

Consolidated Trust Deed

Business Unit: Governance

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Motor Trades Association of Australia
Superannuation Fund Pty Limited
ABN: 14 008 650 628

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Consolidated Trust Deed

(up to and including Deed of Amendment of 29 August 2018)

MTAA Superannuation Fund

**Motor Trades Association of Australia Superannuation Fund
Pty Limited**



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1. Definitions and Interpretations

1.1 Definitions

In the interpretation of this Deed, unless the context otherwise requires:

Act means the *Superannuation Industry (Supervision) Act 1993* and any regulations made thereunder and any prudential standards made thereunder and any legislative instruments made thereunder;

Adjustment Amounts mean:

- (a) estimated costs and expenses of realising the investments of the Fund;
- (b) allowances for future losses in respect of any investment for which the market value cannot be fairly or accurately assessed;
- (c) allowance for the averaging of the earnings of the Fund whether on income or capital account, to take into account possible or actual periodic fluctuations in those earnings and any losses of the Fund not otherwise deducted; and
- (d) allowances for any other purpose or purposes that the Trustee considers desirable or necessary;

Account Based Pension has the meaning ascribed to it in the Act and, for the avoidance of doubt, includes a Transition to Retirement Pension;

Account-Based Pension Account means the sub-account established by the Trustee in respect of any Member choosing to receive Benefits in the form of an Account-Based Pension;

Account-Based Pension Account Balance means the value of a Member's Account-Based Pension Account;

Allocated Pension has the meaning ascribed to it in the Act;

Allocated Pension Account means the sub-account established by the Trustee in respect of any Member choosing to receive Benefits in the form of an Allocated Pension;

Allocated Pension Account Balance means the value of a Member's Allocated Pension Account;

Award means an award, industrial agreement, enterprise agreement or other agreement regulating employment conditions recognised as such under the applicable industrial relations legislation;

Beneficiary means a Member, a Dependant of a Member or any other person who is entitled to be paid a Benefit from the Fund;

Benefit means in relation to a Member the aggregate of the Member's Account;

Child has the meaning ascribed to it in the Act;

Commissioner means the Commissioner of Taxation under the Relevant Law;

Complaint means a complaint made to the Superannuation Complaints Tribunal in accordance with the *Complaints Act* and a complaint made to the Australian Financial Complaints Authority;

Complaints Act means the *Superannuation (Resolution of Complaints) Act 1993*;

Complying Fund means a superannuation fund that complies in terms of Section 45 of the Act;

Conflict of Interest Policy means the policy for managing conflicts of interest as approved by the Trustee from time to time;

Contributions Splitting means rolling over, transferring or allotting an amount of a Member's benefits for the benefit of the Member's spouse in accordance with the Act;

Corporations Act means the *Corporations Act 2001* and any regulations made thereunder;

Death Benefit means the Benefit payable where a Member has died.

Default Period in relation to a Market Linked Pension means a period equal to the Member's life expectancy on the commencement day of the pension, rounded up to the next whole number if the Member's life expectancy does not consist of a whole number of years;

Dependant means, in relation to a Member:

- (a) the Member's Child;
- (b) the Member's Spouse;
- (c) any other person who is wholly or partly financially dependent on the Member or in the case of a deceased Member was wholly or partly financially dependent at the time of the Member's death; and
- (d) any other person with whom the Member has an Interdependency Relationship;

Dependent Child means a Child who:

- (a) is under the age of 18 years; or
- (b) is under the age of 25 years and financially dependent on the Member as at the date of the Member's death; or
- (c) is disabled within the meaning of section 8(1) of the Disability Services Act 1986, or such similar concept as may apply under the Relevant Law from time to time.

Due Date means the date for payment of contributions agreed to, in accordance with applicable law, between the Trustee and the Employer;

Employee means a person employed by an Employer and any other person who is an "employee" for the purposes of the Act;

Employer means a person who is an "employer" for the purposes of the Act;

Employment or **Employed** means employed or self-employed for gain or reward in any business, trade, professions, vocation, calling, occupation or employment;

Fund Expenses means all amounts or costs to be taken into account in operating the Fund including:

- (a) taxation of the Fund or its income;
- (b) administration costs, charges or expenses;
- (c) costs and expenses of investing the Fund;
- (d) custody expenses;
- (e) insurance premiums;

Fund means the MTAA Superannuation Fund governed by this Deed and consists of all money, investments and insurance policies held by the Trustee subject to this Deed;

In-house Asset has the meaning ascribed to it in the Act;

Insured Benefits means the amount, if any, payable under a Policy on death, illness, incapacity or Total and Permanent Disablement;

Interdependency Relationship has the meaning ascribed to it in the Act;

Investment Option has the meaning ascribed to it by Clause 11.5(b);

Lost Member has the meaning ascribed to that phrase in the Act;

Market Linked Pension has the meaning ascribed to it in the Act;

Market Linked Pension Account means the sub-account established by the Trustee in respect of any Member choosing to receive Benefits in the form of a Market Linked Pension;

Market Linked Pension Account Balance means the value of a Member's Market Linked Pension Account;

Market Linked Pension Standards means any Standards prescribed by or under the Act for Market Linked Pensions;

Maximum Splittable Amount, in relation to Splittable Contributions, has the meaning assigned to that term in the Act;

Member means a person who has been admitted as a Member pursuant to a rule and who has not ceased to be a Member by reason of Clause 3.4;

Member Account means the account maintained in accordance with Clause 5.1;

Minimum Amount means \$500.00 or such other amount as is determined by the Trustee from time to time;

Minimum Information means name of the person, date of birth, address, and date of commencement of employment and any other information the Trustee determines;

Non-dependant Benefit means a benefit which may be paid in accordance with regulation 6.22(3) under the Act;

Outgoing Members means those Members who are Employees of a Withdrawing Employer who have not become Employees of another Employer or otherwise remain Members of the Fund;

Participant means a Member or a Participating Employer;

Participating Employer means any Employer approved as such in accordance with Clause 19.1 who has not ceased to be an Employer;

Pension Account means the account established by the Trustee in respect of any Member choosing to receive Benefits in the form of an Account-Based Pension, Allocated Pension or Market Linked Pension;

Permanent Incapacity has the meaning ascribed to that phrase in the Act;

Policy includes the Group Life and Total and Permanent Disablement Insurance Policy and the Group Income Protection Policy which the Trustee holds from time to time for the benefit of Members;

Preserved Benefit means a Benefit which is required to be preserved by the Act or has been classified as such by the Trustee;

Regulator means:

- (a) the Australian Prudential Regulation Authority if the provision is administered by the Authority in respect of the Fund or the Trustee; or

- (b) the Australian Securities and Investments Commission if the provision is administered by the Commission in respect of the Fund or the Trustee; or
- (c) the Commissioner if the provision is administered by the Commissioner in respect of the Fund or the Trustee; or
- (d) such other authority that has regulatory jurisdiction in respect of the Fund or the Trustee.

Relevant Law means the Act, the *Corporations Act*, the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Regulations*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the *Family Law Act 1975*, the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*, the *Bankruptcy Act 1966* and any other applicable legislation or other lawful requirement (as amended from time to time) with which the Trustee or the Fund must comply (whether to avoid breaching the relevant legislation or other lawful requirement or to qualify for tax or other concessions which the Trustee determines to be desirable or for any other purpose).

Reserve Account means an account maintained by the Trustee in accordance with Clause 5.8;

Retirement has the meaning ascribed to that word in the Act;

Reversionary Pensioner means the Spouse of a deceased Member and/or a Dependent Child of a deceased Member and/or a person with whom a deceased Member had an Interdependency Relationship at the date of death of the deceased Member;

RSE Licence has the meaning given to that term in the Act;

Splittable Contributions has the meaning ascribed to that term in the Act;

Spouse has the meaning ascribed to it in the Act;

Standard means a standard set out in the Act;

Successor Fund means a Transfer Fund which will, and the Trustee has agreed with the trustee of that Transfer Fund that it will, on transfer of the Member's Benefit confer on the Member equivalent rights to the rights that the Member had under the Fund in respect of the Member's Benefits;

Tax means a governmental impost (including without limitation a tax, duty or levy) which is or might become payable in connection with the Fund, income of the Fund, the realisation of assets of the Fund, payment or transfer of money or property to or from the Fund, this Deed or anything done or which may be done under this Deed, including any tax, surcharge, duty or levy payable in respect of a Member that must or may be paid or collected by the Trustee or the Fund;

Total and Permanent Disablement in relation to a Member, has the same meaning as **Total and Permanent Disablement** or an equivalent term as defined in the relevant Policy;

Transfer Fund means a Complying Fund, an approved deposit fund that is a complying approved deposit fund for the purposes of Section 43 of the Act and where permitted by the Act a deferred annuity;

Transition to Retirement Pension means a pension that complies with the standards for a transition to retirement income stream as set out in the Act PROVIDED THAT, for the avoidance of doubt, a Transition to Retirement Pension ceases to be a Transition to Retirement Pension and continues as an Account Based Pension when the Trustee is satisfied that a Member meets a condition of release in respect of which the cashing restriction is 'Nil';

Trustee means the trustee who is a party to this deed and shall include the trustee or trustees for the time being of the Fund;

Unit means a part or share of an Investment Option created by the Trustee under Clause 5.5A;

Unit Class means a class of Units referable to a particular Investment Option made available under Clause 11.5;

Unitisation Date means 22 April 2017 or such later date as the Trustee determines;

Unit Price means the applicable price of a Unit as determined by the Trustee under Clause 5.5A;

Withdrawing Employer means an Employer who has given to the Trustee notice in writing of its intention to cease its participation in the Fund, or if in the opinion of the Trustee by reason of liquidation or for any other reason the Employer should be removed as a Participating Employer.

1.2 Interpretation

1.2.1 A reference to:

- (a) a business day means a day during which banks are open for general banking business in the state or territory the laws of which apply in the construction of this deed; and
- (b) this deed includes the recitals of and any schedules, annexures and exhibits to this deed and where amended means this deed as so amended.

1.2.2 Unless the context otherwise requires a word which denotes:

- (a) the singular includes the plural and vice versa;
- (b) any gender includes the other genders; and
- (c) a person includes an individual and a body corporate.

1.2.3 Unless the context otherwise requires a reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended re-enacted or replaced means that amended re-enacted or replacement legislation;
- (b) any other agreement or instrument where amended or replaced means that agreement or instrument as amended or replaced;
- (c) a clause, schedule, annexure or exhibit is a reference to a clause of, annexure to, schedule to or exhibit to this agreement;
- (d) a group of persons includes any one or more of them;
- (e) any thing or amount is a reference to the whole and each part of it; and
- (f) a word or phrase appearing in a certain context which when used in a similar context in the Act would have a particular meaning, has that meaning in this Deed.

1.3 Successors and Assigns

A person includes the trustee, executor, administrator, successor in title and assign of that person. This clause must not be construed as permitting a party to assign any right under this deed.

1.4 Headings and Table of Contents

Headings and the table of contents must be ignored in the interpretation of this deed.

1.5 Notices

1.5.1 Notices may be given by the Trustee to Members and former Members either personally or by sending the same by letter posted to the address last known to the Trustee. In the case of service by post the notice shall be deemed to have been received on the date when the notice would be received in the ordinary course of posting.

1.5.2 Without limiting the means by which notices may be given or information may be disseminated, the Trustee may give notice or provide information by any form of data or image transmission or communication facility or medium, including without limitation facsimile, electronic mail and the internet, in which case the notice will be considered to have been received when transmitted, accessed or published (as the case may be).

1.6 **Applicable Law**

This deed and the trusts created under it are governed and construed in accordance with the laws of New South Wales.

2. Constitution of Fund

2.1 **Establishment of Fund**

The Fund known as the MTAA Superannuation Fund (formerly known as the MTAA Industry Superannuation Fund) was first established on 31 May 1989.

2.2 **Fund to Continue Indefinitely**

The Fund is an indefinitely continuing regulated fund for the purposes of providing superannuation benefits and will only be terminated in accordance with the express provisions in this Deed.

2.3 **Trustee**

The Trustee confirms that it has agreed to act as trustee of the Fund and will hold the Fund subject to the provisions of this Deed and any amendments.

2.4 **Sub plans**

2.4.1 Members may be grouped within sub-plans if the Trustee considers it convenient to manage the Fund in that way.

2.4.2 The Trustee may, by resolution, create sub-plans within the Fund, close a sub-plan or merge sub-plans.

2.4.3 The rules governing a particular sub-plan shall be documented in a Schedule to this Deed or in an agreement with any person sponsoring the sub-plan (including a Participating Employer). The rules may provide for the Trustee to:

- (a) have different eligibility criteria for Members of the sub-plan;
- (b) set different fees and recover different Fund Expenses for the sub-plan, including any amounts payable to a sponsor for services provided in relation to the sub-plan;
- (c) receive different contributions in respect of Members of the sub-plan;
- (d) hold different investment options for the sub-plan;
- (e) determine different Insured Benefits for the sub-plan;
- (f) pay different benefits to Members of the sub-plan, calculated in a different manner, payable in different circumstances and payable in different ways; and
- (g) provide different information for the sub-plan.

2.4.4 A sub-plan may, if the Trustee so determines, have separately identifiable assets and separately identified beneficiaries, in which case the interests of each beneficiary of the sub-plan are to be determined by reference only to the provisions governing that sub-plan.

2.4.5 A sub-plan is not a separate fund or trust.

3. Eligibility and Membership

3.1 Eligibility

3.1.1 A person eligible at law to contribute to, or to have benefits transferred to, the Fund, may apply for:

- (a) membership of the Fund, in the case of an individual; or
- (b) participation in the Fund as a Participating Employer, in the case of an Employer, in a form approved by the Trustee.

3.1.2 Such person becomes a Participant from the date that the Trustee accepts the application or such other date as is determined by the Trustee.

3.1.3 The Trustee may in its absolute discretion reject an application or delay consideration of an application.

3.1.4 The Trustee may, in its absolute discretion, subject to compliance with Relevant Law:

- (a) accept a payment by or in respect of a person who has not applied for admission as a Participant, in which case the person is taken to be a Participant from the date of such acceptance or such other date the Trustee determines;
- (b) accept an application made by a Participating Employer on behalf of any Employee who is eligible to become a Member, in which case that Employee becomes a Member from the date that the Trustee accepts the application or from such other date as the Trustee determines; and
- (c) without limiting the foregoing, determine that a person who has not applied for participation in accordance with Clause 3.1.1 is a Participant on and from such date as the Trustee determines.

3.1.5 The Trustee must deal with a person's application money:

- (a) pending the processing and acceptance of that application; and
- (b) where the application is refused, as required by Relevant Law.

3.2 Approval of Deed

A person on becoming a Member will be deemed to have approved of and shall be bound by the provisions of this Deed.

3.3 Applicant to Provide Information

3.3.1 In the case of every application for membership, there must be submitted to the Trustee:

- (a) an application in a form approved by the Trustee; or
- (b) the Minimum Information in the circumstances determined by the Trustee; and
- (c) if required, any evidence of health and completed and signed statements as to health required in connection with the Insured Benefit; and
- (d) all other information as may be reasonably required by the Trustee.

3.3.2 An applicant to become a Member who fails to provide any information requested by the Trustee may have their application refused.

3.4 **Ceasing to be a Member**

A Member ceases to be a Member once no Benefits which are or may be payable in respect of the Member remain in the Fund or when the Member dies.

3.5 **Ceasing to be a Beneficiary**

A person ceases to be a Beneficiary when all Benefits which are or may be payable in respect of the Beneficiary have been paid or transferred out of the Fund in satisfaction of the Beneficiary's entire entitlement to Benefits or if all the Beneficiary's entitlement to Benefits is otherwise terminated in terms of this Deed or if the Beneficiary dies.

4. Contributions

4.1 **Employer Contributions**

4.1.1 Each Participating Employer will contribute to the Fund for each of its Employees who is a Member, such amounts as determined by the Participating Employer from time to time.

4.1.2 Each Employer must give to the Trustee clear directions as to the amount of contributions to be allocated to each of its Employees who is a Member. If an employer fails to provide such directions, the Trustee may deal with the contributions in the same manner as unallocated application monies are dealt with under Clause 3.1.5.

4.1.3 Each Employer shall pay by the Due Date to the Trustee:

- (a) the amount payable in accordance with Clause 4.1.1; and
- (b) any contributions deducted from the pay of a Member, unless the Member otherwise directs.

4.2 **Member Contributions**

A Member may contribute to the Fund such amounts and on such terms as the Trustee determines from time to time.

4.3 **Contributions Splitting**

4.3.1 Any Member may, upon application to the Trustee, apply to roll over, transfer or allot an amount of the Benefits of the Member for the benefit of the Member's Spouse that is equal to an amount of the Splittable Contributions made by, for or on behalf of the Member in:

- (a) the last financial year that ended before the application; or
- (b) the financial year in which the application is made - where the Member's entire benefit is to be rolled over or transferred in a year.

PROVIDED THAT the amount to which the application relates must not exceed the Maximum Splittable Amount of the Member for the particular financial year.

4.3.2 All applications for Contributions Splitting must be made in accordance with such form as the Trustee may from time to time determine and in accordance with the Act.

4.3.3 Subject to the Act, the Trustee may in its absolute discretion refuse to accept an application for Contributions Splitting.

4.3.4 Where the Trustee accepts an application for Contributions Splitting, the Trustee must give effect to such application in accordance with the Act.

4.4 Spouse Contributions

Subject to the Act, the Spouse of a Member may contribute to the Fund in respect of a Member such amount as the Spouse determines.

4.5 Failure of Employer to pay Contributions

4.5.1 The Trustee may charge collection costs and interest at a reasonable rate as determined from time to time by the Trustee on any contribution not paid by an Employer on the Due Date.

4.5.2 Where the non-receipt of an Employer contribution by the Due Date results in a Member employed by the Employer ceasing to be entitled to cover for the Insured Benefits other than in circumstances where cover is required to cease under the Act, the Employer shall be liable to pay in addition to any other liability:

- (a) if cover for the Insured Benefits would have continued had contributions been received by the Due Date and the Member would have been entitled to payment of an Insured Benefit – an amount equal to the amount of Insured Benefits that would have been payable;
- (b) all contributions due and interest thereon;
- (c) any costs including costs of recovery of the amount payable under this clause.

Nothing in this clause confers on the Member any entitlement to any Insured Benefits or to any amount not recovered from the Employer nor is the Trustee obliged to take any action to recover any amount from the Employer.

4.6 Controls on Contributions

4.6.1 The Trustee will not accept contributions for a Member which may not be accepted at law.

4.6.2 Where insufficient information has been supplied to the Trustee to enable allocation of contributions to a Member Account, the Trustee will deal with the contributions in accordance with the Relevant Law.

4.7 Cooling-off

4.7.1 Subject to the provisions of the Corporations Act where:

- (a) an interest in the Fund is issued to a person (the applicant) and that interest is the first interest in the Fund issued to that person;
- (b) the Applicant is not employed by a Participating Employer;
- (c) the Fund is a public offer fund at the time of issue of the interest; and
- (d) the provisions in the Corporations Act as to "cooling-off" apply;

the applicant 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.

4.7.2 The Trustee must redeem the interest, as soon as practicable after receiving the request, at the price calculated in accordance with the Corporations Act.

4.8 Refund of Contributions

The Trustee must refund a contribution if required by the Relevant Law and may refund any contribution made in error. In refunding contributions, the Trustee may deduct any negative investment earnings and an amount for reasonable administration and transaction costs, including an appropriate proportion of any insurance premium paid in respect of the Member or not recoverable by the Trustee from the insurer.

4.9 Allocation of Contributions

The Trustee must allocate contributions to Member at the times and otherwise in accordance with the Relevant Law.

5. Administration of Fund

5.1 Member Accounts

5.5.1 The Trustee will keep a Member Account for each Member showing such of the following amounts as may be required:

- (a) contributions in respect of the Member;
- (b) any amounts transferred to the Fund in accordance with Clause 14;
- (c) insurance premiums paid;
- (d) any Insured Benefit that has been paid and credited to the account; and
- (e) sums credited or debited to such account pursuant to the provisions hereof.

The Trustee may maintain sub-accounts within a Member's Member Account and may transfer amounts between the sub-accounts for the effective administration of the Member Account.

5.5.2 The Trustee will keep a Pension Account for each Member with an Account Based Pension, Allocated Pension or Market Linked Pension or any other form of pension requiring an account to be maintained showing such of the following amounts as may be required:

- (a) the amount transferred to the Fund or from another account in the Fund to open the Pension Account;
- (b) sums credited or debited to the account pursuant to the provisions hereof; and
- (c) the credit balances of all sub-accounts maintained by the Trustee to the extent not reflected in paragraphs (a) and (b).

The Trustee may maintain sub-accounts within a Member's Pension Account and may transfer amounts between the sub-accounts for the effective administration of the Pension Account.

5.5.3 The Trustee may transfer amounts between a Member's Pension Account and a Member's Member Account as the Member or the Commissioner may direct in order to comply with Relevant Law or avoid an adverse consequence under Relevant Law.

5.2 Preservation and Cashing Restrictions

The Trustee shall record in each Member Account:

- (a) the amount that is preserved;
- (b) the amount that is a restricted non-preserved benefit;
- (c) the amount that is the subject of any other cashing restrictions imposed by the Trustee or the Act.

5.3 Fund Expenses

5.3.1 Subject to any relevant State and/or Federal legislation dealing with unclaimed money and/or Lost Members, the Trustee may in its discretion deduct all Fund Expenses from Member Accounts and Pensions Accounts in such proportions the Trustee considers to be fair and reasonable between

Members and between different classes or groups of Members. For this purpose the Trustee may set one or more fees including entry fees, regular account keeping fees and exit fees.

5.3.2 Any amount of Fund Expenses not deducted from Member Accounts and Pension Accounts shall be taken into account in determining the distribution of earnings for the Fund.

5.4 Valuation of Fund

5.4.1 The Trustee shall value the whole of the assets of the Fund in such manner as it determines as at the thirtieth of June in each year and value any or all of those assets whenever it is necessary or desirable to do so.

5.4.2 In valuing the Fund the Trustee shall make provision for:

- (a) such Adjustment Amounts as the Trustee thinks is prudent;
- (b) Fund Expenses not deducted from Member Accounts and Pension Accounts.

5.5 Crediting Rate

5.5.1 The Trustee shall in its discretion declare final crediting rates (whether positive or negative) for each of the investment options within the Fund.

5.5.2 In addition to final crediting rates, the Trustee may in its discretion declare interim crediting rates to apply from time to time in relation to each of the investment options within the Fund.

5.5.3 The Trustee must ensure that amounts equal to the applicable crediting rates as declared pursuant to this clause 5.5 are credited or debited (as the case may be) to a Member's Account as follows:

- (a) as at the end of each financial year (or such shorter period as the Trustee may determine); and
- (b) upon the Member exiting the Fund (including on the payment to the Member of the Member's Benefit in the Fund or on the transfer or rollover of the Member's Benefits from the Fund) in accordance with this Deed.

5.5.4 The crediting rate may allow for the provision of reserves.

5.5.5 A crediting rate must not be an amount that would, if the Fund were terminated immediately after applying the crediting rate to Members' Accounts, result in the assets of the Fund being insufficient to pay all amounts standing to the credit of Members' Accounts.

5.5A Unitisation

5.5A.1 With effect from the Unitisation Date, the Trustee may, for the purposes of determining the value of the Fund and allocating the investment earnings of the Fund:

- (a) divide the Fund's investments into Units and Unit Classes; and
- (b) allocate Units to Members' accounts and any other accounts and reserves maintained for the purposes of the Fund.

5.5A.2 The Trustee may from time to time:

- (a) prescribe rules in relation to:
 - (i) the price at which Units are to be issued and redeemed (including separate "buy" and "sell" prices and the timing and frequency of the pricing);

- (ii) switching between Unit Classes;
 - (iii) the method and frequency of valuing investments of a Unit Class; and
 - (iv) any other matter which the Trustee determines to be necessary or desirable for administering the Fund as a unitised fund; and
- (b) amend or revoke any rules made under paragraph (a).

5.5A.3 With effect from the Unitisation Date:

- (a) Members' accounts and any other accounts and reserves maintained for the purposes of the Fund will be recorded in Units of the relevant Unit Classes; and
- (b) any amount credited or debited to a unitised account or reserve will be converted into Units of the relevant Unit Class immediately prior to being credited or debited, having regard to the relevant Unit Price.

5.5A.4. With effect from the Unitisation Date:

- (a) where this Deed refers to the balance or amount standing to the credit of a unitised account or reserve, it is taken to be a reference to the account or reserve calculated by reference to the number of Units in the account or reserve and the relevant Unit Price at the time of calculation; and
- (b) any provisions of this Deed which in the opinion of the Trustee are inconsistent with unitisation will be subject to this Clause 5.5A and will only apply (if at all) to the extent determined by the Trustee.

5.5A.5 The Trustee may determine different Unit Prices to apply to a specific Unit Class on issue or redemption of Units or for such other different purposes as the Trustee may think fit from time to time.

5.5A.6 The Trustee may do anything that the Trustee determines is necessary or desirable to:

- (a) facilitate the orderly and efficient transition of the Fund to a unitised fund; and
- (b) maintain the Fund as a unitised fund.

5.6 Member Protection

The Trustee, in order to comply with the Act, has a complete discretion as to the setting of fees and distribution of earnings including but not limited to:

- (a) setting fees that vary between Members; and
- (b) capping fees for certain Members; and
- (c) distribution of earnings that vary between Members.

5.7 Audit of Fund

Each year an approved auditor appointed by the Trustee shall audit the accounts and records of the Fund and shall report to the Trustee not later than 30 days before the date the return is required to be lodged with the Regulator.

5.8 Reserve Account

The Trustee shall keep a Reserve Account showing:

- (a) reserves of earnings (if any);
- (b) other amounts not applied to a specific account;
- (c) amounts applied to general or particular purposes of the Fund.

5.9 Other Accounts

The Trustee shall keep such other reserves and such other accounts as may be required by Relevant Law or as may be necessary to record the financial transactions by the Trustee or to record the Members' entitlements and changes in nature of entitlements.

6. Qualification of Trustee

6.1 Eligibility to be Trustee

6.1.1 Only a constitutional corporation with an RSE Licence having power to act and to carry out the trusts hereof shall be eligible to be the trustee of the Fund.

6.1.2 The board of directors of such corporation shall be comprised of such persons as will at all times ensure that the board complies with the equal representation rules or is comprised as may otherwise be required by Relevant Law or the Regulator.

6.2 Trustee Consent

A person to be appointed as a trustee shall consent in writing (whether in a Deed of Appointment or otherwise) to the appointment.

7. Replacement of Trustee

7.1 The Trustee will cease to be trustee of the Fund in the following circumstances:

- (a) the Trustee retires after appointing a replacement trustee which is eligible under the Act to be a trustee of the Fund; or
- (b) the Trustee is disqualified from acting or is required to cease acting as trustee of the Fund by operation of law and another person which is eligible under the Act to be a trustee of the Fund assumes the office of the Trustee.

7.2 On and from the date of the replacement of the Trustee pursuant to clause 7.1, the Trustee shall be discharged from its duties and obligations under this Deed; and

7.3 The Trustee shall be required to do all such things as may be reasonably necessary to give effect to its replacement and the transfer and assignment of all assets, documents, and records in respect of the Fund and the performance of its duties under this Deed, to the replacement trustee.

8. Discretions and Decisions of Trustee

8.1 Trustee Decisions

The Trustee may act by resolution of the board of directors passed in the manner required by the Act.

8.2 Trustee Discretions

The Trustee in the exercise of the authorities powers and discretions hereby vested in it shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of the authorities powers or discretions from time to time or may refrain from exercising all or any of such authorities, powers or discretions from time to time and its decision as to the interpretation and effect of this Deed shall be final.

8.3 Decisions Revocable

Any Trustee decision as to the payment of benefits shall be revocable until actual payment of the benefit is made.

8.4 No Personal Liability

8.4.1 To the extent permitted by law, no Trustee or director of the Trustee shall be under any personal liability in respect of any loss or breach of trust in respect of the Fund or the benefits of a Member unless the same shall have been due to:

- (a) its own failure to act honestly in a matter concerning the Fund; or
- (b) intentional or reckless failure to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or director was required to exercise.

8.4.2 The Trustee may take out such insurance for claims against the Trustee and/or the directors of the Trustee as it thinks fit and the cost of such shall be an expense of the Fund.

8.5 Indemnity

8.5.1 To the extent permitted by law, the Trustee and the directors of the Trustee will be indemnified against all liabilities and expenses incurred by them in the execution of their duties hereunder and shall have a lien on the Fund for such indemnity.

8.5.2 The costs charges and expenses incurred by the Trustee in and incidental to the administration and winding up of the Fund or otherwise in relation thereto shall be paid out of the Fund.

8.5.3 The indemnity in this clause shall not apply to the Trustee or a director of the Trustee where the Trustee or that director:

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

8.6 Trustee Interested

Subject to compliance with the Fund's Conflict of Interest Policy and any Standard, no director of the Trustee shall by virtue of the office be disqualified from being or becoming a Member or from exercising any rights or deriving any benefit as a Member and a director of the Trustee who is or is about to become a Member may be counted in a quorum and vote at any meeting of the Trustee or its board of directors and generally participate in the exercise of the functions of the Trustee notwithstanding that he is interested in the matter.

8.7 Custodian

The Trustee may, on such terms as it considers appropriate, including the granting of any indemnity reasonably required, appoint a corporate body as custodian trustee to hold on its behalf title to some or all of the assets of the Fund.

8.8 **Managers and Administrators**

To the extent permitted by law, the Trustee may appoint in writing, on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more corporate bodies to act on behalf of the Trustee in regard to the investment and management of the assets and administration of the Fund.

8.9 **Member's Attorney**

Each Member hereby irrevocably appoints the Trustee his or her attorney to execute and sign all such deeds and instruments and do all such things the Trustee considers necessary or desirable in administering the Fund.

8.10 **Exercise of Discretion by Person other than Trustee**

No discretion under these trusts is exercisable by a person other than the Trustee unless:

- (a) the Trustee consents to the exercise of that discretion; or
- (b) the exercise of the discretion relates to the contributions that an Employer will, after the discretion is exercised, be required or permitted to pay to the Fund; or
- (c) the exercise of the discretion relates solely to a decision to terminate the Fund; or
- (d) the circumstances in which the discretion was exercised are covered by the Act.

8.11 **Disclosure**

The Trustee is not bound (except as required by any law) to disclose to any person any of the following:

- (a) any document disclosing any deliberations of the Trustee; or
- (b) any document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this deed.

8.12 **Brokerage**

The Trustee may pay commission or brokerage in such circumstances as the Trustee considers appropriate subject to any restrictions imposed by the Relevant Law.

9. Trustee Covenants

The Trustee must comply with all of the covenants that are taken to be included in this Deed under the Act.

10. Investment

10.1 **Powers of Investment**

The Trustee, as well as having all powers conferred upon it by law, shall have all the powers of a sui juris beneficial owner of the Fund, and, also the following powers:

- (a) to invest the Fund or any part thereof in any part or parts of the world;
- (b) to invest in companies incorporated anywhere in the world by way of shares, stock, options or debentures or in rights of any kind to any such shares, stock, options or debentures:
 - (i) whether or not a public company;
 - (ii) whether such company's liability is limited or not;
 - (iii) whether or not the shares or stock carry any rights to dividends or not or to share in any distribution of capital on a winding up or reduction of capital; and

- (iv) whether the or not the shares or stock carry any rights to vote or not;
- (c) to invest in real property or leasehold property of any description and to subdivide and build on any land and to maintain improve extend and demolish any buildings in whole or part;
- (d) to lend or advance money with or without security;
- (e) to invest in units or sub-units of a unit trust of any kind including a cash management trust, an equity trust, a public securities trust or a property trust;
- (f) to invest in ships, aircraft and chattels of any description and any shares or interest therein;
- (g) to acquire book debts, options, futures contracts, futures options, swap agreements, forward rate agreements, foreign currency, other contracts of a derivative nature and other chooses in action wheresoever situated or enforceable and any shares or interests therein;
- (h) to enter into securities lending arrangements;
- (i) to invest in any reversionary or deferred property or rights of any description wheresoever situate or enforceable and whether by way of original creation or assignment or otherwise;
- (j) to invest part of the Fund in assets for the purposes of capital gain only or which may be of a wasting or speculative nature;
- (k) to invest or expend any part of the Fund in any annuity or policy on the life of any Member or the happening of any other event;
- (l) to invest all or part of the Fund in one or more superannuation policies or pooled superannuation trusts;
- (m) to make deposits with any bank in any part of the world for any period whatsoever;
- (n) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (o) to enter into bill facility or promissory note agreements.

10.2 Restrictions on Investment

10.2.1 The Trustee may not lend any money or give other financial assistance to a Member or relative of a Member and the level of In-house Assets shall not exceed the level determined by the Act.

10.2.2 The Trustee must not invest money of the Fund unless the Trustee and the other party to the relevant transaction are dealing with each other at arm's length in respect of the transaction or, if the Trustee or any director is interested and the Act permits, the terms are no less favourable to the Trustee than those which it is reasonable to expect if the parties had been dealing with each other at arms length in respect of the transaction.

10.2.3 The Trustee shall not acquire an asset (other than cash) from a Member or a relative of a Member except where permitted by the Act.

11. Trustee Powers and Rights

11.1 Dealing with Assets

The Trustee has power:

- (a) to sell, transpose, exchange, or vary any or all assets from time to time included in the Fund;
- (b) to sell, transfer, mortgage, charge, exchange, lease, hire or license the use of the whole or any part of the Fund upon such terms and conditions as to payment or repayment as it thinks fit;
- (c) to pay, agree or settle all or any accounts arising out of or in relation to the acquisition, purchase, sale or disposal of any investments made under the powers and trusts of this Deed and to give effectual receipts, releases and discharges;
- (d) for the purposes of investment, to establish, promote, acquire, invest in, or cause the incorporation or join in or consent to the establishment or reorganisation of companies, partnerships, joint ventures or unit trusts, as it thinks fit and to act from time to time as manager or agent of any such body;
- (e) to grant or cause to be granted options over the whole or any part of the Fund or over the capital of any company or the units of any unit trust in which part of the Fund is invested or over patent, property or other rights to which the Trustee is entitled;
- (f) to establish or maintain, as it may think fit from time to time, reserve funds or sinking funds to provide for the amortisation of the cost of or depreciation in the value of any property forming part of the Fund or of any liability to which it is subject.
- (g) subject to the consent of the person entitled to a Benefit, to convert such Benefit into a pension benefit or annuity on such terms as the Trustee and the person agree; and
- (h) if a Benefit is payable in the form of a pension or an annuity, to pay the pension or annuity on such basis as the Trustee considers necessary or desirable in compliance with Relevant Law.

11.2 General Powers

The Trustee has power:

- (a) to employ or engage managers, servants, agents, sponsors and contractors irrespective of whether such person has any beneficial interest, whether direct or indirect, in the Fund or any parts thereof and to pay out of the Fund any person or persons to perform any services or do any act or acts (including the receipt of information, documents or money) in connection with or arising out of the exercise of the powers under this deed and including, without restricting the generality hereof, acts which the Trustee could perform personally;
- (b) to prosecute and as it may think fit to defend, answer, discontinue, compromise or settle any claims, actions, suits, or proceedings whatsoever and to refer and submit to arbitration any dispute or matter concerning any part of the Fund or relating to the trusts of this deed;
- (c) to make, do, sign, seal, deliver and execute all acts, deeds, matters and things whatsoever necessary or incidental to the exercise or performance of the powers or trusts of this deed or to satisfy its obligations under the Act or give any notices required under that Act;
- (d) to delegate to any person, firm or corporation, including any firm or corporation in which the Trustee may be interested, any of its discretions, powers and authorities including the receipt or payment of money for such period and subject to such conditions or restrictions as the

Trustee shall in its absolute discretion deem fit and to pay to any such person out of the Fund all proper fees, charges, commissions and disbursements;

- (e) to take and act upon the opinion or advice of any accountant, auditor, banker, lawyer, valuer or other expert or professional person or body and upon any information or documents received from a person on whom it is reasonable to rely (in any case whether or not a shareholder or director of the Trustee) and, to the extent permitted by law, in relation to any such opinion, information, documents or advice the Trustee shall not be responsible for any loss, depreciation or damage of any nature to the Fund resulting from any decision of the Trustee to act or not to act as the Trustee may in his absolute discretion think fit in accordance with any such opinion, information, documents or advice;
- (f) to open any account or accounts with any bank or banks and to operate in all usual ways on such accounts;
- (g) to appoint by deed or otherwise any person to act as its attorney in any place in the world to do any acts in connection with or arising out of the exercise of the trusts, powers and discretions under this Deed and in relation to all or any part of the Fund in the same manner as the Trustees could do personally. Such attorney may be given such ancillary powers and be subject to such provisions and restrictions as the Trustees thinks fit including a power to appoint substitutes. The Trustee shall not by reason only of having made the appointment be responsible for any loss arising thereby;
- (h) to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by these presents;
- (i) to compromise, compound, abandon, release, forgive, submit to arbitration or otherwise settle any debt, claim or thing whatsoever relating to the Fund or owing to the Trustee on any account whatsoever;
- (j) to take on lease or hire and make improvements to any real or personal property on such terms and conditions as the Trustee shall in its absolute discretion determine;
- (k) to pay out of the Fund or the income thereof all costs, charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion herein contained or in carrying out or performing the trusts hereof which the Trustee may at any time incur including all income or other taxes payable in respect of the Fund;
- (l) to deduct and pay as required all taxes, charges and levies payable on contributions made to the Fund and on benefits payable from the Fund and to charge for the costs and expenses directly or indirectly attributable to administering such tax, charge or levy;
- (m) to establish a separate trust account and pay into that account in the name of each person any moneys required to be held on separate trust and deal with these moneys as required by the Act;
- (n) to borrow as permitted under the Act;
- (o) where appropriate, to charge fees for the provision of information required to be provided by the Act;
- (p) to advertise, market and otherwise promote the Fund and to join in with trustees of other superannuation funds to advertise, market and otherwise promote superannuation funds including the Fund;
- (q) to determine and to vary the minimum account balance that must remain after payment on the grounds of severe financial hardship and to determine and to vary any other criteria for eligibility for payment on the grounds of severe financial hardship;

- (r) to determine and to vary the Minimum Amount and the class or classes of Members to whom the Minimum Amount is to apply;
- (s) to establish a separate account to which payments under a Policy may be credited and to determine whether or not the account is to be credited with an earnings rate, to determine what that earnings rate should be and to defer crediting the payment (and any earnings thereon) to the appropriate Member Account or Pension Account until a later date not being later than the date the Member Benefit is to be paid;
- (t) at any time and from time to time to determine with effect from the date determined by deed, writing or by oral declaration that this deed and the trusts created under it take effect in accordance with the law of another state or territory;
- (u) to make rules and adopt policies in relation to any matters that the Trustee considers appropriate for the convenient administration of the Fund;
- (v) to give such undertakings and indemnities, enter into such contracts and incur all such obligations in connection with or relating to the Fund or any part thereof as the Trustee may think fit, including without limitation to give a guarantee or indemnity (whether revocable or irrevocable) in respect of any performance or payment obligation of, or to become surety for, any person, trustee, company or other entity; and
- (w) to make payments out of the Fund to a standard employer-sponsor (including for the acquisition of contractual rights), but only to the extent permitted under the Act.

11.3 Management Costs and Directors' Remuneration

The Trustee shall be entitled to be paid from the Fund its costs and expenses properly incurred in carrying out its duties and obligations under this Deed, including the remuneration of the Trustee's directors (but only to the extent that the remuneration is determined by the Trustee to be reasonable, having regard to the advice of an independent remuneration consultant), and payment of travelling and other expenses properly incurred by the Trustee's directors in connection with the business of the Trustee.

11.4 Establishment and Operations of Membership Divisions, Sections and Categories

The Trustee may establish one or more divisions (Membership Division), sections (Membership Section) or categories (Membership Category) within the Fund or a sub-plan, on such terms and conditions as it determines and the following provisions shall apply:

- (a) the Trustee may make rules governing a Membership Division, Membership Section and/or Membership Category and those rules must be set out in this Deed (whether as a Schedule or otherwise) or in the case of a sub-plan in the document governing the sub-plan;
- (b) for avoidance of doubt, it is recorded that a Member may belong to more than one sub-plan, Membership Division, Membership Section or Membership Category at one time;
- (c) the Trustee may segregate (physically or notionally) particular assets of the Fund from other assets including, but not limited to, assets used to fund the payment of pensions in Retirement phase;
- (d) for avoidance of doubt, it is recorded that nothing in this clause shall be taken as creating a separate trust or fund for the purposes of applicable law;
- (e) the provisions of this Deed which are not included in a Schedule (or other document) relating to a sub-plan, Membership Division, Membership Section and/or Membership Category shall govern that sub-plan, Membership Division, Membership Section and/or Membership Category, all to the extent that they are applicable; and
- (f) if there is a conflict between a rule of a sub-plan, Membership Division, Membership Section and/or Membership Category and any other provision of this Deed which is not included in a

Schedule (or other document) relating to such a sub-plan, Membership Division, Membership Section and/or Membership Category, the former prevails over the latter, unless the relevant Schedule or document expressly provides to the contrary or the Trustee otherwise determines.

11.5 Membership Investment Options

Subject to compliance with Relevant Law, the Trustee may:

- (a) hold specific investments for separate Members or classes or groups of Members;
- (b) establish one or more investment objectives and strategies (each called an Investment Option) and allow a Member or a class or a group of Members to specify the Investment Option or Investment Options into which the Member's Accounts are to be invested and, if there is more than one Investment Option, the proportion of their respective Accounts that are to be invested in each Investment Option;
- (c) defer carrying out a Member's direction to withdraw from a specific investment or stagger the withdrawal from a specific investment, directed by a Member, for any reason in the absolute discretion of the Trustee;
- (d) prior to carrying out a Member's direction to make a specific investment or to change a specific investment, seek evidence of the Member's consent to the investment or change;
- (e) impose terms, conditions and restrictions on the manner in which directions for specific investments, or changes to specific investments, may be made, including:
 - (i) the minimum amount that may be invested in any specific investment;
 - (ii) the time or times, and the frequency in relation to which specific investments may be made or changed; and
 - (iii) the fee that can be charged in relation to making or changing any specific investment;
- (f) at any time, vary any term, condition or restriction without the approval of the Member, subject to compliance with Relevant Law;
- (g) if a Member who is allowed to direct the Trustee to make a specific investment or to change a specific investment fails to do so within the time or manner specified by the Trustee, determine the Investment Option or Investment Options into which the Member's Accounts are to be invested, and if there is more than one Investment Option, the proportion of the Member's Accounts that are to be invested in each Investment Option;

PROVIDED THAT:

- (i) a specific investment for a Member or a class or group of Members shall be made for the sole benefit of and at the sole risk of the Member or the Members of the class or group, such that any income or gains or losses or expenses incurred in respect of that specific investment must be attributed to that Member or class or group;
- (ii) notwithstanding paragraph (i) above, a Beneficiary has no right to claim any interest or exercise any right in any particular asset of the Fund; and
- (iii) the Trustee is not liable for the acquisition, delay in acquiring, retention, failure to dispose of, the performance of, or any loss attributable to, a specific investment.

12. Insurance Benefits

12.1 Level of Benefits

The amount and nature, if any, of the Insured Benefits applying to a Member shall be determined by the Trustee in accordance with any relevant provisions of the Act. The Trustee may determine to provide different Insured Benefits in respect of different classes or groups of Members.

12.2 Trustee to Effect Necessary Death and Disability Insurances

To provide the Insured Benefits, the Trustee may enter into one or more group insurance policies with insurers for amounts and on terms and conditions agreed between the Trustee and the insurer and/or may accept the assignment of a policy of insurance on such terms as the Trustee, in its absolute discretion, determines.

12.3 Commencement of Death and Disability Insurance

Where applicable, cover for Insured Benefits in respect of a person will not commence until:

- (a) the person becomes a Member in accordance with Clause 3.1 or, where required by the Act, elects to be covered after becoming a Member;
- (b) if required, the Member and the Employer have provided all information required by the insurer; and
- (c) if required, upon the payment by the Member of any insurance premium.

12.4 Cessation of Insurance Cover

A Member's interest in and rights under any Insured Benefit arranged by the Trustee ceases on the first of the following events to occur:

- (a) on payment of the Member's Benefit or on transfer of the Member's Benefit to a Transfer Fund;
- (b) if the Member ceases to be within the class of persons covered by the Policy or otherwise ceases to be covered under the terms of the Policy;
- (c) on the Trustee determining that it is not reasonably practicable to obtain or renew a Policy on terms acceptable to the Trustee;
- (d) on the occurrence of any other circumstances giving rise to cessation of liability specified in the relevant Policy;
- (e) on the occurrence of any circumstance when cover is required to cease under the Act.

12.5 Scope of Insurance Cover

12.5.1 Any Insured Benefit shall be subject to the terms of the applicable Policy.

12.5.2 No payment shall be required to be made in respect of a Member in satisfaction of any Insured Benefit that is greater than the amount received by the Trustee under the Policy in respect of that Member after deduction of all administration charges and expenses and taxes attributable to that amount.

12.5.3 The Trustee has no duty:

- (a) to effect insurance cover;
- (b) to increase insurance cover; or
- (c) to maintain any insurance policy.

12.5.4 The amount of any Insured Benefit shall be adjusted where appropriate where there is an error in the age, sex or other details of the Member the subject of the Insured Benefit.

12.5.5 The amount of an Insured Benefit payable to a Member is subject to the Trustee being able to insure for the desired amount and for the events giving rise to payment of that amount on standard terms. If the Trustee is unable to insure, the amount of any Insured Benefit payable from the Trust may be reduced accordingly.

12.5.6 If, for any reason, the Trustee fails to insure any benefit payable under this Deed, or if, for any reason, the Insurer (with which the Trustee seeks to insure all or any of the benefits payable under this Deed) declines to accept the proposal for insurance or will only accept the proposal on terms and conditions which the Trustee regards as unacceptable, no Insured Benefit shall be payable to the Member from the Fund.

12.5.7 If, for any reason, the Insurer (with which all or any part of a benefit payable under this Deed is insured) fails or refuses to pay, or reduces, delays or defers payment of, any part of the Insured Benefit, the Trustee must reduce the Insured Benefit payable to or in respect of a Member from the Fund to the extent of the failure or refusal to pay, or reduction, delay or deferral of payment.

12.5.8 The Trustee may pay the premiums and costs of any insurance policy or policies maintained in respect of a Member from such of the Accounts maintained in respect of the Member as the Trustee determines.

12.5.9 If the balance of the Accounts maintained in respect of a Member are insufficient to meet the premiums and costs of any insurance policy or policies attributable to that Member, then:

- (a) the Trustee is not bound to pay such premiums and costs from the Fund in respect of the Member; and
- (b) the Trustee is not liable to the Member for the Insurer:
 - (i) failing to pay, or reducing or deferring payment of the Insured Benefit; or
 - (ii) failing to renew the relevant policy.

13. Interest in Fund

13.1 Members' Interests

13.1.1 The interest in the Fund of a Member and those entitled to a benefit on the death of the Member is personal to that person and the Trustee shall not recognise any agreement, assignment, claim charge or order in respect of that interest unless that agreement, assignment, claim charge or order is permitted expressly or by necessary implication by the Act or the Family Law Act 1975.

13.1.2 A Member only has an interest in the Fund whilst the Member is alive.

13.1.3 Except where Clause 13.1.4 applies, on the death of a Member the entitlement to the Member's Account shall be determined in accordance with the provisions applying on the death of a Member.

13.1.4 Where after a valid claim for payment is made, the Member dies and the Trustee has not received, written notice of the death of the Member before authorising payment, the Member's legal personal representative shall be entitled to payment.

13.2 **Payment**

If any part of the Benefit cannot be paid in accordance with the provisions as to payment in this Deed and is not required to be paid in accordance with Clause 13.3 then it may be applied to the general purposes of the Fund.

13.3 **Unclaimed Money**

Where the Relevant Law as to unclaimed money or Lost Members requires payment then the Trustee shall pay the benefits in accordance with the Relevant Law dealing with unclaimed money and/or Lost Members, as applicable.

13.4 **Application to General Purposes of the Fund**

Subject to Clause 13.3 if when any benefit becomes payable to a Member or his Dependants or legal personal representative and the Member or his Dependants or legal personal representative refuse to accept the Benefit or part thereof or the Trustee is not for a period of three years immediately thereafter (after reasonable enquiry) aware of the location of the Member the amount of the benefit shall, (subject to the Relevant Law dealing with unclaimed money and/or Lost Members), be applied for the general purposes of the Fund.

13.5 **Employer and Employee Rights not Restricted**

Nothing herein contained shall restrict the right of an Employer to dismiss an Employee or be used to increase damages in any action brought against the Employer in respect of such dismissal or affect the legal rights of a Member or legal personal representative arising out of or in the course of his or her employment with the Employer.

14. Transfer from Another Fund

Subject to compliance with the Act and the receipt of such information as the Trustee may reasonably require, the Trustee may make such arrangements as it considers appropriate with a person or any previous employer of a person or the trustees of any superannuation fund, approved deposit fund or deferred annuity in which the person has participated, to transfer to the Fund amounts from another superannuation fund or similar fund in which that person has previously participated and to provide benefits in respect of that person.

15. Transfer of Benefit to New Fund

15.1 **Transfers on Member Request**

Any Member may, with the consent of the Trustee terminate his membership of the Fund and transfer or apply the amount standing to his accounts to a Transfer Fund nominated by the Member which makes provision for payment and preservation of benefits in accordance with the Act.

15.2 **Withdrawal of Employer**

15.2.1 A Withdrawing Employer's participation in the Fund shall be determined in the following manner:

- (a) date of withdrawal is the date any notice takes effect, or if there is no date specified in the notice, the date the notice is received by the Trustee and where there is no notice, the date the Trustee determines that the Employer is a Withdrawing Employer;
- (b) all arrears of contributions and amounts advanced by the Trustee for the benefit of the Employer's Members, if any, together with interest on any amount not paid by the Withdrawing Employer on the Due Date at a reasonable rate as determined from time to time by the Trustee and collection costs shall be paid up to the date of withdrawal;

15.2.2 The Trustee will in the case of each Outgoing Member:

- (a) if required pay any part of the Member's Benefits that may be paid in accordance with Clause 21; and
- (b) transfer the remaining part of the Member's Benefit in accordance with Clause 15.1.

15.3 Transfer to Successor Fund

Any other moneys and assets comprising the benefit of a Member that are not dealt with in accordance with Clauses 15.1 or 15.2 on a person ceasing to be a Member of the Fund or a sub-plan of the Fund or in any other circumstance the Trustee determines shall be transferred to a Successor Fund.

15.4 Transfers in Other Circumstances

15.4.1 Where a benefit has become payable and the Trustee is unable to pay the benefit and the circumstances preventing payment are such that the provisions of the Act and/or the provisions of any other Relevant Law dealing with unclaimed money and/or Lost Members apply or the Act requires or permits payment to the Commissioner or an eligible roll-over fund then the Trustee shall pay or transfer the benefits in accordance with the Act or such other Relevant Law. Payment to the Commissioner or trustee of an eligible rollover fund in accordance with the Relevant Law shall be a complete discharge to the Trustee.

15.4.2 The Trustee may at any time transfer a protected Member's account to an eligible rollover fund.

15.5 Compliance Requirements for Transfers

All transfers out of the Fund are subject to such conditions and must be made within the timeframes required under the Relevant Law. The Trustee must provide to the person responsible for the transferred amount such information as the Relevant Law requires.

15.6 Receipt of Trustee

The receipt of the trustee of the Transfer Fund to which the transfer is made shall, to the extent permitted by law, be a complete discharge to the Trustee in respect of any money or asset so paid or transferred.

16. Fund Information

16.1 Deed Available for Inspection

A copy of the Deed shall be kept by the Trustee at its registered office and shall be open to inspection by the Member at all reasonable times.

16.2 Information on Joining Fund

The Trustee shall give to a person on joining the Fund such information as is required to be disclosed under the Relevant Law.

16.3 Annual Statement

The Trustee shall give to each Member of the Fund as soon as practicable after the end of each financial year and in any event not later than six months after the end of the year a written statement setting out the information required by Relevant Law as to the Member's entitlements and any other information required by Relevant Law.

16.4 Information on Cessation of Membership

Where a Member ceases to be a Member of the Fund the Trustee shall give, or arrange to be given, to the Member (or if the Member is deceased his or her Dependant or legal personal representative) as soon as is practicable, such information as is required to be provided under the Relevant Law.

16.5 Employer Information

The Trustee shall give to a person applying to become a Participating Employer such information as is required to be given by Relevant Law.

16.6 Regulator Information

The Trustee shall ensure that the Regulator is given such notices and reports on contributions to and entitlements of the Fund and is advised of such matters as shall be necessary in order to comply with any requirements of Relevant Law.

16.7 Fees for Provision of Information

16.7.1 The Trustee may charge fees for the provision of information required to be provided in accordance with Relevant Law.

16.7.2 The Trustee shall be entitled to charge fees that take into account all its costs of providing the information. Fees payable by persons other than Members and their Dependants, may unless prohibited by Relevant Law, include a profit element.

17. Alterations to Trust Deed

17.1 Method of Amendment

The provisions of this Deed may be amended by a Deed executed by the Trustee.

17.2 Amendment may be Retrospective

Any amendment may be expressed to have retrospective effect on and from a date prior to the date of the making of such amendment.

17.3 Amendment not to reduce Benefits

17.3.1 Except in the circumstances specified in sub-clause 17.3.3 the Trustee shall not amend the Deed in any manner which has the effect of:

- (a) reducing any Benefits that have accrued to any Member; or
- (b) affecting the basis for calculating the amount of retirement benefits of any Member in a way that reduces that amount with respect to the period of membership prior to the date of the Amendment; or
- (c) changing Clause 17.

17.3.2 No amendment which has the effect of imposing or increasing a Member's liability to contribute to the Fund shall bind any Member unless and until that Member has agreed to that amendment.

17.3.3 The circumstances referred to in sub-clause 17.3.1 are:

- (a) the written approval of all Members adversely affected; or
- (b) the written approval of the Regulator.

17.4 Notice of Amendments

17.4.1 The Trustee shall provide to each Member as soon as practicable after any alteration has been effected a written statement explaining the nature and the purpose of the alteration and the effect (if any) of the alteration on the entitlement of that Member.

17.4.2 The non-compliance by the Trustee with sub-clause 17.4.1 shall not alone render that amendment invalid.

17.5 Amendments not to breach Act

17.5.1 Notwithstanding the foregoing provisions of this clause, no addition to, cancellation, amendment, alteration or deletion shall be made to this Deed;

- (a) which would have the effect of permitting a natural person to be appointed as a Trustee of the Fund;
- (b) where the Act requires any approval or consent from any person or persons before an amendment may be made to the governing rules of a superannuation fund, that approval or consent in the form required by the Act is first obtained; or
- (c) if in the opinion of the Trustee so to do would cause the Trust, this Deed, or the Trustee to contravene the Act unless the Regulator or the person or persons (if any) specified for that purpose under the Act consents to it in writing.

18. Compliance with Relevant Law

18.1 Management

The Fund shall be managed and administered as a Complying Fund and as such, notwithstanding anything expressed or implied to the contrary in this Deed, shall satisfy all requirements applying to Complying Funds.

18.2 Inconsistency

To the extent that there is an inconsistency between the provisions of this Deed and the Act or that this Deed does not deal with any matter required to be dealt with by the Act applying to a Complying Fund those requirements shall be deemed to be included in this Deed and any inconsistent provisions of this Deed shall be deemed to be amended or deleted to the extent necessary for the Fund to be classified as a Complying Fund.

18.3 Mandatory compliance with Relevant Law

The Trustee has all of the powers necessary to comply with a Relevant Law or to do anything authorised by a Relevant Law and the Trustee must:

- (a) do, or cause to be done, any matter or thing necessary in order to satisfy any applicable requirement of a Relevant Law (including compliance with any lawful direction of a Regulator); and
- (b) refrain from doing, and take all reasonable steps to prevent any matter or thing which would cause a breach of or non-compliance with any applicable requirement of a Relevant Law,

and the Trustee is not liable for doing or failing to do anything contemplated by this clause if and to the extent that, under the Relevant Law, the Trustee is relieved from a liability to which the Trustee would otherwise be subject or that might otherwise be imposed on the Trustee under the Relevant Law because of that action or failure.

18.4 Overriding effect

Notwithstanding anything expressed or implied to the contrary in this Deed (including any other provision of this Deed which purports to prevail over this clause) if there is a conflict between this clause and any other provision of this Deed, this clause prevails to the extent of the conflict.

18A. My Super compliance

18A.1 Application

If the Trustee is authorised to offer and determines to offer a class of beneficial interest in the Fund as a MySuper product (within the meaning of the Act), this clause 18A applies to the MySuper product, notwithstanding anything expressed or implied to the contrary in this Deed.

18A.2 MySuper obligations and powers

- (a) The Trustee must comply with any requirement of the Act that must be met in relation to a MySuper product, including the additional obligations of a trustee imposed under the Act.
- (b) The Trustee may (but is not obliged to) act in accordance with any other provision of the Act that relates to a MySuper product, including to attribute or transfer amounts to a MySuper product without the consent of the Member if the Act permits the Trustee to do so or does not prohibit the Trustee from doing so.

18A.3 MySuper product characteristics

18A.3.1 The following rules apply to the MySuper product:

- (a) the Trustee must adopt a single diversified investment strategy for the MySuper assets (as determined by the Trustee from time to time);
- (b) all MySuper Members must have access to the same options, benefits and facilities (as determined by the Trustee from time to time) except to the extent that a benefit is provided by taking out risk insurance;
- (c) the Trustee must allocate the gains or losses attributable to the MySuper assets by attributing them to the Member Accounts of all MySuper Members, except as otherwise permitted by the Act;
- (d) the Trustee must adopt the same process for attributing other amounts permitted to be debited or credited to the Member Accounts of MySuper Members, except as otherwise permitted by the Act;
- (e) the Trustee must not limit the sources or kinds of contributions that may be made to the MySuper product, except as otherwise permitted by the Act;
- (f) a MySuper Member's MySuper product cannot be replaced with another class of interest in the Fund unless:
 - (i) the MySuper Member consents in writing to the replacement no more than 30 days before it occurs; or
 - (ii) as otherwise permitted by the Act;
- (g) a MySuper Member's MySuper product cannot be replaced with a beneficial interest in another superannuation entity unless:
 - (i) the replacement is otherwise permitted or required by Law; or
 - (ii) the MySuper Member consents in writing to the replacement no more than 30 days before it occurs;
- (h) the Trustee must not pay a pension from the MySuper assets, other than by payment of a benefit provided to the Fund by an insurer in the event of a MySuper Member ceasing work due to ill-health or as otherwise permitted by the Act; and

- (i) any other rules determined by the Trustee for the MySuper product from time to time.

18A.3.2 The Trustee must ensure that the rules applicable to the MySuper product comply with section 29TC of the Act. Any inconsistent provisions of this clause 18A.3 shall be deemed to be amended or deleted and any additional provisions shall be deemed to be included in this clause 18A.3 to the extent necessary to ensure conformity.

18A.4 MySuper product fees and payments

- 18A.4.1 The Trustee must charge fees in relation to the MySuper product in the manner required by the Act and only as permitted by the Act.
- 18A.4.2 The Trustee must not pay any conflicted remuneration (within the meaning of the Relevant Law) in relation to the MySuper product.
- 18A.4.3 The Trustee must ensure that any arrangement for the payment of a performance fee to an investment manager for the investment of one or more of the MySuper assets complies with the Act.

18A.5 MySuper Insured Benefits

The Trustee must provide Insured Benefits for MySuper Members to the extent and on the basis required by the Act and only as permitted by the Act.

18A.6 Publication of information

The Trustee must publish on its website information about the MySuper product as required by the Relevant Law.

18A.7 Transfer of Accrued Default Amounts

Unless the MySuper Member directs the Trustee in writing not to do so, the Trustee must attribute to the MySuper Member's MySuper product any Accrued Default Amount held in the Fund for the MySuper Member within the period required by the Act.

18A.8 Definitions

In this clause 18A:

Accrued Default Amount has the meaning given to that expression under the Act.

Law means a law of the Commonwealth.

Member Account includes any sub-account maintained within a Member Account for the MySuper product.

MySuper assets means the Fund assets attributable to the MySuper product.

MySuper Member means a Member who holds a MySuper product of the Fund in respect of all or part of their interest in the Fund.

19. Participating Employer

19.1 Admission of Participating Employer

The Trustee may, in its absolute discretion, admit as a Participating Employer, an Employer who consents to be bound by the terms of this Deed in a form approved by the Trustee.

19.2 **Removal of Participating Employer**

The Trustee in its absolute discretion, may at any time by notice in writing remove a Participating Employer as a Participating Employer.

19.3 **New Employer**

If another company, person or firm (the **New Employer**) agrees to undertake the superannuation obligations of a Participating Employer or otherwise becomes bound to perform the obligations of the Participating Employer in respect of the Fund then that Participating Employer shall upon the New Employer assuming the said obligations be released from all obligations in respect of the Fund and the Deed shall thereafter have effect as if such other company, person or firm had been a party to the Deed instead of the then Employer.

19.4 **Employer not an Agent of the Trustee**

An Employer is not the agent of the Trustee for any purpose.

20. Dissolution of the Fund

20.1 **Date of Dissolution**

If there shall cease to be any Members or if the Trustee resolves to terminate the Fund, the Fund shall be dissolved as from the date on which the last person ceases to be a Member of the Fund or date determined by the Trustee.

20.2 **Benefits on Dissolution**

On the dissolution of the Fund the Trustee shall after deducting expenses deal with benefits in accordance with sub-clause 15.2.2.

20.3 **Surplus**

If after providing benefits for Members under the provisions of this Deed a surplus remains, such surplus or part thereof may, at the discretion of the Trustee, be credited to Member or former Member accounts by way of further benefits and dealt with in accordance with sub-clause 15.2.2.

20.4 **Final Accounts**

The Trustee shall cause final accounts of the Fund to be prepared and shall have those accounts audited by an approved auditor.

21. Payments of Benefits

21.1 **Form of Payment**

Benefits payable under this Deed will be by way of any of or any combination of:

- (a) lump sum;
- (b) an Allocated Pension in accordance with Clause 23;
- (c) an Account Based Pension in accordance with Clause 23A;
- (d) a Market Linked Pension in accordance with Clause 24;
- (e) any other pension permitted under the Act; or
- (f) in purchase of an annuity.

21.2 When Payable

21.2.1 In accordance with the Relevant Law and at the request of a Member, the Trustee may in its absolute discretion retain all or part of any Benefit payable under this Deed in the Fund until:

- (a) the Member requests that it be paid,
- (b) the Member dies, or
- (c) the Trustee elects for whatever reason to pay the Benefit to the Member,

whichever occurs first, and the amount then payable shall be the balance of the Member's Member Account or Pension Account at the date of payment after all credits and debits have been made to the account PROVIDED THAT the Benefit must always be paid in accordance with the Relevant Law.

21.2.2 On the death of a Member Benefits shall be paid in accordance with Clause 21.6 or Clause 21.7 (if applicable).

21.2.3 The Trustee may pay benefits to a Member:

- (a) on Retirement or on attaining such age as may be permitted at law;
- (b) on suffering Permanent Incapacity;
- (c) upon permanent departure from Australia;
- (d) if the Benefit is unrestricted non-preserved:
 - (i) on leaving the Fund;
 - (ii) where the Trustee has determined that such benefits should be available for payment before the Member leaves the fund - on request;
- (e) in circumstances where the Regulator approve the payment and the Trustee's restrictions on payment are met - a single lump sum, not exceeding the amount determined by the Regulator;
- (f) on termination of gainful employment with a Participating Employer where the Member's Preserved Benefit in the Fund is less than the Minimum Amount and the Trustee has determined to permit payment in such circumstances - the whole of the Benefit; and
- (g) in any other circumstances or form permitted under the Act.

21.3 Payment of other amounts

If, in the opinion of the Trustee, an amount:

- (a) must be paid from the Fund to or in respect of a Member in order to satisfy the Relevant Law, the Trustee must pay that amount subject to such conditions as are necessary to satisfy the Relevant Law; or
- (b) may be paid from the Fund in respect of a Member without causing a breach of the Relevant Law the Trustee may pay that amount subject to such conditions as the Trustee may determine (either generally or in a particular case),

and, for the purposes of determining the amount of or eligibility for payment of, any benefit payable pursuant to this Deed in respect of an event or circumstance occurring or arising after the date the amount is paid, the Trustee may take into account, as it determines appropriate, the previous amount paid under this Deed.

21.4 Evidence of Entitlement

As a precondition to payment, the Trustee may require the payee of any benefit to produce satisfactory evidence of his or her entitlement and any other information, evidence or proofs and to execute documents and do other things reasonably required by the Trustee. Payment of the benefit payable in respect of a Member to the person entitled will discharge the Trustee and satisfy that Member's rights under the Trust.

21.5 Establishing Permanent Incapacity

A Member shall not be treated as suffering Permanent Incapacity unless and until the Member has supplied the Trustee with such medical and other evidence as the Trustee requires to satisfy itself that the Member is suffering Permanent Incapacity.

21.6 Death of Member

Subject to Clauses 21.7, 23, 23A, 24, any rules made under clause 24A and the *Family Law Act 1975*, where a Member has died:

- (a) the Trustee must pay the Benefit to or for the benefit of such of the Dependants and legal personal representative of the deceased Member as the Trustee in its absolute discretion considers appropriate; and
- (b) in the case of a Non-dependant Benefit, it may be paid to any other person to whom the Trustee may pay a Benefit under the Act, in any shares or proportions as the Trustee in its absolute discretion considers appropriate.

21.7 Binding Death Benefit Nomination

Subject to the Trustee complying with any conditions contained in the Regulations made under the Act a Member may by written notice given to the Trustee in accordance with the Regulations made under the Act require the Trustee to provide any benefits in respect of the Member on or after the Member's death to a person or persons mentioned in the notice being the legal personal representative or a dependant or dependants of the Member.

21.8 Form of Death Benefits

On identification of the Beneficiary or Beneficiaries to whom the Trustee is to pay a death Benefit, the Trustee may determine, having regard to the preferences of the Member or Beneficiary and such other matters as the Trustee in its absolute discretion resolves to consider, to pay the death Benefit as a lump sum or a pension, to purchase an annuity or to apply a combination thereof, subject to any requirement of Relevant Law to pay a lump sum death Benefit to any Beneficiary who is not a Dependant or a Dependent Child or who is otherwise required to receive a lump sum death Benefit.

22. Benefits to Persons Under Legal Incapacity

22.1 Legal Incapacity of Recipient

Subject to Clauses 23 and 24 where any amount is payable or transferable to a person who is a minor or who, in the opinion of the Trustee, is unable to give a good receipt or is otherwise under a legal incapacity, then the Trustee may in its discretion:

- (a) defer payment of such moneys or any part thereof until such time as such person is in the opinion of the Trustee able to give a good receipt therefore and in the meantime invest such moneys in any investment authorised hereunder; or
- (b) pay the amount or any part thereof to any parent guardian or legal personal representative of such first mentioned person or to any person with whom he is residing for his maintenance, education, advancement or benefit;

- (c) pay the amount to the Public Trustee or a trustee company or one or more trustees to be held by it upon trust to pay or apply the amount for the maintenance education, advancement or benefit of the person with power for such trustee to pay or transfer the same to any parent, guardian or legal personal representative of the person.

22.2 Trustee Receipt

No Trustee shall be concerned to see to the application of any amount paid in accordance with Clause 22.1 and the receipt of the recipient shall be a complete discharge for any moneys so paid or any assets so transferred.

23. Allocated Pensions

- 23.1 An Allocated Pension shall be paid, at least, annually.
- 23.2 The annual amount of an Allocated Pension shall not be greater than nor less than any maximum or minimum amounts stated in the Act and the pension shall comply with the requirements of the Act.
- 23.3 An Allocated Pension shall be paid on such dates and by instalments of such amounts as the Trustee and the Member agree upon or, in the absence of agreement, as the Trustee determines.
- 23.4 The Trustee may at any time and without prior notice to the Member adjust the value of Allocated Pension payments to such Member to a level that complies with the law.
- 23.5 A person in receipt of an Allocated Pension may commute from time to time part or the whole of the pension upon making written application to the Trustee provided that the Trustee will only act upon such written application to the extent that doing so will not breach the Act.
- 23.6 On the commutation of the whole of the Member's Allocated Pension, the Trustee must, to the extent permitted by law, pay, apply or transfer a lump sum benefit to the Member or as directed by the Member equal to the balance of the Member's Allocated Pension Account as at the date of commutation.
- 23.7 On the commutation of part of the Member's Allocated Pension, the Trustee must, to the extent permitted by law, pay, apply or transfer a lump sum benefit to the Member or as directed by the Member from the Member's Allocated Pension Account equal to the amount requested up to the balance of the Member's Allocated Pension Account as at the date of commutation.
- 23.8 If the Trustee is required by law, or is directed or requested by a Regulator, to treat any part of a Member's Allocated Pension as if it had been commuted, the Trustee must, to the extent permitted by law, pay, apply or transfer the excess to the Member or as directed by the Member as a commutation.
- 23.9 Upon the death of a Member who is entitled to receive an Allocated Pension, the Trustee shall distribute the Member's Death Benefit in accordance with Clauses 21.6 and 21.7. If the Trustee pays an Allocated Pension to a Reversionary Pensioner, subject to such conditions and restrictions as the Trustee determines, references to the Member in this clause shall be read as a reference to the Reversionary Pensioner.
- 23.10 The amount and terms and conditions of the Allocated Pension paid to a Reversionary Pensioner pursuant to Clause 23.9 shall, subject to compliance with Relevant Law, be agreed between the Reversionary Pensioner and the Trustee but, in the absence of agreement, the amount and the terms and conditions of the Allocated Pension shall be determined by the Trustee. Notwithstanding the foregoing, if the Allocated Pension has to be paid on some other basis for the Fund to comply with Relevant Law, it must be paid on that basis.
- 23.11 The Allocated Pension will cease to be payable on the earliest of the following:
 - (a) the balance of the Member's Allocated Pension Account is exhausted or decreases to a value determined by the Trustee;

- (b) the term of the Allocated Pension agreed between the Trustee and the Member pursuant to Clause 23.3 has expired; or
- (c) on the date determined by the Trustee in accordance with Relevant Law.

- 23.12 Any balance of the Member's Allocated Pension Account at the date determined under Clause 23.11 shall be paid to the Member as soon as practicable thereafter.
- 23.13 If payment of part or all of such benefit under Clause 23.12 does not comply with the requirements of the Act, the proportion of the benefit that does not so comply shall be applied in the manner stated in Clause 23.14.
- 23.14 If the Trustee is unable to establish within six (6) months after the later of the Member's death and an Allocated Pension ceasing to be payable to all of the Reversionary Pensioners that there are any Dependents, the benefit payable under this clause shall be paid to the Member's legal personal representative but, if a grant of probate or letters of administration in respect of the estate of the deceased Member has not been made, or is not made within three (3) years of the date of the Allocated Pension(s) ceasing to be payable (or such longer period as the Trustee determines), the benefit payable under this clause shall be dealt with in the manner provided for in the Act and/or any other relevant State and/or Federal legislation dealing with unclaimed money and/or Lost Members or, in the absence of any such provision, shall be applied for the general purposes of the Fund.
- 23.15 Allocated Pensions payable from the Fund shall not be assigned or otherwise transferred by the person in receipt thereof (other than to a Reversionary Pensioner on the death of a Member or of another Reversionary Pensioner) and shall not be mortgaged or encumbered in any manner whatsoever. Neither the capital value (if any) of any Allocated Pension payable from the Fund nor any income from it, may be used as a security for a borrowing.
- 23.16 The Trustee may vary any terms and conditions of an Allocated Pension or impose additional terms and conditions to ensure that the pension does and will continue to comply with Relevant Law or in any other manner contemplated by the Relevant Law, without necessarily commuting the pension.

23A. Account Based Pensions

- 23A.1 The Trustee may pay Account Based Pensions.
- 23A.2 Where a Member has elected to be paid an Account Based Pension, the pension may be paid at least annually and in such amounts as may be agreed between the Trustee and the Member or in the absence of agreement as the Trustee determines, provided the pension satisfies the standards of an Account Based Pension under the Relevant Law.
- 23A.3 A Member may commute the whole or a part of an Account Based Pension at any time by notifying the Trustee in a manner approved by the Trustee, subject to the requirements of the Relevant Law.
- 23A.4 A Member may nominate a Reversionary Pensioner to whom the Account Based Pension must be transferred after the Member's death provided that the nomination is consistent with the Relevant Law. The Trustee must reject any nomination that is not consistent with the Relevant Law, in which case, if the Member does not provide a nomination that is consistent with the Relevant Law, the balance of the Pension Account as at the Member's death may be paid to the Reversionary Pensioner as a lump sum or paid in accordance with Clause 21.6, at the Trustee's discretion.
- 23A.5 Subject to the requirements of the Relevant Law, a Reversionary Pensioner may elect to:
- (a) commute a part or all of an Account Based Pension by notifying the Trustee in a manner approved by the Trustee; or
 - (b) limit any right of commutation that the Reversionary Pensioner might otherwise have in order to ensure that the Account Based Pension complies with the Relevant law,

provided that the Trustee must commute an Account Based Pension if, and to the extent that, the Relevant Law so requires.

23A.6 An Account Based Pension will cease to be payable on the earliest of the following:

- (a) the balance of the Member's Pension Account is exhausted or decreases to a value determined by the Trustee; or
- (b) the date determined by the Trustee in accordance with Relevant Law.

23A.7 Where an Account Based Pension is also a Transition to Retirement Pension, additional restrictions on maximum annual payments and commutation apply to the extent required by the Act.

24. Market Linked Pensions

24.1 A Market Linked Pension shall be paid, at least, annually for a period to be agreed between the Member and the Trustee but being for a term no greater than the term permitted by law. Notwithstanding the foregoing, if the Market Linked Pension has to be paid for some other period for the Fund to comply with the Act, it must be paid for that Period. In the absence of agreement the period for which the Market Linked Pension shall be paid is the Default Period.

24.2 The annual amount of a Market Linked Pension shall not be greater than nor less than any maximum or minimum amounts stated in the Act and the pension shall comply with the requirements of the Act.

24.3 A Market Linked Pension shall be paid on such dates and by instalments of such amounts as the Trustee and the Member agree upon or, in the absence of agreement, as the Trustee determines in accordance with the Act.

24.4 A Market Linked Pension cannot be commuted except in the circumstances and the manner set out in the Market Linked Pension Standards.

24.5 On the death of a Member to whom a Market Linked Pension is being paid:

- (a) the Trustee shall distribute the Member's Death Benefit in accordance with Clauses 21.6 or 21.7; or
- (b) if the Trustee determines to pay all or any part of the Member's Death Benefit to the Member's legal personal representative, the Trustee must, subject to sub-paragraph (a) above, commute that amount and pay it as a lump sum benefit; or
- (c) if the Trustee pays all or any part of the Member's Death to a Dependant or to another natural person pursuant to Clauses 21.6 or 21.7, the Trustee may, in its absolute discretion:
 - (i) commute the Pension and pay it to the person as a lump sum benefit, subject to subparagraph (a) above; or
 - (ii) on the request of the person, revert payment of the Market Linked Pension to the person as though he or she were the Member (whereupon the person will be called the Reversionary Pensioner in this clause), provided that the Market Linked Pension must not have a reversionary component greater than 100% of the value of the Member's Market Linked Pension Account immediately before the reversion; or
 - (iii) if the Trustee pays a Market Linked Pension to a Reversionary Pensioner under subparagraph (ii) above, subject to such conditions and restrictions as the Trustee determines, references to the "Member" in this clause must be read as reference to the "Reversionary Pensioner".

24.6 The amount and the terms and conditions of the Market Linked Pension paid to a Reversionary Pensioner under this clause shall be agreed upon by the Reversionary Pensioner and the Trustee subject to compliance with the Act but in the absence of an agreement being reached, the amount and the terms and conditions of the Market Linked Pension shall be determined by the Trustee. Notwithstanding the

foregoing, if the Market Linked Pension has to be paid on some other basis for the Fund to comply with the Act, it must be paid on that basis.

- 24.7 In the event that a Market Linked Pension reverts it shall not have a reversionary component greater than 100% of the Member's Market Linked Pension account balance immediately before the reversion.
- 24.8 In the event that a Market Linked Pension is commuted the commutation amount cannot exceed the Member's Market Linked Pension account balance immediately before the commutation.
- 24.9 A Market Linked Pension will cease to be payable on the earliest of the following:
- (a) the date that the Market Linked Pension is commuted to a lump sum benefit under Clauses 24.4 or 24.5;
 - (b) the date that the term of the Market Linked Pension determined in accordance with Clauses 24.1 and 24.6 has expired;
 - (c) the date that the balance of the Member's Market Linked Pension Account is exhausted; or
 - (d) the date determined by the Trustee in accordance with Relevant Law.
- 24.10 A Market Linked Pension does not have a residual capital value.
- 24.11 If the Trustee is unable to establish within six (6) months after the later of the Member's death and a Market Linked Pension ceasing to be payable to all of the Reversionary Pensioners that there are any Dependants, the benefit payable under this clause shall be paid to the Member's legal personal representative but, if a grant of probate or letters of administration in respect of the estate of the deceased Member has not been made, or is not made within three (3) years of the date of the Market Linked Pension(s) ceasing to be payable (or such longer period as the Trustee determines), the benefit payable under this clause shall be dealt with in the manner provided for in the Act and/or any other State and/or Federal legislation dealing with unclaimed money and/or Lost Members or, in the absence of such provision, applied by the Trustee for the general purposes of the Fund.
- 24.12 Market Linked Pensions payable from the Fund shall not:
- (a) be assigned or otherwise transferred by the person in receipt thereof;
 - (b) be mortgaged, encumbered or used as security in any manner whatsoever. Neither the capital value (if any) of the Market Linked Pension, and the income from it, may be used as a security for a borrowing;
 - (c) be transferred other than in accordance with the Act.
- 24.13 Notwithstanding any other provision of this Clause 24:
- (a) a Market Linked Pension must be paid in such form that complies with the Market Linked Pension Standards and which will not cause the Fund to contravene the law; and
 - (b) any provision which is required to be included in the terms of this clause or in this Deed in order for a Market Linked Pension to comply with the Market Linked Pension Standards or qualify for maximum concessional tax treatment, is deemed to be included for such time as that requirement continues.

24A. Other pensions

The Trustee may pay benefits in the form of any other form of pension or combination of pensions permitted by the Act and may:

- (a) determine the terms and conditions that will apply to those pensions, including, without limitation, rules about eligibility, pension payments and withdrawals, investment, commutation, Reversionary Pensioners and fees; and

- (b) enter into arrangements with insurers or other service providers to secure or otherwise support the payment of those pensions.

Any such pension will only be payable in accordance with the terms and conditions determined by the Trustee and disclosed to Members from time to time

25. Complaints

25.1 Complaints Procedure

The Trustee will establish a complaints procedure to deal with complaints by beneficiaries in a manner as required by the Act. The procedure will be determined by the Trustee in its absolute discretion.

25.2 Complaint to delay Payment

The Trustee shall have no obligation to pay any Benefit on the death of a Member until:

- (a) the time to lodge a Complaint by the persons notified by the Trustee under the Complaints Act or the Corporations Act has lapsed; and
- (b) if a Complaint is lodged with the Superannuation Complaints Tribunal under the Complaints Act or with the Australian Financial Complaints Authority, that Complaint has been dealt with.

26. Tax

26.1 Trustee Powers

The Trustee may take any action (whether prospective or retrospective) that the Trustee considers necessary or appropriate to calculate, pay, deduct or take account of any Tax, including without limitation:

- (a) adopting policies relating to the application or timing of Tax credits and Tax debits to Member accounts;
- (b) adopting policies relating to the acceptance of Members and contributions without any required or desirable Tax-related information;
- (c) adopting policies relating to the claiming of Tax refunds;
- (d) reducing or otherwise adjusting contributions to or benefits or other amounts payable from the Fund, in which case the Member will be entitled to only the net amount;
- (e) providing information and making payments to the Regulator, including in response to release authorities
- (f) establishing reserves and making provisions in the accounts of the Fund; and
- (g) charging to recover the costs and expenses attributable to administering any Tax requirement.

26.2 Member Indemnity

Each Member is liable for all Tax incurred by the Trustee or the Fund in respect of that Member and must indemnify the Trustee in respect of such Tax.