the replacement is otherwise permitted, or is required, by the Relevant Law;
- ix. not replace a Member's interest in that MySuper Product with a beneficial interest in another superannuation entity unless:
 - A. the interest in that other superannuation entity is a MySuper Product and the replacement is permitted under a law of the Commonwealth;
 - B. the Member who holds that MySuper Product consents in writing to the replacement and the replacement is permitted under the Relevant Law; or
 - C. the replacement is otherwise permitted, or is required, under a law of the Commonwealth;
- x. comply with any other requirements as required or prescribed by the Relevant Law in relation to that MySuper Product; and
- xi. not pay a pension from that MySuper Product, unless permitted or required under the Relevant Law.

3.7 MEMBER INVESTMENT CHOICE

Without limiting in any way the powers vested in the Trustee pursuant to sub-clause 3.5 the Trustee may:

- a) establish any number of investment strategies;
- b) nominate the assets which will be subject to each particular investment strategy; and
- c) offer Members the opportunity of having amounts held in their Member Account invested in accordance with a particular investment strategy and make rules on when and how Members may give the Trustee directions in this respect.

Where a Member is provided with an opportunity to have the proceeds of their Member Account invested pursuant to a particular investment strategy and either fails or is unwilling to nominate a particular investment strategy, the Trustee reserves the right to invest the proceeds of the Member's Member Account in such manner as it in its absolute discretion shall deem appropriate.

3.8 DETERMINATION OF EARNINGS

As at every Review Date and at such other times as the Trustee will determine, the Trustee will establish the earnings (whether positive or negative) of the Fund in accordance with Generally Accepted Accounting Principles and in particular Accounting Standards AAS 25.

3.9 APPLICATION OF EARNINGS

- a) Following the ascertainment of the earnings of the Fund, the Trustee will allocate them amongst the Member Accounts and the Reserve Account in such manner or proportion as the Trustee shall determine;
- b) to the extent that the allocation of the earnings leaves a surplus in the Fund which is not allocated, such amount shall be held in the Reserve Account for retention by the Trustee or for application in accordance with sub-clause 3.9(a);
- c) to the extent that the allocation of the earnings leaves a deficiency in the Fund as ascertained in accordance with sub-clause 3.9(a), the amount of any deficiency shall:
 - i. be allocated amongst the Member Accounts and the Reserve Account in such manner or proportion as the Trustee shall determine; or
 - ii. be carried forward to the next Review Date;
 at the discretion of the Trustee.

3.10 INTERIM EARNING RATE

At the beginning of each Fund Year, and at such other times as the Trustee shall determine, the Trustee shall establish an interim earning rate for the Fund which interim earning rate shall be applicable to any distribution of earnings of the Fund or payments from the Fund for the period, in which that earning rate shall be determined on a basis which the Trustee considers to be equitable in accordance with the Relevant Law.

3.11 DIVISION INTO UNITS

The Trustee may:

- a) divide the Fund or part of the Fund into Units;
- b) designate Units as being different Unit Classes, with each Unit Class being referable to:
 - i. a particular part of the Fund; or
 - ii. a particular investment strategy; or
 - iii. a particular sub-fund; or
 - iv. the Reserve Account; or
 - v. a pension account established under sub-clause 8.6(b); and
- c) consistent with such division into Units, allocate Units to Member Accounts, the Reserve Account and pension accounts established under sub-clause 8.6(b),

and unitisation will replace the allocation of earnings of the Fund (including the allocation of any deficiency in the Fund or negative investment earnings) and of the application of any interim earning rate where determined by the Trustee.

3.12 UNIT RULES

The Trustee may adopt rules in relation to:

- a) the creation, classification and redemption of Units;
- b) the pricing of Units (including separate “buy” and “sell” prices, the timing and frequency of pricing, and the determination of separate prices for separate Unit Classes);
- c) switching of Units between Unit Classes where any Member varies the Member’s directions to the Trustee as regards investment of amounts held in their Member Account in a particular investment strategy under sub-clause 3.7 or where Benefits commence to be paid as a Pension under sub-clause 8.6(b);
- d) the method, timing and frequency of valuing the assets of the Fund for the purposes of unitisation; and
- e) any other matters which the Trustee determines to be necessary or appropriate for the transition of the Fund to, and the administration of the Fund as, a unitised fund,

and may add to, repeal, amend or alter such rules from time to time.

3.13 UNITISED ACCOUNTS

- a) Where the Trustee divides the Fund or part of the Fund into Units, the Trustee must consistent with such unitisation maintain the Member Accounts, the Reserve Account and the pension accounts established under sub-clause 8.6(b) so as to record the amounts held in those accounts in Units of the relevant Unit Classes.
- b) Any amount credited or debited to a relevant unitised account must be converted into Units of the relevant Unit Classes immediately before being credited or debited to such account, having regard to the relevant Unit Prices.

3.14 CALCULATION BY REFERENCE TO UNIT PRICES

Where the Trustee divides the Fund or part of the Fund into Units, this Deed must be read and applied such that any reference to:

- a) the amount equal to, the balance of, or the amount standing to the credit of, an account that is unitised is taken to be a reference to the amount or balance calculated by reference to the number of Units in such account and the relevant Unit Price; and
- b) the allocation of earnings of the Fund (including allocation of any deficiency in the Fund or negative investment earnings) or the application of any interim earning rate is taken to be a reference to such allocation by a change in the relevant Unit Prices.

3.15 TRUSTEE TO DO ALL SUCH THINGS REASONABLY REQUIRED

The Trustee may do all such things as the Trustee determines are reasonably necessary or desirable for the orderly and efficient transition of the Fund to, and the administration of the Fund as, a unitised fund.

3.16 FAMILY LAW

Subject to the following provisions of this sub-clause, despite any other provisions of this Deed, the Trustee is empowered to undertake and complete any actions in relation to the Fund or the Benefits or Benefit Entitlement of any Member or Beneficiary required in accordance with the *Family Law Act 1975*, regulations made under that Act and any other provisions of the Relevant Law which govern superannuation and family law ("**Relevant Family Laws**") including to:

- a) establish a new interest in the Fund;
- b) transfer the interest of a spouse to an Approved Benefit Arrangement;
- c) upon satisfaction of a condition of release, pay moneys from the Fund to the spouse.

The Trustee may at any time, and from time to time, elect under this sub-clause for the purposes of the Relevant Family Laws that this Deed will not have operation to permit the Trustee to establish a new interest in the Fund from the interest of a Member or Beneficiary upon the request by the Spouse of the Member or Beneficiary under the Relevant Family Laws. The Trustee may at any time, and from time to time, determine to revoke any such election.

4. Employers

4.1 EMPLOYER APPLICATION

An Employer which desires to participate in the Fund shall apply to the Trustee for admission to the Fund by completing an Application in a form acceptable to the Trustee from time to time.

4.2 ACCEPTANCE OR REJECTION OF APPLICATION

The Trustee may, after obtaining such advice as it considers necessary, accept or reject any such Application by an Employer and shall notify the Employer in writing of its decision.

4.3 DETAILS OF APPLICATION

The Application by the Employer for admission to the Fund will include details of:

- a) the terms and conditions pursuant to which the Employees of the Employer are admitted to the Fund;
- b) the Contributions to be made by and in respect of those Employees; and
- c) the Benefits to be provided to those Employees.

4.4 APPLICATION BINDING

Upon acceptance by the Trustee of the Application of an Employer for admission to the Fund, the terms and conditions of that Application shall be binding on the Employer and each of the Employees of the Employer shall become eligible to become a Member of the Fund.

4.5 DATE OF COMMENCEMENT

An Employer shall be admitted to become an Employer of the Fund on a date specified by the Trustee in the notice referred to in sub-clause 4.2 and if no date is specified then on the date that the notice issues from the Trustee and if no written notice is given then on such date as the Trustee shall specify.

4.6 AMENDMENT OF APPLICATION

The Employer may, with the consent of the Trustee at any time add to, repeal, amend or alter any of the terms and conditions set out in the Application for admission to the Fund provided that no such addition, repeal, amendment or alteration shall:

- a) impose any increase in the liability of a Member who is employed by an Employer to contribute to the Fund without the consent of the Member;
- b) in the opinion of the Trustee be to the detriment of the accrued Benefits of the Members or their Dependants.

Notwithstanding that an alteration to an Application is not evidenced in writing, it will be deemed to have been altered from time to time in order to comply with the Relevant Law.

4.7 DEEMED EMPLOYER

The Trustee may accept an Employer which has paid a contribution to the Fund on behalf of a Member, or an Employer which has Employees who have become Members of the Fund pursuant to a successor fund transfer within the meaning of the Relevant Law, to participate in the Fund without requiring the execution of an application by that Employer. Any Employer admitted under this sub-clause shall be bound by this Deed and be subject to such terms and conditions regarding the category of that Employer's Employees who are eligible for Membership of the Fund, the rate or amount of contributions payable in respect of those Employees, the commencement date of the said contributions and other matters as shall be determined by the Trustee and advised to the Employer following admission of that Employer to the Fund.

4.8 RETIREMENT

The participation in the Fund of an Employer may be terminated if:

- a) where an Employer is or includes a body corporate, a resolution is passed or an order is made for the winding up thereof or a scheme of arrangement providing for the dissolution thereof is approved by a court;
- b) where an Employer is or includes a partnership, the partnership is dissolved;
- c) where an Employer is or includes a natural person or persons not in partnership, that person or any of those persons dies or becomes bankrupt;
- d) an Employer ceases to carry on business;
- e) an Employer gives one month's notice in writing to the Trustee of its intention to cease participation in the Fund; or
- f) the Trustee gives one month's notice in writing to an Employer of its intention to terminate the Employer's participation in the Fund.

4.9 CESSATION DATE

In the event that the Trustee determines that the participation of an Employer in the Fund shall be terminated then the participation of that Employer ("**Retiring Employer**") in the Fund shall cease as from that date ("**Cessation Date**") that the Trustee so determines, which determination shall be advised by the Trustee to the Retiring Employer.

4.10 EFFECT

In the event of the termination of the participation of an Employer in the Fund, then, subject to the provisions of sub-clause 4.11 hereof:

- a) no further persons who are employed solely by that Employer shall be admitted as Members;
- b) no further Contributions shall be made by that Employer except Contributions that were due and payable on or before the Cessation Date,

and after obtaining such advice as it considers necessary, the Trustee shall determine the Benefits payable from the Fund in respect of the Employees of the Retiring Employer who are Members of the Fund ("**Retiring Members**"). Any such Benefits shall reflect the entitlements of the Members in accordance with the provisions of this Deed and shall be paid to Retiring Members in the circumstances provided in this Deed for the payment of a Benefit.

4.11 REPLACEMENT OF RETIRING EMPLOYER

If, in the circumstances described in sub-clauses 4.8(a) to 4.8(d), a new company, organisation, association or person ("**Successor Employer**") takes the place of the Retiring Employer as the result of:

- a) an amalgamation or reconstruction of the Retiring Employer; or
- b) the Retiring Employer ceasing to carry on business by reason of the disposal or transmission of all or part of its business to the Successor Employer,

then, except where the Successor Employer gives written notice to the Trustee of a contrary intent, it shall thereby be bound by the provisions of this Deed with effect from the Cessation Date or such other date as the Trustee and the Successor Employer shall determine.

5. Membership

5.1 ELIGIBILITY

Any person eligible under the Relevant Law is eligible to become a member of the Fund provided, in the case of a person applying to become an Employee Member, his or her Employer has been admitted as a participant in the Fund.

5.2 APPLICATION FOR MEMBERSHIP

The Trustee will provide to any person wishing to join the Fund a Member Application in such form as the Trustee will determine from time to time.

5.3 ADMISSION TO MEMBERSHIP

- a) In the case of an Employee who has satisfied the eligibility criteria and in respect of whom the Trustee has received a completed Member Application, or, unless the Trustee determines otherwise, upon receipt by the Trustee of a Contribution in respect of the person or an amount transferred from an Approved Benefit Arrangement in respect of the person notwithstanding that the person has not submitted a completed Member Application in which case the person will be deemed to have applied for membership of the Fund, membership of the Fund will commence on the later of:
 - i. the Date of Entry of the Employer; or
 - ii. the date being the first day of the first period in respect of which a contribution is payable in respect of the Member by the Employer provided that a contribution is received by the Trustee.
- b) In the case of a person who has satisfied the eligibility criteria but is ineligible to become an Employee member, membership of the Fund will commence when both a Member Application and a Contribution in respect of that person are received by the Trustee.

5.4 CATEGORIES OF MEMBERSHIP

There will be such categories of membership of the Fund as the Trustee determines from time to time.

5.5 APPROVAL OF DEED

On becoming a Member of the Fund that person will be deemed to have approved of and will be bound by all the provisions of the Deed.

5.6 AUTHORITY TO DEDUCT

An Employee Member will be deemed to have authorised the Employer to deduct from the salary of the Employee Member such amounts as will provide the Contributions of the Member (if any) to the Fund as agreed upon between the Trustee and the Member.

5.7 MEMBERS TO PROVIDE INFORMATION

Every Member will submit to the Trustee:

- a) such evidence of age as is required by the Trustee;
- b) such evidence of health as is required by the Trustee and any Insurer; and
- c) such other information as may be reasonably required by the Trustee.

5.8 EMPLOYER TO PROVIDE INFORMATION

An Employer will notify the Trustee:

- a) when an Employee becomes eligible to join the Fund;
- b) after receiving notice of the death, Total and Permanent Disablement, Permanent Incapacity or retirement of a Member; or
- c) upon a Member ceasing to be employed by the Employer for purposes of this Deed and the Employer will provide such other information in its possession regarding an Employee Member or prospective Employee Member of the Fund as may reasonably be required by the Trustee.

5.9 MEDICAL EXAMINATION

A Member will complete and sign any documents required in connection with the provision to the Member of an Insured Benefit and will submit to a medical examination if required by the Trustee or an Insurer by a registered medical practitioner who is acceptable to the Trustee or the Insurer.

5.10 FAILURE TO PROVIDE INFORMATION

Where a Member fails to provide information or alternatively fails to complete documentation for an Insured Benefit or fails to submit to medical examination the Trustee will have no obligation to provide an Insured Benefit in respect of the Member.

5.11 COOLING-OFF

- a) Where:
 - i. an interest in the Fund is issued to a Member and that interest is the first interest in the Fund issued to that person;
 - ii. the Member is not employed by an Employer; and
 - iii. the provisions in the Relevant Law as to "cooling-off" apply, the Member is entitled by written notice given to the Trustee within 14 days after the issue of the interest, to request the Trustee to redeem the interest.
- b) The Trustee must redeem the interest, as soon as practicable after receiving the request, at the price calculated in accordance with the Relevant Law.

5.12 CESSATION OF MEMBERSHIP

A Member will cease to be a Member of the Fund:

- a) in the event of the death of that person;
- b) when all benefits to which the person is entitled under this Deed have been paid or have otherwise ceased or been terminated as provided in the Deed

whichever is the later provided that the person will remain a Member of the Fund until such time as any claim for an Insured Benefit has been finalised.

6. Contributions

6.1 MEMBER AND CONTRIBUTOR CONTRIBUTIONS

Each Member and Contributor will contribute to the Fund at such rate (if any) as the Member and the Trustee, or the Contributor and the Trustee may agree or as required by the Relevant Law.

6.2 EMPLOYER CONTRIBUTIONS

The Employer will contribute to the Fund in respect of each Member at such rate as the Employer and the Trustee may agree or as required by the Relevant Law.

6.3 TRUSTEE UNABLE TO ACCEPT CONTRIBUTIONS

The Trustee shall not accept a Contribution or any Shortfall Component where to do so would breach the Relevant Law.

6.4 PAYMENTS TO TRUSTEE

Each Employer shall pay by the due date to the Trustee or as directed by it:

- a) all Contributions (if any) deducted from the salary of each Member in accordance with this Deed; and
- b) out of the Employer's own money (subject as provided below) the Employer's Contributions in accordance with this Deed.

6.5 DUE DATE

- a) For the purposes of this clause, "due date" for Contributions means the earliest of:
 - i. the date specified in the Application; or
 - ii. the date specified by the Trustee in the contribution return; or
 - iii. the date prescribed by the Relevant Law.

6.6 EMPLOYER'S CONTRIBUTIONS

The Contributions payable by the Employer in respect of any Member shall be paid by:

- a) the Employer by which the Member is for the time being employed; or
- b) if the Employer is one of a group of companies which consists of a holding company and its subsidiaries - any one or more of the companies in the group which are participating in the Fund.

6.7 ADDITIONAL SUMS

Either an Employer, a Contributor or a Member of the Fund may pay to the Trustee such additional or other sums as they respectively determine from time to time subject to the Relevant Law.

6.8 PARTICULARS OF CONTRIBUTIONS

Where an Employer at the direction of the Trustee pays Contributions to any Fund Administrator it shall provide the Fund Administrator with relevant particulars as to how Contributions are to be allocated between Members.

6.9 SHORTFALL COMPONENTS

- a) The Trustee may accept a transfer of a Member's or Employee's Shortfall Component into the Fund.
- b) Any payments of a Shortfall Component shall for purposes of the Fund be deemed to have been made by the Employer and shall immediately vest in the Member or Employee and be preserved in accordance with the Relevant Law.

6.10 TERMINATION, REDUCTION OR SUSPENSION OF CONTRIBUTIONS

- a) Any Employer may at any time on giving one month's written notice to the Trustee of its decision so to do terminate, reduce or suspend the payment by that Employer of all or any of its Contributions to the Fund.
- b) The written notice referred to in sub-clause 6.10(a) shall be given promptly by the Employer upon taking the decision to terminate, reduce or suspend the payment of its Contributions to the Fund.
- c) Upon the expiration of the notice given in accordance with sub-clause 6.10(a), the liability of that Employer to make Contributions to the Fund shall cease either wholly or to the extent or for the period or in the circumstances mentioned in the notice, provided that payments due on or before the date of expiration of the notice shall not be affected.

6.11 EFFECT OF TERMINATION, REDUCTION OR SUSPENSION

If an Employer terminates, reduces or suspends its Contributions to the Fund in respect of some or all of the Members for whom it has been contributing then unless another Employer agrees to continue the Contributions in respect of those Members:

- a) those Members may (to the extent and in the manner determined by the Trustee) terminate, reduce or suspend their own Contributions to the Fund; and
- b) whether or not any Contributions by those Members are terminated, reduced or suspended, the Trustee shall reduce or modify the Benefits in respect of those Members on such basis as the Trustee (after considering such advice as it may require) considers fair and equitable. The reduced or modified Benefits shall, subject to the provisions of this Deed be paid to the Member only in the circumstances provided for in this Deed for the payment of a Benefit.

6.12 CONTRIBUTIONS HELD ON TRUST

The Contributions received by the Trustee (or applied as directed by the Trustee) and any other money or property forming part of the Fund which is received by the Trustee shall be held on trust by the Trustee for the purpose for which they were made and applied in accordance with the provisions of this Deed.

6.13 SHORTFALL COMPONENTS

A Shortfall Component received in respect of a Member or Eligible Employee shall be credited to the relevant Member's Account.

6.14 LEVEL OF CONTRIBUTIONS

The Trustee shall not accept any Contribution or any Shortfall Component:

- a) if the acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- b) if the Regulator directs the Trustee not to accept any Contributions by an Employer or any Shortfall Component pursuant to the Relevant Law.

6.15 INELIGIBLE CONTRIBUTIONS

If the Trustee shall at any time ascertain that any Contribution or Shortfall Component has been accepted in breach of the provisions of this clause, or if the Trustee is satisfied that the payment has been made to the Trustee by an Employer in error, the Trustee shall refund the amount of the Contribution or Shortfall Component within a reasonable period, less any:

- a) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contributions or Shortfall Components; and
- b) reasonable administration charges and such other costs and charges that the Trustee may incur,

and reduce the Benefits held for the Member in the Fund to those which would have been held if such Contributions or Shortfall Component had not been received.

7. Administration of the Fund

7.1 ACCOUNTS

a) **Accounts Conducted by Trustee**

- i. For the purpose of determining the Benefits to which a Member may become entitled, the Trustee shall establish and maintain or cause to be established and maintained in respect of each Member a Member Account;
- ii. in addition to the Member Accounts, the Trustee may establish a Reserve Account (which may have sub accounts) together with such other accounts as the Trustee shall determine from time to time and the Trustee may change the name of any account established pursuant to this sub-clause at any time;
- iii. nothing in this sub-clause shall entitle any Member to any specific asset of the Fund and the Trustee shall have an absolute discretion as to which part of the Fund is applied to provide funds to enable the payment of any Benefit which becomes payable from the Fund.

b) **Reserve Account**

The Reserve Account (which may have sub accounts) may be maintained and applied:

- i. to reduce the effects of fluctuations in the returns on investment of the Fund; and
- ii. for such other purpose as the Trustee may determine subject to the Relevant Law.

c) **Other Accounts**

The Trustee may establish such other accounts or sub accounts as it shall determine from time to time and the Trustee may change the name of any account established pursuant to this clause.

7.2 TAXATION

a) **Tax on Benefits**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, shall deduct from any Benefit payable to any Member or Beneficiary pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it.

b) **Tax on Contributions and Shortfall Components**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to a Member Account. Where such Taxation has been deducted from a Contribution or Shortfall Component a reference to the crediting of the Contribution or Shortfall Component to a Member Account shall mean the crediting of the net Contribution or Shortfall Component after the deduction of such Taxation.

c) **Tax on Income**

The Trustee may make provision for and shall deduct any Taxation payable in relation to the taxable income of the Fund not otherwise deducted under this clause from the Member Account.

d) **Surcharge**

The Trustee may make provision and shall deduct any surcharge or other amount of whatever description levied on the Fund, pursuant to the *Superannuation Contributions Tax Imposition Act 1997* and related legislation (including provisional or advance payments required under that legislation).

e) **Payment to Regulator**

The Trustee shall pay all Taxation which is not being transferred with the agreement of the Trustee to an Insurer or otherwise transferred as provided under the Relevant Law, and any Levy which is due and payable by the Fund, to the Regulator within the required time for payment.

7.3 TERMINATION

a) **Termination**

If at any time there are no Members in the Fund and in the opinion of the Trustee all Benefits which could become payable from the Fund to or in respect of any former Member or any other person have been paid and all liabilities under the Fund in respect thereof are fully discharged, then the Trustee may determine to terminate the Fund.

b) **Distribution of the Fund**

In the event that the Trustee elects to terminate the Fund pursuant to sub-clause 7.1, the Fund shall be dissolved and any money or other assets then remaining in the Fund shall be realised and after payment of all the Fund's expenses and subject to the Relevant Law the residual assets of the Fund shall be distributed by the Trustee to those former Members of the Fund or the Dependants of those former Members of the Fund who were Members at any time within the period of three (3) years preparatory to the date of election to terminate the Fund on such basis as the Trustee considers to be equitable.

c) **Discontinuance of the Fund**

The Trustee may resolve to discontinue the Fund if:

- i. the Trustee determines that it has become impracticable or that it is not expedient to carry on the Fund;
- ii. the Trustee determines that the Fund has failed in accomplishing the objects for which it was originally established; or
- iii. all of the Employers terminate their Contributions to the Fund pursuant to sub-clause 6.10 hereof,
and in respect of the circumstances described in sub-clauses 7.3(c)(i) and 7.3(c)(ii), the Trustee shall give one month's notice in writing to each of the Employers of its intention to discontinue the Fund.

d) **Effect of Discontinuance**

In circumstances where the Trustee determines to discontinue the Fund the following provisions shall apply:

- i. the Fund shall be closed to new entrants from such date as the Trustee shall determine;
- ii. no further Contributions shall be accepted by the Trustee in respect of any Members from the expiration of the one month's written notice provided that payments due on or before the date of expiration of the one month's written notice shall not be affected;
- iii. the Trustee shall cause a valuation to be made of the assets of the Fund (after accruing all expenses which are incurred or will reasonably be incurred as a result of the winding up of the Fund);
- iv. the Trustee shall allocate the amount as ascertained by the valuation amongst the Members in such shares and proportions and in such manner as it shall determine to be fair and equitable after considering such advice as the Trustee shall require;
- v. the amounts so allocated shall be held in trust for Members or the Dependants of Members and invested by the Trustee as authorised by this Deed;
- vi. the amounts so allocated to a Member plus any accretion and minus any diminution shall, subject to the other provisions of this Deed, be paid to the

Member only in the circumstances provided in this Deed for the payment of a Benefit provided, however, that the Trustee may transfer the whole or any part of the Benefit held in respect of a Member to an Approved Benefit Arrangement subject to the Trustee being satisfied that any such transfer:

- A. is made in accordance with the Relevant Law;
- B. ensures that the rights of the Member, the Dependants of the Member or the Legal Personal Representative of the Member to receive the Benefits arising from the Benefits transferred to the Approved Benefit Arrangement are fully secured; and
- C. requires that the Benefits will not be paid from the Approved Benefit Arrangement to or in respect of the Member except in accordance with the Relevant Law.

e) **Full Discharge**

- i. Any amounts paid to any person pursuant to sub-clause 7.3(d) shall be in such form and shall be provided in such manner as the Trustee shall determine.
- ii. Each of the persons to whom such amounts are paid shall accept the same in full discharge of all claims whatsoever in respect of any rights or Benefits under this Deed.
- iii. All decisions of the Trustee pursuant to sub-clauses 7.3(c) and 7.3(d) shall be final and binding upon all parties.

7.4 TRANSFERS

a) **Transfers from Approved Benefit Arrangements**

The Trustee may receive into the Fund an amount transferred from an Approved Benefit Arrangement in respect of a Member and the benefits under the Fund in respect of that Member shall be adjusted in such manner as is determined by the Trustee to take account of the amount so transferred.

b) **Transfers to Approved Benefit Arrangements**

In the event that a Member participates in another Approved Benefit Arrangement, or if the Trustee wishes to transfer the benefits held on behalf of a Member to an Approved Benefit Arrangement where the Member is not at the time of the transfer a participant in that Approved Benefit Arrangement, and the Relevant Law enables such a transfer to take place, then the Trustee may transfer the whole or any part of the amount in the Fund representing the Member's benefits to the trustee of the Approved Benefit Arrangement provided that a transfer may only be made pursuant to this sub-clause where the Trustee is satisfied that:

- i. the Member has applied to the Trustee in writing for such a transfer; or
- ii. the transfer is made in accordance with the Relevant Law, including the successor fund provisions in the Relevant Law.

c) **Transfers to Eligible Rollover Funds or State Authority for Unclaimed Benefits**

The Trustee:

- i. may in accordance with the Relevant Law and where required by the Relevant Law shall transfer a Member's benefit to an Eligible Rollover Fund and shall provide any information to the Trustee of the Eligible Rollover Fund at such time and in such manner as is required by the Relevant Law or the relevant State authority for Unclaimed Benefits as the case requires; and
- ii. must give to the Regulator a statement of Unclaimed Benefits and shall pay any Unclaimed Benefits to the Regulator at such time and in such manner as is required by the Relevant Law or the relevant State authority for Unclaimed Benefits as the case requires.

d) **Compulsory Transfers**

Where required by the Relevant Law, the Trustee shall transfer such part of the Benefits of a Member to another Approved Benefit Arrangement for application by the trustee or other person responsible for that Approved Benefit Arrangement.

e) **Transfer to the Commissioner of Taxation**

Where required by the Relevant Law, and in accordance with the Relevant Law, the Trustee shall transfer the Benefits of a Member to the Commissioner of Taxation.

f) **Successor Fund Transfer**

The Trustee may transfer the whole or part of the Benefits, held on behalf of a Member, to an Approved Benefit Arrangement without the request or consent of the Member where the Approved Benefit Arrangement is a successor fund within the meaning of the Relevant Law. The Trustee may transfer the Member's Benefits to such an Approved Benefit Arrangement whether or not the Member is at the time of the transfer a participant in that Approved Benefit Arrangement.

7.5 INCORRECT OR INCOMPLETE INFORMATION

If the Member's date of birth is shown to be incorrectly stated or if other information supplied to the Trustee or the Insurer is shown to have been incorrect or incomplete or if no information is provided, the Benefit payable under the Fund to or in respect of the Member shall (unless the Trustee otherwise determines) be adjusted as the Trustee considers equitable having regard to the relevant circumstances.

7.6 DEDUCTION FOR MONEYS OWING

If the Member at the time of ceasing to be employed by the Employer for any reason shall be indebted to the Fund for moneys provided in advance of a Benefit or in lieu of a Benefit, the amount of the indebtedness shall, unless the Trustee determines to the contrary, be deducted from the Benefit otherwise payable and shall be applied by the Trustee in making good the indebtedness of the Member.

7.7 ALTERATION TO DEED

a) **Amendments to the Deed**

This Deed may by oral or written resolution of the Trustee (including a resolution of the Board of Directors of the Trustee) or by Deed be added to, repealed, amended or altered in any respect whatsoever provided that such addition, repeal, amendment or alteration does not in the opinion of the Trustee reduce the amount of a Benefit that has accrued to Members or their Dependants at the date of the addition, repeal, amendment or alteration nor adversely affect the basis for calculation of retirement Benefits of Members with respect to the period of membership prior to the date of such addition, repeal, amendment or alteration AND provided further that no addition, repeal, amendment or alteration shall be made otherwise than in accordance with the Relevant Law and provided further that no addition, repeal, amendment or alteration shall:

- i. directly or indirectly prejudice the rights or interests of any Employer admitted to the Fund; or
- ii. impose any increase in the liabilities or obligations of any Employer under the Deed; or
- iii. increase the liabilities or obligations of any Member to contribute to the Fund, without the consent of that Employer or Member.

b) **Date of Amendment**

Any such addition, repeal, amendment or alteration shall be effective from the date specified for that purpose in such deed or resolution or (in the absence of a specified effective date) the date on which the resolution was made or the Deed was executed as aforesaid.

c) **Relevant Law**

Notwithstanding sub-clause 7.7(a), the Trustee shall be entitled to make such addition, repeal, amendment or alteration whatsoever to this Deed as may in its opinion from time to time be required in order to ensure compliance with the Relevant Law.

d) **Notification to Members and Employers**

The Trustee shall as soon as practicable after any addition, repeal, amendment or alteration to the provisions of this Deed notify in writing each Member of the nature and purpose of the addition, repeal, amendment or alteration and shall notify Members of the effect (if any) of the addition, repeal, amendment or alteration on their entitlements.

e) **Limitation on Variation**

No addition, repeal, amendment or alteration shall be made which would have the effect of permitting a person or body other than a Constitutional Corporation to be appointed as Trustee except in circumstances permitted by, and in accordance with, the Relevant Law.

f) **MySuper Amendments**

For so long as the Trustee determines to offer a MySuper Product, the Trustee shall ensure that the Trust Deed is not amended to remove the power to offer a MySuper Product.

7.8 POWER OF EMPLOYER TO DISMISS

Nothing in this Deed shall restrict the right of an Employer to dismiss an Employee or be used to increase damages in any action brought against an Employer in respect of an Employee's dismissal.

7.9 DAMAGES AND COMPENSATION

a) **No Waiver of Rights**

Nothing in this Deed shall in any way affect the right of a Member, the Dependents of the Member or the Legal Personal Representative of a Member or other person to claim damages or compensation by common law or under a Workers' Compensation Act or any other statute in force governing compensation to a Member injured or dying as a result of an accident arising out of or in the course of employment of the Member with an Employer.

b) **No Reduction in Benefits**

Except as may be provided in this Deed, the amount payable in terms of this Deed shall not be reduced by reason of any payment of damages or compensation received by a Member as set out above.

7.10 EXPENSES OF THE FUND

The Trustee shall, except and to the extent that this Deed otherwise provides, pay out of the Fund all expenses of and incidental to the formation, management and administration of the Fund.

7.11 NOTICES

Notices may be given by the Trustee to a Member either personally or by mail to the address last known to the Trustee or by enclosure in the Member's pay envelope or advice and in the case of service by post the notice shall be deemed to be effective on the date when the notice would be received in the ordinary course of posting.

7.12 ACCOUNTS, AUDIT AND DISCLOSURE

a) **Accounts and Records**

The Trustee shall arrange for:

- i. the keeping of accounts of all moneys received into and disbursed from the Fund and of all dealings in connection with such moneys;
- ii. the collection, and prompt payment into an authorised account of the Fund or otherwise appropriate dealing with all moneys due to the Fund;
- iii. the keeping and safe-custody of all records books, accounts, minutes, reports and other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law;
- iv. the preparation of an annual balance sheet of the Fund, a statement of financial position, an operating statement or such accounts and statements in respect of each Fund Year as are required by the Relevant Law; and
- v. the preparation and lodgement of an annual return to the Regulator and of such other certificates, statements, forms, documents and information in such manner and within such time as is required by the Relevant Law.

b) **Audit of Accounts**

The Trustee shall:

- i. make suitable arrangements for the auditing of the accounts, books and relevant records of the Fund by an approved Auditor annually or at such other times as are required by the Relevant Law; and
- ii. obtain from the approved Auditor a certificate at such time and in such form as required by the Relevant Law.

c) **Auditor**

The Trustee shall appoint an Auditor for the Fund who is both appropriately qualified and is independent according to the Relevant Law and may remove from office any person so appointed.

d) **Disclosure and Reporting Requirements**

The Trustee shall arrange to provide to:

- i. Employers;
 - ii. the Regulator;
 - iii. the Actuary;
 - iv. the Auditor,
 - v. the Members; and
 - vi. any other persons specified in the Relevant Law,
- such information or documentation, at such time and in such manner as shall be required by the Relevant Law.

7.13 REGISTER OF MEMBERS

The Trustee shall keep or cause to be kept a register of Members which shall record the name and residential address of each Member and all particulars relating to the employment and circumstances of each Member as shall be necessary to enable the Trustee to determine the Benefits payable to or in respect of the Member and the Contributions required to be paid to the Fund in order to provide those Benefits.

7.14 ADVICE TO MEMBERS

The Trustee shall give to each Member as soon as practicable after the Review Date a written statement setting out those matters which must be notified to Members annually pursuant to the Relevant Law.

7.15 INSPECTION OF TRUST DEED AND OTHER DOCUMENTS

A copy of this Deed and any other documents required by the Relevant Law shall be made available to any Member or Beneficiary in such manner as required by the Relevant Law.

7.16 CONFIDENTIALITY

In accordance with the Relevant Law, the Trustee will hold, and treat as confidential, all records and information it may hold, receive or become aware of in its capacity as Trustee in relation to Employers, Members or Beneficiaries and shall not disclose or make known any such records or information to any third party except as may be required in relation to the administration of the Fund or to facilitate the provision of services or Benefits to Members or as may be required by the Relevant Law or as it may otherwise be lawfully required to do except that a Member may authorise the Trustee to release information pertaining to that Member to a third party.

7.17 NO VERIFICATION REQUIRED

The Trustee may act upon any information given to it by an Employer pursuant to this Deed and shall not be required to verify same.

7.18 PAYMENTS

a) **Benefit Payments**

The payment of any Benefit from the Fund shall be subject to the production of such evidence, the performance of such acts and the execution of such documents and within such time as the Trustee or any Insurer may reasonably require from time to time.

b) **Method of Payment**

Any Benefit payment may be made by the Trustee in such form as it determines and may be mailed to the last known address of the recipient of the Benefit.

c) **Australian Currency**

All Benefits shall be expressed and paid in Australian currency unless otherwise specifically agreed between the Member and the Trustee.

d) **Deductions**

The Trustee shall have power to deduct any taxes or duties and management expenses from any Benefit payable to or in respect of a Member and to pay a residual amount in respect of the said Benefit.

e) **Otherwise than in Cash**

Notwithstanding any other provisions contained in this Deed the Trustee may with the written agreement of the person to whom a Benefit is payable transfer assets of the Fund of equivalent value to the Benefit of that person in lieu of paying the whole or part of the amount which would otherwise have been payable under this Deed.

7.19 NO SPECIFIC INTEREST

Nothing in this Deed shall entitle any Member to any specific asset of the Fund and the Trustee shall have an absolute discretion as to which part of the Fund is applied to provide Benefits to enable the payment of any benefit which becomes payable from the Fund.

7.20 COMPLIANCE

Such terms of the Relevant Law, as are required to be complied with to ensure income tax concessions to the Fund, are deemed to be incorporated within this Deed and in the event of any inconsistency arising between the express terms of this Deed and the implied terms in respect of the Relevant Law, such implied terms are to prevail and take precedence over the terms of this Deed.

The Trustee shall comply with all applicable requirements of the Relevant Law necessary to ensure it is authorised to offer and operate a MySuper Product.

7.21 INQUIRIES, COMPLAINTS AND DISPUTES

- a) If required by the Relevant Law, the Trustee shall ensure that there are in force arrangements to deal with inquiries or complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Relevant Law.
- b) Subject to the Trustee's right to determine in its discretion to appeal against any decision of a Court or the Tribunal, the Trustee shall ensure that it implements any decision of a Court or the Tribunal as required by that Court or the Tribunal.
- c) The Trustee shall arrange to provide to the Tribunal any information or documents relevant to a complaint before the Tribunal in such manner and within such time as required by the *Superannuation (Resolution of Complaints) Act 1993* and may make submissions to or attend a conference of the Tribunal as the Trustee sees fit.

8. Benefits

8.1 RETIREMENT

a) **Normal Retirement Date**

i. **Retirement**

A Member who has attained the Normal Retirement Date shall, subject to sub-clause 8.5, be entitled to an amount equal to the Member's Account at the date of payment of the Benefit.

ii. **Early Retirement**

A Member who has attained the Preservation Age and is able to demonstrate satisfactorily to the Trustee that he or she has permanently retired from Gainful Employment shall subject to sub-clause 8.5, be entitled to an amount equal to the Member's Account at the date of payment of the Benefit.

iii. **Early Release**

A Member who has not attained the Preservation Age but who is able to demonstrate satisfactorily to the Trustee that he or she has satisfied a condition of release under the Relevant Law shall be entitled to receipt of or transfer to an Approved Benefit Arrangement of his or her Benefit as permitted under the Relevant Law.

b) **Form of Retirement Benefits**

The Benefit referred to in sub-clause 8.1(a) shall be paid to the Member either as a lump sum or in such other manner as the Member may elect and without limiting the generality of the foregoing the Member may elect that the whole or part of the Benefit payable be utilised by the Trustee to provide for payment of a Pension to the Member of such nature as the Trustee and the Member agree.

8.2 DEATH

a) **Death Benefits**

If the Member dies, the Benefit payable shall, subject to sub-clause 8.1(b), be an amount equal to the aggregate of:

- i. the Member's Account at the date of payment of the Benefits following the death of the Member; and
- ii. an Insured Benefit (if any) payable by the Insurer in respect of the Member.

b) **Determination of Persons to whom Benefit Payable**

Subject to the sub-clause 8.2(d) 8.2(e) and 8.2(l), the benefit payable under sub-clause 8.2(a) will be paid in such form and to any one or more of the following persons in such proportions as the Trustee shall in its absolute discretion think fit:

- i. all or any of the Dependants of the deceased Member; and/or
- ii. the Legal Personal Representatives of the deceased Member.

c) **No Dependants/Legal Personal Representative**

Where, after having made reasonable inquiries, the Trustee has not been able to find either a Dependant or a Legal Personal Representative of the deceased Member, the Trustee may in its absolute discretion pay all or such part of such benefit to an individual, provided that in the event that the Trustee is unable to find an appropriate person to make a distribution to, and subject to the Relevant Law, the amount which would otherwise be payable as a death benefit shall be forfeited in accordance with the provisions of sub-clause 8.9(a).

d) **Death Benefit Nominations**

To the extent permitted by the Relevant Law, the Trustee may permit a Member to direct the Trustee (by written notice in a nominated form prescribed by the Trustee) to pay the Member's death benefit to all or any of the Dependants of the deceased Member and/or the Legal Personal Representatives of the deceased Member, in such proportions as is specified in the notice (Death Benefit Nomination), and may adopt such rules as the Trustee, in its absolute discretion, determines for the purposes of administering such nominations in accordance with the Relevant Law. To the extent of any inconsistency between such rules and the Relevant Law, the Relevant Law will prevail. A Death Benefit Nomination must be made personally and cannot be made, amended or revoked by a Member's attorney.

e) **Trustee bound by valid Death Benefit Nomination**

The Trustee must pay the Member's death benefit in accordance with a valid Death Benefit Nomination provided the Trustee is permitted to do so under the Relevant Law. The validity of a Death Benefit Nomination is to be determined by the Trustee in accordance with the Relevant Law and any rules it has adopted for the purposes of administering such nominations under sub-clause 8.2(d). If the Death Benefit Nomination is invalid, the Trustee will not be bound by the nomination and sub-clause 8.2(g) will apply as though such nomination had been a preferred Beneficiary nomination by the Member under sub-clause 8.2(f).

f) **Nominated Dependant**

A Member may designate by nomination a preferred Beneficiary or Beneficiaries on a nominated form prescribed by the Trustee from time to time and may alter such designation whenever the Member wishes.

g) **Exercise of Discretion**

In the exercise of its discretion, in determining to whom a death benefit is payable, the Trustee may take into account the nomination of preferred Beneficiaries but shall in no way be bound to pay all or any part of the benefit to the person or persons so designated.

h) **Supervision**

The Trustee may exercise its discretion without being required to supervise or be otherwise concerned with the subsequent application of the benefit so paid, and whether or not there is any other money available for the benefit of the Beneficiary, and whether or not there is any person bound by law to provide for the Beneficiary, and the receipt of the person to whom the benefit is paid shall be a complete discharge to the Trustee.

i) **Non-lapsing Death Benefit Nomination**

To the extent permitted by the Relevant Law, the Trustee may permit a Member to direct the Trustee (by written notice in a nominated form prescribed by the Trustee) to pay the Member's death benefit to all or any of the Dependants of the deceased Member and/or the Legal Personal Representatives of the deceased Member, in such proportions as is specified in the notice and on the basis that the nomination will not lapse by the effluxion of time ("**Non-lapsing Death Benefit Nomination**"), and may adopt such rules as the Trustee, in its absolute discretion, determines for the purposes of administering such nominations in accordance with the Relevant Law. To the extent of any inconsistency between such rules and the Relevant Law, the Relevant Law will prevail. A Non-lapsing Death Benefit Nomination must be made personally and cannot be made, amended or revoked by a Member's attorney.

j) **Consent - Non-lapsing Death Benefit Nominations**

On receipt of a Non-lapsing Death Benefit Nomination the Trustee must consider whether to consent to the Non-lapsing Death Benefit Nomination and notify the relevant Member if the Trustee does not consent. A Non-lapsing Death Benefit Nomination will not be valid unless the Trustee gives its consent to it.

k) **Invalidity of Non-lapsing Death Benefit Nomination**

- i. A Non-lapsing Death Benefit Nomination becomes invalid if any person nominated as a Dependant:
 - A. being a Spouse of the Member, ceases to be the Member's Spouse;
 - B. dies; or
 - C. otherwise ceases to be a Dependant of the Member.
- ii. A Non-lapsing Death Benefit Nomination also becomes invalid if the Trustee has actual knowledge that the Member has, after giving the Trustee a Non-lapsing Death Benefit Nomination:
 - D. married;
 - E. entered into a defacto spousal relationship with another person;
 - F. separated on a permanent basis from their legal Spouse; or
 - G. had a child with a person other than their Spouse.

A Non-lapsing Death Benefit Nomination will become invalid in the circumstances listed above whether the Trustee acquires actual knowledge of such circumstances before or after the Member's death.

l) **Trustee bound by valid Non-lapsing Death Benefit Nomination**

The Trustee must pay the Member's death benefit in accordance with a valid Non-lapsing Death Benefit Nomination provided the Trustee is permitted to do so under the Relevant Law. The validity of a Non-lapsing Death Benefit Nomination is to be determined by the Trustee in accordance with the sub-clauses 8.2(j) and 8.2(k), the Relevant Law and any rules it has adopted for the purposes of administering such nominations under sub-clause 8.2(i). If the Death Benefit Nomination is invalid, the Trustee will not be bound by the nomination and sub-clause (g) will apply as though such nomination had been preferred Beneficiary nomination by the Member under sub-clause (f).

8.3 TOTAL AND PERMANENT DISABLEMENT BENEFITS

a) **Total and Permanent Disablement Benefits**

If the Member becomes Totally and Permanently Disabled prior to the Member attaining the Normal Retirement Date the Benefit payable shall, subject to sub-clause 8.5, be an amount equal to the aggregate of:

- iii. the Member's Account at the date of payment of the Benefit following the Date of Disablement; and
- iv. the Member's Insured Benefit (if any).

b) **Payment of Total and Permanent Disablement Benefits**

If the Member becomes Totally and Permanently Disabled, the Trustee shall pay or apply the Benefit payable under the Deed to or for the benefit of the Member or any one or more of the Dependants of the Member in such shares and proportions and in such manner as the Trustee shall in its discretion determine and without limiting the generality of the foregoing the Trustee may utilise the whole or part of the Benefit payable to provide for payment of a Pension or annuity (to the Member or to any one or more of the Dependants of the Member) of such nature as the Trustee and the Member agree or otherwise as the Trustee in its discretion determines provided that if the Member dies before the whole of the Benefit payable in respect of the Member has been paid or applied under this clause, then the Benefit payable or the balance of the Benefit payable shall be paid to the persons and in the manner referred to in sub-clauses 8.2(b) and 8.2(c).

8.4 INCAPACITY BENEFITS

a) **Incapacity Benefits**

If prior to attaining the Preservation age a Member retires from the workforce permanently as a result of Permanent Incapacity or Permanent Invalidity the Benefit payable shall subject to sub-clause 8.5 be an amount equal to the Member's Account at the date of the payment of the Benefit following the permanent retirement of the Member from the workforce.

b) **Payment of Incapacity Benefits**

The benefit referred to in sub-clause (a) shall be paid to the Member as a lump sum or in such other manner as the Member and the Trustee agree.

8.5 DEFERRED BENEFITS

a) **Deferred Withdrawal Benefits and Withdrawal Benefits**

Subject to sub-clause (b), if a Member ceases to be in Gainful Employment other than in the circumstances provided for in sub-clauses 8.1(a), 8.2(a), 8.3(a) or 8.4(a) the Trustee may, if requested in writing by the Member to do so:

- i. pay to the Member an amount or amounts not exceeding the balance of what is in the Member's Account to the extent that it is not required by the Relevant Law to be preserved; or
- ii. transfer the amount in accordance with sub-clause 7.4(b).

In the absence of any such written request and unless the Trustee determines, or the Relevant Law requires, otherwise, the amount will remain in the Member's Account in the Fund at least until the Deferral Date.

b) **Deferral Date**

For the purposes of this clause, the "Deferral Date" shall be the earliest of:

- i. the date on which the Member permanently retires from the workforce on or after attaining the Preservation Age; or
- ii. the date upon which the Member permanently retires from the workforce as a result of Permanent Incapacity or Permanent Invalidity prior to the attainment of the Preservation Age; or
- iii. the date of death of the Member; or
- iv. such other circumstances as are approved from time to time for the purposes of the Relevant Law.

c) **Method of Payment**

The Benefit referred to in this sub-clause 8.5 and any applicable Insured Benefit shall be paid to the Member either as a lump sum or in such other manner as the Member may elect, or to the Dependants of a Member or the Legal Personal Representative of the Member in the event of the death of the Member or such other recipient as permitted by the Relevant Law.

8.6 PENSION BENEFITS

a) Pension Benefits

At such time as a Benefit or part of a Benefit becomes payable to a Member or Beneficiary under the terms of this Deed in accordance with the Relevant Law or a Benefit is otherwise permitted to be paid under the Relevant Law the Trustee may at the request of the Member or Beneficiary but otherwise in its absolute discretion determine to pay a Pension or Pensions from the Fund to the Member or Beneficiary (as the case might be) on the conditions set out in sub-clause 8.12:

- i. in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or
- ii. in respect of any amounts credited to the pension account of a Member or Beneficiary under sub-clause 8.6(c)(i)(B).

b) Establishment of Pension Account

Where a Member or a Beneficiary has made an application under sub-clause 8.6 and the Trustee determines to pay all or any part of the Benefit to the Member or the Beneficiary as a Pension, the Trustee must establish one or more pension accounts in accordance with sub-clause 7.1(a) in respect of the Member or the Beneficiary to which Accounts the Trustee shall transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Benefits as a Pension.

c) Operation of Pension Account

- i. The following amounts shall be credited to the pension account of a Pensioner:
 - A. any amount transferred under sub-clause 8.6(b);
 - B. any amount paid into the Fund in respect of a Pensioner as a transfer or a roll over payment which the Trustee considers it appropriate to credit;
 - C. the proceeds of any Policy effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
 - D. such earnings of the Fund ascertained in accordance with sub-clauses 3.8 and 3.9 as the Trustee shall determine to be equitable;
 - E. any credit arising out of any adjustments made in accordance with sub-clause 8.11(b);
 - F. any Shortfall Component paid in respect of the Pensioner;
 - G. any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
 - H. such other amounts as the Trustee shall from time to time determine.
- ii. The following amounts are to be debited to the pension account of a Pensioner:
 - A. any amount transferred out of the Fund in respect of a Pensioner as a transfer of a roll over payment which the Trustee considers it appropriate to debit;
 - B. any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to the provisions of this Deed;
 - C. the costs of any Policy effected by the Trustee in respect of the Pensioner which are not debited to the Member Account where the Trustee shall determine it equitable to do so;
 - D. such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the pension account of a Pensioner or arising as a result of a roll over payment as the Trustee shall determine;
 - E. such of the costs, charges and expenses incurred in accordance with sub-clause 7.10 as the Trustee shall determine to be equitable;
 - F. such negative earnings of the Fund ascertained in accordance with sub-clauses 3.8 and 3.9 as the Trustee shall determine to be equitable;
 - G. any amount transferred to the account of a Beneficiary;

H. such other amounts as the Trustee shall from time to time determine as reasonable in all the circumstances.

d) **Segregation of Pension Assets**

In relation to each Pension payable to a Member or a Beneficiary, the Trustee may:

- i. segregate or set apart the assets which represent the pension account of the Member or Beneficiary for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and
- ii. constitute the segregated assets as segregated current and non-current pension assets within the meaning of the Relevant Law and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non-current pension liabilities as the Trustee considers necessary for the purposes of the Relevant Law.

e) **Method of Payment**

Where a Pension is payable from the Fund, the following conditions shall apply to the payment of the Pension:

- i. the Pension shall be paid from the amount standing to the credit of the pension account of the Pensioner;
- ii. the Pension shall be paid at least annually;
- iii. the amount of the Pension in any year shall be such amount as is nominated by the Pensioner and notified to the Trustee in writing from time to time provided that the amount shall not be greater than or lesser than the amounts calculated as the maximum and minimum limits specified by the Relevant Law for the payment of a Pension;
- iv. the Pension shall not be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner or on the death of a Reversionary Beneficiary or shall only be transferred upon such other terms as shall be acceptable under the Relevant Law;
- v. the capital value of the Pension and the income from the Pension cannot be used by a person as security for a borrowing;
- vi. the capital supporting the Pension cannot be added to by way of a contribution or rollover after the commencement of the Pension.

f) **Pension Account Limitation**

Where a Pension is payable to or in respect of a Member or a Beneficiary or where the Trustee at the request of a Member, Beneficiary or Legal Personal Representative purchases an Annuity on behalf of a Member or a Beneficiary, the total instalments of such Pension or the total purchase price of such Annuity shall, subject to sub-clause 8.6(g), not exceed the amount standing to the credit of a Member or Pensioner in the relevant Member Account at the relevant time.

g) **Pension Increase**

Any Pension payable pursuant to the provisions of this Deed shall, if required by the Relevant Law, be increased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases provided, however, that any increase shall be at least the minimum required by the Relevant Law in respect of the type of Pension being paid.

h) **Death of Pensioner**

After the death of a Pensioner who was at the time of death still in receipt of a Pension under this Deed, the Trustee may pay the Pension to any Reversionary Beneficiary nominated by the Pensioner if such Reversionary Beneficiary is eligible under Relevant Law, and otherwise the Trustee shall pay a Benefit in accordance with sub-clause 8.2.

j) **Conditions of Commutation**

On the written application of a Pensioner or Reversionary Beneficiary, the Trustee may commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to such Pensioner or Reversionary Beneficiary as applicable provided that:

- i. the commutation of the Pension is permitted by the Relevant Law;
- ii. the amount of the commuted Benefit including the value of any remaining Pension payable shall be subject to the provisions of sub-clause 8.6(g);
- iii. where any amount remains in the Fund after the entitlement of all Pensioners and Reversionary Beneficiaries have been paid out then the amount so remaining shall be dealt with in accordance with sub-clause 8.9(a) as though it were a forfeited Benefit; and
- iv. the commutation would not be to the disadvantage of the Fund, the Employers, the remaining Members, Pensioners or Reversionary Beneficiaries.

k) **Payment of Lump Sum Benefit**

The Trustee shall pay the amount of the lump sum Benefit in respect of the Pension being commuted to the Pensioner or the Reversionary Beneficiary who applied for the commutation but subject to any other applicable provisions of this Deed.

l) **Adjustment of Pension following the Commutation**

Following the commutation of a part of a Pension, the Trustee shall reduce the total amount of the instalments of any Pension payable to the Pensioner by such amount as it considers appropriate.

8.7 LIMITATION ON BENEFIT

Notwithstanding any other provisions of this deed, the Trustee will not pay out any benefit to a Member, Dependant, Beneficiary or Legal Personal Representative where such payment would cause the Fund to breach the Relevant Law and/or until such payment is allowed by the Regulator.

8.8 INCOME PROTECTION BENEFITS

The Trustee will ensure that under any Policy for income protection benefit insurance obtained by it on behalf of a Member, any Insured Benefit to which the member is entitled will be paid to the Member in a timely manner.

8.9 FORFEITURE OF BENEFITS

a) **Forfeiture or Suspension of Benefits**

Any Member or Beneficiary or after the death of a Member, any of the Dependants of the Member:

- i. who assigns or charges or attempts to assign or charge any Benefit Entitlement;
- ii. whose interest in any Benefit entitlement, whether by the Member's or Beneficiary's own act, operation of law, an order of any Court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- iii. who is insolvent or who commits or has committed an act of bankruptcy;
- iv. who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit Entitlement or who, in the opinion of the Trustee is incapable of managing the person's affairs; or

- v. who in the opinion of the Trustee commits any fraud or is guilty of dishonesty or defalcation,

shall forfeit entitlement to any Benefit Entitlement held in the Fund at that time by that person provided, however, that this sub-clause shall only apply to the extent that it is not limited by or inoperative under the Relevant Law or the *Bankruptcy Act 1966* (Cth) provided further that the Trustee shall only recognise an assignment or charge of a Benefit Entitlement where it is acceptable under the Relevant Law.

b) Retirement Account Residue

Any Member, Former Member or Beneficiary who has been paid all Benefits which the Trustee considers should be paid pursuant to the provisions of this Deed and who still has a residual amount standing to the credit of his or her Member Account shall forfeit such amount and such amount shall be dealt with as a forfeited Benefit provided that no amount shall be forfeited where to do so would breach the Relevant Law.

c) Forfeiture Account

The Trustee shall have power at any time to establish a forfeiture account of the Fund and shall transfer to the credit of the forfeiture account any amounts forfeited pursuant to the provisions of sub-clauses 8.9(a) and 8.9(b) or otherwise forfeited in accordance with this Deed.

Whilst any moneys are held in the forfeiture account they shall not form part of a Member Account, and any income derived by the Fund on the moneys held in the forfeiture account shall be credited back to the forfeiture account.

Any amounts held in the forfeiture account shall be applied in accordance with the remaining provisions of this clause.

d) Application of Forfeited Benefits

The Trustee shall hold upon trust and pay or apply any amounts which have been forfeited and are held in the forfeiture account in any one or more of the following ways:

- i. to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine;
- ii. to the trustee of the estate of the former Member;
- iii. to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- iv. to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund;
- v. for the provision to other Members of the Fund or their Dependants of additional Benefits on a basis that does not breach the Relevant Law and is reasonable having regard to all the circumstances;
- vi. for payment to such of the Employers of the Member or former Member (if any) as the Trustee in its absolute discretion considers appropriate;
- vii. for any other purpose approved in writing by the Regulator,

provided that where a Member remains in the employment of an Employer any payments made to that Member shall be limited to the relief of hardship of the Member or of the Dependants of the Member and provided further that the Trustee shall only apply amounts which have been forfeited in such circumstances, in such manner and at such times as are in accordance with the Relevant Law.

e) Readjustment of Member Interest

Where a forfeiture of a Benefit Entitlement occurs under this clause in respect of a Member, and the Trustee is of the opinion that the event giving rise to the forfeiture has ceased to affect that Member, then the Trustee may readjust any rights, entitlements

or interests of the Member in the Fund and may provide the Member with such rights or entitlements as the Trustee considers appropriate provided that the rights or entitlements shall not exceed the rights or entitlements held by the Member prior to the occurrence of the forfeiture.

8.10 SEVERABILITY

If any part of this clause should be construed as illegal, invalid or void, the legality and validity of the remaining parts of this clause shall not be affected and the illegal, invalid or void part shall be deemed to be deleted.

8.11 ADJUSTMENTS TO BENEFITS

a) National Superannuation

This clause will apply in circumstances where the Government of either Australia or of any State or Territory of Australia introduces or changes any scheme ("**National Scheme**") of national or social insurance or superannuation or social service benefits or other scheme for the granting of pensions or other benefits similar to superannuation benefits for which Members or a class of Members ("**eligible Members**") or their Dependants become eligible. For the purposes of sub-clauses 8.11(b) and 8.11(c), the benefits receivable from the National Scheme will be referred to as the "National Benefit".

b) Adjustment of Benefits

Where sub-clause 8.9(a) applies, subject to sub-clause 8.11(d), the Trustee may vary the Benefits payable under the Fund to or in respect of the eligible Members or their Dependants in such manner and to such extent as it may determine and (without limiting the generality of the foregoing) may:

- i. take into account the amount of the National Benefit;
- ii. take into account such amount as in the opinion of the Trustee is equal to the value at the relevant date of the National Benefit; or
- iii. integrate the Benefits or Contributions under the Fund with the National Benefit.

c) Adjustment to Contributions

Where this clause applies, the Contributions subsequently payable to the Fund by and in respect of the Members whose Benefits are adjusted by the Trustee under sub-clause 8.11(b) shall be adjusted to take into account:

- i. the adjustment in Benefits otherwise receivable from the Fund;
- ii. any Contributions which the National Scheme requires to be paid; and
- iii. any adjustments which may be made by the appropriate Government to the National Scheme.

d) Protection of Aggregate Contributions

The adjustment to the Benefits of any Member under sub-clause 8.11(b) shall not reduce those Benefits to amounts which are less than those which in the opinion of the Trustee (after considering such advice as it shall require) are attributable to the aggregate of the Contributions to the Fund which have been made by the Member and those Contributions deemed by the Trustee to have been made in respect of the Member by an Employer.

e) Trustee may Augment Benefits

The Trustee may determine, in its absolute discretion, to augment a Benefit or an Insured Benefit from a Reserve.

f) Notice of Variation of Benefits

- i. If, on or about the time the Member joins the Fund, the Employer (with the consent of the Trustee) gives the Member written notice that the Benefits and Contributions applicable to the Member vary in one or more respects from those which would otherwise apply to the Member in terms of this Deed, then the

Member's Benefits and Contributions shall be determined either in accordance with such notice or as otherwise agreed between the Employer and the Member (with the consent of the Trustee).

- ii. An Employer and the Member may at any time agree in writing (with the consent of the Trustee) that the Benefits and Contributions applicable to the Member should vary in one or more respects from those which would otherwise apply. In such event the Member's Benefits and Contributions shall be determined in accordance with the terms of the agreement until the agreement is varied by a further agreement.
- iii. Notwithstanding the provisions of sub-clauses 8.11(f)(i) and 8.11(f)(ii), any variation in a Member's Benefits and Contributions:
 - A. shall not, in the opinion of the Trustee, be to the detriment of the accrued Benefits of other Members or their Dependants; and
 - B. shall be promptly advised by the Employer to the Trustee.

8.12 PAYMENT CONDITIONS

Notwithstanding any other provision of this Deed which may be construed to the contrary:

- a) no Member, Dependant or other person eligible under the Relevant Law to receive a Benefit shall be entitled to receive such Benefit which is required by the Relevant Law to be preserved prior to:
 - i. the Member permanently retiring from the workforce on or after attaining the Preservation age or as a result of Permanent Incapacity or Permanent Invalidity prior to attaining the Preservation age; or
 - ii. the date of death of a Member; or
 - iii. such other circumstances as are approved from time to time for the purposes of the Relevant Law; and
- b) all Benefits must be paid by the dates required by the Relevant Law.

8.13 PAYMENT OF NON-PRESERVED AMOUNTS

Notwithstanding any other provisions of this Deed which may be construed to the contrary and subject to the Relevant Law:

a) **Member Election**

a Member may elect at any time to withdraw the whole or any part of the Non-Preserved Amount of that Member by giving notice to the Trustee in such form and manner as may be determined by the Trustee from time to time;

b) **Minimum Payment**

the minimum Non-Preserved Amount which may be withdrawn by a Member pursuant to sub-clause 8.13(a) shall be determined by the Trustee and notified to Members of the Fund.

Schedule – Rules for the Term Allocated Pension Plan

1. NAME OF PLAN

Term Allocated Pension Plan

2. DEFINITIONS

Except in so far as the context or subject matter otherwise indicates or requires, in this Schedule:

“Death Benefit” means the balance of the Plan Member’s Pension Account at the date the Plan Member’s Pension Account is distributed in accordance with rule 10 of this Schedule.

“Non-Commutable Term Allocated Pension” means a Term Allocated Pension which complies with the requirements of a non-commutable pension’ in the *Superannuation Industry (Supervision) Regulations 1994*(Cth).

“Pension” means a Term Allocated Pension or a Non-Commutable Term Allocated Pension which commenced to be paid (from the Predecessor Fund) before 20 September 2007 and complies with the Pension Standards.

“Pension Account” means an Account maintained in respect of a Plan Member.

“Pension Standards” means:

- a) the standards set out in sub-regulations 1.06(1) and 1.06(8) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth); and
- b) any additional or replacement standards that a Term Allocated Pension or this Deed must meet in order for the Term Allocated Pension to qualify as a ‘pension’ for the purposes of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) or for the Fund to qualify for maximum concessional tax treatment.

“Plan Member” means a participant of the Fund under this Schedule.

“Predecessor Fund” means Asset Super (ABN 98 061 665 900).

“Reversionary Beneficiary” means a person to whom a Pension is payable upon the Plan Member’s death under rule 10(f) of this Schedule.

“Term Allocated Pension” means a pension which complies with the Pension Standards.

3. PARTICIPANTS

This Schedule only applies to and in respect of any person admitted to participate in the Term Allocated Pension Plan in the Predecessor Fund and who was in receipt of a pension under the Term Allocated Pension Plan in the Predecessor Fund before 20 September 2007 who is for the time being categorised by the Trustee as Plan Member.

4. PROVIDING THE PENSION

- a) Subject to the Relevant Law, a Plan Member is entitled to a Pension in accordance with the provisions of this Schedule.
- b) The trustee must pay a Non-Commutable Term Allocated Pension in respect of that part (if any) of a Pension Account that is not an unrestricted non-preserved benefit.
- c) The Trustee may, in its absolute discretion, pay the Pension from segregated current pension assets of the Fund, as provided in clause 8.6(d) of this Deed.

5. PENSION ACCOUNT

- a) The Trustee must cause to be maintained in respect of each Plan Member in accordance with the Schedule a Pension Account to which:
 - i. the Trustee shall credit amounts in accordance with sub-clause 8.6(c)(i) of this Deed; and
 - ii. the Trustee shall debit amounts in accordance with sub-clause 8.6(c)(ii) of this Deed.
- b) The capital supporting the Pension cannot be added to by way of contribution or rollover.

6. TERM OF PENSION

Unless the Relevant law requires otherwise, a Pension shall continue for a period equal to not less than the minimum period permitted under the Relevant Law or greater than the maximum period permitted under the Relevant Law, as may be agreed by the Trustee and the Plan Member.

7. FREQUENCY OF PENSION PAYMENTS

- a) **Frequency of Pension Payments**

The Trustee must make Pension payments to the Plan Member with such frequency and at such intervals and times as agreed between the Trustee and the Plan Member.
- b) **Default frequency of Pension payments**

The Trustee shall determine the frequency of Pension payments if, at any time, the frequency of Pension payments has not been agreed upon by the Trustee and the Plan Member.
- c) **Trustee may alter the frequency of Pension payments**

The Trustee may alter the frequency with which the Pension payments are to be made:

 - i. at any time the Trustee considers appropriate; or
 - ii. at any time agreed upon between the Plan Member and the Trustee, Provided that at least one Pension payment must be paid to the Member or to a Reversionary Beneficiary (if any) each financial year after the commencement date of the Pension except as otherwise permitted by the Pension Standards.

8. VALUE OF PENSION PAYMENTS

The total number of the Pension payments to be made in respect of a Plan Member in a year (excluding payments made by way of commutation pursuant to rule 9 of this Schedule, but including payments made under a payment split in accordance with clause 3.11 of this Deed) is determined in accordance with the Pension Standards.

9. COMMUTATION

- a) **Generally**

Subject to rule 9(b), a Pension may only be commuted to a lump sum benefit in the circumstances set out in the Pension Standards.
- b) **Commutation of non-commutable term allocated pension**

The Trustee may only commute a non-commutable term allocated pension (or part of it) if:

 - i. the purpose of the commutation is to cash an unrestricted non-preserved benefit;
 - ii. after the commutation, the amount commuted would be an unrestricted non-preserved benefit; or
 - iii. otherwise where it is permitted to do so by the Relevant Law.

10. DEATH OF PLAN MEMBER

a) **Non-binding nomination**

Unless a Reversionary Beneficiary is nominated pursuant to rule 10(b) of this Schedule, the Trustee may allow a Plan Member to nominate, in a form approved by the Trustee, how the Plan Member would prefer his or her Death Benefit to be distributed among the Plan Member's Dependants and/or Legal Personal Representatives upon his or her death. A nomination made under this rule is given for information only and shall not limit the Trustee's discretion on the distribution of the Plan Member's Death Benefit.

b) **Rules for nomination of Reversionary Beneficiary**

The Trustee may approve such form, adopt such procedures and impose such terms, conditions and restrictions in connection with the nomination of, and payment of the Plan Member's Death Benefit to, the nominated Beneficiary as the Trustee in its absolute discretion determines.

c) **Payment of Plan Member's Death Benefit**

Upon the death of a Plan Member, the Trustee shall distribute the Plan Member's Death Benefit in accordance with:

- i. clause 8.2 of this Deed;
- ii. clauses 7.2(a) and 7.6 of this Deed, having regard to any nomination made by the Plan Member under rule 10(a) of this Schedule; and
- iii. rule 10(f) of this Schedule.

d) **Payment to Legal Personal Representative or other Non-Dependant**

If the Trustee determines to pay all or any part of a Plan Member's Death Benefit to the Plan Member's Legal Personal Representative under clause 8.2 of this Deed or a person (other than a Dependant) under clause 7.2(a) or 7.6 of this Deed, the Trustee must commute that amount and pay it as lump sum benefit.

e) **Payment to Dependant**

If the Trustee determines to pay all or any part of the Plan Member's Death Benefit to a Dependant pursuant to clause 8.2 of this Deed, the Trustee may, in its absolute discretion:

- i. commute the Pension and pay it to the person as a lump sum benefit, subject to rule 10(a) of this Schedule; or
- ii. on the request of the person, revert payment of the Pension to the person as though he or she were the Plan Member (whereupon the person will be called the "Reversionary Beneficiary" in this Schedule).

f) **Reversionary Beneficiary**

Upon the death of a Plan Member who has nominated a Reversionary Beneficiary for the Pension, the Trustee must, subject to the Relevant Law, continue to pay the Pension to the Reversionary Beneficiary until the earlier of:

- i. the expiry of the term of the Pension; or
- ii. the death of the Reversionary Pensioner.

g) **Reference to Plan Member reads as Reversionary Pensioner**

If the Trustee pays a Pension to a Reversionary Pensioner under rule 10(f) of this Schedule, subject to such conditions and restrictions as the Trustee determines, references to the Plan Member in this Schedule must be read as a reference to the Reversionary Pensioner.

11. CESSATION OF PENSION

A Pension will cease to be payable on the earlier of the following:

- a) the date the Pension is commuted to a lump sum benefit under rule 9 or 10 of this Schedule;
- b) the date the term of the Pension determined under rule 6 of this Schedule has expired;
- c) the balance of the Plan Member's Pension Account is exhausted; or
- d) the date determined by the Trustee in accordance with the Relevant Law.

12. CESSATION OF MEMBERSHIP

A person shall cease to be Plan Member when the Plan Member ceases to be entitled to any benefits from this Plan.

13. NO RESIDUAL CAPITAL VALUE

A Pension does not have a residual capital value.

14. NO TRANSFER

A Plan Member's Pension Account may not be assigned or transferred to any other person (other than to a Reversionary Beneficiary on the death of the Plan Member or of another Reversionary Beneficiary), other than in circumstances specified by the Pension Standards.

15. PENSION NOT TO BE USED AS SECURITY

The value of a Plan Member's Pension Account, or the income from a Pension, must not be used as security for a borrowing, unless permitted by the Relevant Law.

16. RELEVANT LAW

Notwithstanding any other provision of this Schedule:

- a) a Pension must be paid in such form that complies with the Pension Standards, and which will not cause the Fund to be in breach of the Relevant Law; and
- b) any provision which is necessary or otherwise required to be included in the terms of this Schedule or in the Deed in order for a Term Allocated Pension to comply with the Pension Standards and qualify as a 'pension' for the purposes of the Superannuation Industry (Supervision) Act 1993 (Cth) or for the Fund to qualify for maximum concessional tax treatment, is deemed to be included for such time as that requirement continues.