

N. M. Superannuation Proprietary Limited

and

AMP Life Limited

## Amendment Deed

Trust Deed - National Mutual Retirement Fund

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This Deed is made on 15 MAY 2020

#### Parties

- 1 **N. M. Superannuation Proprietary Limited** (ABN 31 008 428 322) of Level 24, 33 Alfred Street, Sydney NSW 2000 (**Trustee**).
- 2 **AMP Life Limited** (ABN 84 079 300 379) of Level 24, 33 Alfred Street, Sydney NSW 2000 (**Life Company**).

#### Recitals

- A The Trustee is the trustee of the regulated superannuation fund known as the National Mutual Retirement Fund (ABN 76 746 741 299) (**Fund**). Clause 56 of the trust deed governing the Fund (**Trust Deed**) provides that the Trustee may amend the Trust Deed. The Trustee wishes to amend the Trust Deed in the manner set out in this Deed.
- B The Life Company agrees to be bound by the Trust Deed (and, to avoid any doubt, to remain bound if and to the extent it already is), and to assume the obligations to apply to it under the Trust Deed (and, to avoid any doubt, to recommit to its obligations under the Trust Deed if and to the extent it has previously assumed such obligations), by executing this Deed.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

Definitions in the Trust Deed apply in this Deed, unless the context requires otherwise.

### 1.2 Interpretation

Clauses 3(a) – (d) of the Trust Deed apply, with any necessary changes, as if incorporated in this Deed.

## 2 Amendments

Unless the Trustee determines to the contrary before 15 May 2020, the Trust Deed is amended, with effect from 15 May 2020 or such other date determined by the Trustee, to read as set out in the Attachment to this Deed. The Trustee and the Life Company agree that the 'Amendment Deed: Trust Deed - National Mutual Retirement Fund' dated 8 April 2020 is terminated with effect from 14 May 2020.

## 3 Life Company

The Life Company is bound by the Trust Deed and acknowledges the obligations applicable to it under the Trust Deed.

## 4 No Resettlement

The Trustee confirms that it is not by this Deed intending to:


- (a) resettle or redeclare the Fund; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

**5 Governing Law and Jurisdiction**


This Deed is governed by the laws of the Australian Capital Territory.

**Executed as a Deed.**

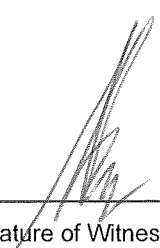
N.M. SUPERANNUATION PROPRIETARY LIMITED (ABN 31 008 428 322) by its undersigned Attorneys who have not received notice of the revocation of the Power of Attorney dated 31 October 2019 under the authority of which this instrument has been signed in *SYDNEY* on *15 MAY 2020*

  
\_\_\_\_\_  
Signature of Attorney

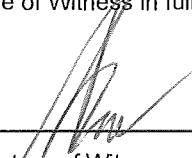
*GERARD BROWNE*  
\_\_\_\_\_  
Name of Attorney in full

  
\_\_\_\_\_  
Signature of Attorney

*CLAIRE MADNI*  
\_\_\_\_\_  
Name of Attorney in full

  
\_\_\_\_\_  
Signature of Witness

*Michelle Asimus*  
\_\_\_\_\_  
Name of Witness in full

  
\_\_\_\_\_  
Signature of Witness

*Michelle Asimus*  
\_\_\_\_\_  
Name of Witness in full

Executed as a deed

AMP LIFE LIMITED (ABN 84 079 300 379)  
by its undersigned Attorneys who have  
not received notice of the revocation of  
the Power of Attorney Registered No. 976  
Book 4669 under the authority of which this  
instrument has been signed in *SYDNEY*  
on *15 MAY 2020*

*P. Bissell*

Signature of Attorney

**Peta Bissell**  
General Counsel

Name of Attorney in full

*[Handwritten Signature]*

Signature of Witness

*JERRY HUTABARAKAT*

Name of Witness in full

*SB*

Signature of Attorney

*[Handwritten Signature]*

Signature of Witness

*SUZANNE BARON*

Name of Attorney in full

*JERRY HUTABARAKAT*

Name of Witness in full

Amendment Deed

Allens & Linklaters

**Attachment - Trust Deed and Part Rules – National Mutual Retirement Fund**

See attached.

N. M. Superannuation Proprietary Limited

## National Mutual Retirement Fund

Trust Deed

Deutsche Bank Place  
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Sydney NSW 2000 Australia  
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## Rules

### 1 Definitions and interpretation

1.1 Unless the contrary intention appears:

**ASL** means AMP Superannuation Limited ABN 31 008 414 104.

**Constitutional Corporation** has the same meaning as in the SIS Act.

**Continuing NMRF Member** means each Member and other beneficiary of the Fund identified as such immediately before the Transfer Time.

**Death Benefit** means a benefit payable on the death of a Member under the applicable Part Rules.

**Deed** means the deed governing the Fund.

**Employer** has the same meaning as in the applicable Part Rules.

**Financial Year** means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

**Former Fund** means SST or SDF.

**Former Member** means a Member who:

- (a) was a member of a Former Fund immediately before the Transfer Time;
- (b) was admitted to the Fund without an application; and
- (c) has not elected to no longer be a Former Member.

**Fund** means the National Mutual Retirement Fund.

**Life Act** means the *Life Insurance Act 1995*.

**Life Company** means AMP Life Limited ABN 84 079 300 379.

**Member** means a person who has been admitted to membership of the Fund and who has not ceased to be a Member. A Member includes a Former Member. Except where the context otherwise requires, a Member includes a Pensioner and this includes a reversionary beneficiary who is being paid a pension from the Fund. A Member does not include a Non-Member Spouse, unless and until they have been admitted to membership of the Fund.

**Member Spouse**, in relation to a Non-Member Spouse, means the person:

- (a) who is a 'member spouse' within the meaning of that term under Part VIII B of the *Family Law Act 1975*; and
- (b) whose interest in the Fund is subject to a Payment Split in favour of the Non-Member Spouse.

**Non-Member Spouse** means a person:

- (a) who is a 'non-member spouse' within the meaning of that term under Part VIII B of the *Family Law Act 1975*; and
- (b) in whose favour a Member's interest in the Fund is subject to a Payment Split.

**Operational Risk Reserve Account** means an Account kept under rule 6.5.

**Part Rules** has the meaning given in rule 2.4.

**Payment Split** has the meaning given to that term in Part VIII B of the *Family Law Act 1975*.

**Pensioner** means a person to whom a pension is payable from the Fund.

**SDF** means the Super Directions Fund.

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

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

**Splitting Instrument**, in relation to a Payment Split, means the superannuation agreement, flag lifting agreement or splitting order (each as defined in the *Family Law Act 1975*) which gives rise to the Payment Split.

**SST** means the AMP Superannuation Savings Trust.

**Superannuation Authority** means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

**Superannuation Law** means any law imposed under:

- (a) the SIS Act and any regulations or declarations made under it, or under the laws referred to in (b) or (c) below, or any other legislation that replaces or is additional to it in controlling the operation of superannuation;
- (b) the *Occupational Superannuation Standards Act 1987*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Family Law Act 1975* or any other law or any requirement imposed by the Superannuation Authority which must be satisfied by a superannuation fund in order to qualify for the maximum available tax concessions; and
- (c) any other present or future law of the Commonwealth of Australia or any state or territory of Australia which the Trustee may determine to be a Superannuation Law for the purposes of the Fund, the Deed or any applicable Part Rules.

**Transfer Time** means the moment immediately before midnight at the end of 15 May 2020 or such other time determined by the Trustee.

**Transferring SDF Member** means each member and other beneficiary of the SDF identified as such immediately before the Transfer Time.

**Transferring SST Member** means each member and other beneficiary of the SST identified as such immediately before the Transfer Time.

**Trustee** means the trustee of the Fund.

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or the applicable Part Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) amend includes delete or replace;
- (f) including when introducing a list of items does not exclude a reference to other items of the same class;
- (g) person includes a firm, a body corporate, an unincorporated association or an authority;

- (h) tax includes any duty or government impost;
  - (i) headings are for convenience only and do not affect interpretation.
- 1.3 If a provision of the Deed would otherwise be invalid in part or in whole because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request and in its discretion agree to act in a manner consistent with it.
- 1.4 If a provision of the Deed would otherwise be invalid in part or in whole because it permits a person to exercise a discretion without the consent of the Trustee, that provision is taken to require the Trustee's consent for the exercise of the discretion.

## 2 Fund

### Parts

- 2.1 With effect from the Transfer Time, the Fund provides benefits in respect of Members in the following Parts:
- (a) SST Part;
  - (b) SDF Part; and
  - (c) NMRF Part.
- 2.2 A Member may belong to more than one Part at a time.
- 2.3 A Part has separately identifiable assets and separately identifiable beneficiaries. However, Parts do not constitute separate trusts or superannuation funds. The Trustee:
- (a) may only apply the assets attributable to a Part for the purposes of the Part or to pay or provide for an appropriate portion (as determined by the Trustee) of the liabilities and expenses of the Fund as a whole; and
  - (b) must pay the benefits payable to or in respect of Members who participate in a Part from the assets identified with the Part.

### Part Rules

- 2.4 The Trustee may by resolution or instrument in writing make rules governing a particular Part (**Part Rules**). Part Rules may be varied in accordance with their terms. If there is any inconsistency between the Deed and the applicable Part Rules, the Part Rules will prevail, unless:
- (a) a contrary intention appears; or
  - (b) the Part Rules contain a provision which is, or which requires the Trustee to act in a manner which is, inconsistent with Superannuation Law.

### Transferring SST Members

- 2.5 With effect from the Transfer Time:
- (a) each Transferring SST Member will be admitted as a Member or other beneficiary of the Fund and, specifically, the SST Part, and allocated to the 'Category' in the SST Part that corresponds to the 'Category' that applied to them in the SST immediately before the Transfer Time; and
  - (b) each person who was an 'Employer' in the SST in relation to a Transferring SST Member immediately before the Transfer Time will be admitted as an Employer of the SST Part

and allocated to the 'Category' in the SST Part that corresponds to the 'Category' that applied to them in the SST immediately before the Transfer Time.

- 2.6 ASL's obligation to pay a pension to a Transferring SST Member in the SST immediately before the Transfer Time will be assumed by the Trustee and continue on the same terms and conditions from the Transfer Time.

### **Transferring SDF Members**

- 2.7 With effect from the Transfer Time:
- (a) each Transferring SDF Member will be admitted as a Member or other beneficiary of the Fund and, specifically, the SDF Part, and allocated to the 'Division' in the SDF Part that corresponds to the 'Division' that applied to them in the SDF immediately before the Transfer Time; and
  - (b) each person who was an 'Employer' in the SDF in relation to a Transferring SDF Member immediately before the Transfer Time will be admitted as an Employer of the SDF Part and allocated to the 'Division' in the SDF Part that corresponds to the 'Division' that applied to them in the SDF immediately before the Transfer Time.
- 2.8 The Trustee's obligation to pay a pension to a Transferring SDF Member in the SDF immediately before the Transfer Time will continue on the same terms and conditions from the Transfer Time.
- 2.9 Each Member and other beneficiary of the SDF who is admitted to the Fund and, specifically, the SDF Part under rule 2.7(a) will, as at the Transfer Time, be provided with equivalent rights to the rights that the Member or other beneficiary had to benefits in the SDF immediately before the Transfer Time.

### **Continuing NMRF Members**

- 2.10 With effect from the Transfer Time, each Continuing NMRF Member will be allocated to the NMRF Part.

## **3 Eligibility and membership**

### **Eligibility**

- 3.1 Subject to rule 3.2, the Trustee may admit a person as a Member if Superannuation Law permits.
- 3.2 Subject to rules 2.5 and 2.7, the Trustee may only admit a person as a Member in respect of a Part in accordance with the applicable Part Rules.

### **Binding effect**

- 3.3 Each Employer and each person entitled to or claiming a benefit is bound by the Deed and the applicable Part Rules.

### **Transfer between Parts**

- 3.4 Subject to the applicable Part Rules, the Trustee may transfer a Member to a different Part. The Trustee may do so on such terms as it determines.

### **Transfer to Fund**

- 3.5 The Trustee may make arrangements it considers appropriate with:
- (a) a Member or group of Members; or

- (b) any employer or previous employer of the Member or group of Members; or
- (c) the trustees of any superannuation fund of which the Member or group of Members is or has been a member; or
- (d) the issuer of an annuity held by the Member or group of Members; or
- (e) any other person,

to transfer assets to the Fund and to provide benefits in respect of the Member or group of Members.

### **Membership ceases**

3.6 A person ceases to be a Member when:

- (a) all benefits which are or may be payable in respect of the Member have been paid; or
- (b) a transfer is made in satisfaction of all the Member's entitlement to benefits; or
- (c) all the Member's entitlement to benefits is terminated.

Subject to the applicable Part Rules, the same rules apply, with any necessary changes, to determining when a person ceases to be a Member of a Part.

## **4 Contributions**

4.1 Members may contribute in the manner and at the times stated in the applicable Part Rules.

4.2 The Trustee may accept a payment from any other person as a contribution in respect of a Member.

## **5 Benefits**

### **Entitlement**

5.1 Members are entitled to the benefits calculated in accordance with the applicable Part Rules.

### **Transfer from Fund or Part**

5.2 If a person entitled to a benefit requests in a manner approved by the Trustee, the Trustee:

- (a) must pay all or part of the benefit to another superannuation arrangement; or
- (b) may transfer all or part of the benefit to another Part.

5.3 The Trustee may pay an amount representing all or part of a person's interest in the Fund, or in a particular Part, to another superannuation arrangement without the consent of the person.

5.4 A transfer or payment under rule 5.2 or 5.3 satisfies the entitlement of the person to any benefit in respect of the amount transferred or paid and the Trustee may agree with the person that it satisfies the entitlement of the person in full. Where the transfer involves another superannuation arrangement, the Trustee is not responsible for the manner in which the provider of the other superannuation arrangement deals with the amount transferred.

### **Death Benefits**

5.5 The Trustee must pay a Death Benefit in respect of a Member in accordance with the applicable Part Rules.

## 6 Records, Accounts and Reserves

### Records

- 6.1 The Trustee must keep records for the Fund:
- (a) of the matters; and
  - (b) for the period; and
  - (c) in the manner,
- prescribed by Superannuation Law.

### Accounts and audit

- 6.2 The Trustee must appoint an auditor.
- 6.3 For each Financial Year the Trustee must prepare any financial statements for the Fund.
- 6.4 The Trustee must ensure that, for each Financial Year, the auditor:
- (a) audits the accounts and records of the Fund; and
  - (b) reports in writing to the Trustee,
- within the time specified by Superannuation Law.

### Operational Risk Reserve Account

- 6.5 If the Trustee wishes to maintain an operational risk reserve in the Fund for the purposes of covering any or all of the operational risk relating to the Fund, it must keep one or more Operational Risk Reserve Accounts. An Operational Risk Reserve Account is to hold amounts:
- (a) contributed or transferred to the Fund by the Trustee;
  - (b) contributed or transferred to the Fund by or in respect of a Member which the Trustee determines are to be credited to the account;
  - (c) transferred from another account including a benefit account for the purposes of covering any or all of the operational risk relating to the Fund.
- 6.6 The Trustee may only apply amounts held in an Operational Risk Reserve Account:
- (a) to satisfy a liability of the Trustee relating to the Fund or for any other purpose permitted by Superannuation Law; and
  - (b) to the extent the amount exceeds the amount required, in the Trustee's opinion, to satisfy the operational risk requirement (**excessive amount**), in any way the Trustee determines.

### Reserves

- 6.7 The Trustee may establish and maintain one or more other reserve accounts with the balance to be applied for the purpose or purposes determined by the Trustee from time to time.

### Actuarial investigations

- 6.8 If required by the Superannuation Law, the Trustee must arrange for actuarial investigations of the Fund or a Part to be conducted in accordance with the Superannuation Law.



## **7 Investments**

### **Assets**

- 7.1 The assets of the Fund consist of:
- (a) money or other assets that the Trustee holds for the purposes of the Fund; and
  - (b) investments that the Trustee makes and all income on those investments.
- 7.2 The Trustee holds the assets of the Fund on trust to apply them in the manner set out in the Deed and the applicable Part Rules.

### **Investments**

- 7.3 The Trustee may invest Fund assets in any investments the Trustee considers appropriate.
- 7.4 The Trustee may:
- (a) mix investments with investments of other people or trusts; and
  - (b) vary, replace, encumber and deal with the investments, as if it were dealing with its own property.
- 7.5 The Trustee must invest in a manner which is consistent with Superannuation Law.
- 7.6 The Trustee may make a loan or give financial assistance to a person.
- 7.7 The Trustee may appoint nominees to hold investments.

### **Borrowing**

- 7.8 The Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which it thinks fit.

## **8 Trustee**

### **Nature**

- 8.1 The Trustee must be a Constitutional Corporation.

### **Removal**

- 8.2 The Trustee ceases to be the Trustee on the date:
- (a) specified in a written notice of retirement served on the Life Company by the Trustee; or
  - (b) it becomes a disqualified person under Superannuation Law; or
  - (c) it ceases to be a registrable superannuation entity licensee under Superannuation Law.

### **Appointment**

- 8.3 The Trustee must (even if it has already ceased to be the Trustee under rule 8.2(b) or 8.2(c)), with the written consent of the Life Company, appoint any body corporate as the new Trustee. The appointment must be made in writing.
- 8.4 A retiring Trustee must transfer all assets to the new Trustee or its nominee.

### **Trustee's powers**

- 8.5 The Trustee may do anything it considers appropriate including:

- (a) giving receipts and discharges;
- (b) conducting and settling legal proceedings;
- (c) referring claims to arbitration;
- (d) compromising any claim;
- (e) giving any guarantee or indemnity;
- (f) insuring any risks;
- (g) acting as an underwriter;
- (h) making rules for rounding off contributions and benefits;
- (i) making rules for the crediting or debiting of interest to a benefit which is paid after the date it becomes payable;
- (j) providing for and transferring liability for any tax;
- (k) electing to be bound by any legislation; and
- (l) anything which is not prohibited by Superannuation Law.

### **Manager**

8.6 The Trustee may appoint any person to administer the Fund or to manage investments of the Fund or both. The appointment must be in writing on terms which the Trustee considers appropriate.

### **Delegation**

8.7 The Trustee may delegate any of its powers, duties and discretions to any person.

### **Trustee's liability**

8.8 The Trustee is only liable for:

- (a) its acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) a monetary penalty under a civil penalty order (as defined in the SIS Act); or
- (c) both.

### **Trustee's indemnity**

8.9 The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund or the administration of the Trustee, unless:

- (a) it results from the Trustee's dishonesty or an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) the law prevents it; or
- (c) it is for a monetary penalty under a civil penalty order (as defined in the SIS Act).

8.10 The Trustee's right of indemnity under rule 8.9 is subject to the following:

- (a) the Trustee is not entitled to be indemnified from Fund assets for any amount expended out of capital of the Trustee managed and maintained by the Trustee to cover operational risk relating to the Fund;
- (b) the Trustee is not entitled to satisfy its right of indemnity from the Operational Risk Reserve Accounts in respect of any liability or expense which does not relate to

operational risk relating to the Fund unless the liability or expense is satisfied from an excessive amount (within the meaning of rule 6.6(b)); and

- (c) to the extent that the indemnity is for a liability or expense relating to operational risk relating to the Fund, the indemnity must be satisfied first from the amounts in the Operational Risk Reserve Accounts which are required to be maintained in those Accounts to satisfy the operational risk requirement and may only be satisfied from other accounts (including benefit accounts) to the extent that the relevant amounts in the Operational Risk Reserve Accounts are insufficient.

8.11 The benefit of rules 8.8 and 8.9 also applies to:

- (a) any directors or employees of the Trustee;
- (b) any other person nominated in writing by the Trustee;
- (c) a former Trustee; or
- (d) any person who previously fell within any of (a) and (b).

For the purposes of this rule 8.11, the operation of rule 8.10 is to be ignored to the maximum extent permitted by Superannuation Law.

### **Authorisations**

8.12 The Trustee may treat a written or oral authorisation purported to be given by a person entitled to a benefit as given by that person.

### **Trustee's discretions**

8.13 The Trustee and any of its officers may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise or may benefit from it or owes other duties in respect of it.

8.14 The Trustee is completely unrestricted in the exercise of its powers and discretions.

### **Remuneration**

8.15 The Trustee is entitled to be paid remuneration out of the Fund as set out in the applicable Part Rules.

### **Non-Member Spouse not a beneficiary**

8.16 To the maximum extent permitted by law, it is declared that:

- (a) any Non-Member Spouse is not a beneficiary of the trusts operating over the Fund by virtue of being a Non-Member Spouse;
- (b) the Trustee owes no duties, fiduciary or otherwise, to any Non-Member Spouse by virtue of being a Non-Member Spouse; and
- (c) the Trustee may take any steps it considers appropriate to notify any Non-Member Spouse about this provision.

## **9 Administration**

### **Expenses**

9.1 The Trustee is entitled to pay from the Fund or reimburse itself from the Fund for all expenses incurred in connection with the Fund or the administration of the Trustee.

**Information**

- 9.2 Every Member or person claiming a benefit must give the Trustee any information or documents that the Trustee requires to administer the Fund.
- 9.3 The Trustee may require a Member to have a medical examination.
- 9.4 The Trustee may modify a Member's benefit, as in its absolute discretion it thinks fit, if any information given to it about the Member is incomplete or incorrect.

**Confidentiality**

- 9.5 The Trustee may give to the Life Company or to any related body corporate (within the meaning of the *Corporations Act 2001*) of the Trustee (**Associate**), and the Life Company or the Associate (as applicable) may receive, information about any Member or other person who might benefit from the Fund, whether or not that information is confidential or held by the Trustee as a fiduciary. The Life Company or the Associate (as applicable) may use that information in the ordinary course of its business provided it complies with law.
- 9.6 The Trustee must otherwise treat as confidential any information relating to Members which it acquires as Trustee and use the information only for the purposes of the Fund or as required by law.

**Dispute resolution**

- 9.7 If Superannuation Law requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
  - (b) inquiries or complaints will be considered and dealt with within 90 days after they were made.

**Notices**

- 9.8 Any notice or other written communication in connection with the Fund is given to a person if it is:
- (a) handed to the person; or
  - (b) delivered to the person's last known address; or
  - (c) posted by ordinary post from within Australia to the person's last known address; or
  - (d) sent by facsimile to the person at the facsimile number notified by the person to the Trustee or the Former Fund Trustee; or
  - (e) sent by email to the person at the email address notified by the person to the Trustee or the Former Fund Trustee.
- 9.9 If the notice or communication is:
- (a) posted - it is taken to be received on the third business day after posting;
  - (b) sent by facsimile - it is taken to be received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the person;
  - (c) sent by email - it is taken to be received:
    - (i) when the sender receives an automated message confirming delivery; or

- (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

### **Power of attorney**

- 9.10 Each Employer, Member and any other person claiming a benefit irrevocably appoints the Trustee as their attorney to do all things which the Trustee considers appropriate to administer the Fund.

### **Governing law**

- 9.11 The Fund, the Deed and the Part Rules are governed by the law in force in the Australian Capital Territory.

## **10 Amendment of Deed**

### **Power to amend**

- 10.1 Subject to the applicable Part Rules, the Trustee may amend any of the provisions of the Deed including this rule 10. The Trustee must not remove the requirement for the written consent of the Life Company to the appointment of a new Trustee without the written consent of the Life Company.

### **Form of amendment**

- 10.2 An amendment must be in writing.

### **Date of effect**

- 10.3 An amendment may take effect from a date before or after the time it is made.

## **11 Termination of Fund**

### **General**

- 11.1 The Fund is to terminate if each Part, or if only one Part remains, that Part, is to terminate.

### **Application**

- 11.2 On termination of the Fund, the Trustee must apply the Fund assets to provide for all expenses and liabilities (other than benefits) for which the Trustee is or may become liable other than those for which the Life Company must indemnify the Trustee under rule 11.3 and must then apply the remaining assets identified with each Part in accordance with the applicable Part Rules.
- 11.3 The Life Company indemnifies the Trustee for the costs of winding up the Fund. These costs may only be met from the Fund if this indemnity cannot be enforced against the Life Company for any reason.

## **12 Compliance with Superannuation Law**

- 12.1 Any matters (including standards) required by Superannuation Law to be included in the governing rules of superannuation funds, from time to time, form part of this Deed whether or not they are explicitly stated in this Deed.
- 12.2 However, if:

- (a) a matter (including a standard) is no longer required to be included; or
  - (b) the Superannuation Authority does not require it to be complied with,
- then the matter ceases to be included by this rule 12.

12.3 In the event of any inconsistency or conflict between those requirements and this Deed, the Trustee must act or refrain from acting in order to comply with Superannuation Law. This rule applies notwithstanding anything to the contrary contained in this Deed.

N. M. Superannuation Proprietary Limited

## Part Rules for the SST Part

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## Rules

### 1 Definitions and Interpretation

1.1 Unless the contrary intention appears, capitalised terms used in these Part Rules which are defined in rule 1.1 of the Trust Deed for the National Mutual Retirement Fund have the same meaning in these Part Rules and:

**Account** means a Capital Guaranteed Account or Heritage Account.

**Account Balance** in relation to a Member at a particular time means the balance of all Benefit Accounts maintained for the Member at that time. It also refers to the balance of a Member's Benefit Account at a particular time, depending on the context.

**Benefit Accounts** means the Accounts referred to in rule 8.1.

**Binding Nomination** means a written direction given to the Trustee (as trustee of the Fund) by a Member to whom the Trustee has offered the right to give such a direction on terms and conditions determined by the Trustee, and which:

- (a) is given in a manner and form approved by the Trustee;
- (b) directs the Trustee to pay the Death Benefit in relation to the Member insofar as it relates to one or more Accounts to one or more Dependants named in the notice or, if permitted by the Trustee, to the Member's Legal Personal Representative or both;
- (c) is intended by the Member to be binding on the Trustee;
- (d) has not ceased to have effect under rule 7.9; and
- (e) is permitted by Superannuation Law.

A written direction given to ASL (as trustee of the SST) which was a 'Binding Nomination' for the purposes of the SST's trust deed and rules immediately before the Transfer Time is also a Binding Nomination for the purposes of the Deed and Rules in respect of the corresponding Account or Accounts in the Fund, unless and until it ceases to have effect under rule 7.9.

**Capital Guaranteed Policy** has the meaning given to that term in the *Retirement Savings Account Act 1997*.

**Capital Guaranteed Account** means the Account kept for a Capital Guaranteed Category Member under rule 8.1(a).

**Capital Guaranteed Category** means the category established under rule 2.2(a) and governed by Schedule A.

**Category** means:

- (a) Capital Guaranteed Category; or
- (b) Heritage Category,

and, in relation to a Member, means the Category or Categories to which the Member is admitted or transferred.

**Child**, in relation to a person, includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the person;
- (b) a child of the person's Spouse; and
- (c) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

**Death Benefit** means a benefit payable on the death of a Member under rule A4.2 or B8.2.

**Dependant** of a person means:

- (a) a Spouse;
- (b) a Child;
- (c) any person whom the Trustee believes is, or was at the date of death, a dependant within the meaning of Superannuation Law; or
- (d) any other person whom the Trustee believes is, or was at the date of death, dependent on the person.

**Employer** means, in respect of a Heritage Category Member, a person, firm or body corporate who pays or is liable to pay salary or wages. For the purposes of this definition, a body corporate is an employer of a person if that person is a member of the executive body of the body corporate (whether described as a board of directors or not).

**Guardian** has the meaning given in rule 7.22.

**Heritage Account** means the Account kept for a Heritage Category Member under rule B7 of Schedule B.

**Heritage Category** means the Category established under rule 2.2(b) and governed by Schedule B.

**Heritage Category Member** means a Member in the Heritage Category.

**Insolvent** in respect of a deceased Member's estate, means that the Trustee, after being put on notice, has formed the opinion that a significant proportion of the Death Benefit payable on the Member's death would be available to creditors of the deceased Member or the Member's estate if it was paid to the Member's Legal Personal Representative. The Trustee must not form such an opinion if to do so would cause any of the provisions of the Deed to be void under the *Bankruptcy Act 1966* or cause the Trustee or another person, to the Trustee's knowledge, to contravene that Act.

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

**Non-Lapsing Nomination** has the meaning given to it in rule 7.11. A written direction given to ASL (as trustee of the SST) which was a 'Non-Lapsing Nomination' for the purposes of the SST's trust deed and rules immediately before the Transfer Time is also a Non-Lapsing Nomination for the purposes of the Deed and Rules in respect of the corresponding Account or Accounts in the Fund, unless and until it ceases to have effect under rule 7.14.

**Preferred Nomination** means any of the following:

- (a) where the Trustee has offered the right to give such a notice on terms and conditions determined by the Trustee, a notice given by the Member which identifies the preferred beneficiary or beneficiaries of a Death Benefit insofar as it relates to one or more Accounts (which may at the Trustee's election include a notice which purports to be a binding nomination);
- (b) a notice which was a 'preferred nomination' under the trust deed and rules for the SST just before the Transfer Time (and this is so notwithstanding that the notice was given to ASL),

and the notice may include, if so decided by the Trustee either generally or in particular circumstances, a notice given in writing, over the telephone or in such other form as the Trustee may determine from time to time.

**Release Authority** means a 'release authority' or 'transitional release authority' within the meaning given to those terms in the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* respectively.

**Reversionary Beneficiary** means a Dependant nominated as such by a Heritage Category Member in a manner and in circumstances approved by the Trustee or, before the Transfer Time, by ASL.

**Spouse**, in relation to a person, includes:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

**SST Part** means the Part of the Fund governed by these Part Rules (and 'this Part' has a corresponding meaning).

**Superannuation Policy** means a life policy within the meaning of the Life Act held by the Trustee (either in its capacity as Trustee of the Fund or otherwise) and includes a Capital Guaranteed Policy and a Member's Insurance (as defined in Schedule B).

**Temporary Disablement** has the meaning given to that term or a similar term in the relevant insurance policy.

**Total and Permanent Disablement** has the meaning given to that term or a similar term in the relevant Superannuation Policy.

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or these Part Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) amend includes delete or replace;
- (f) including when introducing a list of items does not exclude a reference to other items of the same class;
- (g) person includes a firm, a body corporate, an unincorporated association or an authority;
- (h) tax includes any duty or government impost;
- (i) headings are for convenience only and do not affect interpretation.

1.3 If a provision of these Part Rules would otherwise be invalid in part or in whole because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request and in its discretion agree to act in a manner consistent with it.

1.4 If a provision of these Part Rules would otherwise be invalid in part or in whole because it permits a person to exercise a discretion without the consent of the Trustee, that provision is taken to require the Trustee's consent for the exercise of the discretion.

## **2 SST Part**

### **Application**

- 2.1 These Part Rules apply only to Members of the SST Part. A reference to a Member in these Part Rules is a reference to a Member of the SST Part.

### **Categories**

- 2.2 With effect from the Transfer Time, the SST Part provides benefits in respect of Members in the following Categories:
- (a) Capital Guaranteed; and
  - (b) Heritage.
- 2.3 A Member may belong to more than one Category at a time.

## **3 Eligibility and membership**

### **Eligibility**

- 3.1 The Trustee may admit a person as a Member of the SST Part if Superannuation Law permits.
- 3.2 The Trustee can impose special conditions or restrictions on admission to Membership in respect of a person, Category or other group of Members and can waive those conditions or restrictions in relation to any person, Category or group of Members.

### **Membership**

- 3.3 Except for a Transferring SST Member, before admitting a person as a Member, the Trustee may require the person to:
- (a) have a medical examination; and
  - (b) provide information which the Trustee considers relevant to the administration of this Part.
- 3.4 Except for a Transferring SST Member, a person becomes a Member on the date the Trustee approves the person's application or, if there is no application, the date determined by the Trustee.
- 3.5 The Trustee may:
- (a) reject an application; or
  - (b) impose special conditions or restrictions pursuant to rule 3.2 when accepting an application.
- 3.6 On admitting a person as a Member, the Trustee must notify the Member of:
- (a) the date of admission;
  - (b) the Category or Categories to which the Member is admitted; and
  - (c) any other matter prescribed by Superannuation Law or which the Trustee considers appropriate.

### **Binding effect**

- 3.7 Each Employer and each person entitled to or claiming a benefit is bound by these Part Rules.

**Transfer between Categories**

- 3.8 Subject to the Schedule applying in respect of a Category, the Trustee may transfer a Member to a different Category. The Trustee may do so on such terms as it determines.

**Transfer to Part**

- 3.9 The Trustee may make arrangements it considers appropriate with:
- (a) a Member or group of Members; or
  - (b) any employer or previous employer of the Member or group of Members; or
  - (c) the trustees of any superannuation fund of which the Member or group of Members is or has been a member; or
  - (d) the issuer of an annuity held by the Member or group of Members; or
  - (e) any other person,
- to transfer assets to this Part and to provide benefits in respect of the Member or group of Members.

**4 Contributions****Manner and times**

- 4.1 Members may contribute in the manner and at the times stated in the Schedule for their Category.
- 4.2 The Trustee may accept a payment from any other person as a contribution in respect of a Member.

**Acceptance of money or other assets**

- 4.3 The Trustee may refuse to accept all or part of money or other assets from a person without giving any reason. However, a Schedule may specify that the Trustee may only refuse to accept a contribution in particular circumstances.
- 4.4 If the Trustee receives money or other assets contrary to Superannuation Law, the Trustee must return them, or any part of them, in accordance with any requirements under Superannuation Law. The Trustee may deduct an amount for insurance effected or expenses incurred in relation to the money or other assets.
- 4.5 If the Trustee returns all or part of any amount under rule 4.4, then it is authorised to take any action permitted by Superannuation Law, including adjusting the amount to be returned.

**Assumptions about contributions**

- 4.6 If the Trustee has agreed with any person to make contributions to this Part, the Trustee may assume that the person complies with the agreement and the Trustee has no duty to:
- (a) verify the accuracy of an assumption made under this rule;
  - (b) verify that the person has met its obligation to contribute to this Part in accordance with the agreement;
  - (c) notify the person that a contribution or any part of a contribution is overdue; or
  - (d) take any action to enforce the person's obligation to contribute under the agreement.

**Recovery of overdue contributions**

- 4.7 If any contribution or part of a contribution due by a person under an agreement is overdue:
- (a) the Member may:
    - (i) demand the payment of the contribution to this Part by the person; or
    - (ii) with the written approval of the Trustee and in the names of the people agreed between the Trustee and the Member (including in the name of the Member, if so agreed), commence proceedings against the person for the payment of the contribution to this Part by the person; and
  - (b) the person must not dispute the standing of the Member to take any action referred to in paragraph (a).

**5 Benefit entitlement****Benefits**

- 5.1 Members are entitled to the benefits calculated in accordance with the Schedule for their Category.

**Voluntary deferral**

- 5.2 The Trustee may defer payment of all or part of a benefit if the Member entitled to it requests.

**Preservation**

- 5.3 If the Trustee considers it necessary under Superannuation Law or convenient for the purposes of the administration of this Part to preserve any part of a benefit that would otherwise be payable to or in respect of a Member, the Trustee must:
- (a) pay that part of the benefit under rule 7.1, 7.2 or 7.3; or
  - (b) retain that part of the benefit in this Part, in which case, the Trustee may transfer the Member to another Category as the Trustee considers appropriate.

**Retained benefits**

- 5.4 Any part of a benefit retained under rule 5.2 or 5.3 remains credited to the appropriate Account until payment. If the Member dies before the benefit is paid in full, the Trustee must pay the remainder of the benefit as a Death Benefit.

**Early release**

- 5.5 If a benefit may be paid to a Member under Superannuation Law, the Trustee may pay that benefit and make any consequential modification to the Member's other benefit entitlements it considers appropriate.

**Trustee determinations**

- 5.6 A benefit is payable only if the applicable Schedule permits.
- 5.7 The Trustee may act on:
- (a) any proofs or presumptions which it considers satisfactory whether or not they are strictly legal proofs or presumptions;
  - (b) any authorisation or direction given by or on behalf of a Member even if the authorisation or direction was given by them as an SST member to ASL or the Life Company.

## 6 Restrictions on benefit entitlement

### Corporations law

- 6.1 If the Trustee believes that the payment of a benefit will contravene any law relating to corporations, the Trustee may:
- (a) reduce the contributions payable in respect of the Member; or
  - (b) deduct an amount from the Member's Benefit Accounts or otherwise reduce the benefit and transfer a corresponding amount to a reserve account maintained under rule 8.6; or
  - (c) apply a combination of (a) and (b),
- as it considers appropriate.

### Forfeiture

- 6.2 The Trustee may forfeit any benefit which is the subject of an order of the person otherwise entitled. This rule has no effect on the Member's bankruptcy to the extent that its operation would be contrary to the *Bankruptcy Act 1966*.
- 6.3 The Trustee must apply a forfeited benefit for one or more of the Member and the Member's Dependants as the Trustee considers appropriate.

### Assignments

- 6.4 The Trustee must not recognise any purported assignment of a benefit.

## 7 Payments and transfers of benefits

### Annuity or pension

- 7.1 The Trustee may, on such terms and conditions as it determines from time to time, apply all or part of any benefit payable to or for the benefit of a person to purchase an annuity or pension for the benefit of the person, if the person or the person's Guardian so requests in a manner approved by the Trustee.

### Transfer from Part or Category

- 7.2 If a person entitled to a benefit requests in a manner approved by the Trustee, the Trustee:
- (a) must pay all or part of the benefit to another superannuation arrangement; or
  - (b) may, subject to such terms and conditions as the Trustee determines, transfer all or part of the benefit to another Category or another Part.
- 7.3 The Trustee may pay an amount representing all or part of a person's interest in this Part to another superannuation arrangement without the consent of the person.
- 7.4 A transfer or payment under rules 7.1, 7.2 or 7.3 satisfies the entitlement of the person to any benefit in respect of the amount transferred or paid and the Trustee may agree with the person that it satisfies the entitlement of the person in full. Where the transfer involves another superannuation arrangement, the Trustee is not responsible for the manner in which the provider of the other superannuation arrangement deals with the amount transferred.

### Unclaimed benefits

- 7.5 The Trustee must comply with Superannuation Law in relation to benefits which Superannuation Law:



- (a) treats as unclaimed money; or
- (b) requires to be transferred to another superannuation arrangement.

### General

7.6 The Trustee must pay all benefits in a form consistent with Superannuation Law.

### Death Benefits - Binding Nomination

- 7.7 If permitted by Superannuation Law, subject to rule 7.8 and rule 7.13, the Trustee must pay the Death Benefit of a Member for whom it holds a Binding Nomination at death in accordance with the Member's Binding Nomination.
- 7.8 The Trustee is not required to comply with rule 7.7 in respect of a Member if the Trustee:
- (a) is subject to a court order that has the effect of restraining or prohibiting the Trustee from paying a benefit in respect of the Member in accordance with a Binding Nomination; or
  - (b) is aware that the Member is subject to a court order that:
    - (i) requires the Member to amend or revoke a Binding Nomination; or
    - (ii) has the effect of restraining or prohibiting the Member from giving a Binding Nomination.
- 7.9 A Member's Binding Nomination ceases to have effect on the earliest of the following dates:
- (a) the date the Binding Nomination ceases to have effect under Superannuation Law;
  - (b) the date a nominated beneficiary predeceases the Member;
  - (c) the date the Member marries (except where the Member marries a nominated beneficiary who is in a de-facto relationship with the Member);
  - (d) the date the Member enters into a de-facto relationship (including with a person of the same sex);
  - (e) the date the Member divorces or the Member's de-facto relationship (including with a person of the same sex) terminates;
  - (f) the date the Member revokes the Binding Nomination in writing;
  - (g) the date the Member provides a Preferred Nomination under paragraph (a) of the definition of that term (or under any predecessor provision) or a Non-Lapsing Nomination in relation to the Account or Accounts to which the Binding Nomination relates;
  - (h) the day before the date of the Member's death where, at the date of the Member's death, a nominated beneficiary is neither a Dependant or the Legal Personal Representative of the Member; or
  - (i) the date that any other circumstance, which the Trustee may determine from time to time, occurs in relation to the Member.

### Death Benefits - Preferred Nomination

- 7.10 The Trustee must, in the case of a Member who has a Preferred Nomination, pay the Death Benefit (insofar as it relates to the Account or Accounts to which the Preferred Nomination relates) to one or more of the Member's Dependents or Legal Personal Representative in proportions which the Trustee determines (or, if there is no Dependant and no Legal Personal Representative appointed within a reasonable time, to any other person or persons in proportions which the Trustee determines).

**Death Benefits – Non-Lapsing Nomination**

- 7.11 The Trustee may from time to time determine that this rule 7.11 applies in respect of a Category or group of Members, and may determine from time to time that this rule 7.11 no longer applies in respect of a Category or group of Members. Where the Trustee has determined that this rule 7.11 applies in respect of a Member (and has not determined that this rule 7.11 no longer applies in respect of the Member), where the Superannuation Law permits, the Member may give the Trustee a nomination in such form and manner as the Trustee determines from time to time (**Non-Lapsing Nomination**) that directs the Trustee to pay some or all of the Member's Death Benefit to a person or persons listed in the nomination (being the Legal Personal Representative and/or Dependants of the Member) on the death of the Member.
- 7.12 Where the Trustee receives a Non-Lapsing Nomination, the Trustee may provide its consent to the exercise of a Member's direction in a Non-Lapsing Nomination:
- (a) on an individual nomination basis; or
  - (b) on a general basis,
- where the Non-Lapsing Nomination satisfies such terms and conditions as the Trustee determines from time to time, in which case such consent becomes effective from the time that the Non-Lapsing Nomination is processed by or on behalf of the Trustee.
- 7.13 Subject to rule 7.14, if all the requirements of the Superannuation Law have been met, where:
- (a) the Trustee is in receipt of a current, valid Non-Lapsing Nomination; and
  - (b) the Trustee has consented to the Non-Lapsing Nomination in accordance with rule 7.12; and
  - (c) the Non-Lapsing Nomination complies with any terms and conditions determined by the Trustee pursuant to rule 7.12,
- the Trustee must pay the deceased Member's Death Benefit to the person or persons listed in the Non-Lapsing Nomination.
- 7.14 A Non-Lapsing Nomination ceases to be valid and effective upon the earlier of the following events:
- (a) the date the Non-Lapsing Nomination ceases to have effect under Superannuation Law;
  - (b) the date a nominated beneficiary predeceases the Member;
  - (c) the date the Member marries (except where the Member marries a nominated beneficiary who is in a de-facto relationship with the Member);
  - (d) the date the Member enters into a de-facto relationship (including with a person of the same sex);
  - (e) the date the Member divorces or the Member's de-facto relationship (including with a person of the same sex) terminates;
  - (f) the date the Member revokes the Non-Lapsing Nomination in writing;
  - (g) the date the Member provides a Preferred Nomination or a Binding Nomination in relation to the Account or Accounts in respect of which the Non-Lapsing Nomination was made;
  - (h) the day before the date of the Member's death where, at the date of the Member's death, a nominated beneficiary is neither a Dependiant or the Legal Personal Representative of the Member; or

- (i) the date that any other circumstance, which the Trustee may determine from time to time, occurs in relation to the Member.

#### **Death Benefits - no Binding Nomination, Non-Lapsing Nomination or Preferred Nomination**

- 7.15 Subject to rule 7.16, if a Member dies, the Death Benefit, to the extent it is not payable under rule 7.7, 7.10 or 7.13, must be paid:
- (a) unless the Member's estate is Insolvent or the Trustee otherwise considers it appropriate in relation to a particular class, Category or group of Members to provide for payment to the Member's Dependants, to the Member's Legal Personal Representative; or
  - (b) if paragraph (a) does not apply or if there is no Legal Personal Representative appointed within a reasonable time, to any:
    - (i) of the Member's Dependants; or
    - (ii) if none, other person,in proportions which the Trustee determines.

#### **Death Benefits – Reversionary Beneficiary**

- 7.16 Rule 7.15 does not apply to the extent that a Reversionary Beneficiary is entitled to the Death Benefit. To avoid any doubt, neither a Binding Nomination, a Non-Lapsing Nomination nor a Preferred Nomination has any effect to the extent it relates to one or more Accounts in relation to which a Reversionary Beneficiary has been specified.

#### **Death Benefits – No Account**

- 7.17 To the extent that a benefit does not relate to one or more Accounts, references to 'Account' in rules 7.9, 7.10 and 7.15 (and in the associated definitions) are to be read as references to the relevant part of the benefit.

#### **Death Benefits - form of payment**

- 7.18 Subject to Superannuation Law, the Trustee may pay a Death Benefit as one or more lump sums, pensions or annuities, or in any other form, as the Trustee considers appropriate.

#### **Transfer of assets**

- 7.19 If a person entitled to a benefit requests in a manner approved by the Trustee, the Trustee may pay all or part of the benefit by transferring assets of equivalent value to the person or the person's nominee.

#### **Trustee's discharge**

- 7.20 The Trustee is discharged from all obligations in respect of a benefit if:
- (a) the Trustee pays or applies it in good faith to or on behalf of a person the Trustee believes to be entitled to it; and
  - (b) in so doing, the Trustee acts honestly and exercises the degree of care and diligence required of it.
- 7.21 The Trustee is not required to inquire into, or seek further evidence about, a Binding Nomination or a confirmation, amendment or revocation of a Binding Nomination which on its face appears to comply with Superannuation Law.

**Incapacity - benefit payments**

7.22 If, in relation to a person entitled to a benefit:

- (a) the person is a minor;
- (b) the person is suffering from any form of legal incapacity;
- (c) the Trustee believes that the person is unable to manage their financial affairs; or
- (d) the Trustee otherwise considers it appropriate for any reason,

the Trustee may, subject to Superannuation Law pay the benefit to another person (**Guardian**) including, but not limited to a parent, guardian or Legal Personal Representative of that person to be applied for the benefit of the person.

**Incapacity - payment of pensions**

7.23 If, in relation to a person entitled to a benefit:

- (a) the person is a minor;
- (b) the person is suffering from any form of legal incapacity;
- (c) the Trustee believes that the person is unable to manage their financial affairs; or
- (d) the Trustee otherwise considers it appropriate for any reason,

the Trustee, subject to Superannuation Law, may pay any or all of any pension payments to a Guardian to be applied for the benefit of the person.

**Dealings with Guardians**

7.24

- (a) The Trustee may act (but shall not be obliged to act) on any direction given by a Guardian as if the Guardian was the person entitled to the benefit.
- (b) The receipt of a Guardian of any amount is a complete discharge to the Trustee in respect of that amount and the Trustee is not responsible for the application of any amount paid to a Guardian.
- (c) The Trustee may impose any terms and conditions on its dealings with a Guardian and on any payments to a Guardian that it considers appropriate.
- (d) Subject to Superannuation Law, the Trustee is not liable if it acts on instructions from or relies on information provided to it by a Guardian.

**Tax**

7.25 The Trustee may deduct from a payment from this Part any amount which it is required to deduct for tax.

**Release Authority**

7.26 If the Trustee receives a Release Authority in respect of a Member, the Trustee must pay an amount from this Part in respect of that Member in accordance with Superannuation Law.

7.27 Subject to Superannuation Law, the Trustee may adjust any amount, benefit or entitlement that a Member has in this Part in order to give effect to a payment under rule 7.26.

## 8 Accounts and Reserves

### Benefit Accounts

- 8.1 The Trustee must keep the following **Benefit Accounts**:
- (a) a Capital Guaranteed Account for each Capital Guaranteed Category Member; and
  - (b) a Heritage Account for each Heritage Category Member.
- 8.2 The Trustee may divide the Benefit Accounts into sub-accounts.
- 8.3 The Trustee must maintain the Heritage Accounts in accordance with rule B7 of Schedule B. The Trustee may maintain the Capital Guaranteed Accounts in a way it considers appropriate. This may include recording:
- (a) contributions and transfers to this Part in respect of the Member;
  - (b) any other amount received by the Trustee in respect of the Member;
  - (c) any liabilities of this Part (or of the Fund) which are attributable to the Member;
  - (d) amounts paid from this Part in respect of the Member including premiums paid by the Trustee in respect of any interest in a Superannuation Policy on the life of the Member or any other insurance policy maintained in respect of the Member;
  - (e) amounts transferred to or from a reserve;
  - (f) any provisions for any payments in respect of the Member;
  - (g) any other matters or amounts which the Trustee considers appropriate.
- 8.4 The Trustee must record in a Benefit Account kept for each Transferring SST Member, the value of the benefit transferred to this Part from the SST at the Transfer Time.

### Tax and expenses

- 8.5 The Trustee may record in the Capital Guaranteed Accounts (as to the Heritage Accounts, see rule B7 of Schedule B):
- (a) tax incurred by the Trustee;
  - (b) expenses of this Part (or of the Fund);
  - (c) administration expenses of the Trustee;
  - (d) provisions for (a), (b) and (c),
- in proportions which the Trustee considers fair.

### Reserves

- 8.6 The Trustee may establish and maintain one or more other reserve accounts with the balance to be applied for the purpose or purposes determined by the Trustee from time to time.

## 9 Investments

### Assets

- 9.1 The assets identified with this Part consist of:
- (a) money or other assets that the Trustee holds for the purposes of this Part; and
  - (b) investments that the Trustee makes and all income on those investments.

- 9.2 The Trustee must apply the assets identified with this Part in the manner set out in these Part Rules.

### **Investments (including Superannuation Policies)**

- 9.3 The Trustee may invest assets identified with this Part in:
- (a) Superannuation Policies and, in the case of assets held on behalf of Members of the Capital Guaranteed Category, a Capital Guaranteed Policy or Policies; and
  - (b) subject to the requirements for the Capital Guaranteed Category, the Heritage Category and Schedules A and B, in any other investments the Trustee considers appropriate.
- 9.4 Subject to Schedules A and B, the Trustee may:
- (a) mix investments with investments of other people or trusts (including, without limitation, holding a Superannuation Policy which provides benefits in respect of Members of this Part as well as in respect of members of another Part or of any other superannuation fund of which the Trustee is also the trustee); and
  - (b) vary, replace, encumber and deal with the investments, as if it were dealing with its own property.

## **10 Trustee and Life Company**

### **Life Company**

- 10.1 The Life Company may appoint another company (**Nominee**) which is registered as a life insurance company under the Life Act to replace it for the purposes of this Part if:
- (a) the Nominee agrees, by deed, to be bound by these Part Rules and any applicable Superannuation Policies;
  - (b) the Trustee consents; and
  - (c) the appointment complies with all relevant laws.

### **Remuneration**

- 10.2 The applicable life company may receive remuneration from a Superannuation Policy in accordance with the Superannuation Policy at a rate or in amounts or both notified to applicable Member or Members.
- 10.3 In the case of Members other than those who were 'Former Members' for the purposes of the SST immediately before the Transfer Time, the Trustee is entitled to be paid remuneration out of this Part (or the broader Fund) at the rate of 3% per annum of each Member's Account Balance.

### **Family law fees**

- 10.4 In addition to other fees, the Trustee is entitled to charge or retain for its own benefit from this Part (or the broader Fund) an amount equal to any fee that it would be entitled to charge any person under the Family Law (Superannuation) Regulations 2001. If, under the Family Law (Superannuation) Regulations 2001, the fee:
- (a) was charged; and
  - (b) would be payable by a particular person; and
  - (c) that person is presently or prospectively entitled to be paid a benefit or other amount from this Part (or the broader Fund),

the Trustee must deduct the amount to which it is entitled from that benefit or other amount. The Trustee may add interest, at a rate the Trustee determines, to any unpaid fee that the Trustee charges and may debit the interest to a benefit or an interest that the relevant Member or Non-Member Spouse has in this Part.

### **Life Company's discretions**

- 10.5 In exercising any power or discretion conferred on it under the Deed or these Part Rules, the Life Company may:
- (a) act in its own interests;
  - (b) is not bound to take into account the interests of Members or other beneficiaries unless expressly bound by law to do so; and
  - (c) is not bound to account to this Part or any other person for any profit or reward it may derive by acting in its own interests.

## **11 Amendment of Deed and Part Rules**

### **Power to amend**

- 11.1 The Trustee may amend any of the provisions of the Deed or these Part Rules including this rule 11. The Trustee must not amend the Deed (insofar as it relates to the SST Part and its Members and assets) or these Part Rules without the written consent of the Life Company.
- 11.2 An amendment to the Deed or these Part Rules has no effect in relation to a Heritage Category Member or their Dependants unless the Trustee forms the opinion before the amendment is made that the amendment would not be to their detriment.
- 11.3 An amendment to the Deed or these Part Rules has no effect in relation to a Heritage Category Member who was previously a member of AMP Personal Superannuation Fund or AMP Self Employed Persons Superannuation Fund or in relation to an Employer who was referable to either of those superannuation funds if the amendment would impose on them without their consent any increase in their liability to contribute to this Part.
- 11.4 Rules 11.2 and 11.3 do not apply in relation to any amendment required in order to comply with Superannuation Law.

### **Form of amendment**

- 11.5 An amendment must be in writing.

### **Date of effect**

- 11.6 An amendment may take effect from a date before or after the time it is made.

## **12 Termination of Part**

### **By Life Company**

- 12.1 This Part is to terminate:
- (a) on the expiry of three months' notice from the Life Company to the Trustee;
  - (b) on the date the Life Company ceases to carry out life insurance business as defined in the Life Act.

**Notification**

- 12.2 If the Life Company gives notice under rule 12.1 the Trustee must give written notice to each Member that this Part is to terminate. That notice must specify the termination date.

**Contributions**

- 12.3 The Trustee must not accept any contributions to this Part after the termination date other than contributions which were due and payable as at the termination date.

**Application of Part**

- 12.4 On termination of this Part, the Trustee must apply the assets identified with this Part to provide for all expenses and liabilities (other than benefits) for which the Trustee is or may become liable other than those for which the Life Company must indemnify the Trustee under rule 12.5 and then to apply:
- (a) the assets identified with the Heritage Category to provide the benefits of the Heritage Category Members;
  - (b) all other assets identified with this Part in the following order of priority:
    - (i) to provide in respect of each person entitled to a benefit, other than a benefit payable from the Heritage Category, any benefit which became payable before the termination date (**Termination Benefit**);
    - (ii) to provide, in respect of each Member, other than a Heritage Category Member, the Member's benefit under this Part, less the Termination Benefit, if any.
- 12.5 The Life Company indemnifies the Trustee for the costs of winding up this Part. These costs may only be met from this Part (or the broader Fund) if this indemnity cannot be enforced against the Life Company for any reason.

**Payment of benefits**

- 12.6 A Member may not receive a benefit under rule 12.4 before Superannuation Law permits.
- 12.7 If a Member dies before receiving a benefit provided under rule 12.4, the Trustee must pay it as if it were a Death Benefit.

**Application of other rules**

- 12.8 On termination of this Part and pending the final distribution of all the assets identified with this Part, the provisions of the Deed and these Part Rules continue to apply. However, to the extent of an inconsistency between this rule 12 and any provision of the Deed (but not of these Part Rules), rule 12 prevails.

**13 Compliance with Superannuation Law**

- 13.1 Any matters (including standards) required by Superannuation Law to be included in the governing rules of superannuation funds, from time to time, form part of these Part Rules whether or not they are explicitly stated in these Part Rules. In the event of any inconsistency or conflict between those requirements and these Part Rules, the Trustee must act or refrain from acting in order to comply with Superannuation Law. This rule applies notwithstanding anything to the contrary contained in these Part Rules.
- 13.2 However, if:
- (a) a matter (including a standard) is no longer required to be included; or



- (b) the Superannuation Authority does not require it to be complied with,  
then the matter ceases to be included by this rule 13.

## **Schedule A - Capital Guaranteed**

The provisions of this Schedule only apply to Members of the Capital Guaranteed Category.

A reference to a Member in this Schedule is a reference to a Member of the Capital Guaranteed Category.

The Trustee may admit an employer-sponsored Member to the Capital Guaranteed Category on terms and conditions determined by the Trustee.

### **A1 Capital Guaranteed Fund**

- A1.1 The Trustee must ensure that the assets and Members of the Capital Guaranteed Category are separately identifiable at all times.
- A1.2 The Trustee must not transfer assets, benefits or money between the Capital Guaranteed Category and any other Category of this Part (or to another Part) without a transfer of a corresponding beneficial interest.
- A1.3 The Trustee must ensure that the insurance and administration costs of the Capital Guaranteed Category are attributable only to the Capital Guaranteed Category.

### **A2 Investments**

The Trustee must ensure that the contributions and accumulated earnings of Members are not reduced by a reduction in the value of any Capital Guaranteed Policy held on behalf of Members in the Category.

### **A3 Contributions**

A Member or any other person in respect of a Member may contribute in the amounts and at the times the Trustee permits.

### **A4 Benefits**

- A4.1 A Member is entitled to a benefit on request equal to the Member's Account Balance.
- A4.2 On the death of a Member, a Death Benefit is payable in respect of the Member equal to the Member's Account Balance.

## **Schedule B - Heritage**

The provisions of this Schedule apply only to Members of the Heritage Category.

A reference to a Member in this Schedule is a reference to a Member of the Heritage Category.

Capitalised terms used in this Schedule which are not defined in rule 1.1 of the Part Rules are defined in rule B9.

### **B1 Separate Category**

- B1.1 The Trustee must ensure that the assets and Members of the Heritage Category are separately identifiable at all times.
- B1.2 The Trustee must not transfer assets, benefits or money between the Heritage Category and any other Category of this Part (or to another Part) without a transfer of a corresponding beneficial interest.
- B1.3 The Trustee must ensure that any insurance or administration costs of the Heritage Category are attributable only to the Heritage Category.

### **B2 Transfer**

- B2.1 The Trustee is not required to comply with Superannuation Law in connection with contributions or benefit payments relating to the Heritage Category to the extent that the Trustee reasonably considers that it has the benefit of a relevant exemption, modification or other concession granted by, or a relevant 'no action' or similar position taken by, a Superannuation Authority (including any predecessor government authority).
- B2.2 Any reserve maintained by ASL within the SST in respect of the 'Heritage Category' immediately before the Transfer Time will continue within the Part after the Transfer Time under rule 8.6 on the same terms and conditions (with any necessary changes) unless and until the Trustee determines otherwise.

### **B3 Contributions**

- B3.1 Subject to rule B3.2, a Member or any other person in respect of the Member may contribute for a Member.
- B3.2 For the purposes of rule 4.3 of these Part Rules, the Trustee may only refuse to accept a contribution if:
  - (a) the Trustee considers it necessary to do so in order to comply with Superannuation Law;
  - (b) the Member is not someone who was a 'Former Member' under the SST's trust deed and rules;
  - (c) the Member was previously a member of AMP Personal Superannuation Fund and the contribution is not made by the Member or the Member's Employer;
  - (d) the Member was previously a member of AMP Self Employed Persons Superannuation Fund and the contribution is not made by the Member; or
  - (e) the Member was previously a member of AMP Personal Employer Sponsored Superannuation Fund and the contribution is not made by the Participating Employer.
- B3.3 The Trustee may determine minimum contributions that must be made for a Member.

**B4 Member's Insurance**

- B4.1 The Trustee must effect and maintain Member's Insurance:
- (a) for the amount;
  - (b) carrying the rights and benefits; and
  - (c) in consideration of the premium payable,
- as the Member approves and the Trustee is able to arrange.
- B4.2 The Trustee must, subject to rule B5, apply contributions received in respect of a Member to pay the premiums on the Member's Insurance.
- B4.3 The Trustee may effect and maintain the Member's Insurance by a separate policy or as part of the insurance provided in respect of multiple Members under a 'Group' or 'Master' policy issued to the Trustee.
- B4.4 The obligations of the Trustee under this rule B4 are conditional upon:
- (a) the Member submitting to any medical examination which the applicable life company requires; and
  - (b) the Trustee being able to obtain from the applicable life company and maintain in respect of the Member insurance of the type, with the benefits and on the conditions required by the Member.
- B4.5 If the Trustee is unable to obtain from the applicable life company or maintain the desired insurance, the Trustee may obtain other insurance from the applicable life company as the Trustee determines to be in the interests of the Member and, if so, the Trustee must notify the Member of the nature of the insurance effected.
- B4.6 If the Member's Insurance matures before the Member's benefit becomes payable, the Trustee may arrange for the proceeds of the Member's Insurance to be retained by, or deposited with, the applicable life company in a life insurance policy, on terms agreed between the Trustee and the applicable life company, until the benefit becomes payable.
- B4.7 The Member may exercise any option included in the Member's Insurance under which further insurance may be effected without the consent of the Trustee, subject to:
- (a) the Trustee's right to refuse to accept contributions;
  - (b) the Member's required contributions increasing consequentially, as notified by the Trustee to the Member.

**B5 Advance Premium Account**

- B5.1 The Trustee may permit the Member or any other person to make contributions in excess of the amount required to satisfy premiums due and, if so, the excess contributions may be credited to an Advance Premium Account maintained by the Trustee.
- B5.2 The Trustee must keep an individual account of each Member's share in the Advance Premium Account.
- B5.3 The Trustee must:
- (a) invest the contributions that are credited to the Advance Premium Account; and
  - (b) add to the Member's Credit at least once a year the income (if any) earned in respect of the Member's Credit.

B5.4 If contributions for a Member are insufficient to pay a premium that is due on the Member's Insurance, the Trustee may apply the Member's Credit to pay the premium.

## **B6 Restrictions on converting Member's Insurance into Paid-up Policy**

B6.1 If:

- (a) the Member's Credit is insufficient, or the contributions made for the Member are insufficient, to enable the premium on the Member's Insurance to be paid when due;
- (b) the Member's Insurance is not voided by the non-payment of the premium; and
- (c) no premium has been paid for 13 months after becoming due,

the Trustee may arrange with the applicable life company for the Member's Insurance to be converted into a Paid-up Policy, unless the Member was previously a member of AMP Personal Superannuation Fund or AMP Self Employed Persons Superannuation Fund and before the 13 month period expires the Member instructs the Trustee otherwise.

B6.2 If a Member was a 'Former Member' under the SST's trust deed and rules and ceases to be an Eligible Person, the Member must promptly notify the Trustee. The Trustee may make any arrangements that it determines regarding the Member's Insurance or any contributions received after the Member ceased to be an Eligible Person. However, where the Member was previously a member of AMP Personal Superannuation Fund or AMP Self Employed Persons Superannuation Fund, the Trustee may only arrange with the applicable life company for the Member's Insurance to be converted into a Paid-up Policy if the Member has not requested that the Trustee:

- (a) apply some or all of the Member's Credit (excluding any amount credited to the Advance Premium Account after the Member ceased to be an Eligible Person) to pay future premiums, in which case the Trustee must not arrange for the Member's Insurance to be converted into a Paid-up Policy until some or all of the Member's Credit has been so applied; or
- (b) arrange with the applicable life company for outstanding premiums to remain unpaid and for future premiums to be unpaid and for the unpaid premiums to accumulate at interest as a debt on the policy.

## **B7 Heritage Account**

B7.1 The Trustee may record in the Heritage Accounts tax incurred by the Trustee and provisions for tax in proportions which the Trustee considers fair.

B7.2 Subject to any deductions under rule B7.1 and to any adjustments made by the Trustee in order to reflect its obligations relating to pensions, the balance of a Heritage Account for a Member comprises:

- (a) the amount payable to the Trustee in respect of the Member under the Member's Insurance;
- (b) any amounts held by the applicable life company in respect of the Member under rule B4.6 including any interest paid by the applicable life company on those amounts;
- (c) the amount of any Member's Credit in the Advance Premium Account; and
- (d) any other amount credited to the Heritage Account for the Member.

## **B8 Benefits**

B8.1 A Member is entitled to a benefit on request equal to the Member's Account Balance.

B8.2 On the death of a Member, a Death Benefit is payable in respect of the Member equal to the Member's Account Balance.

## **B9 Definitions**

B9.1 In this Schedule, unless the contrary intention appears:

**Advance Premium Account** means the account maintained under rule B5.1.

**Eligible Person** means:

- (a) in respect of a Member who was previously a member of AMP Personal Superannuation Fund or AMP Self Employed Persons Superannuation Fund, a person for whom the Trustee is able to accept contributions in accordance with Superannuation Law;
- (b) in respect of a person who was previously a member of AMP Personal Employer Sponsored Superannuation Fund, a person who is an employee of the applicable Participating Employer.

**Member's Credit** means the total balance of a Member's individual account maintained under rule B5.2.

**Member's Insurance** means the policy or policies of insurance on the life of the Member to provide benefits under the Heritage Category.

**Paid-up Policy** means:

- (a) in the context of whole-of-life insurance policies or endowment insurance policies - a policy in respect of which no further premiums may be paid, the Trustee having requested the applicable life company to vary the policy in whatever manner the applicable life company considers equitable so as to provide for a payment in lieu of the amount originally payable;
- (b) in any other case - a policy in respect of which no further premiums may be paid, the Trustee having cancelled any protection cover and authorised the applicable life company to adjust the balance of the Member's Insurance to take into account the cessation of premium payments.

**Participating Employer** means an Employer whose application for an employee for membership of AMP Personal Employer Sponsored Superannuation Fund was accepted by ASL.

N. M. Superannuation Proprietary Limited

## Part Rules for the SDF Part

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## Rules

### 1 Definitions and Interpretation

#### Definitions

1.1 Unless the contrary intention appears, capitalised terms used in these Part Rules which are defined in rule 1.1 of the Trust Deed for the National Mutual Retirement Fund have the same meaning in these Part Rules and:

**Account** means a Contribution Account, a Reserve Account, such one or more sub-accounts thereof as may at any time and from time to time subsist, the Cash Float Account (if any) and any other account under this Part howsoever designated and established by the Trustee.

**Account Balance** means the balance of a Member's Contribution Accounts at a particular time.

**Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth) as the same shall from time to time stand amended.

**Additional Division** means a Division established pursuant to Rule 2.2.

**Allocated Pension** means a Pension payable to a Member of the Allocated Pension Division or to a Reversionary Pensioner, being a Pension which is intended to comply with the standards from time to time set out in Regulation 1.06(4) or Regulation 1.06(9A) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Allocated Pension Division** means one of the Divisions established and maintained pursuant to Rule 2.2 and which Division is governed by Schedule B hereto.

**Annuity Policy** means an annuity policy issued by a Life Assurance Company in respect of a Member, the terms, provisos and conditions of which have been agreed between the Member and the Trustee or in respect of a Dependant of a Member with the consent of the Trustee, the terms, provisos and conditions of which have been agreed between that Dependant and the Trustee and includes a policy which provides for payment of an allocated annuity.

**Application Form** means the form or forms specified by the Trustee for completion by an Employee, a self employed person, a person wishing to become a Member of the Allocated Pension Division or an Eligible Spouse, as the case may require.

**APRA** means the Australian Prudential Regulation Authority and includes any authorised delegate of that Authority.

**ASIC** means the Australian Securities and Investments Commission and includes any delegate appointed by that Commission.

**Assets of an Investment Portfolio** includes all the money or other assets held by the Trustee in relation to that Investment Portfolio including, at its option, amounts owing by debtors and excluding, at its option, any debts which in the opinion of the Trustee are bad or doubtful.

**Assets of a Plan** means the aggregate of the assets representing:

- (a) the Interests in the Plan of the Members; and
- (b) the balance of the Plan Reserve Account, Plan Reserve Transfer Account, Plan Reserve Charges Account and the Cash Float Account (if any) established in relation to the Plan,

**PROVIDED THAT** arrears of contributions in respect of the Plan or a Member of the Plan, as the case requires, shall not (unless the Trustee otherwise determines to the contrary) be included as an asset.

**Assets of the Part** means the aggregate of the Assets of all Plans in this Part.

**Associated Employer** means a person whose application to participate under Rule 4.1 has been accepted and whose participation has not been terminated under Rule 4.5. In relation to:

- (a) a Participating Employer, it means an employer whose application is accepted with the consent of the Participating Employer or its predecessor under Rule 4.1; and
- (b) a Plan, it means an Associated Employer who participates under the Plan.

**ATO** means the Australian Taxation Office.

**Award** means an agreement certified or an award made on or after 1 July 1986 or any other formal arrangement which, for all intents and purposes, the Employer and the Trustee shall mutually agree to treat as an Award for the purposes of this Part.

**Binding Nomination** means a nomination which:

- (a) is given to the Trustee by the Member in accordance with and subject to Rule 11.12A in such form and manner as the Trustee may from time to time specify (whether in the Binding Nomination Guidelines or otherwise);
- (b) requires the Trustee to pay the Member's benefits to one or more persons nominated in the nomination (being Dependants and/or Legal Personal Representatives of the deceased Member) in the proportions specified in the nomination; and
- (c) complies with Superannuation Law and any Binding Nomination Guidelines applicable both at the date on which the nomination was made, and on the date of death of the Member.

A written direction given to the Trustee (as trustee of the SDF) which was a 'Binding Nomination' for the purposes of the SDF's trust deed and rules immediately before the Transfer Time is also a **Binding Nomination** for the purposes of these Part Rules in respect of the corresponding Account or Accounts in this Part, unless and until it ceases to have effect under Rule 11.12EA.

**Binding Nomination Guidelines** means such conditions and restrictions relating to Binding Nominations as the Trustee may from time to time specify and which are consistent with Superannuation Law.

**Cash Float Account** means the account (if any) established and maintained for each Plan pursuant to Rule 17.17.

**Category** means category of membership provided for under Rule 33 applying in respect of a Member.

**Category Selection** means a Category Selection Form received by the Trustee.

**Category Selection Form** means a notice in a form acceptable to the Trustee under which a Member can specify a Category.

**Child:**

- (a) for the purposes of Rule 33 and subject to Rule 33.10 means surviving child of the Member at the date of the Member's death, including without limitation an adopted child, step-child and ex-nuptial child and a child of the member's spouse who was dependent on the Member for maintenance or support at the date of the Member's death;
- (b) for all other purposes includes:
  - (i) an adopted child, a step-child, an ex-nuptial child;
  - (ii) any person who, in the opinion of the Trustee is or was at the relevant date actually being maintained by the Member as the child of that Member;

- (iii) any child of the Member that is born after the death of the Member but where the paternity of that child is in issue, means a child that has obtained a Declaration of Paternity (in relation to the Member) from a relevant Court of law;
- (iv) a child of the Spouse of the Member; and
- (v) a child of the Member within the meaning of the *Family Law Act 1975* (Cth).

**Commissioner** includes any person the Trustee reasonably believes is or was authorised to give information on behalf of the Commissioner of Taxation.

**Complying Superannuation Fund** has the same meaning as in the Tax Act.

**Contribution Accounts** means any one or more of the following accounts as the context requires:

- (a) Member Regular Contributions Account;
- (b) Member Special Contributions Account;
- (c) Member Transfer Account;
- (d) Employer Super Guarantee/Award Account;
- (e) Employer SG/Award Special Contribution Account;
- (f) Employer Salary Sacrifice Contribution Account.

**Costs** means administration and transaction expenses relating to the relevant Member No TFN Contribution, including the relevant portion of any applicable insurance premium.

**Death Benefit:**

- (a) for the purposes of Rule 33 means a benefit payable on the death of a Member from a LPSP; and
- (b) for all other purposes means the benefit payable following the death of a Member.

**Deed of Adoption** means the deed, in the form or forms approved by the Trustee and executed by an Employer pursuant to Rule 3.1 and accepted by the Trustee, under which the Employer adopts the Fund as a superannuation fund for such of its Employees as become Members. The form may be entitled Deed of Adoption or have any other name approved by the Trustee for the purposes of this definition.

**Default Investment Portfolio** means the Investment Portfolio designated by the Trustee as the default investment portfolio pursuant to Rule 15.2.

**Dependant**, in relation to a Member, means:

- (a) the Spouse of the Member;
- (b) any Child of the Member;
- (ba) any person with whom the Member has an interdependency relationship;
- (c) any other person whom the Trustee believes is or was at the date of death, either wholly or in part, financially dependent on the Member or who has or had at the relevant date a legally enforceable right to look to that Member for financial support; or
- (d) any person considered to be a dependant by the Act.

**Division** means a division of this Part identified under Rule 2.2, and in relation to an Employer or Member means the Division under which the Employer or Member participates.

**Eligible Spouse** means a Spouse:

- (a) who is the spouse (within the meaning of that term as it applies for the purposes of eligible spouse contributions under the Tax Act) of an Employee; and
- (b) in respect of whom the Trustee is permitted to accept contributions under the Act.

**Eligible Termination Payment** means any amount comprising the whole or part of an eligible termination payment as that term is defined in the Tax Act.

**Employee** means:

- (a) an employee of an Employer;
- (b) a director of the Employer if the Employer is a company;
- (c) any other person for whom an Employer is required to pay Mandated Contributions in respect of that person; and
- (d) where the case requires, includes a self-employed person, and a partner in a partnership.

**Employer** means a Participating Employer or an Associated Employer.

**Employer Contribution Account** means such one or more accounts (if any) established and maintained for a Member under Rule 17 for the purposes of recording certain amounts contributed to a Plan by an Employer in respect of that Member.

**Estate** means the Legal Personal Representative of the Member on behalf of the deceased Member's estate.

**Former NM Fund** means either of:

- (a) the National Mutual Simple Superannuation Fund established by a trust deed dated 1 October 1978 (**Simple Super**); and
- (b) the National Mutual Tailored Superannuation Fund established by a trust deed dated 29 September 1986 (**Tailored Super**).

**Insurance Premium Refund** means the amount (if any) paid to the Trustee for crediting to this Part which represents a refund, rebate or bonus (or howsoever described) that has become payable under any group life insurance policy effected by the Trustee for the purposes of this Part having regard to the claims experience of that policy or the insurance pool in which the policy may participate (as the case requires) in each policy year.

**Interest in the Plan**, in the case of a Member, means the Member's Part Credit at the applicable date.

**Investment Portfolio** means an Investment Portfolio more particularly described in Rule 15.

**Legal Personal Representative** of a deceased person means the executor or the appointed administrator of that person's estate.

**Liabilities of an Investment Portfolio** includes:

- (a) amounts allocated to the Investment Portfolio pursuant to Rule 19;
- (b) costs and expenses in respect of the Investment Portfolio (including its share of the accrued but unpaid fees and expenses of the Trustee);
- (c) accrued charges in respect of or owing in relation to any of the Assets of the Investment Portfolio;
- (d) amounts which, in the opinion of the Trustee, should be taken into account in respect of Tax that has been or will or may be incurred in respect of income or gains (whether realized, unrealized or anticipated) by the Investment Portfolio;

- (e) any other liabilities, factors or provisions which the Trustee considers should be taken into account or made in relation to the Investment Portfolio.

**Life Assurance Company** means a company registered under the Life Insurance Act 1995 (Cth).

**LPSP** means the Life Protection Superannuation Plan unless otherwise determined by the Trustee.

**Mandated Contributions** means:

- (a) contributions an Employer of a Member makes for the benefit of that Member pursuant to an Award;
- (b) contributions an Employer of a Member makes for the benefit of that Member for the sole purpose of avoiding payment of any Superannuation Guarantee Charge; and
- (c) any Shortfall Components received by the Trustee for the benefit of a Member.

**Maximum Float Level** means the amount determined by the Trustee pursuant to Rule 17:

**Member.**

- (a) for the purposes of Rule 33, includes a person who was a Member at the time of his or her death; and
- (b) for all other purposes, means a person who has been admitted to membership of a Division and includes:
- (i) a Reversionary Pensioner unless otherwise determined by the Trustee;
- (ii) a Member who transfers membership from the Personal Division to the Allocated Pension Division pursuant to Rule A5 and has not ceased to be a Member of that Division;

and, in relation to a Division or a Plan, means a Member who participates under that Division or Plan whether within a group of members having a common Employer, a self-employed person or an individual person who has established his or her own Plan in this Part. This definition must be read together with Rule 2.1.

**Member No TFN Contribution** means a non-concessional contribution (as defined in the Tax Act) made to this Part by or in respect of a Member where the Trustee has not been provided with a TFN for the Member.

**Minor Child** means, subject to Rule 33.10, a Child under the age of 18 at the date of the Member's death.

**Net Assets of an Investment Portfolio** means the Assets of the Investment Portfolio less the Liabilities of the Investment Portfolio.

**Non-Lapsing Nomination** has the meaning given to it in clause 11.12G. A written direction given to the Trustee (as trustee of the SDF) which was a 'Non-Lapsing Nomination' for the purposes of the SDF's trust deed and rules immediately before the Transfer Time is also a **Non-Lapsing Nomination** for the purposes of these Part Rules in respect of the corresponding Account or Accounts in this Part, unless and until it ceases to have effect under rule 11.12J.

**Normal Retirement Date of a Member** means the Member's 65th birthday, unless some other date is specified in the relevant Schedule, Deed of Adoption, Schedule to the Deed of Adoption or Application Form or as expressed and advised to the Trustee in such other applicable manner that is acceptable to the Trustee.

**Part Credit** means in relation to a Member the aggregate balances standing to the credit of the Contribution Accounts of that Member at the applicable date.

**Participating Employer** means a person:

- (a) who has been accepted as a Participating Employer pursuant to Rule 3.1; or
- (b) who has replaced a Participating Employer pursuant to Rule 3.10;
- (c) whose participation has not been terminated pursuant to Rule 3.8,

and, in relation to an Associated Employer, means the Participating Employer or its successor who consented to the Associated Employer's admission.

**Pension** means a benefit taken to be a pension for the purposes of Superannuation Law.

**Personal Division** means one of the Divisions established and maintained pursuant to Rule 2.2 and which Division is governed by Schedule A hereto.

**Plan** means an arrangement established by the Trustee under which an Employer or Member participates in a Division or Divisions and, in relation to a Member, means the Plan to which the Member is admitted.

**Plan Reserve Account** means the account of that name established pursuant to Rule 17.5.

**Plan Reserve Charges Account** means the account of that name established pursuant to Rule 17.5.

**Plan Reserve Transfer Account** means the account of that name established pursuant to Rule 17.5.

**Policy** means a policy of the type more particularly described in Rule 9.10 and without limiting the generality of that Rule includes:

- (a) a policy of life insurance issued to the Trustee by a Life Assurance Company (together with the proposal for that Policy) which provides for payment of an insured benefit in the event of the death or total and permanent disablement or total but temporary disablement or such one or more of them and in such combinations (if any) as the Trustee considers to be appropriate; and
- (b) at the option of the Trustee, a policy issued to the Trustee by a Life Assurance Company (together with the proposal for that Policy) to wholly or partially represent the Assets of the Part, such Policy being represented by assets of that part of the relevant Statutory Fund to which the Policy relates of that Life Assurance Company,

and in circumstances where the Trustee contracts with the same Life Assurance Company for the issue of the relevant policies, evidence of that or those contractual arrangements may at the option of the Trustee, be by means of one or more policies or by means of one or more blanket policies, the terms and conditions of which shall include such number of supplementary rules relating to the operation of those policies and, ipso facto, a Rollover Plan in the Personal Division.

**Policy Committee** means a committee (if any) appointed in respect of a Plan pursuant to Rule 27.

**Prescribed Contribution Date** means the date at which the Trustee must cease to accept contributions in respect of a Member under Superannuation Law.

**Primary Beneficiary** means the Member to whom an Allocated Pension is payable in the first instance under Schedule B.

**Protection Portfolio** means the Investment Portfolio designated by the Trustee as the protection investment portfolio under Rule 15.2.

**Register** means the Register maintained under Rule 13.1.

**Required Payment Date** means any date at which a Member's benefit must be paid or commence to be paid under Superannuation Law.

**Reserve Account** means the account maintained for a Plan pursuant to Rule 17.

**Retrenchment** means the termination by the Employer of the Service of a Member for all or any of the following reasons:

- (a) that the work for which he was engaged has been completed or that his position has ceased to exist;
- (b) that the amount of work has diminished and has rendered a reduction necessary or expedient in the number of Employees.

**Reversionary Pensioner** means a person who receives a Death Benefit, in the form of an Allocated Pension, following the death of a Primary Beneficiary.

**Rollover Plan** means a Plan designated as such by the Trustee.

**Rules** means such one or more of the Rules forming part of these Part Rules and includes the Schedules hereto.

**Schedules** means any Schedule attached to these Part Rules, and in relation to a Division means the Schedule applicable to that Division.

**Schedule to the Deed of Adoption** means any document (other than a Deed of Adoption) signed by an Employer and accepted by the Trustee, in which the Employer specifies any of the current terms on which the Employer and its Employees will participate in a Plan. The Schedule to the Deed of Adoption may cross-refer to the trust deed and rules governing any other specified Superannuation Entity of which Employees of the Employer are or have been members.

**SDF Part** means the Part of the Fund governed by these Part Rules (and 'this Part' has a corresponding meaning).

**Securities System** means any securities, title, transfer or holding system which operates by any physical means, by an electronic medium or by any custom (whether located in Australia or elsewhere) and includes any clearing agency which acts as a securities depository or a book entry system for the centralized dealing with any investment authorised under Rule 14.1.

**Service** in relation to a Member means the most recent period of continuous service of the Member as an Employee, and includes:

- (a) any period during which the Member is off work because of injury or illness and receives workers' compensation, sickness pay or other regular income from either the Employer or any insurance scheme or policy sponsored by the Employer; and
- (b) any other period declared by the Employer and accepted by the Trustee to be Service for the purposes of this Part.

**Superannuation Holding Accounts Special Account** means the account administered by the ATO to receive and appropriate small superannuation amounts from employers unable to identify a superannuation fund that protects small account balances from erosion by fees and charges.

**Shortfall Component** has the same meaning as is ascribed to it in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Spouse:**

- (a) for the purposes of Rule 33 and subject to Rule 33.10, means a person who immediately before the Member's death lived with the Member as his or her spouse and includes a



person who, although not legally married to the Member, both lived with the Member immediately before his or her death on a bona fide domestic basis as the husband or wife of the Member and is accepted by the Trustee as being the Member's spouse; and

- (b) for all other purposes includes:
- (i) another person (whether of the same sex or a different sex) with whom the person is or was in a relationship that was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* (Cth) as a kind of relationship prescribed for the purposes of that section; and
  - (ii) another person who, although not legally married to the person, in the opinion of the Trustee, lives or lived with the person on a genuine domestic basis in a relationship as a couple.

**Superannuation Authority** means (as the context requires) APRA or the ASIC or the ATO or any successor thereof or any other Governmental Department or authority responsible for administering the laws or any other rules governing the operation of Superannuation Entities or the availability of income tax concessions to Superannuation Entities.

**Superannuation Entity** means a superannuation fund, approved deposit fund, eligible rollover fund, retirement savings account or any other arrangement which the Trustee determines should be treated for the purposes of this Part as a Superannuation Entity.

**Superannuation Guarantee Charge** means a charge or tax imposed on employers for not making certain superannuation contributions or for not providing certain superannuation benefits.

**Superannuation Law** means any requirement under the Act or the Tax Act, the *Retirement Savings Account Act 1997* (Cth), the *Corporations Act 2001* (Cth), *Bankruptcy Act 1966* (Cth) or the *Superannuation Guarantee Charge Act 1992* (Cth) and any regulations made under those Acts or any other law (whether Commonwealth or State) or by a Superannuation Authority:

- (a) imposed on the Trustee; or
- (b) which the Fund must satisfy to qualify for the most favourable taxation treatment available to Superannuation Entities,

including any proposed requirements which the Trustee believes will have retrospective effect.

**Surcharge** means any surcharge or other amount of whatever description levied on the Fund, the Trustee, any Member or former Member pursuant to the *Superannuation Contributions Tax Imposition Act 1997* (Cth) and related legislation (including provisional or advance payments (if any) required under that legislation).

**Switching Request** means a switching request more particularly referred to in Rule 16.

**Tax** includes all actual or anticipated tax, Surcharge, levy or impost on income, capital gains and superannuation contributions, stamp, financial institutions, registration and other duties, bank accounts debits tax, goods and services tax and other taxes, levies, imposts, deductions and charges together with interest, fines and penalties (if any) and charges, fees or other amounts made or payable in respect of them.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or *Income Tax Assessment Act 1997* (Cth), as applicable.

**TFN** means a tax file number for the purposes of the Tax Act and Superannuation Law.

**Total and Permanent Disablement:**

- (a) in respect of a Member and for the purposes of life insurance under this Part, has the same meaning as that expression (or an expression corresponding to it) is given in any Policy or Policies effected by or transferred to the Trustee and applying to the Member under which insurance proceeds may become payable to the Trustee upon the total and permanent disablement of the Member; or
- (b) in respect of a Member and for the purposes of releasing from this Part the Member's Part Credit in circumstances where a Member is considered by the relevant Life Assurance Company to be not totally and permanently disabled under the Policy, means total and permanent incapacity (whether physical or mental) established to the reasonable satisfaction of the Trustee and being such that in the opinion of the Trustee having regard to medical advice, the Member is unlikely to ever again engage in gainful employment in any occupation for which the Member is reasonably qualified by education, training or experience.

**Total but Temporary Disablement** has the same meaning as that expression (or an expression corresponding to it) is given in any Policy or Policies effected by or transferred to the Trustee and applying to the Member under which insurance may become payable to the Trustee for the benefit of the Member upon the total but temporary disablement of that Member.

**Working Day** means any day, other than a Saturday or Sunday, when banks are open for business within the City of Melbourne, Australia.

**Interpretation**

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or these Part Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa and words denoting a particular gender include all genders as the case may require;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) headings are for convenience only and do not affect the interpretation of any provision;
- (f) if a period of time is specified and dates from a given day or the date of an act or event, it is to be calculated exclusive of that day;
- (g) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (h) if a notice period terminates on a day which is a Saturday or Sunday or a bank holiday, then the notice period is deemed to expire on the next following Working Day;
- (i) 'amend' includes delete or replace;
- (j) 'complies with' includes 'not inconsistent with';
- (k) 'including' when introducing a list of items does not by itself exclude a reference to other items of the same class;
- (l) 'permit' or 'permitted' when referring to Superannuation Law includes 'not prohibited';
- (m) 'person' includes a firm, a body corporate, an unincorporated association or an authority;

- (n) a word or expression defined in Superannuation Law has the meaning given to it in Superannuation Law.
- 1.3 Subject to Rule 1.4, all the standards, rules and covenants required by the Superannuation Law to be included in the governing rules of superannuation funds form part of these Part Rules, whether or not they are explicitly stated in these Part Rules.
- 1.4 If a standard, rule or covenant included under Rule 1.3 is no longer required to be included or the Superannuation Authority does not require it to be complied with, then that standard, rule or covenant ceases to be included by Rule 1.3.
- 1.5 A standard, rule or covenant included by Rule 1.3 prevails over any other provision in these Part Rules which is inconsistent with it.
- 1.6 If a provision of these Part Rules would otherwise be invalid in part or in whole because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request and in its discretion agree to act in a manner consistent with it.
- 1.7 If a provision of these Part Rules would otherwise be invalid in part or in whole because it permits a person to exercise a discretion without the consent of the Trustee, that provision is taken to require the Trustee's consent for the exercise of the discretion.
- 1.8 Each Schedule hereto shall form part of these Part Rules and shall apply in relation to the Division to which it is expressed to refer.

## **2 SDF Part, Divisions and Plans**

### **Application**

- 2.1 These Part Rules apply only to Members of the SDF Part. A reference to a Member in these Part Rules is a reference to a Member of the SDF Part.
- 2.2 With effect from the Transfer Time, the SDF Part comprises of the following Divisions:
- (a) the Personal Division; and
  - (b) the Allocated Pension Division.
- 2.3 Divisions do not constitute separate trust funds.

### **Additional Divisions**

- 2.4 The Trustee may by supplemental deed provide for the establishment of Additional Divisions.
- 2.5 The supplemental deed must include:
- (a) a declaration that the Additional Division will be governed by the Deed and these Part Rules as the same shall stand amended, adopted or applied by the supplemental deed;
  - (b) such terms, conditions and matters which the Trustee considers appropriate; and
  - (c) any consequential amendments to the Deed and these Part Rules which the Trustee considers to be expedient or appropriate.
- 2.6 The Trustee must establish:

- (a) in the **Personal Division**:
  - (i) one or more Rollover Plans; and
  - (ii) a Plan for each other Member in the Personal Division;
- (b) in the **Allocated Pension Division** - a Plan for each Primary Beneficiary in the Allocated Pension Division.

However, the Trustee may but is not required to establish a Plan for any Member or Primary Beneficiary if the Trustee already maintains a Plan for the Member or Primary Beneficiary in another Division.

- 2.7 The Trustee may establish such other Plans in a Division as it determines from time to time on such terms, conditions and matters as the Trustee considers appropriate.
- 2.8 Plans do not constitute separate trust funds.

### **No interference by Members**

- 2.9 Each Member is entitled to a beneficial interest in the Fund. However, unless expressly provided in the Deed, these Part Rules or required by law, the beneficial interest of a Member does not entitle that Member to:
  - (a) interfere with the rights or powers of the Trustee in its dealings with the Assets of the Part;
  - (b) exercise any rights, powers or privileges in respect of any Assets of the Part;
  - (c) interfere in any way with any other Division constituted under these Part Rules;
  - (d) require the transfer to the Member of any of the Assets of the Part; or
  - (e) otherwise claim any interest in any particular Asset of the Part.

## **3 Participating Employers**

### **Application for participation**

- 3.1 If a person wishes to apply to participate in this Part as a Participating Employer, the person must:
  - (a) by notice in writing (or such other form acceptable to the Trustee) to the Trustee, indicate the intention to contribute to this Part in respect of certain other persons and include such information as may otherwise have been included in a Schedule to the Deed of Adoption; or
  - (b) complete and execute a Deed of Adoption; and
  - (c) complete such one or more Schedules to the Deed of Adoption as the Trustee may require,

and lodge with the Trustee, the notice, Deed of Adoption and Schedule to the Deed of Adoption as the case requires at its registered office or as the Trustee may otherwise direct. The Trustee may accept as a Participating Employer a person that has not applied to participate in this Part, on such terms and conditions as the Trustee determines, where any employees of the person are Members and Superannuation Law permits.

### **Deed of Adoption and Schedule to the Deed of Adoption**

- 3.2 If any provision of the Deed of Adoption or a Schedule to that Deed of Adoption is inconsistent with a provision of the Deed or these Part Rules, the Trustee, in the exercise of its discretion, may

allow or disallow the provisions of the Deed of Adoption and the Schedule to that Deed of Adoption to prevail.

- 3.3 A Deed of Adoption and any Schedule to that Deed of Adoption entered into by a Participating Employer shall apply equally to relevant Associated Employers and their Employees.
- 3.4 The Trustee and the Participating Employer may agree to alter a Schedule to the Deed of Adoption at any time and from any date (including retrospectively) by such means as the Trustee may specify and so long as the alteration complies with Superannuation Law.

#### **Acceptance or rejection of application**

- 3.5 The Trustee may accept or reject an application made pursuant to Rule 3.1. If the Trustee rejects an application, the Trustee must:
- (a) as soon as reasonably practicable thereafter, notify the person; and
  - (b) return to the contributor any moneys paid to the Trustee in connection with the application.

#### **Notice of acceptance**

- 3.6 On a person being accepted as a Participating Employer pursuant to Rule 3.1, the Trustee must within any time specified by Superannuation Law:
- (a) record or cause to be recorded, the person's name as a Participating Employer;
  - (b) establish a Plan for the person;
  - (c) establish relevant Accounts and sub-accounts for the Plan; and
  - (d) may, by such means and in such manner as the Trustee considers to be reasonable or appropriate, advise the person of:
    - (i) the date of acceptance;
    - (ii) the Division to which the acceptance relates; and
    - (iii) any other matters which, in the opinion of the Trustee, are appropriate or which are required of it by Superannuation Law.

#### **Bound by Rules and Schedules**

- 3.7 Each Participating Employer is bound by these Part Rules and the relevant Schedule or Schedules.

#### **Termination of participation**

- 3.8 The participation of a Participating Employer and the relevant Plan terminates if:
- (a) the Participating Employer gives written notice to the Trustee; or
  - (b) the Trustee gives written notice to the Participating Employer; or
  - (c) the Participating Employer ceases to have any Employees who are Members and there is no Associated Employer in the Plan with Employees who are Members; or
  - (d) an order is made or an effective resolution is passed for the winding up of the Participating Employer, and the Trustee determines that no other person is likely to take the place of the Participating Employer.
- 3.9 A notice under Rule 3.8 must specify a termination date which is at least 30 days (or such other period agreed with or specified by the Trustee) after the date of the notice.

**Replacement of Participating Employer**

- 3.10 If a Participating Employer gives notice under Rule 3.8(a) but nominates an associated employer to take its place and the associated employer agrees to do so in a manner approved by the Trustee; then:
- (a) the associated employer shall, on and from the date specified by that Participating Employer or if not specified then specified by the Trustee become the Participating Employer; and
  - (b) the former Participating Employer may be regarded as an Associated Employer (for as long as the former Participating Employer has any Employees who are Members in the Plan); and
  - (c) Rule 4.7 shall apply on termination of participation by the former Participating Employer (instead of Rule 3.11).

**Application of Assets of a Plan**

- 3.11 Subject to Rule 3.10, on termination:
- (a) the Participating Employer, any Associated Employers and their Employees who are Members of the Plan must immediately pay to the Trustee the amount of any arrears of contributions up to the termination date but may make no further contributions;
  - (b) the Trustee must continue to pay out of the Plan benefits which have become payable on or before the termination date to or in respect of Employee-members of that Participating Employer;
  - (c) after providing for all expenses and liabilities (including Tax) for which the Trustee is or reasonably believes it is or may become liable and any fees to which it is or reasonably believes it is or will become entitled in respect of the Plan, the Trustee may pay the Assets of the Plan to:
    - (i) a Complying Superannuation Fund nominated by the Participating Employer; or
    - (ii) if the Participating Employer does not nominate a Complying Superannuation Fund within 30 days after the termination date, a Complying Superannuation Fund selected by the Trustee,in a manner consistent with Superannuation Law; and
  - (d) if the Trustee does not pay the Assets of the Plan under Rule 3.11(c), the Trustee must apply them in accordance with Rule 31.6.
- 3.12 If a Member dies before the Trustee has paid or applied the whole of the benefit in respect of that Member pursuant to Rule 3.11, the Trustee must pay so much of it as remains unpaid, as a death benefit or must forthwith pay or apply so much of it as remains unpaid at the date of death, in accordance with Rules 3.11(c) or 3.11(d), as the case requires.

**4 Associated Employers****Application for participation**

- 4.1 The Trustee may admit a person to participate in a Plan as an Associated Employer of a Participating Employer if:
- (a) the person is associated with the Participating Employer;

- (b) the person applies to the Trustee in the form prescribed by the Trustee and lodges the application with the Trustee either at its registered office or as the Trustee may specify; and
- (c) the Participating Employer first acknowledges its consent in writing (or such other form acceptable to the Trustee) to the application being accepted by the Trustee.

### Acceptance or rejection of application

- 4.2 The Trustee may accept or reject an application made pursuant to Rule 4.1. If the Trustee rejects an application, the Trustee must:
- (a) as soon as is reasonably practicable thereafter, notify the person and the relevant Participating Employer; and
  - (b) return to the contributor any moneys paid to the Trustee in connection with the application.

### Notice of acceptance

- 4.3 On accepting a person's application pursuant to Rule 4.1, the Trustee must within any time specified by Superannuation Law:
- (a) record or cause to be recorded, the person's name as an Associated Employer; and
  - (b) may, by such means and in such manner as the Trustee considers to be reasonable or appropriate, advise the person of:
    - (i) the date of acceptance;
    - (ii) the Division to which the acceptance relates; and
    - (iii) any other matters which, in the opinion of the Trustee, are appropriate or which are required of it by Superannuation Law.

### Bound by Rules and Schedules

- 4.4 Each Associated Employer is bound by the Deed and these Part Rules and the relevant Schedule or Schedules.

### Termination of participation

- 4.5 The participation of an Associated Employer terminates if:
- (a) the Associated Employer gives written notice to the Trustee; or
  - (b) the Trustee gives written notice to the Associated Employer; or
  - (c) the Participating Employer gives written notice to the Associated Employer and the Trustee; or
  - (d) the Associated Employer ceases to have any Employees who are Members in the Plan; or
  - (e) an order is made or an effective resolution is passed for the winding up of the Associated Employer.
- 4.6 A notice under Rule 4.5 must specify a termination date which is at least 30 days (or such other period agreed with or specified by the Trustee) after the date of the notice.

### Application of Assets of a Plan

- 4.7 Subject to Rule 3.10, on termination:

- (a) the Associated Employer and its Employees who are Members of the Plan must immediately pay to the Trustee the amount of any arrears of contributions up to the termination date but may make no further contributions to the Plan;
- (b) the Trustee must continue to pay out of the Plan benefits which have become payable on or before the termination date to or in respect of Members then in the Service of that Associated Employer;
- (c) after providing for all expenses and liabilities (including Tax) for which the Trustee is or reasonably believes it is or may become liable and any fees to which it is or reasonably believes it is or will become entitled in respect of the amount of the transfer, the Trustee may transfer the Interests in the Plan of the Members in the Associated Employer's Service, together with any share of the Plan Reserve Account, the Plan Reserve Transfer Account and the Plan Reserve Charges Account as shall be determined by the Trustee after consulting with the Participating Employer and the Associated Employer, to:
  - (i) a Complying Superannuation Fund nominated by the Associated Employer; or
  - (ii) if the Associated Employer does not nominate a Complying Superannuation Fund within 30 days after the termination date, a Complying Superannuation Fund selected by the Trustee,in a manner consistent with Superannuation Law;
- (d) if the Trustee does not pay the Interests in the Plan of the relevant Members pursuant to Rule 4.7(c), the Trustee must hold those amounts **ON TRUST** to be applied by the Trustee in the following order of priority:
  - (i) to provide for all expenses and liabilities (including Tax) for which the Trustee reasonably believes it is or reasonably believes it may become liable and any fees to which it is or reasonably believes it will become entitled in respect of the amount;
  - (ii) to pay out of the Plan benefits which have become payable on or before the termination date to or in respect of Members then in the Service of the Associated Employer;
  - (iii) to pay a benefit for each of the Members then remaining in the Service of the Associated Employer calculated as if the Member had been Retrenched on the termination date;
  - (iv) to increase any benefits as the Deed of Adoption, Schedule to the Deed of Adoption, Application Form or as such other advice lodged with and accepted by the Trustee may require or as the Trustee and the Participating Employer may agree;
  - (v) otherwise for the general purposes of the Plan as the Trustee and the Participating Employer may agree,subject always to Superannuation Law.

4.8 A person may not receive a benefit under Rule 4.7 before Superannuation Law permits.

4.9 If a Member dies before being paid all the benefit to which the Member was entitled pursuant to Rule 4.7(d), the Trustee must pay as a Death Benefit, so much of it as remains unpaid at the date of death.



## **5 Eligibility and Membership**

### **Eligibility**

- 5.1 A person is eligible to become a Member of a Division if they are a Transferring SDF Member or otherwise in accordance with the Schedule for that Division and having due regard to the relevant Deed of Adoption, Schedule to the Deed of Adoption, Application Form or to such other advice lodged with and accepted by the Trustee.

### **Member of a Division**

- 5.2 A person admitted as a Member of a Division will be a Member of one or more of the Divisions referred to in Rule 2.2.

### **Information from prospective Members**

- 5.3 Before admitting a person as a Member, the Trustee may require the person (except if they are a Transferring SDF Member):
- (a) to provide evidence of that person's good health which may also include the requirement that the person present for medical examination with one or more medical examiners;
  - (b) to provide such information that is reasonably requested by the Life Assurance Company which may issue (or have issued) a Policy under which that person is to be covered by insurance; and
  - (c) to provide such other information which the Trustee considers relevant to the effective administration of this Part.

### **Membership**

- 5.4 An Employee shall become a Member:
- (a) on the date on which the Trustee has accepted the Employee's application, the inclusion of the Employee's name on a notice supplied to the Trustee by that Employee's Employer or, if the Trustee has waived the requirement for an application, upon the acceptance by the Trustee of a contribution in respect of that Employee; or
  - (b) on any earlier or later date agreed between the Trustee and the relevant Employer.
- 5.5 The Trustee may:
- (a) reject an application or nomination; or
  - (b) impose special conditions when accepting an application or nomination.
- 5.6 If the Trustee rejects an application or a nomination, the Trustee shall:
- (a) as soon as practicable notify, the person and any relevant Employer; and
  - (b) cause to be returned to the contributor, any moneys paid to the Trustee in connection with the application or nomination.

### **Bound by Rules and Schedules**

- 5.7 Each Member is bound by these Part Rules and the relevant Schedule or Schedules including, where the context so requires, the relevant Schedule to the Deed of Adoption, Application Form and such other advice as may have been lodged with and accepted by the Trustee.

**Offering Categories of Membership**

5.7A The Trustee may:

- (a) offer a Member the option of selecting a category of membership provided for under Rule 33; and/or
- (b) determine that a Member is in a group of Members to whom Rule 33 applies.

If paragraph (a) and/or (b) of this clause applies to a Member, that Member's benefits are payable in accordance with the terms of Rule 33.

**Establishing, Deleting and Varying Categories of Membership**

5.7B The Trustee may establish, close, delete or vary Categories of membership within a Division or a Plan in a Division at any time.

**Notice of admissions**

5.8 Upon a person being admitted as a Member, the Trustee shall within any time specified by Superannuation Law:

- (a) record or cause to be recorded, that person's name;
- (b) where the case so requires, establish or cause to be established Contribution Accounts for the Member;
- (c) may, by such means and in such manner as the Trustee considers to be reasonable or appropriate, advise the person in writing of:
  - (i) the date of acceptance;
  - (ii) the Division and Category to which the acceptance relates; and
  - (iii) any other matters which, in the opinion of the Trustee, are appropriate or which are required of it by Superannuation Law.

**Transfer of Service**

5.9 The transfer of a Member from Service with one Employer to Service with another Employer in the same Plan does not constitute a termination of Service unless the Participating Employer of each Plan and the Trustee declare otherwise.

**Membership ceases**

5.10 A person shall cease to be a Member of a Division when:

- (a) all of that person's entitlement to benefits from each Plan of the Division of which that person is a Member have been paid; or
- (b) a transfer is made to another Division or Part or any Superannuation Entity in satisfaction of all the Member's entitlement to benefits from each Plan of the Division; or
- (c) all of the Member's entitlement to benefits from each Plan of the Division cease.

**6 Transfers to and from the Fund****Transfer to a Plan**

6.1 The Trustee may make such arrangements it considers appropriate with:

- (a) a Member;
- (b) any previous employer of the Member;

- (c) the trustee of any Superannuation Entity of which the Member is or has been a member; or
  - (d) the owner of an annuity policy held by the Member,
- to transfer assets in respect of the Member to a Plan and to provide benefits in respect of the Member, which may be calculated in a different manner from that set out in the relevant Schedule and any Deed of Adoption, Schedule to the Deed of Adoption, Application Form or other advice lodged with and accepted by the Trustee; as the case may be. The Trustee may specify a minimum transfer amount and impose such other conditions on the transfer as it considers to be appropriate and reasonable in all the circumstances.
- 6.2 Any arrangements made pursuant to Rule 6.1 must:
- (a) if applicable, specify how the transferred assets are to be allocated as between Investment Portfolios; and
  - (b) comply with Superannuation Law.
- 6.3 Assets other than cash may be transferred to this Part if the Trustee so permits but any such assets must first be valued in the manner described in Rule 18.3 before being transferred to this Part.
- 6.3A The arrangements made pursuant to Rule 6.1 may include the Trustee accepting into the fund from the trustee of another Superannuation Entity, by way of transfer, assets identified by that trustee to be surplus to the requirement to make adequate provision for the benefits which immediately before the transfer had accrued in respect of the transferring members of that other Superannuation Entity, and which that trustee considers to be appropriate to transfer to this Part. The Trustee shall credit such assets to the Plan Reserve Transfer Accounts of the applicable Employers, or otherwise in respect of the applicable Members or as the Trustee considers equitable.

### Transfer from a Plan

- 6.4 If a Member is, or is eligible to be, a member of another Plan, Part or Superannuation Entity, that Member may request the Trustee to transfer assets to the other Plan, Part or Superannuation Entity and the Trustee in its discretion may do so. However:
- (a) the transfer must comply with Superannuation Law; and
  - (b) the Trustee must not transfer assets having a value in excess of:
    - (i) the Interest in the Plan of the Member; or
    - (ii) the amount requested by the Member to be transferred.
- The Trustee may specify a minimum transfer amount and impose such other conditions on the transfer as it considers to be appropriate and reasonable in the circumstances.
- 6.5 Assets other than cash must first be valued pursuant to Rule 18.3 before being transferred from this Part.
- 6.6 A transfer made pursuant to Rule 6.4 shall be made in full satisfaction of the Member's entitlement to any benefit in respect of the amount transferred. The Trustee shall not be responsible for the manner in which the trustee of any other Superannuation Entity deals with the amount transferred.
- 6.7 To satisfy a transfer of assets pursuant to Rule 6.4, the Trustee must debit the Contribution Accounts of the relevant Member in accordance with Rule 17 or otherwise adjust the Member's

benefits or give effect to the transfer in such other manner as the Trustee considers appropriate in the circumstances.

### **Successor Fund Transfers**

- 6.8 Despite anything to the contrary expressed or implied in these Part Rules the Trustee may accept a transfer of assets and Members into a Plan, or agree to a transfer of assets or Members out of a Plan, without the consent of the Member or Members provided the transfer is consistent with the Superannuation Law.

### **Transfers in respect of Divisions**

- 6.9 Without limiting Rule 6.4 or the provisions for transfer to the Personal Division or Allocated Pension Division:
- (a) if a Member is, or is eligible to be, a Member of more than one Division of this Part, the Trustee may designate the Member as a Member of any of those Divisions and allocate the Member's Part Credit wholly to the designated Division;
  - (b) if a Member is, or is eligible to be, a Member of more than one section of a Division of this Part, the Trustee may designate the Member as a Member of any of those sections and allocate the Member's Part Credit wholly to the designated section.

### **Transfers between classes**

- 6.10 The Trustee may transfer a Member's interest in the Fund, or part of their interest, from a class of beneficial interest to another class of beneficial interest if permitted by Superannuation Law.

## **7 Contributions**

### **Amount, manner and times**

- 7.1 Each Employer and each Member must in relation to a period, contribute to the relevant Plan the amount (if any) and in the manner and at the times specified in the relevant Schedule with due regard to the relevant Deed of Adoption, Schedule to the Deed of Adoption, Application Form or such other advice as has been accepted by the Trustee.

### **General**

- 7.2 The Trustee may refuse to accept all or part of any contribution, including but not limited to a Member No TFN Contribution, from a person without giving any reason.
- 7.3 The Trustee must not accept contributions contrary to Superannuation Law.
- 7.4 If the Trustee finds that any contributions have been accepted contrary to Superannuation Law, the Trustee must repay them to the contributor. If Superannuation Law permits, the Trustee may deduct an amount for insurance effected or Tax or expenses incurred in relation to those contributions.
- 7.4A If the Trustee receives a Member No TFN Contribution, it:
- (a) must, if required by Superannuation Law, refuse to accept the Member No TFN Contribution;
  - (b) must, if required by Superannuation Law, return the Member No TFN Contribution to the relevant Member within 30 days of the amount being received by the Trustee;

- (c) may, in its absolute discretion, return the Member No TFN Contribution to the relevant member after deducting amounts from these contributions to take account of:
  - (i) a reduction in the value of the Member No TFN Contribution owing to losses sustained as a result of its investment during the period it was held by the Trustee; or
  - (ii) reasonable Costs incurred in respect of this Part, or both.

### **Mandated Employer Contributions**

7.5 If an Employer makes contributions for a Member in relation to a period and:

- (a) the contributions are intended to:
  - (i) satisfy the Employer's obligations under any Award in relation to the period; or
  - (ii) avoid a liability for the Superannuation Guarantee Charge in relation to the period; and
- (b) the contributions in the opinion of the Trustee do not satisfy the Award or avoid the Superannuation Guarantee Charge in relation to the period,

the Employer may request the Trustee to repay the contributions to the Employer, less any charge which the Trustee may make for any insurance effected or Tax or expenses incurred in relation to those contributions or at its option, the Employer may request that the contributions be applied by the Trustee in full or partial satisfaction of the Employer's obligation to make such contributions in respect of a later period.

7.6 The Trustee shall consent to the Employer's request under Rule 7.5 unless:

- (a) the Trustee is not satisfied that the circumstances described in Rule 7.5(a) and (b) exist; or
- (b) to do so is not permitted by Superannuation Law.

7.7 If an Employer is required to make contributions to the Plan for a Member for a period but has not yet made them and the Trustee is satisfied that the Employer has become bound to:

- (a) make contributions under an Award to another Superannuation Entity for the Member in relation to the period; or
- (b) pay the Superannuation Guarantee Charge for the Member in relation to the period,

then the Employer's liability to contribute under the relevant Schedule, Deed of Adoption, Schedule to the Deed of Adoption, Application Form or such other advice that has been accepted by the Trustee, shall be reduced to the extent that the Employer must make the Award contributions or pay the Shortfall Component of the Member.

### **Shortfall Component**

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

## **8 Application of Contributions, Transfers & Other Receipts**

### **Application**

8.1 On acceptance of any contribution, transfer or other receipt of this Part pursuant to these Part Rules in circumstances where the Assets of the Part are represented wholly by a Policy, the amount of such contribution, transfer or other receipt shall forthwith be applied by the Trustee as

a premium under that Policy for allocation and investment thereunder in accordance with the Member's requirements as expressed in the Schedule to the Deed of Adoption, Application Form or in such other manner acceptable to the Trustee as the case may be and in circumstances where the Assets of the Part are not represented wholly by a Policy, then subject only to Rule 9:

- (a) each such contribution and other receipt of this Part must be paid into the Cash Float Account (if any) or into such other Accounts of the relevant Plan as the Trustee considers to be appropriate; and
- (b) each such transfer must be paid into the Cash Float Account (if any) or into such other Accounts of the relevant Plan as the Trustee considers to be appropriate.

### Receipt by Trustee

8.2 Each contribution, transfer or other receipt of this Part under these Part Rules must be held by the Trustee **ON TRUST**. If the contribution, transfer or other receipt of this Part is rejected, the Trustee must forthwith return the moneys to the contributor, transferor or payer as the case requires and may account to the said contributor, transferor or payer for any interest gained or capital loss incurred while such moneys were being held on trust.

### Cooling off period

8.3 If the Trustee accepts from or in respect of a Member whose employer does not contribute to the Plan in respect of that Member, a contribution, transfer or other receipt in relation to this Part and:

- (a) the contributor, transferor or payer requests repayment of the contribution, transfer or other receipt of this Part within the period of 14 days immediately following admission to membership of this Part; and
- (b) Superannuation Law permits the Trustee to do so,

the Trustee must pay to the contributor, transferor or payer as the case requires, the amount accepted less any deductions which the Trustee is entitled to make under Superannuation Law together with any further amount stipulated by Superannuation Law.

## 9 Policies

### Trustee to effect Policy

9.1 The Trustee may effect or extend the application of a Policy in respect of:

- (a) a Member; or
- (b) a group of Members,

and the terms of the Policy shall bind each relevant Member and any person who becomes entitled to a benefit in respect of the Member. The Trustee covenants that it will apply every reasonable endeavour to ensure that to the greatest extent practicable, the terms and conditions of the Policy are consistent with the provisions of the Deed and these Part Rules.

### Premiums payable

9.2 In circumstances where the Assets of the Part are represented wholly by a Policy the Trustee must apply pursuant to Rule 8 all contributions, transfers and other receipts of this Part as the premium under that Policy but in any other circumstance, the Trustee must pay premiums in respect of each Policy from the Cash Float Account (if any) or from such other Accounts as the Trustee considers to be appropriate and where the context so requires, shall debit the amount paid to:

- (a) the Contribution Accounts of the relevant Member; or
  - (b) any other Account of the relevant Plan,
- or partly from one and partly from the other and in such proportion as the Trustee shall determine.

### Claims

- 9.3 If the Trustee becomes aware that there is a reasonable basis for making a claim under a Policy, the Trustee must as soon as reasonably practicable thereafter make that claim in writing to the relevant Life Assurance Company.

### Policy proceeds

- 9.4 In circumstances where the Assets of the Part are:
- (a) represented wholly by a Policy, all premiums paid by the Trustee in respect of that Policy and all benefits payable to the Trustee under that Policy shall be effected in accordance with the terms and conditions of that Policy consistent with the express wish of the Member as the same has been advised to and accepted by the Trustee;
  - (b) not represented wholly by a Policy, the Trustee must pay the proceeds of any Policy to the Cash Float Account and credit the amount of the proceeds to:
    - (i) the Contribution Accounts of the relevant Member; or
    - (ii) any other Account of the relevant Plan in accordance with these Part Rules,or partly to one and partly to the other of them in such proportions as the Trustee shall determine.

### Benefit payable

- 9.5 The Trustee shall not be obliged to make a payment in respect of a Policy that is greater in amount than the amount actually received by the Trustee under the Policy, net of any deductions which the Trustee is entitled to make under these Part Rules and under the Policy.

### Sum Assured refused, varied or declined

- 9.6 If the Life Assurance Company that has issued the relevant Policy under which life insurance is provided:
- (a) refuses to provide or to increase the insurance under that Policy in respect of a Member on its standard terms; or
  - (b) terminates the insurance under that Policy or terminates the obligation to accept any additional Members under that Policy; or
  - (c) does not admit a claim (either wholly or partially) under that Policy; or
  - (d) varies the Policy,
- then the Trustee must forthwith reduce or vary accordingly, the amount which would otherwise have been payable under this Part.
- 9.7 The Trustee must advise each Member (or cause each Member to be advised) of the amount of insurance that has been accepted or declined under the relevant Policy in respect of that Member.
- 9.8 If a Life Assurance Company, in response to an application by the Trustee pursuant to Rule A3.2, declines to provide (either wholly or partially) insurance for any Member under the relevant Policy,

the Trustee shall not be obliged or required to arrange any other policy of insurance in respect of that Member.

### **Increase in premiums**

- 9.9 If a Life Assurance Company, in response to an application by the Trustee pursuant to Rule A3.2, increases or varies the premium rates under a Policy, the Trustee must advise (or cause to be advised) the Employer and Member of the increase or variation as soon as it is practicable so to do. The Trustee may pay the increased or varied premiums until the Trustee determines that:
- (a) the insured benefit is not to be provided under that Policy; or
  - (b) a reduced benefit is to be provided at a reduced premium; or
  - (c) the said Policy is to be terminated from a specified date and another policy is effected in substitution therefor with effect from that date with the same or with another Life Assurance Company.

### **Policy types**

- 9.10 Notwithstanding anything to the contrary whether express or implied in the Deed and these Part Rules, the Trustee may effect in its name one or more policies of life insurance (including where the context requires, an 'investment only policy'; a 'group life insurance policy' and an 'Annuity Policy') with a Life Assurance Company to provide the insured and any other benefits which may become payable under this Part pursuant to the Deed and these Part Rules.
- 9.10A Notwithstanding anything to the contrary whether express or implied in the Deed and these Part Rules, the Trustee may effect in its name one or more policies of life insurance with a Life Assurance Company which pays proceeds in circumstances where a Member is diagnosed by a medical practitioner as having a terminal illness and on receipt of the proceeds of any such policy, the Trustee will pay the proceeds to the Member, subject to the terms of the Deed and these Part Rules.
- 9.11 The Trustee is empowered to and may give full and effectual receipts, releases and discharges in respect of payment of any moneys under the said Policy or Policies as may be required of it and which it considers to be proper having regard to the circumstances.
- 9.12 In the event that the Trustee has elected to secure the benefits payable under this Part pursuant to these Part Rules by means of a policy of a type referred to in Rule 9.10 then to the extent that one such policy is wholly or partially an 'investment only policy', that policy shall be sufficient, if the Trustee so decides, to remove any requirement in these Part Rules for the Trustee to maintain a separate Cash Float Account under this Part.
- 9.13 For the avoidance of doubt, the provisions of the various State and Territory Trustee Acts relating to investments shall not apply to the Fund and all matters relating to the investment of the Assets of the Part shall be governed by the Deed and these Part Rules.

### **Powers in relation to Policies**

- 9.14 Only the Trustee is entitled to enforce any rights, remedies or contract in connection with a Policy.
- 9.15 No Employer, Member or a person claiming through either of them, may claim nor shall have any right, title or interest in or over any Policy.



### Insurance Premium Refund

9.16 Where premiums for life insurance have been deducted from a Member's Contribution Account or from an Employer's Contribution Account, the amount of any refund of insurance premiums under the Policy shall be fully distributed by the Trustee amongst those of the Members in respect of whom the life insurance premiums had been deducted and who, at the date of distribution remain in the Service, by crediting it to the respective Member's Contribution Accounts and Employer's Contribution Accounts in such proportions as in the opinion of the Trustee, is equitable in the circumstances.

For the avoidance of doubt, any refund of life insurance premiums will be credited to a Member's Contribution Account only if the Member remains a Member in accordance with the provisions of the Deed and these Part Rules at the date of distribution.

## 10 Benefit Entitlement

### Benefit

10.1 Each Member shall be presumptively entitled to a benefit calculated under the relevant Schedule for that Member's Division having regard to the relevant Schedule to the Deed of Adoption or the Application Form or to such other advice lodged with and accepted by the Trustee.

### Benefits for Non-Member Spouse

10.1A In the event that a Non-Member Spouse does not become a Member, the Trustee may, subject to Superannuation Law and in accordance with the provisions of this Deed, pay to a Non-Member Spouse or pay or transfer to another Superannuation Entity (including an eligible rollover fund) any amount which becomes payable in respect of the Non-Member Spouse because the Member's interest in this Part is subject to a Payment Split. The receipt in those circumstances is a sufficient discharge for the Trustee of any obligation it has in respect of the Non-Member Spouse.

### Adjusting benefits for Payment Splits

10.1B The Trustee may adjust any benefit payable or which may become payable from this Part in respect of a Member to take account of any Payment Split under Part VIII B of the *Family Law Act 1975* (Cth) in respect of the Member or in respect of benefits payable from this Part for or in respect of that Member. Subject to Superannuation Law, any adjustment will be on such terms as the Trustee determines.

### Required Payment Date

10.2 If:

- (a) a Member reaches the Required Payment Date; and
- (b) if applicable, having regard to that Member's Division, remains in Service,

the Trustee must pay the Member a benefit calculated under the Schedule for the Member's Division having regard to the relevant Schedule to the Deed of Adoption, Application Form or to such other advice lodged with and accepted by the Trustee, or shall otherwise apply it pursuant to Rule 11. The Member does not thereafter become entitled to any further benefit by reason of leaving Service or dying in Service.

**Premature release of benefit**

10.3 The Trustee may pay a benefit to a Member (including in the circumstance of the Member having not left Service) where:

- (a) the Member requests payment;
- (b) the benefit does not exceed the Interest in the Plan of the Member; and
- (c) Superannuation Law permits.

The Trustee may impose such conditions and penalties on the premature payment of benefits pursuant to this Rule, as it considers to be appropriate in the circumstances.

**Trustee determinations**

10.4 A benefit is payable only if these Part Rules so permit.

10.5 The Trustee may act on:

- (a) any proofs or presumptions which it considers satisfactory (whether or not they are strictly legal proofs or presumptions);
- (b) any authorisation or direction given by or on behalf of a Member even if the authorisation or direction was given by them as an SDF member to the Trustee or the Life Company.

**Unclaimed benefits and lost Members**

10.6 The Trustee must comply with Superannuation Law in relation to the Interest in the Plan of Members which Superannuation Law:

- (a) treats as unclaimed money; or
- (b) requires, in the case of a Member whose present whereabouts is unknown to the Trustee, to be transferred to another Superannuation Entity,

and no person shall thereafter have any claim whatsoever under the Deed and these Part Rules, to or in respect of the amount of that Member's Interest in the Plan.

**Assignments**

10.7 The Trustee is not bound to recognise any purported assignment or charge or alienation of benefit. However:

- (a) Where a Member or Dependant in the opinion of the Trustee becomes physically, mentally or otherwise incapable for any reason whatsoever of managing his own affairs -
  - (i) all benefits which have become payable to or on behalf of that Member or Dependant but which have not yet been paid or otherwise applied in terms of the Deed and these Part Rules; and
  - (ii) all benefits to which that Member or Dependant is contingently entitled or which may become payable to that Member or Dependant under this Part,are forfeited to the Trustee but shall nevertheless be applied by the Trustee in accordance with paragraph (c).
- (b) If:
  - (i) a Member or Dependant purports to assign, charge or alienate; or
  - (ii) any other event occurs which results in another person becoming entitled to,

all or part of the benefit of the Member or Dependant which may become payable (but which has not become payable at the date of the purported assignment, charge, alienation or other event), then subject to Superannuation Law, that benefit or part thereof shall be forfeited and applied in accordance with paragraph (c) below **PROVIDED THAT** Rule 10.7 shall have no effect on the bankruptcy or insolvency of the Member or Dependant to the extent that its operation would be contrary to the Superannuation Law.

- (c) Any benefit which the Trustee determines has been forfeited shall be applied by the Trustee for the maintenance and benefit of that person and that person's Dependents or such one or more of them to the exclusion of the other or others of them and in such manner and proportions as the Trustee in its absolute discretion determines **PROVIDED THAT** application of the forfeited benefit shall be in accordance with Superannuation Law.

### Debt or wrongdoing

- 10.8 If at any time a benefit becomes payable to a Member or available for transfer, then subject to Superannuation Law, the Trustee may reduce that benefit by any amount that the Trustee can reasonably demonstrate to be owed by the Member to the Trustee.
- 10.9 If a Member becomes bankrupt (within the meaning of subsection 5(1) of the Bankruptcy Act) the amount of that Member's Interest in the Plan (subject to any minimum amount prescribed under Superannuation Law) at the commencement of the bankruptcy and payments to the Member under this Part received on or after the date of bankruptcy (other than by way of pension) shall not constitute property that is divisible amongst the Member's creditors and shall be protected to the extent described in the Superannuation Law.

## 11 Payment of Benefit

### Benefit not to be paid in contravention of law

- 11.1 The Trustee must not pay a benefit to or in respect of a Member if the payment would result in the Trustee or an Employer contravening:
- (a) Superannuation Law; or
  - (b) any law relating to corporations.

### Voluntary deferral

- 11.2 The Trustee may defer payment of all or part of a benefit if the Member entitled to it requests (***Deferred Benefit***).
- 11.2A Subject to the Superannuation Law, the Trustee:
- (a) must pay part or all of the Deferred Benefit to the Member upon request;
  - (b) must pay part or all of the Deferred Benefit to another Superannuation Entity upon request of the Member;
  - (c) must pay the Deferred Benefit to or in respect of the Member when the Member reaches the Required Payment Date; or
  - (d) must pay the remainder of the benefit as a death benefit, if the Member dies before the Deferred Benefit is paid in full.

**Preservation**

- 11.3 If the Trustee considers it necessary under Superannuation Law to preserve any part of a benefit that has become payable from this Part, then it must:
- (a) pay that part of the benefit under Rule 11.6 or 11.9 to a Superannuation Entity which also preserves it under Superannuation Law; or
  - (b) if the Member does not nominate a Superannuation Entity and Superannuation Law permits:
    - (i) pay it to a Superannuation Entity nominated by the Trustee; or
    - (ii) retain it in this Part until it may be paid in accordance with Superannuation Law.

**Deferred and preserved benefits**

- 11.4 If payment of any amount of a benefit is deferred pursuant to Rule 11.2 or if any amount of a benefit is preserved pursuant to Rule 11.3, the Trustee must adjust the amount of the benefit in such manner and to such extent (if any) as it determines to be appropriate in the circumstances. If the Member dies before the benefit is paid under this Part in full, the Trustee must pay the remainder of the benefit as a Death Benefit.

**Purchase of an Annuity Policy**

- 11.5 If a person who is entitled under this Part to receive a lump sum benefit:
- (a) requests the Trustee in writing to pay or apply all or part of that lump sum benefit to purchase an Annuity Policy or an allocated pension in the name and for the benefit of:
    - (i) the Member; or
    - (ii) the Member and one or more Dependants of the Member; or
    - (iii) a Dependant of the Member; and
  - (b) such payment, application and purchase as the case requires complies with Superannuation Law,

then the Trustee, in the exercise of its absolute discretion, may comply with the request.

**Purchase of an Annuity Policy**

- 11.6 If a person who is entitled under this Part to receive a lump sum benefit:
- (a) requests the Trustee in writing to pay or apply all or part of that lump sum benefit to purchase an Annuity Policy or another appropriate policy under this Part for the benefit of that person; and
  - (b) such payment, application and purchase as the case requires, complies with Superannuation Law,

then the Trustee, in the exercise of its absolute discretion, may comply with the request.

**Payment of pension under Part**

- 11.7 Payment under this Part of a pension (including an allocated pension) shall be made by the Trustee in accordance with the terms and conditions of the Annuity Policy or such other policy including an allocated pension as may have been purchased by the Trustee for the purpose and to that extent, in accordance with the wishes of the person referred to in Rule 11.6.

**Payment of benefit to another fund**

- 11.8 If a person who is entitled under this Part to receive a lump sum benefit:
- (a) requests the Trustee to pay all or part of that lump sum benefit to another Superannuation Entity; and
  - (b) such payment complies with Superannuation Law,
- then the Trustee, in the exercise of its absolute discretion may comply with the request.

**Payment to another fund or purchase of annuity without consent**

- 11.9 The Trustee may pay all or part of a benefit to:
- (a) another Superannuation Entity; or
  - (b) the provider of a deferred annuity,
- without the consent of the person entitled, so long as Superannuation Law permits.

**Payment of Death Benefit to a Dependant or to the Legal Personal Representative or to another person**

- 11.10 Subject to Rule 11.12A, Rule 11.12I, Rule 33 and the Superannuation Law, the Trustee must pay or apply a Member's Death Benefit to or for the benefit of such one or more, as determined by the Trustee, of:
- (a) the Dependants of the deceased Member;
  - (b) the Legal Personal Representative of the deceased Member;
  - (c) any other person to whom the payment of the Benefit is permitted under Superannuation Law,
- in such form and manner, at the times and in such proportions between them (if more than one) as the Trustee in its absolute discretion shall determine.

**Member's preference for payment of Death Benefit**

- 11.11 A Member may give to the Trustee a non-binding nomination in such form and manner as the Trustee specifies from time to time requesting the Trustee to pay some or all of the Member's Death Benefit to a person or persons mentioned in the nomination (being the Legal Personal Representative and/or Dependants of the deceased Member) (**Non-Binding Nomination**) but the Trustee is not bound to follow a Non-Binding Nomination. This applies even if the nomination was given to the Trustee as trustee of the SDF.

11.12 [Deleted]

**Binding Nominations**

- 11.12A If the Superannuation Law has been met, where:
- (a) the Trustee has determined that this Rule 11.12A will apply in respect of a Member or a group of Members to which the Member belonged at the date of death;
  - (b) the Trustee is in receipt of a current, valid nomination which was given to the Trustee by the Member in such form and manner as the Trustee specifies from time to time requiring the Trustee to pay some or all of the Member's Benefit to a person or persons mentioned in the nomination (being the Legal Personal Representative and/or Dependants of the deceased Member) (**Binding Nomination**); and

- (c) the nomination referred to in paragraph (b) complies with any Binding Nomination Guidelines applicable at the date on which the nomination was made,

then the deceased Member's Death Benefit must be paid by the Trustee in accordance with the Binding Nomination.

11.12B [Deleted]

11.12C [Deleted]

11.12D [Deleted]

11.12E [Deleted]

11.12EAA Member's Binding Nomination ceases to have effect upon the earliest of the following dates:

- (a) the date the Binding Nomination ceases to have effect under Superannuation Law;
- (b) the date a nominated beneficiary predeceases the Member;
- (c) the date the Member marries (except where the Member marries a nominated beneficiary who is in a de-facto relationship with the Member);
- (d) the date the Member enters into a de-facto relationship (including with a person of the same sex);
- (e) the date the Member divorces or the member's de-facto relationship (including with a person of the same sex) terminates;
- (f) the date the Member revokes the Binding Nomination in writing;
- (g) the date the Member provides a Non-Binding Nomination or a Non-Lapsing Nomination in relation to the Member's Interest or Interests in respect of which the Binding Nomination was made;
- (h) the day before the date of the Member's death where, at the date of the Member's death, a nominated beneficiary is neither a Dependant or the Legal Personal Representative of the Member; or
- (i) the date that any other circumstance, which the Trustee may determine from time to time, occurs in relation to the Member.

11.12EB The Trustee may from time to time specify conditions and restrictions relating to Binding Nominations (***Binding Nomination Guidelines***) which must be complied with in order for a Binding Nomination to be valid.

11.12EC For the avoidance of doubt:

- (j) a Non-Binding Nomination and/or a Binding Nomination may form part of the Application Form lodged by the Member with the Trustee at the time of his or her application to become a Member; and
- (k) the Trustee may pay the deceased Member's Benefit as a lump sum or as a pension or a combination of both, as the Trustee in its absolute discretion considers appropriate, notwithstanding any request contained in a Non-Binding Nomination or a direction contained in a Binding Nomination to pay the deceased Member's Benefit in a particular form.

### **Payment of Death Benefit to Infants**

11.12F Where any Dependant to whom a benefit is to be paid under Rule 11.10 or Rule 11.12A is an infant, the payment shall be made **IN TRUST** to the person appearing to the Trustee to be the guardian or the person having actual custody or control of such infant or to the person with whom

such infant will permanently reside or to such other person or institution and generally subject to such directions as to the manner in which the payment is to be applied for the benefit of the infant as the Trustee shall think fit and the receipt of such person or of the appropriate official of such institution shall be a good and effectual discharge to the Trustee for any money so paid and the Trustee shall not be bound to see to the application thereof nor to the carrying out of their directions as aforesaid.

### Non-Lapsing Nominations

11.12G The Trustee may from time to time determine that this Rule 11.12G applies in respect of a particular Division, Plan, category or group of Members, and may determine from time to time that this Rule 11.12G no longer applies in respect of a Division, Plan category or group of Members. Where the Trustee has determined that this Rule 11.12G applies in respect of a Member (and has not determined that this Rule 11.12G no longer applies in respect of the Member), where the Superannuation Law permits, the Member may give the Trustee a nomination in such form and manner as the Trustee determines from time to time (***Non-Lapsing Nomination***) that directs the Trustee to pay some or all of the Member's Death Benefit to a person or persons listed in the nomination (being the Legal Personal Representative and/or Dependents of the Member) on the death of the Member.

11.12H Where the Trustee receives a Non-Lapsing Nomination, the Trustee may provide its consent to the exercise of a Member's direction in a Non-Lapsing Nomination:

- (a) on an individual nomination basis; or
- (b) on a general basis,

where the Non-Lapsing Nomination satisfies such terms and conditions as the Trustee determines from time to time, in which case such consent becomes effective from the time that the Non-Lapsing Nomination is processed by or on behalf of the Trustee.

11.12I Subject to Rule 11.12J, if all the requirements of the Superannuation Law have been met, where:

- (a) the Trustee is in receipt of a current, valid Non-Lapsing Nomination; and
- (b) the Trustee has consented to the Non-Lapsing Nomination in accordance with Rule 11.12H; and
- (c) the Non-Lapsing Nomination complies with any terms and conditions determined by the Trustee pursuant to Rule 11.12H,

the Trustee must pay the deceased Member's Death Benefit to the person or persons listed in the Non-Lapsing Nomination.

11.12J A Non-Lapsing Nomination ceases to be valid and effective upon the earlier of the following events:

- (a) the date the Non-Lapsing Nomination ceases to have effect under Superannuation Law;
- (b) the date a nominated beneficiary predeceases the Member;
- (c) the date the Member marries (except where the Member marries a nominated beneficiary who is in a de-facto relationship with the Member);
- (d) the date the Member enters into a de-facto relationship (including with a person of the same sex);
- (e) the date the Member divorces or the member's de-facto relationship (including with a person of the same sex) terminates;
- (f) the date the Member revokes the Non-Lapsing Nomination in writing;

- (g) the date the Member provides a Non-Binding Nomination or a Binding Death Benefit Nomination in relation to the Member's Interest or Interests in respect of which the Non-Lapsing Nomination was made;
- (h) the day before the date of the Member's death where, at the date of the Member's death, a nominated beneficiary is neither a Dependant or the Legal Personal Representative of the member; or
- (i) the date that any other circumstance, which the Trustee may determine from time to time, occurs in relation to the Member.

### **Nature of payment of Death Benefit**

11.13 Subject to Rule 33 and Rule B2.4, the Trustee, in the exercise of its absolute discretion, may determine that a Death Benefit be paid as a lump sum, pension, annuity or in any other form as it considers to be appropriate in the circumstances and as permitted by Superannuation Law.

### **Transfer of Assets**

11.14 Except in circumstances where the Assets of the Part are represented wholly by a Policy, the Trustee may pay a benefit to a person entitled to the benefit by transferring assets of equivalent value to the person or to the person's nominee if:

- (a) Superannuation Law permits; and
- (b) the person so requests; and
- (c) the Trustee agrees.

11.15 Assets must first be valued pursuant to Rule 18 before being transferred in accordance with Rule 11.14.

### **Incapacity**

11.16 If the Trustee considers or reasonably believes that a person who is entitled to a benefit is unable to give a proper receipt or discharge or is unfit or is unable to manage his or her financial affairs and Superannuation Law permits, the Trustee may:

- (a) pay the benefit to another person ON TRUST to be used solely for the advantage of the person determined by the Trustee to be entitled to it; and
- (b) accept that other person's receipt as a good and complete discharge.

The Trustee shall not be responsible to see to the application of the benefit by the person to whom it is paid.

### **Payment period**

11.17 Subject to Superannuation Law and to Rule 15.12, a benefit must be paid or transferred within such period after the Member has become entitled to receive it as is reasonable in the circumstances.

### **Payments to third parties**

11.18 Where a benefit becomes payable under Superannuation Law or Superannuation Law permits the release of benefits in specified circumstances, the Trustee is not prevented from paying the benefit to a nominated third party upon receipt of a written request from the Member or person if it considers such payment appropriate.



**Clearance of funds**

11.19 Where an amount is paid to this Part by cheque or payment order in respect of a person, the Trustee shall not be under any obligation to make a payment under this Part in relation to that person until the proceeds of that cheque or payment order as the case may be is in cleared funds.

**Trustee's discharge**

11.20 To the extent permitted by Superannuation Law, the Trustee is discharged from all obligations in respect of a benefit if it is paid in good faith to or on behalf of a person whom the Trustee reasonably believes to be entitled to it.

**Lump sum benefits**

11.21 Subject to the Superannuation Law, any benefit payable under this Part as a lump sum is payable either as a single sum or by instalments over such period and at such time or times as the Trustee determines.

**12 Records and Accounts****Records**

12.1 The Trustee shall establish and maintain or cause to be established and maintained all appropriate records of this Part including (but not limited to):

- (a) Members and Employers under each Plan within each Division;
- (b) Deeds of Adoption, Schedules to the Deeds of Adoption, Application Forms and such electronic or other means by which relevant data in relation to this Part, a Plan or a Member has been advised to and accepted by the Trustee;
- (c) assets and liabilities (including all sales and purchases);
- (d) income and expenditure;
- (e) the payment of all benefits and transfers;
- (f) the receipt of all contributions and transfers;
- (g) the balance in each Contribution Account and the other Accounts;
- (h) investments of each Plan;
- (i) nominated beneficiaries of each Member;
- (j) all dates, names and addresses relevant to the proper administration of the Plan, Division and Fund; and
- (k) all other matters and information (including the Tax File Number of each Member) which the Trustee considers appropriate or which is required by Superannuation Law,

in the manner (including use of the electronic medium) and for such period specified by Superannuation Law or otherwise as determined by the Trustee.

**Minutes and other evidence**

12.2 The Trustee must, in relation to this Part, keep minutes and keep or cause to be kept, other appropriate documentary evidence of all matters specified by Superannuation Law, in the manner (including electronic image) and for such period specified by Superannuation Law or otherwise as determined by the Trustee.

**General**

- 12.3 Employers and Members must notify the Trustee of any change of name or address. An Employer may notify on behalf of a Member. Upon being satisfied with the proof of the change, the Trustee must accordingly alter or caused to be altered, the relevant record.

**13 Register****Register**

- 13.1 The Trustee shall establish and maintain or cause to be established and maintained a Register which shall include:
- (a) the name, current address or principal place of business of each Participating Employer and Associated Employer;
  - (b) the Division and Plan of which the Employees of that Employer are admitted to membership of this Part; and
  - (c) any other information which the Trustee considers appropriate or which is required by Superannuation Law.
- 13.2 At the option of the Trustee, the information described in Rule 13.1 need not be maintained in a separate and distinct Register but may instead be incorporated and maintained with other records of this Part established and maintained by or on behalf of the Trustee under Rule 12.1.

**14 Investments****Authorised investments**

- 14.1 The Assets of the Part shall be acquired by the Trustee on an arms length basis. Subject only to Superannuation Law, the Trustee, in the exercise of its absolute discretion, may elect to invest all the Assets of the Part in a Policy. In circumstances where the Trustee has decided to invest all the Assets of the Part otherwise than in a Policy it may invest all the Assets of the Part which are not required to meet current payments in any manner in which it could invest if it were personally entitled to the money or assets. This includes, but is not limited to:
- (a) investments not prohibited by any law relating to the investment of trust funds;
  - (b) policies of life insurance;
  - (c) trusts or common funds;
  - (d) a deposit or loan, with or without security;
  - (e) real property;
  - (f) shares, stocks, notes, options, debentures or other securities;
  - (g) stock lending arrangements;
  - (h) options, hedging contracts, futures contracts and other financial instruments.
- 14.2 If Superannuation Law permits, the Trustee may:
- (a) mix investments with investments of other people or trusts; and
  - (b) vary, replace, encumber and deal with the investments,
- as if it were dealing with its own property and specifically, the Trustee may vary, transpose and replace any investment of this Part in such manner as it determines without being responsible for any loss occasioned by such variation, transposition and replacement.

**Related trusts**

14.3 The Trustee may:

- (a) invest in a trust or fund of which the Trustee or a related body corporate of the Trustee is the promoter, manager or trustee; or
- (b) invest in a policy of insurance issued by the Trustee as insurer or by a related body corporate of the Trustee as insurer,

and need not account to this Part or to Members of this Part for fees, profit or any other remuneration earned in that capacity otherwise than may be required by Superannuation Law.

**Compliance with Superannuation Law**

14.4 The Trustee must invest in a manner which complies with Superannuation Law.

**Loans and financial assistance**

14.5 The Trustee may make a loan or give financial assistance only in a manner which complies with Superannuation Law.

**Borrowing**

14.6 The Trustee may in its absolute discretion borrow or raise money up to any amount and may secure payment or repayment in any manner. However, the Trustee may do so only if or to the extent that Superannuation Law permits.

**Custodians**

14.7 The Trustee may appoint a custodian to hold investments within or outside Australia. Such appointment must be in writing and be in compliance with Superannuation Law. The custodian may be a related body corporate of the Trustee and the Trustee may be reimbursed out of the relevant Plans for the fees of that body corporate, so long as the appointment is on arm's length terms.

14.8 A custodian appointed pursuant to Rule 14.7 may hold an investment directly or through a sub-custodian. The custodian must pay out of its own fees, the fees of any sub-custodian.

14.9 A custodian or sub-custodian must be a body corporate which satisfies Superannuation Law.

**Engagement of Securities System**

14.10 The Trustee may engage the services of one or more Securities Systems on such terms as it determines to:

- (a) receive and hold on behalf of the Trustee in safe custody any investments of this Part and any documents of title relating to them;
- (b) record and settle any transactions involving those investments; and
- (c) perform any other function approved by the Trustee in writing.

**15 Investment Portfolios****Investment Portfolios**

15.1 The Trustee shall hold and maintain the Assets of the Part in separate portfolios being Investment Portfolios unless the Trustee, in the exercise of its discretion determines that the Assets of the

Part are pursuant to Rules 9.12 and 14.1, to be wholly invested in a Policy in which case, the assets of the Policy shall be represented by separate investment portfolios.

- 15.2 Unless the Trustee determines otherwise, it must specify a Default Investment Portfolio and a Protection Portfolio for each Plan as at the date on which the Plan is established.
- 15.3 The Trustee may transfer assets between different Investment Portfolios.
- 15.4 Investment Portfolios do not constitute separate trust funds.

#### **Designation and variation of Investment Portfolios**

- 15.5 The Trustee may at any time and from time to time designate Investment Portfolios and specify:
- (a) the kinds of assets to be held in each Portfolio;
  - (b) the proportion of assets of different kinds to be held in each Portfolio; and
  - (c) any other matters that the Trustee considers to be expedient or appropriate.
- 15.6 The Trustee may vary the specification for an Investment Portfolio as it considers appropriate.
- 15.7 The Trustee must specify the Cash Float Account (if any) as an Investment Portfolio.
- 15.8 An Investment Portfolio must not be designated or varied in a manner that is inconsistent with Superannuation Law.

#### **Investment Portfolios - Range of, selection of and Rules in relation to**

- 15.9 The Trustee in the exercise of its discretion may:
- (a) divide an Investment Portfolio into two or more separate Investment Portfolios;
  - (b) amalgamate two or more separate Investment Portfolios into one Investment Portfolio;
  - (c) extend the available range of Investment Portfolios; and
  - (d) reduce the available range of Investment Portfolios.
- 15.10 Subject to Superannuation Law and Rule 15.11, a Member or an Employer may select:
- (a) Investment Portfolios to which contributions or transfers are to be applied; and
  - (b) the proportions of contributions or transfers to be allocated as between the Investment Portfolios.
- 15.11 The Trustee may make rules in relation to the:
- (a) Default Investment Portfolio; and
  - (b) Protection Portfolio; and
  - (c) range and number (which may be one) of available Investment Portfolios including the maximum number of such Portfolios that may be selected by and maintained concurrently for a Member or group of Members under this Part; and
  - (d) whether, when and how the wishes of Members or Employers, as the case requires, concerning the application by the Trustee of contributions, transfers and other receipts of this Part to Investment Portfolios generally, may be advised to the Trustee; and
  - (e) such other matters concerning the application of contributions, transfers and other receipts of this Part and the operation of Investment Portfolios generally, as the Trustee considers to be appropriate or expedient.

The rules must be communicated in writing (or such other form acceptable to the Trustee) to Employers and to Members affected by or likely to be affected by these rules must be consistent with Superannuation Law.

### **Postponement of application and repayment**

- 15.12 The Trustee may, due to circumstances beyond its control or influence, postpone the application of any amount to an Investment Portfolio or the repayment of any amount from an Investment Portfolio or for any other reason which the Trustee considers to be equitable having regard to the particular circumstances.

## **16 Switching**

### **Switching between Investment Portfolios**

- 16.1 An amount in an Investment Portfolio may, at the discretion of the Trustee, be switched into an amount in one or more other Investment Portfolios.

### **Switching Requests**

- 16.2 A switch under Rule 16.1 may be made by the Trustee:
- (a) at any time; or
  - (b) following the making of a Switching Request by a Member or, if permitted by Superannuation Law, a Switching Request by any relevant Employer.
- 16.3 A Switching Request must be made in writing or in such form as the Trustee may from time to time prescribe and must be lodged at the registered office of the Trustee or as the Trustee may otherwise permit.

### **Operation of switching**

- 16.4 A switch under Rule 16.1 operates as if it were a request for a repayment of the relevant amount in the existing Investment Portfolio and an application of the relevant amount to the other Investment Portfolios.
- 16.5 The Trustee may:
- (a) specify any conditions (including the number of Switching Requests that may be lodged free of charge by or in respect of the same Member within a prescribed period and the payment of fees or charges generally) in relation to Switching Requests; and
  - (b) make rules on whether, when and how Members or Employers may make and lodge Switching Requests. The rules must be communicated to Employers and to Members and must be consistent with Superannuation Law.

## **17 Accounts**

### **Contribution Accounts**

- 17.1 If appropriate to the benefit design of a particular Division, the Trustee must maintain or cause to be maintained, Contribution Accounts for each Member in that Division.

- 17.2 Subject to Rule 7, if appropriate to the benefit design of a particular Division, the Trustee must record or cause to be recorded for each Member in that Division:
- (a) in a **Member Regular Contributions Account** — Member contributions and contributions made for a Member who is an Eligible Spouse, being in each case, contributions that are fully vested in the Member;
  - (b) in a **Member Special Contributions Account** — Member contributions of irregular amount and made at irregular intervals, being contributions that are fully vested in the Member;
  - (c) in a **Member Transfer Account**:
    - (i) that portion of the total amount transferred to this Part in respect of a Member from another Complying Superannuation Fund, being a portion at the relevant date that is fully vested in the Member; or
    - (ii) any benefit which becomes payable in respect of a Member from a Plan in the Personal Division, which is transferred to the Allocated Pension Division.
  - (d) in an **Employer Super Guarantee/Award Account** — Mandated Contributions in respect of a Member determined pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth) as that Act may stand amended from time to time or pursuant to the terms of an Award, being contributions that are fully vested in the Member;
  - (e) in an **Employer SG/Award Special Contribution Account** — Mandated Contributions in respect of a Member determined pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth) as that Act may stand amended from time to time or pursuant to the terms of an Award or the amount received by the Trustee for the benefit of a Member from the ATO representing:
    - (i) the net Superannuation Guarantee Charge payable by the ATO in respect of that Member; or
    - (ii) the Superannuation Holding Accounts Special Account amount payable in respect of that Member,being contributions that are fully vested in the Member;
  - (f) in an **Employer Salary Sacrifice Contribution Account** — Employer contributions in respect of a Member pursuant to an agreement between that Member and the Employer of that Member such that the amount to be contributed by the Employer shall be contributed in lieu of salary and shall accordingly represent the foregone portion of that Member's pre-tax income specified in the said agreement, such contributions being fully vested in the Member;
  - (g) in such other Contribution Account or accounts howsoever described and established by the Trustee for the purposes of that particular Division as the Trustee considers to be expedient or necessary.

Notwithstanding the provisions of this Rule 17.2 the Trustee, in the exercise of its discretion, may apply the amount of any contribution, transfer or receipt of this Part otherwise than specified in this Rule 17 in circumstances where it has formed the reasonable belief that to do so is appropriate and reasonable having regard to the particular circumstances of the case.

- 17.3 Subject to Rule 7, if appropriate to the benefit design of a particular Division, the Trustee must also record or cause to be recorded in the appropriate Contribution Account:

- (a) amounts transferred from sources other than Superannuation Entities which the Trustee elects to credit to the account;
- (b) premiums on Policies which the Trustee elects to debit to the account;
- (c) proceeds of Policies which the Trustee elects to credit to the account;
- (d) amounts which the Trustee elects to allocate to the account in respect of losses, expenses and liabilities pursuant to Rule 19.1;
- (e) allocations to the account for earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios;
- (f) amounts or allocations which the Trustee elects to credit, debit or apply to the account in respect of any Tax pursuant to Rule 22;
- (g) amounts paid as benefits or transferred to other Superannuation Entities from the account;
- (h) amounts transferred to and from any other Account;
- (i) any other amounts or allocations that the Trustee in the exercise of its discretion elects to credit, debit or apply to the account.

17.4 The Trustee may divide each Contribution Account into sub-accounts if it considers such division to be expedient or necessary and may establish more than one Contribution Account of the same name **PROVIDED THAT** the nature of the contributions to be recorded in each such Contribution Account and the specific rules for the proper operation of each such Contribution Account shall be as specified in the relevant Schedule to the Deed of Adoption, Application Form or in such other manner as is acceptable to the Trustee.

17.4AA The Trustee must record in a Contribution Account kept for each Transferring SDF Member, the value of the benefit transferred to this Part from the SDF at the Transfer Time.

#### **Consolidation of member accounts**

17.4A The Trustee may, in such manner as the Trustee considers appropriate, identify Members with more than one interest or account in this Part and may merge or consolidate those interests or accounts.

#### **Reserve Accounts generally**

17.5 If applicable to a Plan, the Trustee must maintain or cause to be maintained, the following Reserve Accounts for each Plan that is to say, the Plan Reserve Account, the Plan Reserve Transfer Account and the Plan Reserve Charges Account and such number of additional Reserve Accounts as the Trustee may at any time and from time to time deem to be necessary or expedient.

#### **Plan Reserve Account**

17.6 Subject to Rule 7, amounts to be credited, debited or applied to this account include:

- (a) amounts which are not credited to Contribution Accounts in accordance with Rule 19;
- (b) amounts which the Trustee considers appropriate to allocate to the account in respect of losses, expenses and liabilities pursuant to Rule 19;
- (c) amounts or allocations credited, debited or applied to the account for earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios;
- (d) amounts or allocations which the Trustee elects to debit, credit or apply to the account in respect of any Tax pursuant to Rule 22;

- (e) any Assets of the Plan no longer required to pay benefits for a Member of that Plan;
  - (f) any other amounts or allocations that the Trustee considers appropriate to credit, debit or apply to the account.
- 17.7 The Trustee may divide each Plan Reserve Account into sub-accounts if it considers such division to be expedient or necessary.
- 17.8 Subject to Rule 7, the Trustee must apply amounts held in the Plan Reserve Account for one or more of the following purposes in relation to the Plan at such times and on such terms as it considers appropriate:
- (a) as a credit to such one or more of the Contribution Accounts of all or certain Members as the Trustee and the Employer may agree;
  - (b) any other purpose which the Trustee may determine.
- 17.9 The Trustee may apply amounts pursuant to Rule 17.8 only as permitted by Superannuation Law and must apply all amounts:
- (a) within any time limits imposed by Superannuation Law; and
  - (b) unless Superannuation Law requires otherwise, at least once in each Financial Year on such basis as the Trustee shall from time to time prescribe or permit.

#### **Plan Reserve Transfer Account**

- 17.10 Amounts to be credited, debited or applied to this account include:
- (a) amounts transferred from other Superannuation Entities which the Trustee agrees to credit to the account in accordance with any transfer arrangements described in Rule 6.1;
  - (b) amounts which the Trustee may consider appropriate to allocate to the account in respect of losses, expenses and liabilities pursuant to Rule 19;
  - (c) amounts or allocations credited, debited or applied to the account for earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios;
  - (d) amounts or allocations which the Trustee considers appropriate to debit, credit or apply to the account in respect of any Tax pursuant to Rule 22; and
  - (e) any other amounts or allocations that the Trustee considers appropriate to credit, debit or apply to the account.
- 17.11 The Trustee may divide each Plan Reserve Transfer Account into sub-accounts if it considers such division to be expedient or necessary.
- 17.12 The Trustee may apply amounts held in a Plan Reserve Transfer Account for one or more of the following purposes related to the Plan at it considers appropriate:
- (a) meeting contributions or expenses;
  - (b) providing additional benefits for Members of the Plan or the Member's Dependents (by transfers to relevant Contribution Accounts or otherwise) on such basis as the Trustee shall from time to time prescribe or permit;
  - (c) any other purposes which the Trustee may determine.
- 17.13 The Trustee may apply amounts pursuant to Rule 17.12 only as permitted by Superannuation Law and must apply all amounts within any time limits imposed by Superannuation Law.



**Plan Reserve Charges Account**

17.14 Amounts to be credited, debited or applied to this account include:

- (a) Employer contributions from time to time being not in respect of a particular Member but being an amount contributed to subsidise or offset the costs, charges and expenses relating to this Part;
- (b) amounts which the Trustee may consider appropriate to allocate to the account in respect of losses, expenses and liabilities pursuant to Rule 19;
- (c) amounts or allocations credited, debited or applied to the account for earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios;
- (d) amounts or allocations which the Trustee considers appropriate to debit, credit or apply to the account in respect of any Tax pursuant to Rule 22; and
- (e) any other amounts or allocations that the Trustee considers appropriate to credit, debit or apply to the account.

17.15 The Trustee may divide each Plan Reserve Charges Account into sub-accounts if it considers such division to be expedient or necessary.

17.16 Amounts standing to the credit of the Plan Reserve Charges Account shall be applied in respect of a Plan, to subsidise, offset, or meet the costs, charges and expenses relating to this Part or such one or more of them as the Trustee considers appropriate, including as follows:

- (a) amounts or allocations attributable to earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios being credited, debited or applied to the account as the case requires; and
- (b) amounts or allocations in respect of Tax pursuant to Rule 22 being debited, credited or applied to the account as the case requires.

**Cash Float Account**

17.17 In circumstances where the Assets of the Part are not represented by an investment Policy issued to the Trustee for the purposes of this Part, the Trustee must establish and maintain a Cash Float Account for each Plan and may divide the Cash Float Account into sub-accounts if it considers such division to be expedient or necessary. For so long as the Assets of the Part are represented by an investment Policy, then in accordance with Rule 9.12 the operation of Rules 17.17 to 17.19 inclusive is suspended.

17.18 The Trustee must designate a Maximum Float Level for the Cash Float Account. The Maximum Float Level may be varied by the Trustee from time to time.

17.19 The Trustee must pay into the Cash Float Account all amounts received in respect of the Plans, including:

- (a) contributions;
- (b) amounts transferred;
- (c) proceeds of Policies; and
- (d) transfers from other Investment Portfolios; and
- (e) any such other amounts as the Trustee may receive from time to time,

and the Trustee must pay from the Cash Float Account all amounts payable in respect of the Plans including:

- (f) payment and transfers of benefits;
- (g) fees, charges and expenses (including Tax);
- (h) payment of insurance premiums;
- (i) transfers to other Investment Portfolios;
- (j) any other purposes which the Trustee shall determine and the assets of the Cash Float Account must be invested in the Cash Investment Portfolio.

### **Investment of Accounts**

17.20 A Contribution Account must be:

- (a) invested in Investment Portfolios designated by the Trustee for the relevant Plan; or
- (b) dealt with in any other manner as may be determined by the Trustee.

17.21 The Investment Portfolio of a Plan Reserve Account must be the Default Investment Portfolio.

17.22 The Investment Portfolio of a Plan Reserve Charges Account must be the Default Investment Portfolio.

17.23 The Investment Portfolio of a Plan Reserve Transfer Account may be any of the Investment Portfolios available under this Part but the whole amount standing to the credit of that Account must be invested in one Investment Portfolio only at any time.

### **Investment fee refund**

17.24 Any amount determined by the Trustee to constitute the refund or rebate of an investment fee or charge shall be recredited to the Member's Contribution Account, the Employer's Contribution Account and to each of the Plan Reserve Account, Plan Reserve Transfer Account and the Plan Reserve Charges Account, of the relevant Principal Employer in the same ratio that the assets in each of those accounts bears to the Assets of the Plan or the Member's Part Credit, as the case requires.

## **18 Valuation of Assets**

### **Valuation of Assets**

18.1 In circumstances where all the Assets of the Part are invested in a Policy the value of the net assets of that Policy will be the value ascribed to it at the relevant date by the Appointed Actuary (or his delegate) of the Life Assurance Company by whom the Policy has been issued to the Trustee.

18.2 In any other circumstance, the Trustee must cause the current value of the Net Assets of each Investment Portfolio to be determined as frequently as it considers necessary or desirable but such valuations must occur at least once in each Financial Year or more frequently if necessary to comply with Superannuation Law and Rules 18.3, 18.4 and 18.5 shall apply but not otherwise.

### **Valuation methodology**

18.3 The Assets of the Part must be valued on such basis as the Trustee considers appropriate in the circumstances.

**Change to valuation methodology**

18.4 The Trustee may at any time and from time to time vary the valuation methodology referred to in this Rule 18.

**Valuation by approved valuer**

18.5 The Trustee may instruct a suitably qualified valuer or such one or more other persons having relevant experience and expertise to value such one or more of any particular Assets of the Part. The costs of such valuations may be borne by this Part.

**Interim valuations**

18.6 The Trustee may make or cause to be made interim valuations of all or part of the Net Assets of each Investment Portfolio after the date of the last valuation made pursuant to Rule 18 as frequently as it considers necessary or desirable and in accordance with such procedures as it considers to be equitable.

**19 Allocation of Earnings and Expenses****Allocation of losses, expenses and liabilities**

19.1 Losses, expenses and liabilities (including Tax), not included in the valuation of the Policy and whether realized, unrealized or anticipated, must be allocated in a manner determined by the Trustee to be equitable as between:

- (a) all the Members of this Part; and
- (b) the various kinds of benefits of each Member of this Part.

**Method of allocation**

19.2 When allocating amounts pursuant to Rule 19.1, the Trustee must comply with Superannuation Law.

**Deduction of losses, expenses and liabilities**

19.3 Any such losses, expenses and liabilities may be allocated to:

- (a) the Contribution Accounts of relevant Members; or
  - (b) the other Accounts of relevant Plans in accordance with these Part Rules,
- or apportioned between each of the Accounts referred to in paragraphs (a) and (b) of this Rule in such manner as the Trustee sees fit.

**Provision for losses, expenses and liabilities**

19.4 To the extent that the same may not be included in the valuation of a Policy representing all or part of the net Assets of the Part the Trustee may make provision for losses, expenses or liabilities (whether realized or anticipated) which are to be allocated to an Investment Portfolio.

19.5 If applicable to a Plan in circumstances where at least some of the Assets of the Part are invested otherwise than in a Policy, the Trustee must allocate earnings or losses (whether realized, unrealized or anticipated) based on the net assets of each Investment Portfolio, to Accounts in the manner in which the Trustee considers to be equitable.

**20 Trustee**

20.1 [Deleted]

## 21 General Trustee Powers

### Absolute discretion

21.1 Except as otherwise provided in these Part Rules, the Trustee shall have an absolute and uncontrolled discretion as to the exercise of all the trusts, powers, authorities and discretions vested in it (including if, when or how the same shall be exercised).

### Trustee's powers generally

21.2 The Trustee may:

- (a) enter into and execute all contracts, deeds and documents and do all acts, matters or things which it may deem expedient for giving effect to, carrying out and enforcing the authorities, powers and discretions conferred upon the Trustee by these Part Rules;
- (b) determine who may sign for and on behalf of the Trustee, documents relating to this Part;
- (c) make and give receipts, releases and other discharges of whatsoever kind in relation to this Part;
- (d) open bank accounts and retain moneys on current or deposit account at any bank or financial institution as it considers proper and make regulations for the operation of those accounts including the signing and endorsing of cheques;
- (e) pay benefits under this Part to persons entitled;
- (f) make Rules for rounding off contributions and benefits;
- (g) provide for liability for any Tax in respect of this Part;
- (h) transfer liability for any Tax in respect of this Part;
- (i) conduct and settle legal proceedings for any purpose whatsoever;
- (j) enter into arrangements with any person in relation to the conduct and settlement of legal proceedings;
- (k) refer claims to conciliation and/or arbitration;
- (l) compromise any claim;
- (m) give any guarantee or indemnity;
- (n) effect insurance policies;
- (o) elect to be bound by any legislation;
- (p) determine the terms and conditions of and create infant beneficiary trusts under Rule 11.12F and appoint trustees thereof;
- (q) determine the persons to whom the Death Benefit of the Member is to be paid, subject to Rule 33.

### Delegation and appointments

21.3 The Trustee may at any time:

- (a) delegate to any of its directors, officers and employees or to any related body corporate of the Trustee or to any other person, such powers, authorities and discretions (not exceeding those vested in the Trustee) and on such terms as the Trustee determines; and

- (b) appoint any person to be an attorney or agent of the Trustee for such purposes and with such powers, authorities or discretions (not exceeding those vested in the Trustee) and on such terms (excluding the power of sub-delegation) as the Trustee determines.

21.4 Notwithstanding Rule 21.3, the Trustee may engage any person by written agreement, to provide services in connection with the investment or administration of this Part on such terms as it determines (including fees, commissions and like matters) so long as this is consistent with Superannuation Law.

#### **Fees and expenses of delegates and appointees**

21.5 The Trustee may be reimbursed out of this Part in relation to any costs, charges and expenses incurred by a person referred to in Rules 21.3 or 21.4 which the Trustee has reimbursed or will be obliged to reimburse to the person.

#### **Commission and brokerage**

21.6 The Trustee may pay any commission, procurement or other fees or brokerage to such person and on such terms as the Trustee determines. Payment as aforesaid must be made only in accordance with Superannuation Law.

#### **Power over Assets**

21.7 Subject to Rule 14, the Trustee has all the powers over and in respect of the Assets of the Part which it could exercise as if it were the absolute and beneficial owner of those Assets.

#### **Dealings by Trustee**

21.8 Subject to Superannuation Law the directors, officers or employees of the Trustee may effect any transaction or exercise individually or jointly any duty, power, authority or discretion, even though that person has another interest directly or indirectly in the result of the transaction or exercise.

#### **Compensation payments**

21.9 The Trustee may do all such acts and things and sign all documents it consider expedient or necessary to compensate Members or former Members, including (but not limited to) payments of any amount to any third party, including (but not limited to) a charity, in respect of any Member or former Member.

## **22 Trustee's Taxation Powers**

#### **Taxation amounts**

22.1 If the Trustee is liable, or believes that it or the Fund will become liable, for any Tax in respect of:

- (a) amounts contributed or transferred to or the receipt of Contributions or transfers to this Part;
- (b) the holding or disposal of the Assets of the Part;
- (c) the receipt of income or gains of or relating to this Part;
- (d) any transaction or document concerning this Part;
- (e) any payment under this Part; or
- (f) any other event in circumstances where the law so requires,

the Trustee may:

- (g) deduct an amount equal to the Tax or an amount which in the opinion of the Trustee represents a fair and reasonable estimate of the Tax from those contributions or transfers or this Part generally as it thinks proper; and
- (h) reduce any benefit payable or which may become payable from this Part to take account of the Tax and any related amounts (such as foregone investment earnings), and pay the necessary amounts to the relevant Government authority as and when appropriate.

22.2 Any amount which is deemed to be contributed, transferred, credited, allocated or otherwise set apart in respect of a Member or other person must be reduced or adjusted in the manner and to the extent that the Trustee, in the exercise of its discretion, determines to take account of the Tax referred to in Rule 22.1.

### **Recalculation of Tax**

22.3 The Trustee may at any time recalculate the Tax in respect of a person who is or has been a Member.

### **Surplus on recalculation**

- 22.4 If the Tax in respect of a Member as recalculated pursuant to Rule 22.3 is less than the Tax in respect of that person as previously determined, the Trustee may:
- (a) if the person remains a Member on the recalculation date, allocate the difference to the Contribution Accounts of the Member or otherwise increase the Member's benefit; or
  - (b) if the person is not a Member on the recalculation date, pay an amount under this Part, equal to the difference, to or for the benefit of the person;
  - (c) if in the particular circumstances and in the opinion of the Trustee it is reasonable and appropriate so to do, the Trustee may elect to deal with the matter in some other manner as it considers to be equitable in the circumstances.

### **Deficiency on recalculation**

- 22.5 If the Tax in respect of a Member as recalculated exceeds the Tax as previously determined in respect of the person then:
- (a) if the person remains a Member on the recalculation date, the Trustee may deduct the amount of the additional Tax from the Interest in the Plan of the Member as it considers appropriate, and any shortfall shall constitute a debt immediately due and payable by the Member to the Trustee and the Trustee may sue for that debt; or
  - (b) if the person is not a Member on the recalculation date but the liability for the Tax rests with the Trustee, the additional Tax shall constitute a debt due and be payable by the person to the Trustee and the Trustee may sue for that debt; and
  - (c) the Trustee may deduct the amount of the excess Tax from one or more of the Plan Reserve Account, Plan Reserve Transfer Account and Plan Reserve Charges Account for the relevant Plan; but
  - (d) if in the particular circumstances and in the opinion of the Trustee it is reasonable and appropriate so to do, the Trustee may elect to give effect the adjustment in such other manner as it considers to be equitable in the circumstances.

### **Failure to provide particulars**

22.6 If under Rule 28.1 or 28.2 a person fails to provide the required particulars within 30 days of a request or such later date as may be specified in a request, the Trustee may determine the Tax in

respect of the person on the basis of any assumptions which in the circumstances appear to the Trustee to be reasonable. Subject to Superannuation Law, the person has no claim against the Trustee or this Part for any loss suffered as a result of any such assumptions being incorrect or otherwise deemed by the person to be inappropriate or unreasonable.

### **Incorrect particulars**

22.7 Where a person makes or has made a statement to the Trustee that:

(a) in the opinion of the Trustee, is relevant to the Trustee's determination of Tax in respect of the person; and

(b) is reasonably believed by the Trustee to be untrue or misleading,

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

## **23 Trustee's Duties**

### **Management of the Part**

23.1 The Trustee must:

(a) manage this Part; and

(b) carry out and perform the duties and obligations imposed upon it under these Part Rules.

### **Holding of Assets**

23.2 Except as otherwise provided in these Part Rules, the Trustee must:

(a) retain or cause to be retained in safe custody the scrip, certificates, Policies and any other evidence of the Assets of the Part; and

(b) not sell, mortgage, charge or part with the possession of any of the Assets of the Part except where consistent with Superannuation Law and as otherwise permitted in the Deed and these Part Rules.

### **Acting as trustee of other funds**

23.3 Nothing in these Part Rules shall prevent the Trustee from establishing or acting as manager or trustee of funds other than the Fund.

### **Trustee and Trustee director covenants**

23.4 If Superannuation Law requires it, the Trustee and each of the directors of the Trustee must comply with any covenants which Superannuation Law imposes on the Trustee and/or the directors of the Trustee.

## **24 Trustee's Liability**

### **Non-exclusion of liability**

24.1 Notwithstanding the effect of Rules 24.2 to 24.8 inclusive, the Trustee is liable for:

(a) a breach of trust where the Trustee has:

(i) failed to act honestly in relation to a matter concerning the Fund; or

(ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required or reasonably expected to exercise; or

- (b) any monetary penalty imposed on the Trustee under Superannuation Law.

### **Lack of instructions**

24.2 The Trustee is not liable for any loss or damage incurred as a result of it:

- (a) concurring, refusing or otherwise failing to concur in the exercise or proposed exercise of any discretion or power under these Part Rules; or
- (b) failing to carry out any of its duties or obligations,

by reason of the fact that it has not received (or has received insufficient, inadequate or contradictory) instructions or information from any person at any time.

### **Taxation and charges**

24.3 The Trustee is not liable to account to any Employer or Member for:

- (a) any payments in respect of Tax made by the Trustee in good faith to any Government authority; or
- (b) other charges upon the Assets of the Part or with respect to any transaction under these Part Rules,

even if it is conclusively established that the payment or charge need not have been made.

### **Dealings with corporations**

24.4 If, because of the liquidation of any corporation or for any other reason beyond the control of the Trustee, it becomes impossible or impracticable for the Trustee to carry out the provisions of these Part Rules, the Trustee is not liable by reason of any error of law or any matter or thing done or suffered or omitted to be done by it.

### **Dealings by Trustee**

24.5 The Trustee is not liable to account to:

- (a) the Fund; or
- (b) the Employers or Members,

for any fees, profit, profit shares, commission, brokerage, benefits or remuneration made or received to a transaction or exercise of power or discretion referred to in Rule 21.8.

### **Liability for delegates, agents and service providers**

24.6 The Trustee is not liable for the acts or omissions of:

- (a) any attorney or agent who is appointed under Rule 21.3; or
- (b) any person who is engaged under Rule 21.4.

### **Limitation on recourse to the Trustee**

24.7 Subject to Superannuation Law, no person to whom the Trustee is liable under these Part Rules may have recourse in satisfaction of that liability to any assets held by the Trustee:

- (a) in its personal capacity; or
- (b) in its capacity as trustee of any trust other than the Fund.



**Reliance on others**

- 24.8 Subject to Superannuation Law, the Trustee is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
- (a) the Trustee relies upon the services of, or information or advice from, any adviser or other person which the Trustee is entitled to employ, engage, appoint or contract with under these Part Rules;
  - (b) the Trustee acts or fails to act as required by any present or future law, order or judgement of any competent court or other competent authority; or
  - (c) the Trustee relies upon any signature, notice, instrument or other document believed by the Trustee to be genuine and to have been properly passed, executed or approved.

**Persons covered**

- 24.9 To the extent permitted under Superannuation Law, all references to the Trustee in this Rule 24 shall be deemed to include references to:
- (a) any directors of the Trustee;
  - (b) any officers or employees of the Trustee;
  - (c) a former Trustee;
  - (d) any person who previously fell within this Rule 24.9;
  - (e) any body corporate related to the Trustee;
  - (f) any current or former representatives of a Policy Committee; and
  - (g) any other person nominated in writing by the Trustee.

**25 Trustee's Indemnity****Indemnity not to apply**

- 25.1 Despite the effect of Rules 25.2 to 25.5 inclusive, the Trustee is not entitled to be indemnified under Rule 25 for:
- (a) liability for a breach of trust where the Trustee has:
    - (i) failed to act honestly in relation to a matter concerning the Fund; or
    - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required or reasonably expected to exercise; or
  - (b) any monetary penalty imposed on the Trustee under Superannuation Law.

**General indemnity**

- 25.2 In addition to any indemnity allowed by law, the Trustee is entitled to be indemnified from the Fund in respect of any expense or liability incurred (directly or indirectly) in connection with prosecuting or defending any action or suit relating to the Fund.
- 25.3 The Trustee is not required to effect any transaction or dealing in relation to the Fund on behalf of or for the benefit of or at the request of any person unless the person has first paid or otherwise provided to the satisfaction of the Trustee for all duties, Taxes, governmental charges, brokerage, registration fees, valuation fees, legal fees or other charges which may be or become payable in respect of the transaction or dealing.

25.4 The Trustee may pay and discharge any of the amounts referred to in Rule 25.3 on behalf of the relevant person and retain the amount so paid out of any moneys or property to which the relevant person may be or become entitled.

### **Indemnity from Member**

25.5 The Trustee is entitled to be indemnified by a Member or a person claiming a benefit under these Part Rules who:

- (a) fails to supply any information or document requested by the Trustee;
- (b) supplies incorrect information; or
- (c) fails to notify the Trustee that information previously provided has ceased to be correct, for any loss suffered by the Trustee or the Fund as a result of that act or omission.

### **Persons covered**

25.6 To the extent permitted under Superannuation Law, all references to the Trustee in this Rule 25 shall be deemed to include references to:

- (a) any directors of the Trustee;
- (b) any officers or employees of the Trustee;
- (c) a former Trustee;
- (d) any person who previously fell within this Rule 25.6;
- (e) any body corporate related to the Trustee;
- (f) any current or former representatives of a Policy Committee; and
- (g) any other person nominated in writing by the Trustee.

## **26 Trustee's Fees**

### **Entitlement to fees**

26.1 The Trustee is entitled to recover out of the Assets of the Part the fees incurred in connection with a Plan. For this purpose, the Trustee may debit amounts from the Contribution Accounts of the relevant Member or any other Account of the relevant Plan as it considers appropriate.

### **Reimbursement of expenses**

26.2 Without limiting Rule 25 and Rule 26.1, the Trustee is entitled to recover out of the Assets of the Part all costs, charges and expenses incurred in connection with the administration, maintenance, management or operation of this Part (other than the usual overhead expenses of the Trustee including in-house administration costs in the nature of rent for premises, computer charges, salaries, research costs and like expenses).

## **27 Policy Committees**

### **Policy Committee**

27.1 For each Plan, the Trustee shall apply its best endeavours to establish a Policy Committee if the same is required under Superannuation Law.

**Rules for the appointment and removal of representatives and operation generally**

27.2 The Trustee must determine rules for the appointment and removal of representatives of a Policy Committee as well as for the operations of the Policy Committee.

**28 Information****Giving of information to Trustee**

28.1 Every Participating Employer, Member and other person claiming a benefit under these Part Rules must, whenever required by the Trustee, provide any information and produce any documents which are necessary or desirable for the purpose of enabling the Trustee to:

- (a) perform any duties or obligations; or
  - (b) exercise any powers or discretions,
- under these Part Rules or at law.

**Payment of benefit**

28.2 A benefit is not payable to a Member or a person claiming a benefit under these Part Rules unless the Member or person has supplied, to the satisfaction of the Trustee, all information which is relevant to determining whether:

- (a) the Member or person is entitled to that benefit;
- (b) that benefit is required to be preserved under Rule 11.3; or
- (c) Tax is required to be deducted from that benefit pursuant to Rule 22.

**Confidentiality**

28.3 The Trustee must treat as confidential any information relating to Members or Employers which it acquires as Trustee and shall use the information for the purposes of this Part only or as permitted under Rule 28.4.

28.4 The Trustee may supply any information or document obtained pursuant to Rule 28.1 or 28.2 to any person who:

- (a) has a right under any law; or
- (b) in the opinion of the Trustee, has a need for it based on that person's connection or involvement with this Part.

**Medical examination**

28.5 The Trustee may require a Member to have a medical examination at any time and from time to time for such purposes, including the provision of insurance benefits for that member, as the Trustee considers to be necessary.

**Giving of information by Trustee**

28.6 The Trustee must give or cause to be given to:

- (a) each Member,
- (b) each prospective Member,
- (c) each Employer,
- (d) the Superannuation Authority;

- (e) each former member;
- (f) the trustee of any other Superannuation Entity to which a transfer is made or the issuer of any annuity to which assets are transferred,

the information that must be given under Superannuation Law in the manner and at the times required under Superannuation Law.

## **29 Amendment of Part Rules**

### **Power to amend**

29.1 The Trustee may amend any of the provisions of these Part Rules including this Rule 29.

### **Form of amendment**

29.2 An amendment must be in writing.

### **Date of effect**

29.3 An amendment may take effect from a date before or after the time it is made.

### **Limitation of power**

29.4 No amendment may alter a benefit entitlement contrary to Superannuation Law.

29.5 No amendment may enable an individual to be appointed as Trustee unless Superannuation Law permits.

### **Notification**

29.6 The Trustee must, where and when required by Superannuation Law, notify the Employers and Members of the nature, purpose and effect of any amendment. However, any failure by the Trustee to notify as aforesaid shall not, unless Superannuation Law so provides, invalidate the amendment.

## **30 Liability of Members and Employers**

### **Limitation of liability**

30.1 Subject to Rule 30.3 and any relevant law, an Employer or Member is not, by reason alone of:

- (a) being an Employer or Member; or
- (b) the relationship created under the Deed or these Part Rules with the Trustee,

under any obligation to indemnify the Trustee or any creditor of the Fund or Trustee in the event of there being any deficiency of Assets of the Part as compared with the liabilities to be met from it.

### **Limitation on indemnity**

30.2 Subject to Rule 30.3 and any relevant law, any rights of the Trustee or of a creditor of the Fund or Trustee to seek indemnity:

- (a) are limited to having recourse to the Fund; and
- (b) do not extend to an Employer or Member in their respective capacities as an Employer or Member.

- 30.3 Rules 30.1 and 30.2 inclusive do not extend to an Employer or Member if in the opinion of the Trustee, the deficiency was caused by that Employer or Member.

## **31 Termination of Part or Division or Plan**

### **Duration of Part, Division or Plan**

- 31.1 The Part, each Division and each Plan continues until terminated pursuant to these Part Rules.

### **When terminated**

- 31.2 The Trustee may, by written notice to each Employer and Member affected, terminate:

- (a) this Part; or
- (b) a Division; or
- (c) a Plan.

The notice must specify a termination date at least 30 days after the date of the notice unless, in the opinion of the Trustee, an earlier termination date is justified by the nature and potential or actual effect of unforeseen circumstances and such earlier date is in the interests of the Members affected or in the case of a Division or a Plan, is in the best interests of the Members of other Plans remaining under this Part.

- 31.3 On the termination date:

- (a) if Rule 31.2(a) applies, this Part is terminated; or
- (b) if Rule 31.2(b) applies, the relevant Division is terminated; or
- (c) if Rule 31.2(c) applies, the relevant Plan is terminated,

unless the Trustee in writing withdraws the notice on or before the termination date or otherwise determines, in the exercise of its discretion, to cancel the effect of the notice.

### **Contributions and benefits**

- 31.4 Subject to the provisions of any agreement between the Member and the Employer of that Member, any contributions in arrears at the termination date must be paid immediately and if not paid upon demand shall represent a debt owed by the relevant Employer to the Members concerned.

- 31.5 The Trustee shall not be required to:

- (a) accept any other contributions or transfers after the termination date; or
- (b) pay any benefits or make any transfers after the termination date except as required pursuant to Rule 31.6.

### **Application of Part on termination**

- 31.6 On termination of this Part or a Division, all Plans comprised in this Part or the Division (as the case may be) must terminate and on termination of a Plan, that Plan must terminate. Subject to Superannuation Law, the Trustee must apply the Assets of a terminated Plan:

- (a) to provide for all expenses and liabilities (including Tax) for which the Trustee reasonably believes it is or reasonably believes it may become liable and any fees to which it is or reasonably believes it will become entitled in respect of the Plan;
- (b) to pay in respect of each Member:
  - (i) any benefit which became payable before the termination date; or

- (ii) if Rule 31.6(b)(i) does not apply — a benefit equal to the Interest in the Plan of that Member;
  - (c) to increase any benefits as the Deed of Adoption or any current Schedule to the Deed of Adoption for the Plan may require or as the Trustee may decide;
  - (d) to pay affected Employers in proportions which the Trustee decides.
- 31.7 A person may not receive a benefit pursuant to Rule 31.6 before Superannuation Law permits.

### **Death Benefit**

- 31.8 If a Member dies before being paid all of the benefit to which the Member was entitled pursuant to Rule 31.6, the Trustee must pay as a Death Benefit, so much of it as remains unpaid as at the date of death.

## **32 Administration**

### **Deed and Rules**

- 32.1 A Member or Employer or representative of a Policy Committee may inspect a copy of the Deed and these Part Rules at the Trustee's office or at any other mutually convenient location during the usual business hours of the Trustee and as required by Superannuation Law.

### **Employer authorisation**

- 32.2 The Trustee may treat a written, electronic or oral authorisation given or purported to be given by or on behalf of an Employer, as a valid authorisation by the Employer.

### **Member authorisation**

- 32.3 The Trustee may treat a written, electronic or oral authorisation given or purported to be given by a Member, as a valid authorisation by the Member.

### **Notices**

- 32.4 Any notice or other written communication in connection with this Part is given to a person by a responsible officer for the Trustee, Employer or the Policy Committee (if any) as the case requires and is:
- (a) handed to the person; or
  - (b) delivered to the person's last known address; or
  - (c) posted by ordinary post within Australia to the person's last known address; or
  - (d) transmitted by facsimile or other electronic means to the person's last-known point of contact.
- 32.5 If the notice or communication is posted within Australia, it shall be taken to have been received on the third Working Day after posting and if transmitted by electronic means, it shall be taken to have been received on the next Working Day after transmission.

### **Replacement of notices**

- 32.6 If a notice of acceptance, admission or of whatsoever nature issued to an Employer or to a Member is lost or destroyed, the Trustee may issue or cause to be issued a duplicate notice on such terms and subject to payment of such fee as it may determine.

### Appointment of Receiver

32.7 If at any time a receiver or a receiver and manager is appointed to any property of an Employer the Trustee may, within 60 days of its receiving notice of the appointment of such receiver, give notice in writing (or such other form as the Trustee determines) to the Employer that the Trustee regards such receiver as being such Employer for the purposes of the Deed and these Part Rules, and as from the date of the Trustee's notice, such receiver shall be such Employer for the Purposes of the Deed and these Part Rules.

### Dispute resolution

- 32.8 The Trustee must take reasonable steps to ensure that arrangements that satisfy the requirements of the Act are in place under which:
- (a) any person so entitled under Superannuation Law has the right to make an inquiry into, or to complain about, the operation or management of this Part in relation to that person; and
  - (b) each enquiry or complaint will be considered and determined by the Trustee within 90 days after it is made or within such other period as may be permitted under Superannuation Law.

## 33 Categories of Membership

### Category Selection

- 33.1 A Member who is given an option under Rule 5.6A may give the Trustee a Category Selection Form.
- 33.2 The Member may give the Trustee a new Category Selection Form at any time in a manner approved by the Trustee. A new Category Selection will have the effect of permanently revoking any previous Category Selection of the Member.
- 33.3 Subject to Rule 33.14:
- (a) a Member becomes a member of the membership category which the Member specifies in a Category Selection; and
  - (b) the Member's Category applies from the date the Category Selection is received by the Trustee.
- 33.4 If the Trustee has not received a Category Selection from a Member and the Member:
- (a) has been offered the option of selecting a Category under Rule 5.6A; or
  - (b) is in a group of Members who the Trustee determines is a Member to whom Rule 33 applies,
- that Member is a Category 1 Member.

### Benefit Payments

- 33.5 For Members of Category 1:
- (a) benefits are payable under the relevant provisions in the Deed unless the Member has died;
  - (b) the Trustee must pay the Death Benefit to one or more of the Member's Dependents or Estate or any other person permitted by Superannuation Law, in proportions which the Trustee considers appropriate;

- (c) the Trustee may determine that the Death Benefit be paid a lump sum, pension or annuity or in any other form that the Trustee considers appropriate; and
- (d) Rules 33.9 to 33.13 and 33.15 to 33.19 do not apply.

33.6 For Members of Categories 2 to 8:

- (a) benefits are payable under the relevant provisions in the Deed unless the Member has died;
- (b) on the death of a Member, subject to Rules 33.12 to 33.14, the Trustee must:
  - (i) if the Member is a Category 2 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (ii) if the Member is a Category 3 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (iii) if the Member is a Category 4 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (iv) if the Member is a Category 5 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (v) if the Member is a Category 6 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (vi) if the Member is a Category 7 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (vii) if the Member is a Category 8 Member:
    - (A) pay the Member's Death Benefit to the Member's Children as a lump sum; and
    - (B) [not used];
- (c) benefits to Children (including Minor Children) will be paid in equal shares; and
- (d) if there is more than one Spouse, each Spouse will be paid in equal shares.

33.7 Benefits to the Estate are to be paid at the Trustee's discretion to the Legal Personal Representative of the Member upon production of probate or letters of administration.



- 33.8 Any benefit payable to a Minor Child will be paid on trust subject to the same terms as those regarding infant beneficiary trusts set out in Rule 11.12F of the Deed.
- 33.9 If there is no person to whom part or all of a Death Benefit can be otherwise paid, the part of the Death Benefit that cannot be paid under Rule 33 may be paid to any other person or persons determined by the Trustee if Superannuation Law permits.
- 33.10 A person is not a Spouse, Child or Minor Child of a Member unless the Trustee is satisfied as to that person's identity, eligibility and location within 3 months of the date of the Member's death.
- 33.11 The Trustee is not required to make any inquires to determine the eligibility, identity or location of potential recipients of a Death Benefit.

### Exceptions

- 33.12 If the Trustee is unable to identify or locate at least one person capable of qualifying for payment of the part of the Member's Death Benefit that is payable as a lump sum under Rule 33.6(b), the Trustee will pay:
- (a) the part of the benefit that would have been payable as a lump sum to Children under Rule 33.6(b) - to the Spouse; and
  - (b) the part of the benefit that would have been payable as a lump sum to a Spouse under Rule 33.6(b) - to the Member's Estate.
- 33.13 [not used]
- 33.14 If the Trustee believes in good faith that:
- (a) a Category Selection is not sufficiently clear to allow the Trustee to pay a Death Benefit;
  - (b) a Category Selection is incomplete; or
  - (c) a Category Selection is not consistent with Superannuation Law,
- the Trustee may refuse to accept or give effect to all or any part of the Category Selection and may at any time, including before and/or after a Member's death, deem the Member to be a Category 1 Member. A refusal by the Trustee under this Rule does not cause a previous Category Selection of the Member to become valid.

### Mode of Payment

- 33.15 The Trustee will pay a Death Benefit under Rule 33.6(b) by lump sum.
- 33.16 [not used]
- 33.17 [not used]
- 33.18 [not used]
- 33.19 A person who may qualify as a beneficiary under the Member's Category Selection has no rights or entitlements under this Deed during the lifetime of the Member.
- 33.20 If any doubt or dispute arises as to the validity of a Category Selection, subject to the jurisdiction of any relevant Court or Tribunal, the decision of the Trustee shall be binding on all interested persons.

**Schedule A Personal Division****A1 Personal Division****Personal Division**

A1.1 The Personal Division comprises:

- (a) one or more Rollover Plans for Members who are admitted to a Rollover Plan pursuant to Rule A1.2 or Rule A1.2A; and
- (b) Plans for the benefit of Eligible Spouses; and
- (c) Plans for the benefit of employed persons who apply to the Trustee for membership of the Personal Division; and
- (d) Plans for the benefit of self-employed persons who apply to the Trustee for membership of the Personal Division; and
- (e) Plans for the benefit of such other persons as the Trustee determines from time to time who apply to the Trustee for membership of the Personal Division.

The Rules applying to persons who become Members of Plans in the Personal Division are described in this Schedule A.

**Membership of Rollover Plans**

A1.2 The Trustee must admit as a Member of a Rollover Plan in the Personal Division a person who held a 'Rollover Plan' in the 'Personal Division' of the SDF immediately before the Transfer Time.

A1.2A The Trustee may admit as a Member of a Rollover Plan in the Personal Division a person:

- (a) whose benefit is transferred or rolled over to this Part from another Superannuation Entity; and
- (b) who immediately before the transfer or rollover was entitled to benefits from that Superannuation Entity as a former employee of a participating employer in that Superannuation Entity.

A1.2B A person admitted under Rule A1.2A becomes a Member of a Rollover Plan in the Personal Division on such date, and on such terms and conditions, as the Trustee determines.

A1.3 No other persons, including a Non-Member Spouse of a Member of the Rollover Plan, may become a Member of a Rollover Plan.

**Membership of Eligible Spouses**

A1.4 An Eligible Spouse becomes a Member of a Plan in the Personal Division if:

- (a) the Eligible Spouse applies to the Trustee in the Application Form prescribed by the Trustee within such time as the Trustee may specify; and
- (b) the Trustee accepts the Application made pursuant to Rule A1.4(a) and approves admission to membership of a Plan in this Division; and
- (c) Superannuation Law permits that person to become a Member.

A1.5 The Trustee may waive the need for the Eligible Spouse to complete an Application Form under Rule A1.4, and approve the person's admission without having received an Application Form.

A1.5A The Trustee may refuse to accept an Eligible Spouse as a Member of a Plan in the Personal Division without giving any reason, and the provisions of Rule 5.6 shall apply.

### **Membership of other persons**

A1.6 A person becomes a Member of a Plan in the Personal Division as specified in the Deed or if:

- (a) that person lodges an Application Form with the Trustee; and
- (b) the Trustee accepts the Application Form and approves admission to membership of a Plan in this Division; and
- (c) Superannuation Law permits that person to become a Member.

A1.6A Where Superannuation Law permits, the Trustee may waive the need for the person to complete an Application Form under Rule A1.6, and approve the person's admission without having received an Application Form.

### **Rejection of application**

A1.7 The Trustee may decline to admit to membership of a Plan in this Division, without giving any reason, a person who lodges an application pursuant to Rule A1.6(a) and thereupon the provisions of Rule 5.6 shall apply.

## **A2 Contributions, Roll-Overs and Transfers**

A2.1 Subject to Superannuation Law and any terms and conditions determined by the Trustee from time to time, the Trustee may accept contributions into this Part from a Member of a Rollover Plan or any other person in respect of the Member.

A2.2 Subject to Rule 7, contributions may be accepted by the Trustee in respect of a Member of a Plan in this Division if:

- (a) the contributions are made in respect of the Member referred to in Rule A1.4(a); and
- (b) Superannuation Law permits.

The Trustee may impose restrictions on the timing and amount of the contributions.

A2.3 Subject to Rules 7, A2.1 and A2.2, contributions may be accepted by the Trustee in respect of any other Member of the Personal Division on such basis as shall be specified in the Member's Application Form or as agreed between the Member and the Trustee.

A2.4 The Trustee may, in respect of a Member in the Personal Division who so requests, accept into this Part in respect of that Member, an amount transferred from another Complying Superannuation Fund of which the Member is a member.

## **A3 Benefits**

### **Benefit on request**

A3.1 A Member of the Personal Division is entitled to a benefit equal to the Part Credit of the Member where:

- (a) he or she requests payment; and
- (b) Superannuation Law permits.

A3.1A Where the conditions of Rule A3.1 are satisfied and the Member is not entitled to a benefit under any other Rule of this Division, the Trustee will pay the benefit determined under that rule from

this Part subject to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

### **Insured amounts**

A3.2 Subject to the terms and conditions of the Policy, the Deed and these Part Rules, where the Deed of Adoption, Schedule to the Deed of Adoption, Application Form or such other means of notification that is acceptable to the Trustee specifies that a benefit in respect of a Member may include an insured amount, the Trustee shall make every reasonable endeavour to effect appropriate insurance as the case requires, in accordance with Rule 9.1, with the Life Assurance Company selected by the Trustee.

A3.2A Where an insured benefit is paid to the Trustee in respect of the death or Total and Permanent Disablement of a Member of the Personal Division, the insured benefit must be credited to one or more of the Member's Contribution Accounts, as determined by the Trustee from time to time.

### **Death**

A3.3 If a Member dies, the Death Benefit is equal to the Part Credit of the Member, the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

### **Total and Permanent Disablement**

A3.4 A Member who becomes Totally and Permanently Disabled is entitled to a benefit equal to the Part Credit of the Member, the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

### **Total but Temporary Disablement**

A3.5 To the extent permitted by Superannuation Law, a Member (other than a Member in a Rollover Plan) who becomes Totally but Temporarily Disabled is entitled to a benefit:

- (a) of the amount and payable in the manner specified in the relevant Policy until the first to occur of the following events:
  - (i) the Member ceases to be Totally but Temporarily Disabled;
  - (ii) the Member becomes entitled to another benefit under this Rule A3;
  - (iii) the Part Credit of the Member is exhausted; and
- (b) the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

A3.5A To the extent permitted by Superannuation Law, where the Trustee has determined to apply this Rule A3.5A to a Rollover Plan, a Member in the Rollover Plan who becomes Totally but Temporarily Disabled is entitled to a benefit:

- (a) of the amount and payable in the manner specified in the relevant Policy until the first to occur of the following events:
  - (i) the Member ceases to be Totally but Temporarily Disabled;
  - (ii) the Member becomes entitled to another benefit under this Rule A3;
  - (iii) the Part Credit of the Member is exhausted; and

- (b) the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

#### **Unrestricted non-preserved benefits**

- A3.6 A Member of the Personal Division who has an unrestricted non-preserved benefit may at any time apply to the Trustee for that benefit to be paid from this Part to the Member or as the Member may direct and pursuant to Rule 10.3, the Trustee shall thereupon release (or cause to be released) from this Part, the amount of that benefit net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

#### **A4 General**

- A4.1 The Trustee may impose such restrictions on the membership of a Member of a Plan in the Personal Division as it considers appropriate. The Trustee must advise the Member in writing (or such other form permitted by Superannuation Law) of the restrictions, but an accidental failure to do so shall not cause the restriction to be ineffective.
- A4.2 The Trustee may make such rules and specify such terms and conditions and charges as it considers appropriate regarding Members of a Plan in the Personal Division.

#### **A5 Transfer to Allocated Pension Division**

- A5.1 The Trustee must transfer a Member from a Plan in the Personal Division to the Allocated Pension Division where:
- (a) a benefit becomes payable in respect of the Member from the Personal Division; and
  - (b) the Member applies and the Trustee approves the Member's admission as a Member of the Allocated Pension Division.
- A5.2 For the purposes of Rule A5.1, the Trustee may make such rules and specify such terms conditions and charges as it considers appropriate regarding the transfer of Members from a Plan in the Personal Division to the Allocated Pension Division.

## **Schedule AA          Personal Division Special Provisions for Rollover Members of Simple Super and Tailored Super**

### **AA1.    Application of Schedule AA**

#### **Simple Super and Tailored Super Rollover Members**

- AA1.1 This Schedule AA applies to Members who were members of a Former NM Fund immediately before 30 April 2011, and were identified under the governing rules of a Former NM Fund as 'Rollover Members' (Transferred Rollover Members).
- AA1.2 A Transferred Rollover Member may, if the Trustee offers and the Member applies in the prescribed form, become, a Member of a Rollover Plan that has terms of membership applicable to other Rollover Members.

### **AA2.    Exclusion of Provisions for Simple Super and Tailored Super Rollover Members**

#### **Excluded provisions**

- AA2.1 The following provisions of this Deed do not apply in respect of Transferred Rollover Members:
- (1) Rules 9.14 and 9.15;
  - (2) Rule 10.8;
  - (3) Rule 25.5.
- AA2.2 The exclusion of the Rules listed in Rule BA4.1 does not limit or otherwise affect the rights of the Trustee or the Transferred Rollover Members at law that would otherwise apply if those Rules were not included in this Deed in respect of any Members.

#### **Modified provisions**

- AA2.3 The following provisions of this Deed are modified in respect of Transferred Rollover Members:
- The following provision applies instead of Rule 22.5:
- '22.5 If the Tax in respect of a Member as recalculated exceeds the Tax as previously determined in respect of the person then:
- (a) if the person remains a Member on the recalculation date, the Trustee may deduct the amount of the additional Tax from the Interest in the Plan of the Member as it considers appropriate; or
  - (b) the Trustee may deduct the amount of the excess Tax from one or more of the Plan Reserve Account, Plan Reserve Transfer Account and Plan Reserve Charges Account for the relevant Plan; but
  - (c) if in the particular circumstances and in the opinion of the Trustee it is reasonably and appropriate to do so, the Trustee may elect to give effect to the adjustment in such other manner as it considers to be equitable in the circumstances.'

## **Schedule B Allocated Pension Division**

### **B1 Allocated Pension Division**

#### **Allocated Pension Division**

B1.1 The Allocated Pension Division comprises Plans for the benefit of:

- (a) a Member who transfers from the Personal Division pursuant to Rule A5.1; and
- (b) any other person who applies to the Trustee for Membership of the Allocated Pension Division and is accepted by the Trustee.

The Rules applying to persons who become Members of Plans in the Allocated Pension Division are described in this Schedule B.

#### **Eligibility of existing Members**

B1.2 A Member of a Plan in the Personal Division is eligible to become a Member of a Plan in the Allocated Pension Division if their Part Credit consists wholly or partially of unrestricted non-preserved benefits which may be transferred under Rule A5.1, to a Member Transfer Account in a Plan in the Allocated Pension Division and out of which the Trustee agrees that an Allocated Pension will be paid.

#### **Eligibility of other persons**

B1.3 Any other person is eligible to become a Member of a Plan in the Allocated Pension Division if they are in receipt of an Eligible Termination Payment which may be deposited in, or transferred under Rule 6.1, to a Member Transfer Account in a Plan in the Allocated Pension Division and:

- (a) that person lodges an Application Form with the Trustee;
- (b) the Trustee accepts the Application Form;
- (c) the Trustee agrees that an Allocated Pension will be paid out of the Member's Transfer Account; and
- (d) the Trustee approves admission to Membership of a Plan in this Division, and Superannuation Law permits that person to become a Member.

#### **Rejection of Application**

B1.4 The Trustee may decline to admit to Membership of a Plan in this Division without giving any reason, a person who lodges an Application Form pursuant to Rule B1.3(a) and thereupon, the provisions of Rule 5.6 shall apply.

### **B2 Benefits**

B2.1 A Member is entitled to payment of an Allocated Pension on the terms and conditions agreed between the beneficiary and the Trustee or, in the absence of agreement, as determined by the Trustee and only to the extent that the Member's Transfer Account and Superannuation Law will allow.

B2.2 Where the conditions of Rule B2.1 are satisfied the Trustee will pay the benefit determined under that Rule, subject to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

- B2.3 If and to the extent allowed by Superannuation Law, and subject at all times to the terms and conditions upon which it has been agreed or determined that an Allocated Pension will be paid under Rule B2.1, the Trustee may, at the request of the Member or Reversionary Pensioner, decide in its absolute discretion to commute part or all of any Allocated Pension to a lump sum payment upon such terms and conditions as the Trustee determines from time to time. The lump sum payment arising from the commutation of part or all of the Allocated Pension must not exceed the balance in the Member's, or Reversionary Pensioner's, Member Transfer Account.
- B2.4 If a Member or Reversionary Pensioner dies, the Death Benefit is equal to the balance in his or her Member Transfer Account, the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member or as a consequence of such payment by the Trustee subject at all times to:
- (a) any terms and conditions agreed between the beneficiary of the Death Benefit and the Trustee or, in the absence of agreement, as determined by the Trustee; and/or
  - (b) any terms and conditions upon which it was agreed or determined that an Allocated Pension would be paid to the Member (under Rule B2.1), or prior Reversionary Pensioner (under paragraph (a) above) of this Rule.



N. M. Superannuation Proprietary Limited

## Part Rules for the NMRF Part

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## Part 1 Preliminary

### Application

- 1 These Part Rules apply only to Members of the NMRF Part. A reference to a Member in these Part Rules is a reference to a Member of the NMRF Part.
- 2 [Not used]

### Interaction with the Applicable Requirements

- 2A. (a) All the standards, rules and covenants required by the Applicable Requirements to be included in the governing rules of superannuation funds form part of these Part Rules, whether or not they are explicitly stated in these Part Rules. However, if a standard, rule or covenant is no longer required to be included or the Commissioner does not require it to be complied with, then that standard, rule or covenant ceases to be included by this clause. A standard, rule or covenant included by this clause prevails over any other provision in these Part Rules which is inconsistent with it.
- (b) If a provision of these Part Rules would otherwise be invalid in whole or in part because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request only.
- (c) If a provision of these Part Rules would otherwise be invalid in whole or in part because it permits a person to exercise a discretion without the consent of the Trustee then that provision is taken to require the Trustee's consent for the exercise of the discretion.

### Definitions

- 3 Where the context permits and unless the contrary intention appears, capitalised terms used in these Part Rules which are defined in rule 1.1 of the Trust Deed for the National Mutual Retirement Fund have the same meaning in these Part Rules and:

**Act** means:

- (a) the *Superannuation Industry (Supervision) Act 1993* (Cth), the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Corporations Act 2001* (Cth) and any other act relating to superannuation with which the Trustee must comply or which provides for the concessional taxation of superannuation funds and all regulations made under those Acts (as modified in their application to the Fund by any subsisting declaration, modification or exemption granted by the Commissioner);
- (b) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which applies to the Fund, the Deed, these Part Rules or the Trustee with the force of law; and
- (c) any present or future law of the Commonwealth of Australia or any State or Territory of Australia which does not fall within paragraph (a) or (b) of this definition but which the Trustee determines from time to time to be an Act for the purposes of the whole or any particular provision of the Deed or these Part Rules.

**Annuity Policy** means a benefit taken to be an Annuity for the purposes of the Act.

**Applicable Requirement** means:

- (a) such of the provisions of the Act and the Regulations; and

- (b) such circulars guidelines and rulings issued from time to time by the Commissioner in relation to superannuation funds; and
- (c) such other material issued from time to time by the Commissioner or by any other government authority responsible for the operation of superannuation funds and whether or not having the force of law,

as the Trustee considers it prudent to observe for the purpose of establishing or maintaining exemption relief or concession from or in respect of taxation.

**Benefit** in relation to a Member or Undischarged Ex-Member means the Policy or Policies effected or held with the applicable life company on the life of the Member or Undischarged Ex-Member concerned and the money payable thereunder and any other money or investments held under these Part Rules in respect of the Member or Undischarged Ex-member and includes any payment under a Pension.

**Category** means category of membership provided for under Part 2A applying in respect of a Member.

**Category Selection** means a Category Selection Form received by the Trustee.

**Category Selection Form** means a notice in a form acceptable to the Trustee under which a Member can specify a Category.

**Children** means, subject to clause 6A.10, surviving children of the Member at the date of the Member's death, including without limitation adopted children, step-children and ex-nuptial children and children of the member's spouse who were dependent on the Member for maintenance or support at the date of the Member's death.

**Commissioner** means:

- (a) for the purposes of Part 2A, includes any person the Trustee reasonably believes is or was authorised to give information on behalf of the Commissioner of Taxation; and
- (b) for all other purposes, as the case requires means the Commissioner of Taxation, the Australian Securities and Investments Commission or the Australian Prudential Regulation Authority.

**Costs** means administration and transaction expenses relating to the relevant Member No TFN Contribution, including the relevant portion of any applicable insurance premium.

**Death Benefit** means a Benefit payable from the SLPP on the death of a Member.

**Deed of Entitlement** means the Deed dated 13 June 1995 between National Mutual Holdings Limited, AXA Société Anonyme and Perpetual Trustees Victoria Limited as amended (including amendments made by a deed dated 5 July 1996).

**Dependant** in respect of a Member means a spouse de facto spouse widow widower child adopted child step-child or ex-nuptial child of a Member or Undischarged Ex-Member any person considered to be a dependant by the Act or any person who in the opinion of the Trustee is at the relevant date (or in the case of a deceased person was at his death) wholly or partially dependent on that Member or Undischarged Ex-Member or who has or had at the relevant date a right to look to that Member or Undischarged Ex-Member for support.

**Deposit Administration Policy** means the policy maintained by the Trustee pursuant to clause 36.

**Directed Termination Payment** means a transitional employment termination payment

(as defined in the Tax Act) which a Member directs be made to this Part.

**Eligible Member** means a person who as at 21 June 1995:

- (a) was not a standard employer sponsored member as defined in section 16 of the *Superannuation Industry (Supervision) Act 1993* (Cth); and
- (b) fell within the definition of Member or Undischarged Ex-Member in the Deed.

**Employer No TFN Contribution** means a concessional contribution (as defined in the Tax Act) made to this Part in respect of a Member where the Trustee has not been provided with a TFN for the Member.

**Employer-Supported Member** means any Member of this Part whose employer has agreed to contribute to this Part in respect of the Member.

**Estate** means the legal personal representative of the Member on behalf of the deceased Member's estate.

**Full-Time Employment** means Gainful Employment for a period of not less than 30 hours per week.

**Gainful Employment** means employment (either as an employee or self-employed person) for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages and 'gainfully employed' has a similar meaning.

**Individual NMH Entitlements** means that portion (if any) of the value of the NMH Share Entitlement which the Trustee determines was attributable to the Member under the Deed as at the date on which the NMH Share Entitlement was allocated to the Trustee.

**Life Insurance Policy** means a life policy as defined in the *Life Insurance Act 1995* (Cth) or any other Act that may be substituted therefor.

**Member.**

- (a) for the purposes of Part 2A, includes a person who was a Member at the time of his or her death; and
- (b) for all other purposes means, a person who has been accepted as a Member of this Part and who has not ceased to be a Member as hereinafter provided,

but does not include a Non-Member Spouse. This definition must be read together with Rule 1.

**Member No TFN Contribution** means a non-concessional contribution (as defined in the Tax Act) made to this Part by or in respect of a Member where the Trustee has not been provided with a TFN for the Member.

**Memorandum of Allocation** has the meaning ascribed to that term in the Deed of Entitlement.

**Merged Funds** means The UC Retirement Fund, the Flexipol Personal Superannuation Fund, the Flexipol Self-Employed Persons Superannuation Fund, the National Mutual Employer-Supported Retirement Fund and the National Mutual Self-Employed Superannuation Fund.

**Merged Funds Transfer Date** means 30 September 1990.

**Minor Children** means, subject to clause 6A.10, Children under the age of 18 at the date of the Member's death.

**National Mutual** means The National Mutual Life Association of Australasia Limited.

**NMH Share** has the meaning ascribed to that term in the Memorandum of Allocation.

**NMH Share Entitlement** means the number of NMH Shares which the board of National Mutual allocated to the Trustee in relation to the Fund on the basis of the principles set out in the Memorandum of Allocation.

**NMRF Part** means the Part of the Fund governed by these Part Rules (and 'this Part' has a corresponding meaning).

**Nominee** means any Dependant of a Member or Undischarged Ex-Member who is nominated by the Member or Undischarged Ex-Member in a manner approved by the Trustee as a person to whom that Member or Undischarged Ex-Member desires to be paid in the event of his death either the whole or such portion as he may specify in that nomination of the Benefit in respect of him.

**Paid-up** in relation to a Policy means reduced in amount in consideration of no further premiums being payable thereunder.

**Parliamentary Member** means a person who is engaged and working:

- (a) under an agreement pursuant to Section 20 of the *Members of Parliament (Staff) Act 1984* whereby that person has been appointed to the Staff of a Senator or a Member of the House of Representatives; or
- (b) under an agreement pursuant to Section 13 of the *Members of Parliament (Staff) Act 1984* where that person has been appointed to the Staff of an Office Holder; or
- (c) under an agreement pursuant to Section 4 of the *Members of Parliament (Staff) Act 1984* whereby that person has been appointed as a Consultant to a Minister of the Crown; or
- (d) as a Senior Executive Service Officer appointed on a fixed-term basis pursuant to Section 42 and to Section 44 of the *Public Service Act 1922*; or
- (e) as a Departmental Secretary appointed on a fixed-term basis pursuant to Section 36 and to Section 39 of the *Public Service Act 1922*.

For the purposes of this definition any reference to either of the Acts more particularly specified herein shall be to the relevant Act as the same may from time to time be amended or re-enacted and includes every Statute substituted therefore and any reference to a Section thereof shall be to the corresponding section of any amended or re-enacted Act.

**Part-Time Employment** means Gainful Employment for a period of 10 hours or more per week but less than 30 hours per week.

**Pension** means a benefit taken to be a pension for the purposes of the Act.

**Plan** means any superannuation arrangement made by the Trustee pursuant to clause 61.

**Policy** means a Life Insurance Policy, a Pure Endowment Policy or an Annuity Policy as the case requires (with or without the provision of additional benefits) effected or held for the purposes of this Part.

**Preserved Benefit** in relation to a Member means that portion of any Benefit arising under this Part in respect of him which in accordance with the preservation standards set out in the Regulations is required to be preserved.

**Pure Endowment Policy** means a policy which provides subject to the conditions therein stated for the payment of the policy moneys on the survival throughout the term of that

policy of the person on whose life it has been effected or if he dies before the expiry of the selected term for the repayment of premiums which have been paid thereunder with interest added at the rate therein stated.

**Regulations** means any Regulations made under the Act.

**Reversionary Pensioner** means a person who being a Dependant at the time of death of the Member or Undischarged Ex-Member who is in receipt from this Part of a reversionary pension has been nominated by that Member or Undischarged Ex-Member as the person who should continue to receive the remainder of that pension.

**Selected Retirement Date** means the retirement date selected by a Member at the date he becomes a Member which shall not be earlier than his 55th birthday and not later than his 65th birthday (except where the Member has already attained the age of 65 years) **PROVIDED THAT** subject to the limitations hereinbefore contained a Member may at any time and from time to time by notice in writing given to the Trustee substitute for the date so selected or for any date substituted therefor such other date as may be selected by him.

**SLPP** means the Superannuation Life Protection Plan and includes the Superannuation Life Protection Plan as renamed or replaced, unless otherwise determined by the Trustee.

**Spouse** means subject to clause 6A.10, the spouse of a Member, and includes a person who, although not legally married to a Member, lives with the Member on a genuine domestic basis as the husband or wife of the Member.

**Successor Fund** has the meaning given to that term in the Regulations.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or *Income Tax Assessment Act 1997* (Cth), as applicable.

**TFN** means a tax file number pursuant to the Act or Regulations.

**Undischarged Ex-Member** means a former Member who has ceased to be a Member in manner provided in these Part Rules and who has not received the whole of his Benefit.

- 3A The headings in these Part Rules are for convenience only and shall not affect the interpretation hereof.
- 3B Words denoting the masculine gender shall include the feminine gender. Words denoting the singular number shall include the plural number and vice versa.
- 3C Words and expressions used herein but not defined in this clause, shall, if they are defined in the Act, have the meanings given to them respectively in the Act.
- 3D A reference to any legislation or legislative provision includes any statutory modification or re-enactment of or legislative provision substituted for and any statutory instrument issued under that legislation or legislative provision.

## Part 2 Membership

### Eligibility/Applications

- 4 (a) The following categories of people (other than Non-Member Spouses) may apply for membership of this Part:
- (i) any person who is in Full-Time Employment;
  - (ii) any person who is in Part-Time Employment;
  - (iii) any person whose employer has agreed to contribute in respect of him mandated employer contributions (as that expression is defined in the Regulations);
  - (iv) any person who is otherwise permitted under the Act or Regulations to become a superannuation fund member,
- and who has not attained the age of 65 years except where Members who have attained their 65th birthday are permitted in accordance with the Act or Regulations.
- (b) Any person desirous of becoming a Member shall apply to the Trustee in writing on the form prescribed from time to time by the Trustee wherein the applicant shall inter alia agree to be bound by the provisions of these Part Rules.
- (c) The Trustee may in its absolute discretion accept or reject any such application **PROVIDED THAT** the Trustee must not intentionally or recklessly accept any application for membership unless the Trustee is satisfied on reasonable grounds that the applicant has received documents that contain all the information required under the Act or Regulations with regard to membership of this Part.
- (d) Every applicant for membership and every Member shall whenever requested by the Trustee provide to the Trustee such information documents and other evidence in connection with this Part as the Trustee may reasonably request. It shall be the obligation of every Member to give prompt notification to the Trustee in writing of any circumstance affecting his eligibility for membership of this Part and his ability to make contributions to this Part in accordance with the Act and the Regulations.
- (e) Upon acceptance by the Trustee of any application for membership of this Part and the payment by or in respect of him of a contribution to this Part such applicant shall be deemed to be a Member and he shall thereupon be bound by the terms and conditions of these Part Rules.
- (f) The Trustee may:
- (i) offer a Member the option of selecting a category of membership provided for under Part 2A; and/or
  - (ii) determine that a Member is in a group of Members to whom Part 2A applies.
- If subparagraphs (f)(i) and/or (ii) of this clause applies to a Member, that Member's Benefits are payable in accordance with the terms of Part 2A.
- (g) The Trustee may establish, delete or vary categories of membership at any time.

### Non-Member Spouse

- 4A. For the avoidance of doubt, if:
- (a) a Member's interest in this Part is subject to a Payment Split; and



- (b) a Non-Member Spouse requests a new interest in this Part be created for the Non-Member Spouse in connection with the Payment Split,

the Trustee must not create a new interest in this Part for the Non-Member Spouse in those circumstances and the Non-Member Spouse has no interest in this Part because of those circumstances.

### **Former Members of the Merged Funds**

- 5 Where to apply the provisions of these Part Rules would have a detrimental effect on the value of the Benefit of a former member of one of the Merged Funds who transferred into the Fund on the Merged Funds Transfer Date or on any right conferred under the trust deed for that fund the Trustee may apply the provisions of that trust deed in substitution for or in addition to the provisions of these Part Rules to ensure that the Member's former rights and benefits are retained PROVIDED THAT the Trustee will not thereby cause the Fund to cease to comply with the Applicable Requirements.

### **Cessation of Membership**

- 6 A Member shall cease to be a Member on the occurrence of the first of the following events:
  - (a) when he has received the whole of his Benefit; or
  - (b) on the transfer of the whole of the Benefit of the Member or Undischarged Ex-Member in accordance with clause 7(b); or
  - (c) when this Part no longer contains any Benefit in respect of the Member or Undischarged Ex-Member.

## **Part 2A Category Selection**

### **Category Selection Form**

6A.1 A Member who is given an option under clause 4(f) of these Part Rules may give the Trustee a Category Selection Form.

### **New Category Selection Form**

6A.2 A Member to whom clause 6A.1 applies may give the Trustee a new Category Selection Form at any time in a manner approved by the Trustee. A new Category Selection will have the effect of immediately and permanently revoking any previous Category Selection of the Member.

### **Applicable Membership Category**

6A.3 Subject to clause 6A.14:

- (a) a Member becomes a member of the Category which the Member specifies in a Category Selection;
- (b) the Member's Category applies from the date the Category Selection is received by the Trustee.

### **Deemed Category 1 Member**

6A.4 If the Trustee has not received a Category Selection from a Member and:

- (a) the Member has been offered the option of selecting a Category under clause 4(f) of these Part Rules; or
- (b) the Trustee determines that the Member is in a group of Members to whom Part 2A applies,

that Member is a Category 1 Member.

### **Benefit Payments Category 1**

6A.5 For Members of Category 1:

- (a) benefits are payable under the relevant provisions in these Part Rules unless the Member has died;
- (b) the Trustee must pay the Death Benefit to one or more of the Members' Dependents or legal personal representative or any other person permitted by the Applicable Requirements at the absolute discretion of the Trustee, in proportions which the Trustee considers appropriate;
- (c) the Trustee may determine that the Death Benefit be paid as a lump sum, pension or annuity or in any other form that the Trustee considers appropriate; and
- (d) clauses 6A.9 to 6A.13 and 6A.15 to 6A.19 do not apply.

### **Benefit Payments - Categories 2 to 8**

6A.6 For Members of Categories 2 to 8:

- (a) benefits are payable under the relevant provisions in these Part Rules unless the Member has died;

- (b) on the death of a Member, subject to clauses 6A.12 to 6A.14, the Trustee must:
  - (i) if the Member is a Category 2 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (ii) if the Member is a Category 3 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (iii) if the Member is a Category 4 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (iv) if the Member is a Category 5 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (v) if the Member is a Category 6 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (vi) if the Member is a Category 7 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (vii) if the Member is a Category 8 Member:
    - (A) pay the Member's Death Benefit to the Member's Children as a lump sum; and
    - (B) [not used];
- (c) Benefits to Children (including Minor Children) will be paid in equal shares; and
- (d) if there is more than one Spouse, each Spouse will be paid in equal shares.

### **Benefits to an Estate**

6A.7 Benefits to the Estate are to be paid at the Trustee's discretion to the legal personal representative of the Member upon production of probate or letters of administration.

### **Benefits to Minor Children**

6A.8 Any Benefit payable to a Minor Child will be paid on trust subject to the same terms as those regarding infant trusts set out in clause 19(a) of these Part Rules.

**Death Benefit Payment**

6A.9 If there is no person to whom part or all of a Death Benefit can be otherwise paid under this Part 2A, the part of the Death Benefit that cannot be paid may be paid to any other person or persons determined by the Trustee in the exercise of its absolute discretion if the Applicable Requirements permit.

**Qualification for Payment**

6A.10 A person is not a Spouse, Child or Minor Child of a Member unless the Trustee is satisfied as to that person's identity, eligibility and location within 3 months of the date of the Member's death or such longer period as the Trustee may determine.

**Trustee not required to Inquire**

6A.11 The Trustee is not required to make any inquiries to determine the eligibility, identity or location of potential recipients of a Death Benefit.

**Exception**

6A.12 If the Trustee is unable to identify or locate at least one person capable of qualifying for payment of the part of the Member's Death Benefit that is payable as a lump sum under clause 6A.6(b), the Trustee will pay:

- (a) the part of the Benefit that would have been payable as a lump sum to Children under clause 6A.6(b) - to the Spouse; and
- (b) the part of the Benefit that would have been payable as a lump sum to a Spouse under clause 6A.6(b) - to the Member's Estate.

6A.13 [not used]

**Rejection of Category Selection**

6A.14 If the Trustee believes in good faith that:

- (a) a Category Selection is not sufficiently clear to allow the Trustee to pay a Death Benefit;
- (b) a Category Selection is incomplete; or
- (c) a Category Selection is not consistent with the Applicable Requirements,

the Trustee may refuse to accept or give effect to all or any part of the Category Selection and may at any time, including before and/or after a Member's death, deem the Member to be a Category 1 Member. A refusal by the Trustee under this clause does not cause a previous Category Selection of the Member to become invalid.

**Mode of Payment - Death Benefits**

6A.15 The Trustee will pay a Death Benefit under this Part 2A by lump sum

6A.16 [not used]

6A.17 [not used]

6A.18 [not used]

**Status of Person who may Benefit under Category Selection Form**

6A.19 A person who may qualify as a beneficiary under the Member's Category Selection has no rights or entitlements under these Part Rules during the lifetime of the Member.

**Validity of Category Selection**

6A.20 If any doubt or dispute arises as to the validity of a Category Selection, subject to the jurisdiction of any relevant Court or Tribunal, the decision of the Trustee shall be binding on all interested persons.

**Part 3 Transfers of Benefits To or From Other Existing Funds**

- 7 (a) The Trustee may from time to time subject to the Applicable Requirements and to the conditions of this clause accept into this Part in respect of a Member assets or investments to the extent that those assets and investments are acceptable to the Trustee and including any policy or policies issued by a life insurance company which are transferred from another superannuation fund in which the Member has participated or from an approved deposit fund in which the Member has been a depositor or from an Annuity purchased by or on behalf of the Member whereupon the Trustee shall ensure that the Member's benefits arising from the assets and investments so transferred are preserved to such extent as it necessary in accordance with the standards under the Regulations having regard to the advice received from the trustees of the fund from which the assets or investments are transferred.
- (aa) The Trustee may, in its absolute discretion:
- (i) refuse to accept into this Part assets, investments or other benefits from untaxed superannuation funds or other untaxed sources; or
  - (ii) return the relevant assets, investments or other benefits to the relevant untaxed superannuation fund or other untaxed source.
- (b) If at any time:
- (i) a Member requests his membership to be transferred to a superannuation fund administered in compliance with the Applicable Requirements and the trustees of such fund agree to accept the transfer;
  - (ii) a Member who has not attained the age of sixty five years requests that the whole or part of his Benefit be transferred to an approved deposit fund administered in compliance with the Applicable Requirements and which is required to preserve any Benefit so transferred in accordance with the standards set out in the Regulations and the trustees of the approved deposit fund agree to accept the transfer; or
  - (iii) a Member requests that the whole or part of his Benefit be transferred to an Annuity issued by a corporation which agrees to accept as consideration therefor such Benefit,
- PROVIDED THAT** the transfer of any Preserved Benefit in respect of the Member is in accordance with the standards prescribed in the Regulations the Trustee may transfer to the trustees of that other superannuation fund or approved deposit fund or to the corporation issuing the Annuity the whole or part of the Benefit (including any Policy or Policies) held by the Trustee in respect of the Member under this Part.
- (c) Any assets and investments taken over by the Trustee pursuant to paragraph (a) of this clause shall thereafter be subject to the terms of these Part Rules.
- (d) The transfer of the whole or part of a Benefit in accordance with paragraph (b) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under this Part in respect of the Benefit or that part of the Benefit so transferred. The Trustee shall neither be responsible for nor be liable in respect of the disposal or otherwise by the trustee or trustees of that other superannuation fund or approved deposit fund or by the corporation issuing the deferred annuity for the Benefit or the part of the Benefit so transferred.

- (e) For all the purposes of these Part Rules the Benefit of any member in respect of whom paragraph (a) of this clause applies shall be deemed to include the policy or policies investments and any other moneys taken over by the Trustee in respect of him **PROVIDED THAT** the value of such assets shall for the purpose of these Part Rules not be deemed to be a contribution to this Part.
- (f) Notwithstanding anything contained in these Part Rules, the Trustee may, subject to the Applicable Requirements, transfer a Member's Benefit without having obtained the Member's consent if in the opinion of the Trustee the transferee fund is a Successor Fund.

## Part 4 Contributions

### Regular Contributions

- 8 Subject to these Part Rules, the regular contributions:
- (a) by the Member or in respect of the Member shall be made to this Part yearly or at such other intervals of time as the Trustee may allow and accept;
  - (b) payable under this Part in respect of an Employer Supported Member shall include the amounts payable by that Member and by the employer of that Member in respect of him.

### Amount of Contributions

- 9 The amount of the regular contributions referred to in the preceding clause 8 shall be determined:
- (a) in respect of a Member other than an Employer Supported Member or a Parliamentary Member according to the requirements of that Member as notified to the Trustee at any time and from time to time;
  - (b) in respect of an Employer Supported Member but excluding a Parliamentary Member according to the requirements of that Member and/or the employer of that Member as notified to the Trustee at any time and from time to time;
  - (c) in respect of a Parliamentary Member:
    - (i) according to the rules prescribed from time to time by the Department of Finance (or such other responsible authority) of the Commonwealth of Australia; or
    - (ii) according to the provisions in that regard more particularly set forth in the relevant Statute referred to in that definition as the case may require.

### Limits on Contributions

- 10 (a) The Trustee shall not accept contributions by or in respect of a Member:
- (i) who has attained 65 years of age except in such circumstances as permitted by the Regulations.
  - (ii) who has ceased for a continuous period of two years to be in either Full Time Employment or Part Time Employment unless:
    - (A) the contributions are mandated employer contributions (as that expression is defined in the Regulations);
    - (B) the Member has ceased Full Time Employment or Part Time Employment because of ill health (whether physical or mental) that at the date of making the contribution prevents the Member from engaging in the employment of the kind that the Member engaged in at the onset of the ill health; or
    - (C) otherwise permitted by the Applicable Requirements.
- (aa) The Trustee:
- (i) must, if required by the Applicable Requirements:
    - (A) refuse to accept Member No TFN Contributions;
    - (B) return Member No TFN Contributions to the relevant Member within 30 days of the amount being received by the Trustee;
  - (ii) may, in its absolute discretion:



- (A) refuse to accept one or more of the following: Employer No TFN Contributions or Directed Termination Payments;
  - (B) return Employer No TFN Contributions or Directed Termination Payments (or both of them) to the relevant Member or Employer at any time;
- (iii) may, in its absolute discretion, return the Member No TFN Contributions to the relevant Member after deducting amounts from these contributions to take account of:
  - (A) a reduction in the value of the Member No TFN Contribution owing to losses sustained as a result of its investment during the period it was held by the Trustee; or
  - (B) reasonable Costs incurred by the Fund,or both.
- (b) Any contributions accepted by the Trustee in breach of paragraph (a) of this clause shall be refunded within a period of two months of the Trustee becoming aware that the Member satisfied either of the criteria described in sub paragraphs (1) and (2) of paragraph (a) of this clause (save that where such refund cannot be made out of that portion of his Benefit other than the Policy effected or held on his life the amount to be refunded to him shall be the surrender value of the contributions concerned) and in respect of any Policy held in respect of him in this Part the Trustee shall be at liberty to apply to the applicable life company to have so much of the said Policy surrendered as will permit such refund to be made and to have the reduced Policy then remaining made Paid-up. That Member shall thereupon become and until he shall seek reinstatement as a Member on again becoming eligible to make contributions to this Part remain an Undischarged Ex Member and whilst so remaining an Undischarged Ex Member no contribution to this Part by or in respect of him shall be accepted by the Trustee.
- (c) If in any case where he has been requested so to do a Member fails to furnish the Trustee with the information, documents or other evidence referred to in paragraph (d) of clause 4 within the time stated in the request the Trustee (subject to the provisions of the immediately preceding paragraph (b) in the event of the Member ceasing to be eligible to contribute to this Part):
  - (i) may refuse to accept any contributions by or in respect of a Member;
  - (ii) may subject to any limitation contained in the Applicable Requirements adjust or withhold the whole or part of the Benefit payable in respect of the Member;
  - (iii) shall be at liberty to have the Policy on the life of that Member made Paid-up and that Member shall thereupon become an Undischarged Ex Member and whilst remaining an Undischarged Ex Member no contribution by or in respect of him shall be accepted by the Trustee **PROVIDED ALWAYS THAT** if at any time thereafter that Undischarged Ex Member establishes to the satisfaction of the Trustee that he had not otherwise ceased to be eligible for membership of this Part he shall be reinstated to membership as from the date he became an Undischarged Ex Member as aforesaid and his Benefit in this Part shall as far as practicable and upon such terms and conditions as the Trustee and the applicable life company may then agree be reinstated to that which he would have obtained had he not become an Undischarged Ex Member as aforesaid.

- (d) Where a Member or Undischarged Ex Member furnishes information required pursuant to these Part Rules that affects or is likely to affect his Benefit and the information supplied is incorrect or misleading then subject to any limitation contained in the Applicable Requirements the Trustee may in its discretion adjust the Benefit in respect of the Member or Undischarged Ex Member to an amount that would have applied had full and accurate information been supplied.

**Additional Contributions**

- 11 Subject to the Applicable Requirements and to any minimum or maximum limits or other conditions advised by the Trustee additional contributions may be made to this Part by or in respect of a Member at any time and from time to time.

## Part 5 Policies

### Policies to be Effected

- 12 (a) On a Member joining this Part and from time to time thereafter whenever any regular contributions additional to those which have hitherto been made in respect of the Member are agreed to be provided a Policy shall be effected by the Trustee with a life company on the life of the Member for an amount to be determined between the Trustee and the applicable life company having regard to the moneys which the Trustee shall in its absolute discretion determine are or are likely to be held in this Part in respect of that Member and according to his age at the commencing date of that Policy the type of Policy (with or without additional benefits) selected by the Member and approved by the Trustee and the conditions imposed by the applicable life company.
- (b) If at any time a Member is possessed of a policy on his life which has been effected with the applicable life company and which provides a benefit of the same or substantially the same type as that which the Trustee is pursuant to the preceding paragraph of this clause obliged to effect or cause to be effected in respect of that Member subject to any limitation contained in the Applicable Requirements the Trustee may upon such terms and conditions and for such monetary consideration (if any) as the Trustee shall in the exercise of its absolute discretion determine agree to acquire the same in substitution or partial substitution for the Policy which the Trustee would otherwise be obliged to effect or cause to be effected in respect of him **PROVIDED ALWAYS THAT** in any case where a policy has been acquired by the Trustee as aforesaid then the Member in the Financial Year in which that policy was so acquired shall be deemed for the purposes of these Part Rules to have made a contribution to this Part.

### Health and other Evidence

- 13 Every Member shall supply such information documents and other evidence including such evidence of his health and as to the date of his birth as the applicable life company may require and do all things necessary on his part to enable the applicable life company to issue any Policy to the Trustee in respect of him.

### Payment of Premiums

- 14 The Trustee save as herein otherwise provided shall out of the moneys held in this Part in respect of a Member punctually pay the premiums on all Policies held in this Part in respect of him.

### Policies under Trustee's Control

- 15 The Trustee is hereby authorised and empowered to arrange for the issue of the Policies required to be effected as hereinbefore provided and to give full and effectual receipts releases and discharges in respect thereof as the Trustee from time to time thinks proper and the applicable life company requires. Any such Policy shall either be effected in the name of the Trustee or if already effected be assigned or transferred so that it shall be subject to and remain under the control of the Trustee during the time it is subject to the provisions of these Part Rules. The Trustee only shall be entitled in respect of any such Policy to receive all moneys payable thereunder and to enforce any rights remedies or contract in connection therewith or incidental thereto and shall be solely entitled to the full benefits and advantages thereof and no Member or Undischarged Ex Member shall have or claim save as herein provided any right title or interest in or to any such Policy or contract or in respect of the moneys payable thereunder. The applicable life company shall not be concerned to see or inquire if any of the events has happened by

reason whereof the Trustee has become entitled under these Part Rules to assign or transfer any such Policy to vary the contract hereunder to terminate the whole or any portion of such Policy for cash or to have the whole or any portion of such Policy made Paid-up and these Part Rules together with any request by the Trustee to the applicable life company to register a duly executed assignment or the transfer of any such Policy to vary the contract thereunder to terminate the whole or any portion of such Policy for cash or to have the whole or any portion of such Policy made Paid-up shall as against such Member or Undischarged Ex Member and any person claiming through or under him be conclusive evidence in respect of that Policy of the consent and authority of that Member or Undischarged Ex Member or such person as the case may be to the applicable life company to effect and complete such registration variation or termination accordingly.

### **Blanket Policies**

- 16 Notwithstanding anything to the contrary in these Part Rules otherwise contained the Trustee may with the consent of the applicable life company arrange for the whole of the Benefits then secured by individual Policies on the lives of Members and Undischarged Ex Members or in respect of specified groups of Members and Undischarged Ex Members or thereafter to be secured in respect of such persons or groups of persons to be secured by one or more blanket policies issued by the applicable life company and providing when requested by the Trustee for the purposes of these Part Rules for the issue in substitution of the Benefit otherwise secured by the blanket policy in respect of a Member or Undischarged Ex Member of an individual policy on his life either in the name of that Member or Undischarged Ex Member or in the name of the Trustee as the Trustee requires and securing so much of the Benefit to which that Member or Undischarged Ex Member or any person claiming through him may then be entitled under these Part Rules at the time of the issue of that individual policy.

### **Maintenance of Policies**

- 17 If at any time the full amount of contribution to this Part payable by or in respect of a Member is not paid when due and no additional contributions pursuant to clause 11 have been paid or the amount of any additional contributions so paid together with interest (if any) is not sufficient for the purpose of paying the premium or instalment thereof on the Policy effected or held on his life then that Policy shall be kept on foot so long as the surrender value (if any) thereof will permit unless the Member concerned shall have requested the Trustee in manner hereinafter appearing to have the Policy made Paid-up.

### **Paid-up Policies**

- 18 Upon the receipt of a written request by a Member requiring the Trustee so to do the Trustee shall subject to the consent of the applicable life company have the Policy held in respect of him in this Part made Paid-up.

## Part 6 Payment of Benefits

### Payment on Death

- 19 Upon the death of a Member or Undischarged Ex Member then his Benefit (or so much of his Benefit as remains unpaid at his death) shall subject to clauses 4(f), 19A, 27, 28, 29A and 53 be paid or shall in the case of a pension commence to be paid at the option of the Trustee -
- (a) to or for the benefit of his Dependants (including his Nominee or Nominees) or such one or more of them and to the exclusion of the other or others of them and in such proportions and manner (including but without limiting the generality thereof by way of Annuity or Pension as the Trustee in its absolute discretion shall think fit **PROVIDED THAT** and subject to the foregoing provisions of this paragraph (a) where any Dependant as aforesaid to whom or for whose benefit the payment is to be made by the Trustee is an infant such payment may be made in trust to the person appearing to the Trustee to be the guardian or the person having actual custody or control of such infant or to the person with whom or institution in which such infant will permanently reside to such other person or institution as the Trustee may determine by such instalments and at such time or times and subject to such directions as to the manner in which the payment is to be applied for the benefit of that infant as the Trustee shall in its absolute discretion think fit and the receipt of such guardian or person or the appropriate official of such institution shall be a good and valid discharge to the Trustee for any moneys so paid and the Trustee shall not be bound to see to the application thereof nor to the carrying out of the directions of the Trustee as aforesaid; or
  - (b) to the legal personal representatives of that Member or Undischarged Ex Member upon production of probate or letters of administration to be held by them by way of direct trust operating under these Part Rules for the person beneficially entitled to that Member's or Undischarged Ex Member's residuary estate under his Will or on his intestacy and in the shares and upon the trusts which affect the Member's or Undischarged Ex Member's residuary estate but such moneys shall not be part of that Member's or Undischarged Ex Member's estate or be liable for his liabilities or for the liabilities of his estate; or
  - (c) upon the production of a grant of probate or letters of administration and on the production of such evidence (including the original last Will of that Member or Undischarged Ex Member or a declaration that the Member or Undischarged Ex Member has died intestate) as the Trustee may deem satisfactory and under such terms and conditions as the Trustee may in its absolute discretion think fit in payment or part payment of any duties charges whether death probate succession estate duty or otherwise payable to any Government or other authority as a result of the death of the Member or Undischarged Ex Member; or
  - (d) any other person to whom the payment of the Benefit is permitted under the Applicable Requirements.

### Payment of Reversionary Pension

19A Subject only to clause 19:

- (a) Where the Benefit payable to a Member or Undischarged Ex-Member is a reversionary pension, the Member or Undischarged Ex-Member may request that upon his death the Trustee shall pay the remainder of that Benefit to the Reversionary Pensioner nominated by the Member or Undischarged Ex-Member.

- (b) Where a Member or Undischarged Ex-Member requests the Trustee as contemplated by sub-clause 19A(a), the Trustee shall SUBJECT ALWAYS to the Applicable Requirements, pay that Benefit to the Reversionary Pensioner nominated in writing by the Member or Undischarged Ex-Member.
- (c) Upon the death of the person nominated as a Reversionary Pensioner and in respect of whom the reversionary pension shall have been paid pursuant to paragraph (b) of this clause, the Trustee shall determine the amount of any death Benefit payable in respect of that deceased person and determine the payment of such death Benefit in accordance with clause 19 of this Trust Deed.

### Mandatory Payments

- 20 Subject to clauses 27, 28, 29A and 53 the Benefit of a Member or Undischarged Ex Member shall be paid or in the case of a Pension shall commence to be paid as soon as practicable pursuant to the Applicable Requirements.

### Permitted Payments

- 21 Subject to clauses 27, 28, 29A and 53 that part of the Benefit of a Member or Undischarged Ex Member that is made up of any preserved or restricted non preserved benefits (within the meaning of those expressions in the Regulations) may subject to any conditions the Trustee may in its absolute discretion determine be paid in whole or in part on or after the occurrence of the following events:
- (a) where the Member or Undischarged Ex Member has attained age 55 when an arrangement under which the Member or Undischarged Ex Member was Gainfully Employed has come to an end and the Trustee is reasonably satisfied that the Member intends never to again to enter into Full Time Employment or Part Time Employment;
  - (b) where the Member or Undischarged Ex Member has attained age 60 when an arrangement under which the Member or Undischarged Ex Member was Gainfully Employed has come to an end on or after the Member or Undischarged Ex Member attaining that age;
  - (c) on the permanent incapacity of the Member or Undischarged Ex Member (as that term is defined in the Regulations);
  - (d) on the departure from Australia of the Member or Undischarged Ex Member where the Trustee is reasonably satisfied that departure is for the purpose of permanent residence outside Australia;
  - (e) on attaining age 65;
  - (f) on the Commissioner's determination in writing that the Member or Undischarged Ex Member is in financial hardship **PROVIDED THAT** payment is in a form that satisfies the Applicable Requirements;
  - (g) termination of Gainful Employment with an employer who had or any of whose associates had at any time contributed to this Part in respect of the Member or Undischarged Ex Member **PROVIDED THAT** any Preserved Benefit is paid in a form that satisfies the Applicable Requirements;
  - (h) on the Member's or Undischarged Ex Member's temporary incapacity (within the meaning of that term in the Regulations) **PROVIDED THAT** payment is in a form that satisfies the Applicable Requirements;

- (i) on any other condition of release approved by the Commissioner being satisfied for the purposes of the Applicable Requirements; or
- (j) on a condition of release, not otherwise specified in this clause 21, being satisfied for the purposes of the Applicable Requirements **PROVIDED THAT** payment is in a form that satisfies the Applicable Requirements,

**PROVIDED THAT:**

- (i) if by reason of the happening of any event referred to in the Policy on the life of a Member or Undischarged Ex Member effected, held or acquired pursuant to the provisions of these Part Rules a supplemental insured benefit becomes payable under that Policy the amount of that supplemental benefit shall be then payable to the Member or Undischarged Ex Member.
- (ii) the Trustee shall be at liberty to arrange with the applicable life company for the Policy on the life of a Member to be made Paid-up upon that Member becoming an Undischarged Ex Member.

**21A Vesting of Individual NMH Entitlement in Eligible Members**

Notwithstanding anything contained in these Part Rules, if and to the extent that the Trustee has any right, title or interest in the Individual NMH Entitlement of an Eligible Member and so long as this is consistent with the Applicable Requirements or is permitted by the Commissioner, the Individual NMH Entitlement is vested in that Eligible Member or in the legal personal representative of that person and the Trustee has no obligation to call in or hold in this Part that Individual NMH Entitlement.

- 22** Subject to clauses 27, 28 and 53 that part of the Benefit of a Member or Undischarged Ex Member that is made up of unrestricted non preserved benefits (within the meaning of that expression in the Regulations) may subject to any conditions advised by the Trustee be paid in whole or in part on the written request of the Member or Undischarged Ex Member.

**22A Benefits for Non-Member Spouse**

The Trustee may, subject to the Act and in accordance with the provisions of these Part Rules, pay to a Non-Member Spouse or pay or transfer to another entity with the superannuation system (including an eligible rollover fund) any amount which becomes payable in respect of the Non-Member Spouse because the Member's interest in this Part is subject to a Payment Split. The receipt in those circumstances is a sufficient discharge for the Trustee of any obligation it has in respect of the Non-Member Spouse.

**22B Adjusting Benefits for Payment Splits**

The Trustee may adjust any Benefit payable or which may become payable from this Part in respect of a Member to take account of any Payment Split under Part VIII B of the Family Law Act 1975 (Cth) in respect of the Member or in respect of Benefits payable from this Part for or in respect of that Member. Subject to the Act, any adjustment will be on such terms as the Trustee determines.

**Payment Provision for Certain Members**

- 23** Subject to the Applicable Requirements the Benefit in respect of a Member or Undischarged Ex Member who transferred into the Fund from either the Flexipol Self Employed Persons Superannuation Fund or the National Mutual Self Employed Superannuation Fund on the Merged Funds Transfer Date may:
- (a) be paid or commence to be paid as the case may be when the Member or Undischarged Ex Member reaches his Selected Retirement Date;

- (b) be retained in this Part until the Member or Undischarged Ex Member reaches an age not exceeding 75 years.

### **Pension and Roll over Facility Options**

24 Subject to Part 2A:

- (a) a Benefit payable pursuant to the provisions of these Part Rules may if the Member requests and the Trustee agrees be paid wholly or in part in the form of a Pension or an Annuity;
- (b) the Trustee shall before payment of the first instalment of such Pension or Annuity confirm to the Member the amount and terms of payment thereof;
- (c) on the written application of a Member Undischarged Ex Member or beneficiary, the Trustee may in its discretion commute to a lump sum a part or whole of the Pension or Annuity that remains to be paid from this Part in respect of a Member or Undischarged Ex Member **PROVIDED THAT** the commutation will not cause the Fund to breach the Applicable Requirements;
- (d) on receipt of a notice in writing from the Commissioner the Trustee shall commute to a lump sum so much of the Pension payable from this Part in respect of a Member or Undischarged Ex Member as the Commissioner has determined exceeds the reasonable benefit limits (within the meaning of that expression in the Regulations) of the Member or Undischarged Ex Member; and
- (e) subject to the Applicable Requirements where a Benefit in respect of a Member or Undischarged Ex Member becomes payable from this Part in accordance with the provisions of this part the Trustee may at the direction of the Member or Undischarged Ex Member pay to such person, institution or superannuation entity the whole or part of such Benefit as the Member or Undischarged Ex Member advises.

### **Payment of Benefits to former Flexipol Fund Members**

- 25 (a) In addition to the foregoing provisions of this Part the Trustee shall have regard to the provisions of Schedule A when paying assigning or commencing to pay as the case may be the Benefit in respect of a Member or Undischarged Ex Member who was transferred into the Fund from the Flexipol Personal Superannuation Fund on the Merged Funds Transfer Date or when making any determination in connection therewith.
- (b) In addition to the foregoing provisions of this Part the Trustee shall have regard to the provisions of Schedule B when paying assigning or commencing to pay as the case may be the Benefit in respect of a Member or Undischarged Ex Member who was transferred into the Fund from the Flexipol Self Employed Persons Superannuation Fund on the Merged Funds Transfer Date or when making any determination in connection therewith.

### **Compliance with Superannuation Fund Conditions**

- 26 Notwithstanding anything to the contrary expressed or implied in these Part Rules if at any time in the opinion of the Trustee the terms and conditions of payment of any contribution or the whole or part of any Benefit payable under this Part in respect of any Member or Undischarged Ex Member or any other action required to be taken pursuant to the terms of these Part Rules would cause the Fund to cease to comply with the superannuation fund conditions as specified in the Applicable Requirements then the Trustee may to such extent and for such period as it considers to be necessary to maintain compliance with the said superannuation fund conditions alter the terms and conditions of payment of the contribution or Benefit or take such other action as it considers to be appropriate in the circumstances.



## Part 7 Application of Benefit in Certain Cases

### Forfeiture of Benefits

- 27 If:
- (a) a Member or Undischarged Ex Member purports to assign alienate or charge; or
  - (b) any other event occurs which results in another person becoming entitled to, all or part of the Benefit of the Member or Undischarged Ex-Member which may become payable (but which has not become payable at the date of the purported assignment, alienation, charge or other event), then subject to the Applicable Requirements that benefit or part thereof shall be forfeited **PROVIDED THAT** this clause shall have no effect on the bankruptcy or insolvency of the Member or Undischarged Ex Member to the extent that its operation would be contrary to the *Bankruptcy Act 1966*.

### Application of Forfeited Benefits

- 28
- (a) Subject to the Applicable Requirements the Trustee shall apply a forfeited benefit for the benefit of the Member or Undischarged Ex Member or such one or more of his Dependants as the Trustee may in its absolute discretion determine.
  - (b) Any part of the Benefit of a Member or Undischarged Ex Member forfeited pursuant to clause 27 which is not applied by the Trustee in pursuance of the immediately preceding paragraph shall on the death of the Member or Undischarged Ex Member be held upon trust for the legal personal representatives of that Member or Undischarged Ex Member.
  - (c) The application of any moneys pursuant to this clause shall be a complete discharge to the Trustee therefor.

### Assignments and Charges

- 29
- (a) The Trustee shall not recognise encourage or sanction:
    - (i) an assignment of the Benefit of a Member or Undischarged Ex Member;
    - (ii) a charge over or in relation to the minimum benefit or preserved benefit (within the meaning of those expressions in the Regulations) of a Member or Undischarged Ex Member;
    - (iii) a charge over or in relation to a non commutable income stream (within the meaning of that expression in the Regulations).
  - (b) Except to the extent permitted by the Act or the Regulations the Trustee shall not give a charge over or in relation to an asset of the Fund.

### Unclaimed Benefits

- 29A
- (a) No benefit shall become payable under these Part Rules until the Trustee has determined that the Benefit is payable because either:
    - (i) the Member or Undischarged Ex-Member has attained age 65; or
    - (ii) pursuant to the Applicable Requirements payment of the Benefit is required to be made by the Trustee; or
    - (iii) both of the following are satisfied:
      - (A) the Trustee has received notice that a condition of release has been satisfied in relation to that Benefit; and

- (B) the Trustee has received a claim or request for payment from a person entitled under these Part Rules and the Applicable Requirements to receive payment of that benefit.
- (b) Notwithstanding sub-clause 29A(a) if payment of a Benefit is required to be made under the Applicable Requirements, the Trustee may determine that the Benefit is immediately payable whether or not any person has applied to the Trustee to have the amount paid to him or her.
- (c) In circumstances where, in accordance with the Applicable Requirements, a benefit:
  - (i) may be transferred from this Part; or
  - (ii) must be paid to the Commissioner or otherwise transferred from this Part, by reason of the Trustee being unable to locate the Member or Undischarged Ex-Member if living or if not the Dependants of that Member or Undischarged Ex-Member or by reason of the Trustee being satisfied that written communications from the Trustee to the Member or Undischarged Ex-Member have not been received by the addressee, the Trustee may at its discretion or shall where the Applicable Requirements so require pay or transfer the Benefit from this Part in accordance with the Applicable Requirements. In respect of a benefit so paid or transferred, no person shall thereafter have any claim whatsoever under these Part Rules to or in respect of that benefit, but may thereafter claim in accordance with the Applicable Requirements.

**Part 8 Investment Standards****Investment of moneys by Trustee**

- 30 All moneys in the hands of the Trustee arising upon the death of a Member or Undischarged Ex Member and not immediately required for payment to the Dependants or legal personal representatives of the Member or Undischarged Ex Member under and pursuant to clauses 4(f), 19 or 19A hereof may at the discretion of the Trustee:
- (a) be invested in forms of investment which comply with the standards contained in the Applicable Requirements and subject thereto may be invested either individually or in a common fund established by the Trustee for the purpose:
    - (i) in any investment in which by the laws of any State or Territory of the Commonwealth of Australia trustees are authorised to invest; or
    - (ii) in interest bearing deposits with any bank savings bank or building society in any State or Territory of the Commonwealth of Australia or with a life company, with power from time to time to sell or get in any such investments and to vary or transpose them for other investments of any of the classes specified in this clause; or
  - (b) be paid by way of premium to the applicable life company under and pursuant to the Deposit Administration Policy.

31 [Not used]

31A ***Trustee Act 1958 (Vic)***

For the avoidance of doubt, the provisions of Part I of the *Trustee Act 1958 (Vic)* relating to investments shall not apply and all matters relating to the investment of this Part's assets shall be governed by the Deed and these Part Rules.

## Part 9 Financial Assistance

### Prohibition of Financial Assistance

32 Subject to clause 33 the Trustee shall not:

- (a) lend money of the Fund or give any other financial assistance using the resources of the Fund to a Member or Undischarged Ex Member or to a relative of a Member or Undischarged Ex Member;
- (b) intentionally acquire an asset from a Member or Undischarged Ex Member or a relative of a Member or Undischarged Ex Member unless such acquisition is permitted by the Act.

### Loans to Members

33 (a) The Trustee may make an advance to a Member or Undischarged Ex Member by way of loan out of this Part upon such terms and conditions of repayment and at such rate of interest as the Trustee thinks fit **PROVIDED THAT:**

- (i) the amount lent to any Member or Undischarged Ex Member together with any other loan made to him pursuant to the provisions of this clause shall not exceed the aggregate at the date of such loan of:
  - (A) the amount of contributions to this Part in respect of him;
  - (B) the amount of any additional benefit which has become payable pursuant to the terms thereof under any Policy on his life affected or acquired pursuant to the provisions of these Part Rules; and
  - (C) any other accretions of a capital nature to his Benefit in this Part;
- (ii) the loan shall only be granted to a Member or Undischarged Ex Member if the Trustee is satisfied that the Member or Undischarged Ex Member is unable to borrow from any other source from which money may usually be borrowed on reasonable terms and that he would be in serious financial difficulties if such loan were not granted by the Trustee.

For the purposes of this clause the Trustee may subject to clause 32 of these Part Rules if the surrender value of the Policy on the life of that Member or Undischarged Ex Member held in this Part will permit borrow from the applicable life company on the security of that Policy the amount to be so lent upon such terms and conditions and at such rate of interest as the applicable life company charges from time to time in respect of loans made on the security of its policies and the applicable life company shall not be concerned to enquire as to whether the necessity of any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

- (b) Notwithstanding anything to the contrary (whether expressed or implied) in these Part Rules
  - (i) but subject to any limitation contained in the Applicable Requirements the amount of any loan together with interest shall unless previously repaid be deducted from the Benefit when the same becomes payable to that Member or Undischarged Ex Member or to any person claiming through him.
  - (ii) the Trustee shall not make any amendment modification or variation to these Part Rules where such amendment modification or variation would have the effect of removing or lessening any restriction or limitation on the power of the Trustee to make an advance to a Member or Undischarged Ex Member under this clause.

## **Part 10 Financial Assistance**

### **Prepayment Account**

- 34 (a) The Trustee shall maintain as part of this Part an account to be called the 'Prepayment Account'.
- (b) The Trustee may pay to the Prepayment Account for the individual credit of the Member concerned so much of the contribution in respect of the Member as is not immediately required for the payment of premiums on the Policy or Policies held in this Part in respect of him.
- (c) Any moneys for the time being standing to the individual credit of a Member or Undischarged Ex Member in the Prepayment Account may be paid by way of premium to the applicable life company in respect of that Member or Undischarged Ex Member under and pursuant to the Deposit Administration Policy.
- 35 In the event that the contribution in respect of a Member is not paid or that such contribution is not sufficient to pay a premium payable on a Policy or Policies held in this Part in respect of that Member the Trustee shall be at liberty to and shall apply so much of the amount standing to the individual credit of the Member in the Prepayment Account as the case requires in or towards payment of that premium.

**Part 11 Deposit Administration Policy**

- 36 The Trustee shall maintain the Deposit Administration Policy held in its name with a life company and shall hold that Policy and the moneys payable thereunder as part of this Part.
- 37 Any interest or other benefit accruing to the Trustee under and pursuant to the Deposit Administration Policy in respect of payments made to the credit of a Member or Undischarged Ex Member shall not less frequently than annually be added to the credit of that Member or Undischarged Ex Member as the case may be.

**Part 12 Administration**

38 [Not used]

39 [Not used]

**Records and Accounts**

40 (a) The Trustee shall keep:

- (i) minutes of the decisions of its Directors and officers relating to the carrying out of the provisions of these Part Rules; and
- (ii) a record for each Member and Undischarged Ex Member showing his full name and address and the particulars of the Policies held in respect of him pursuant to these Part Rules and the premiums payable to keep the same on foot  
**PROVIDED THAT** the Trustee may appoint a life company as its agent to keep the records referred to in this paragraph and in such case the keeping by the applicable life company of those records which it is required to keep pursuant to any Statute from time to time in force shall be deemed to be the keeping by the Trustee of the records it is required to keep pursuant to this paragraph.

(b) The Trustee shall maintain or cause to be maintained such records and accounts and in such form as shall be necessary to satisfy the Applicable Requirements.

(c) The Trustee shall cause the said records and accounts referred to in paragraph (b) of this clause to be audited annually or at such other time or times as shall be required pursuant to the Applicable Requirements by an approved auditor (within the meaning of that expression in the Act).

41 [Not used]

**Payment of Charges/Deductions**

42 (a) If any tax or other government imposition shall be payable in respect of any Benefit due to a Member or Undischarged Ex Member from this Part then the Trustee (if compelled by law or requested by the Member or Undischarged Ex Member so to do) shall deduct or arrange to have deducted the amount of such tax or other government imposition (including any interest payable thereon) and shall account for the same to the proper authorities before paying any such Benefit or any portion thereof to the Member or Undischarged Ex Member so entitled thereto and may if necessary postpone payment of such Benefit until such tax or other government imposition and any interest thereon has been paid or provided for to the satisfaction of the Trustee.

(b) The Trustee shall pay to the Commissioner all moneys required to be paid pursuant to the Act or Regulations.

(c) The Trustee may cause to be deducted from this Part:

- (i) any tax duty or impost payable by the Trustee in connection with this Part or the investment earnings thereof or in relation to or as a consequence of any contribution to this Part and shall account for the same to the proper authorities; or
- (ii) any fee or charge (howsoever described) payable by the Trustee as consideration for the transfer of liability for any such tax duty or impost to any agent of the Trustee properly appointed by the Trustee.

- (d) To the extent that a deduction pursuant to paragraph (b) of this clause is directly attributable to a contribution to this Part then upon such contribution being received by the Trustee or at such other time as the Trustee in its absolute discretion considers expedient in the circumstances the Trustee may deduct or cause to be deducted from such contribution such amount as it considers appropriate to provide for the relevant amount of tax duty impost fee or charge and may retain such amount within this Part until the Trustee gives effect to the provisions of paragraph (b) of this clause.
- (e) Notwithstanding anything to the contrary (whether expressed or implied) in these Part Rules any amount for the time being retained within this Part pursuant to paragraph (b) of this clause shall be treated in similar manner to a lien on this Part.

### Determination of Interest Rate

- 43 If during the period of any Financial Year the Trustee is obliged for the purposes of these Part Rules to determine the amount of interest which has accrued on the whole or any portion of the Benefit of a Member since the expiration of the preceding Financial Year then the Trustee is hereby empowered and shall determine a rate or rates per centum per annum which shall be the rate or rates applicable for that purpose during each Financial Year thereafter until the Trustee shall determine a different rate or rates which shall themselves be subject to alteration in manner aforesaid.

### Exercise of Trustee's Powers and Discretions

- 44 The Trustee in the exercise of the authorities powers and discretions hereby vested in it shall have an absolute discretion and may exercise or enforce all or any of such powers authorities or discretions from time to time and at any time or may refrain from exercising all or any of such powers authorities or discretions from time to time or at all.
- 45 Any power authority or discretion vested in the Trustee hereunder may be exercised on its behalf by its Directors as a Board, and the Board may appoint such of the employees of the Trustee as it thinks fit to exercise for or on behalf of the Trustee all or any of the powers authorities and discretions exercisable by the Trustee under the provisions of these Part Rules.
- 46 The Trustee may in carrying out and performing the duties, discretions and obligations on its part to be carried out or performed by Power of Attorney by writing or otherwise appoint any person to be the attorney or agent of the Trustee for such purposes and with such powers authorities and discretions (not exceeding those vested in the Trustee) as it thinks fit with power for any such attorney or agent to sub delegate any such power or authority subject to the Trustee's approval **AND** authorise the issue in the name of the Trustee of documents bearing facsimile signatures of officers of an applicable life company or of the attorney or agent either with or without the proper manuscript signatures of its officers thereon **AND** remove supersede or suspend any such attorney or agent for such cause or reason as the Trustee in its sole discretion thinks sufficient and either absolutely or for such time as it may think proper **PROVIDED THAT** the Trustee in any such Power of Attorney and the attorney or agent by the terms of any such sub delegation may insert such provisions for the protection and convenience of those dealing with any such attorney agent or sub delegate as it or they may think fit.
- 47 (a) The Trustee subject to any limitation contained in the Applicable Requirements may in its absolute discretion enter into and execute all such contracts, deeds and documents and do all such acts matters and things as it deems expedient for the carrying out of the trusts authorities powers and discretions conferred upon it by these Part Rules **PROVIDED THAT** the Trustee shall not discriminate against any Member or Undischarged Ex



- Member in such a manner as to infringe any law of the Commonwealth of Australia or of any State or Territory in respect of discrimination.
- (b) The Trustee may create additional classes or categories of membership of this Part or may subdivide an existing class of Members in order to secure taxation advantages to Members or to this Part or otherwise and may subject to the Applicable Requirements impose such qualifications restrictions and conditions on the said classes or categories of membership as it considers appropriate.
- (c) The Trustee may do all such acts and things and sign all documents it considers expedient or necessary to compensate Members or former Members, including (but not limited to) payments of any amount to any third party, including (but not limited to) a charity, in respect of any Member or former Member.
- 48 The Trustee is hereby authorised and empowered for the purpose of carrying out any provision or requirement of these Part Rules to surrender to the applicable life company the whole or any portion of the amount assured or endowed or the amount of the annuity as the case may be under any Policy held in respect of a Member or Undischarged Ex Member in this Part.
- 49 The Trustee may act on the advice or opinion of any actuary, barrister, solicitor, accountant, medical practitioner or any other professional person (whether or not such advice or opinion shall be or have been obtained by it) and shall not be responsible for anything done or suffered by it in good faith in reliance on such opinion or advice.

#### **Limits of Trustee's Liability**

- 50 The provisions of clauses 51 to 53 inclusive are subject to any limitation contained in the Applicable Requirements.
- 51 Neither the Trustee nor the directors of the Trustee shall be liable for:
- (a) any losses except losses arising from its own wilful default or the wilful default of any of its Directors or officers;
- (b) any act or acts done bona fide in conformity with the decision of its Directors hereunder; or
- (c) the neglect or default of any solicitor, banker, accountant or other agent employed in good faith by the Trustee.
- 52 (a) Neither the Trustee nor the directors of the Trustee shall be liable for any failure to perform or do any act or thing which by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory thereof or any Ordinance rule regulation or by law made pursuant thereto or of any decree order or judgement of any competent Court the Trustee shall be hindered prevented or forbidden from doing or performing.
- (b) Neither the Trustee nor the directors of the Trustee shall be liable to account to any Member Undischarged Ex Member or otherwise for any payments made by the Trustee in good faith to any duly empowered fiscal authority of the Commonwealth of Australia or any State or Territory thereof for taxes or other charges upon this Part or with respect to any transaction under these Part Rules notwithstanding that any such payment ought to or need not have been made.
- (c) Neither the Trustee nor the directors of the Trustee shall incur any liability by reason of any false or incorrect statement in any proposal or other document made by a Member or Undischarged Ex Member in relation to a Policy effected on his life whereby that Policy is cancelled or voided in any way by the applicable life company or whereby the amount

assured or endowed or the amount of the annuity as the case may be under that Policy is reduced.

- (d) Neither the Trustee nor the directors of the Trustee shall in any event be liable to the Members or Undischarged Ex Members to any greater extent than in respect of this Part or any such part thereof which ought to be vested in the Trustee.

53 [Not used]

### Payment to Trustee

54 The Trustee shall be at liberty to receive and apply for its own use and benefit any payment made to it by the applicable life company by way of commission or otherwise in respect of any policy or any premium or instalment of premium paid in respect thereof.

55 [Not used]

### Amendment of Part Rules

56 (a) Subject to paragraph (b) of this clause the Trustee may from time to time in the exercise of its absolute discretion make any amendment modification or variation to these Part Rules (including if it thought fit the revocation or restriction of this present clause) which in its opinion may be expedient for the more convenient economical or advantageous working or management or administration of the trusts herein declared and contained or which is required as a condition of the continuance of the approval of the Commissioner\* and the Minister administering the Duties Act 2000 (Vic) to the terms and conditions of this Part and which the Trustee may think proper having regard to all the circumstances of the case. Upon any such amendment modification or variation being made these Part Rules shall take effect as amended modified or varied accordingly.

\* Applicable in Victoria only.

(b) [Not used]

(c) After any such amendment modification or variation as aforesaid has been made the Trustee shall give to each Member and Undischarged Ex Member as soon as practicable thereafter a written statement explaining the nature and purpose of the amendment modification or variation and the effect (if any) of the amendment modification or variation on the entitlements of the Member or Undischarged Ex Member.

(d) Any amendment modification or variation made pursuant to this clause shall be in writing made by the Trustee and any amendment modification or variation so made and for the time being in force shall have the same validity as if it had been contained in these Part Rules when executed and shall be itself subject in like manner to amendment modification or variation PROVIDED ALWAYS THAT the Benefit of any Member or Undischarged Ex Member already secured at the date of any such amendment modification or variation shall not be detrimentally affected thereby unless the amendment modification or variation meets the relevant standards in the Applicable Requirements and the consent of the Member or Undischarged Ex Member to the amendment modification or variation has been obtained in writing.

57 [Not used]

### **Part 13 General**

58 [Not used]

#### **Cooling off Period**

59 Notwithstanding anything to the contrary herein otherwise contained if:

- (a) the Policy effected by the Trustee with the applicable life company on a life of a Member does not meet the needs of that Member; and
- (b) the copy of that Policy is returned to the Trustee within 14 days of:
  - (i) the date of the postmark on the envelope in which the copy of the Policy was posted to the Member; or
  - (ii) the date on which the copy of the Policy was otherwise delivered to the registered address of the Member,

then upon receipt by the Trustee of the copy of the Policy as aforesaid together with a request to cancel the Policy and refund all contributions made to this Part by and in respect of the Member in relation to that Policy and if that Policy was the only Policy under this Part on the life of that Member the Member shall cease to be a Member upon cancellation of the Policy.

**Part 14 Crystallisation of this Part**

- 60 After the number of Members and Undischarged Ex Members of this Part falls below twenty the Trustee shall continue to administer this Part in accordance with the provisions of these Part Rules except that no further contributions shall be accepted from the Members no new Policy shall be effected in respect of any Member and no new Members shall be admitted and when all the Benefits of Members and Undischarged Ex Members have been paid assigned or applied pursuant to these Part Rules this Part shall be deemed to be dissolved and these Part Rules shall cease to have effect.

**Part 15 Plans****Trustee May Make a Plan**

- 61 (a) The Trustee may determine:
- (1) to establish one or more plans within this Part; or
  - (2) that one or more existing superannuation arrangements within this Part is a plan for the purposes of this clause 61.
- (b) In making a determination under clause 61(a), the Trustee shall have regard to all relevant matters including the provisions of any Applicable Requirements.
- (c) Any Plan may be made on such terms and conditions as the Trustee thinks fit not being inconsistent with the provisions of these Part Rules or any Applicable Requirements relating to the Fund.
- (d) Notwithstanding any other provision of these Part Rules, if the Trustee has made a Plan comprising a certain Member or Members of this Part, any information, reports, documents and statements required or permitted by these Part Rules to be given to that Member or those Members may, unless contrary to the Applicable Requirements, relate specifically to such Plan comprising that Member or those Members and not to any other segment of this Part.
- (e) A Plan may bear such name or style as the Trustee may from time to time determine.
- (f) The Trustee may close any Plan from time to time.

**Transfer to or from a Plan**

- 62 The Trustee may transfer a Member to a Plan or from a Plan on such terms and conditions as the Trustee in its discretion determines subject to the Applicable Requirements and any terms and conditions the Trustee has made for any relevant Plan under clause 61.

## Schedule A

### Additional Benefit Provisions for Former Members of the Flexipol Personal Superannuation Fund

- 1 A benefit in respect of a Member or Undischarged Ex Member shall be paid:
  - (a) if the Member suffers disablement, permanent and total disablement or physical incapacity (if a benefit is payable on such occurrence under the Policy or Policies held by the Trustee in respect of the Member); or
  - (b) if the Member suffers temporary total disablement (if a benefit is payable on such occurrence under the Policy or Policies held by the Trustee in respect of the Member).
- 2
  - (a) Where a Member is presently entitled to be paid any Benefit pursuant to the provisions of these Part Rules then a transfer to the Member of a Policy or Policies being part of this Part and equivalent to but in lieu of payment of the whole or any part of the said Benefit shall be made by the Trustee on the prior written authority of the Member.
  - (b) The transfer of the whole or part of the Benefit to the Member in accordance with paragraph (a) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under this Part in respect of the Benefit or that part of the Benefit so transferred.

## **Schedule B**

### **Additional Benefit Provisions for Former Members of the Flexipol Self Employed Persons Superannuation Fund**

- 1 (a) A Member who has become presently entitled to receive any Benefit pursuant to the provisions of these Part Rules may with the prior approval of the Trustee accept a Policy or Policies in lieu of the whole or part of such Benefit.
- 1 (b) The receipt of the whole or part of his Benefit by the Member in accordance with paragraph (a) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under this Part in respect of the Benefit or that part of the Benefit so transferred.
- 2 Upon the death of a Member or Undischarged Ex Member then his Benefit (or so much of his Benefit as remains unpaid at his death) may subject to clauses 27, 28, 29A and 53 of these Part Rules be applied by the Trustee in accordance with the Member's or Undischarged Ex Member's election pursuant to the provisions of the Flexipol Self Employed Persons Superannuation Fund.





N. M. Superannuation Proprietary Limited

and

AMP Life Limited

## Amendment Deed

Trust Deed - National Mutual Retirement Fund

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This Deed is made on 8 APRIL 2020.

**Parties**

- 1 **N. M. Superannuation Proprietary Limited** (ABN 31 008 428 322) of Level 24, 33 Alfred Street, Sydney NSW 2000 (**Trustee**).
- 2 **AMP Life Limited** (ABN 84 079 300 379) of Level 24, 33 Alfred Street, Sydney NSW 2000 (**Life Company**).

**Recitals**

- A The Trustee is the trustee of the regulated superannuation fund known as the National Mutual Retirement Fund (ABN 76 746 741 299) (**Fund**). Clause 56 of the trust deed governing the Fund (**Trust Deed**) provides that the Trustee may amend the Trust Deed. The Trustee wishes to amend the Trust Deed in the manner set out in this Deed.
- B The Life Company agrees to be bound by the Trust Deed (and, to avoid any doubt, to remain bound if and to the extent it already is), and to assume the obligations to apply to it under the Trust Deed (and, to avoid any doubt, to recommit to its obligations under the Trust Deed if and to the extent it has previously assumed such obligations), by executing this Deed.

**It is agreed** as follows.

**1 Definitions and Interpretation**

**1.1 Definitions**

Definitions in the Trust Deed apply in this Deed, unless the context requires otherwise.

**1.2 Interpretation**

Clauses 3(a) – (d) of the Trust Deed apply, with any necessary changes, as if incorporated in this Deed.

**2 Amendments**

Unless the Trustee determines to the contrary before 15 May 2020, the Trust Deed is amended, with effect from 15 May 2020 or such other date determined by the Trustee, to read as set out in the Attachment to this Deed.

**3 Life Company**

The Life Company is bound by the Trust Deed and acknowledges the obligations applicable to it under the Trust Deed.

**4 No Resettlement**

The Trustee confirms that it is not by this Deed intending to:

- (a) resettle or redeclare the Fund; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

**5 Governing Law and Jurisdiction**

This Deed is governed by the laws of the Australian Capital Territory.

**Executed as a Deed.**


N.M. SUPERANNUATION PROPRIETARY LIMITED (ABN 31 008 428 322) by its undersigned Attorneys who have not received notice of the revocation of the Power of Attorney dated 31 October 2019 under the authority of which this instrument has been signed in  
on



Signature of Attorney

CLAIRE MARTIN

Name of Attorney in full



Signature of Attorney

GERARD BROWNE

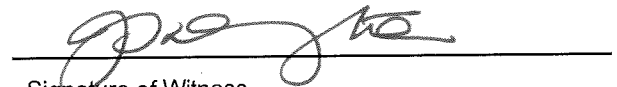
Name of Attorney in full



Signature of Witness

Elizabeth Blackman

Name of Witness in full



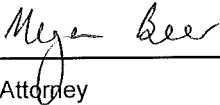
Signature of Witness

JULIE T DORRINGTON

Name of Witness in full

**Executed** as a deed

**AMP LIFE LIMITED (ABN 84 079 300 379)**  
**by its undersigned Attorneys who have**  
**not received notice of the revocation of**  
**the Power of Attorney Registered No. 976**  
**Book 4669** under the authority of which this  
instrument has been signed in  
on



Signature of Attorney



Signature of Witness

MEGAN BEER

Name of Attorney in full

GRAHAM DUFF

Name of Witness in full



Signature of Attorney



Signature of Witness

SUZANNE BARRON

Name of Attorney in full

GRAHAM DUFF

Name of Witness in full

Amendment Deed

Allens < Linklaters

**Attachment - Trust Deed and Part Rules – National Mutual Retirement Fund**

See attached.

N. M. Superannuation Proprietary Limited

## National Mutual Retirement Fund

Trust Deed

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

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## Rules

### 1 Definitions and interpretation

1.1 Unless the contrary intention appears:

**ASL** means AMP Superannuation Limited ABN 31 008 414 104.

**Constitutional Corporation** has the same meaning as in the SIS Act.

**Continuing NMRF Member** means each Member and other beneficiary of the Fund identified as such immediately before the Transfer Date.

**Death Benefit** means a benefit payable on the death of a Member under the applicable Part Rules.

**Deed** means the deed governing the Fund.

**Employer** has the same meaning as in the applicable Part Rules.

**Financial Year** means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

**Former Fund** means SST or SDF.

**Former Member** means a Member who:

- (a) was a member of a Former Fund immediately before the Transfer Date;
- (b) was admitted to the Fund without an application; and
- (c) has not elected to no longer be a Former Member.

**Fund** means the National Mutual Retirement Fund.

**Life Act** means the *Life Insurance Act 1995*.

**Life Company** means AMP Life Limited ABN 84 079 300 379.

**Member** means a person who has been admitted to membership of the Fund and who has not ceased to be a Member. A Member includes a Former Member. Except where the context otherwise requires, a Member includes a Pensioner and this includes a reversionary beneficiary who is being paid a pension from the Fund. A Member does not include a Non-Member Spouse, unless and until they have been admitted to membership of the Fund.

**Member Spouse**, in relation to a Non-Member Spouse, means the person:

- (a) who is a 'member spouse' within the meaning of that term under Part VIIIIB of the *Family Law Act 1975*; and
- (b) whose interest in the Fund is subject to a Payment Split in favour of the Non-Member Spouse.

**Non-Member Spouse** means a person:

- (a) who is a 'non-member spouse' within the meaning of that term under Part VIIIIB of the *Family Law Act 1975*; and
- (b) in whose favour a Member's interest in the Fund is subject to a Payment Split.

**Operational Risk Reserve Account** means an Account kept under rule 6.5.

**Part Rules** has the meaning given in rule 2.4.

**Payment Split** has the meaning given to that term in Part VIIIIB of the *Family Law Act 1975*.

**Pensioner** means a person to whom a pension is payable from the Fund.

**SDF** means the Super Directions Fund.

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

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

**Splitting Instrument**, in relation to a Payment Split, means the superannuation agreement, flag lifting agreement or splitting order (each as defined in the *Family Law Act 1975*) which gives rise to the Payment Split.

**SST** means the AMP Superannuation Savings Trust.

**Superannuation Authority** means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

**Superannuation Law** means any law imposed under:

- (a) the SIS Act and any regulations or declarations made under it, or under the laws referred to in (b) or (c) below, or any other legislation that replaces or is additional to it in controlling the operation of superannuation;
- (b) the *Occupational Superannuation Standards Act 1987*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Family Law Act 1975* or any other law or any requirement imposed by the Superannuation Authority which must be satisfied by a superannuation fund in order to qualify for the maximum available tax concessions; and
- (c) any other present or future law of the Commonwealth of Australia or any state or territory of Australia which the Trustee may determine to be a Superannuation Law for the purposes of the Fund, the Deed or any applicable Part Rules.

**Transfer Date** means 15 May 2020 or such other date determined by the Trustee.

**Transferring SDF Member** means each member and other beneficiary of the SDF identified as such immediately before the Transfer Date.

**Transferring SST Member** means each member and other beneficiary of the SST identified as such immediately before the Transfer Date.

**Trustee** means the trustee of the Fund.

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or the applicable Part Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) amend includes delete or replace;
- (f) including when introducing a list of items does not exclude a reference to other items of the same class;
- (g) person includes a firm, a body corporate, an unincorporated association or an authority;
- (h) tax includes any duty or government impost;

- (i) headings are for convenience only and do not affect interpretation.
- 1.3 If a provision of the Deed would otherwise be invalid in part or in whole because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request and in its discretion agree to act in a manner consistent with it.
- 1.4 If a provision of the Deed would otherwise be invalid in part or in whole because it permits a person to exercise a discretion without the consent of the Trustee, that provision is taken to require the Trustee's consent for the exercise of the discretion.

## 2 Fund

### Parts

- 2.1 With effect from the Transfer Date, the Fund provides benefits in respect of Members in the following Parts:
- (a) SST Part;
  - (b) SDF Part; and
  - (c) NMRF Part.
- 2.2 A Member may belong to more than one Part at a time.
- 2.3 A Part has separately identifiable assets and separately identifiable beneficiaries. However, Parts do not constitute separate trusts or superannuation funds. The Trustee:
- (a) may only apply the assets attributable to a Part for the purposes of the Part or to pay or provide for an appropriate portion (as determined by the Trustee) of the liabilities and expenses of the Fund as a whole; and
  - (b) must pay the benefits payable to or in respect of Members who participate in a Part from the assets identified with the Part.

### Part Rules

- 2.4 The Trustee may by resolution or instrument in writing make rules governing a particular Part (**Part Rules**). Part Rules may be varied in accordance with their terms. If there is any inconsistency between the Deed and the applicable Part Rules, the Part Rules will prevail, unless:
- (a) a contrary intention appears; or
  - (b) the Part Rules contain a provision which is, or which requires the Trustee to act in a manner which is, inconsistent with Superannuation Law.

### Transferring SST Members

- 2.5 With effect from the Transfer Date:
- (a) each Transferring SST Member will be admitted as a Member or other beneficiary of the Fund and, specifically, the SST Part, and allocated to the 'Category' in the SST Part that corresponds to the 'Category' that applied to them in the SST immediately before the Transfer Date; and
  - (b) each person who was an 'Employer' in the SST in relation to a Transferring SST Member immediately before the Transfer Date will be admitted as an Employer of the SST Part

and allocated to the 'Category' in the SST Part that corresponds to the 'Category' that applied to them in the SST immediately before the Transfer Date.

- 2.6 ASL's obligation to pay a pension to a Transferring SST Member in the SST immediately before the Transfer Date will be assumed by the Trustee and continue on the same terms and conditions on and from the Transfer Date.

### **Transferring SDF Members**

- 2.7 With effect from the Transfer Date:
- (a) each Transferring SDF Member will be admitted as a Member or other beneficiary of the Fund and, specifically, the SDF Part, and allocated to the 'Division' in the SDF Part that corresponds to the 'Division' that applied to them in the SDF immediately before the Transfer Date; and
  - (b) each person who was an 'Employer' in the SDF in relation to a Transferring SDF Member immediately before the Transfer Date will be admitted as an Employer of the SDF Part and allocated to the 'Division' in the SDF Part that corresponds to the 'Division' that applied to them in the SDF immediately before the Transfer Date.
- 2.8 The Trustee's obligation to pay a pension to a Transferring SDF Member in the SDF immediately before the Transfer Date will continue on the same terms and conditions on and from the Transfer Date.
- 2.9 Each Member and other beneficiary of the SDF who is admitted to the Fund and, specifically, the SDF Part under rule 2.7(a) will, as at the Transfer Date, be provided with equivalent rights to the rights that the Member or other beneficiary had to benefits in the SDF immediately before the Transfer Date.

### **Continuing NMRF Members**

- 2.10 With effect from the Transfer Date, each Continuing NMRF Member will be allocated to the NMRF Part.

## **3 Eligibility and membership**

### **Eligibility**

- 3.1 Subject to rule 3.2, the Trustee may admit a person as a Member if Superannuation Law permits.
- 3.2 Subject to rules 2.5 and 2.7, the Trustee may only admit a person as a Member in respect of a Part in accordance with the applicable Part Rules.

### **Binding effect**

- 3.3 Each Employer and each person entitled to or claiming a benefit is bound by the Deed and the applicable Part Rules.

### **Transfer between Parts**

- 3.4 Subject to the applicable Part Rules, the Trustee may transfer a Member to a different Part. The Trustee may do so on such terms as it determines.

### **Transfer to Fund**

- 3.5 The Trustee may make arrangements it considers appropriate with:
- (a) a Member or group of Members; or

- (b) any employer or previous employer of the Member or group of Members; or
- (c) the trustees of any superannuation fund of which the Member or group of Members is or has been a member; or
- (d) the issuer of an annuity held by the Member or group of Members; or
- (e) any other person,

to transfer assets to the Fund and to provide benefits in respect of the Member or group of Members.

### **Membership ceases**

3.6 A person ceases to be a Member when:

- (a) all benefits which are or may be payable in respect of the Member have been paid; or
- (b) a transfer is made in satisfaction of all the Member's entitlement to benefits; or
- (c) all the Member's entitlement to benefits is terminated.

Subject to the applicable Part Rules, the same rules apply, with any necessary changes, to determining when a person ceases to be a Member of a Part.

## **4 Contributions**

4.1 Members may contribute in the manner and at the times stated in the applicable Part Rules.

4.2 The Trustee may accept a payment from any other person as a contribution in respect of a Member.

## **5 Benefits**

### **Entitlement**

5.1 Members are entitled to the benefits calculated in accordance with the applicable Part Rules.

### **Transfer from Fund or Part**

5.2 If a person entitled to a benefit requests in a manner approved by the Trustee, the Trustee:

- (a) must pay all or part of the benefit to another superannuation arrangement; or
- (b) may transfer all or part of the benefit to another Part.

5.3 The Trustee may pay an amount representing all or part of a person's interest in the Fund, or in a particular Part, to another superannuation arrangement without the consent of the person.

5.4 A transfer or payment under rule 5.2 or 5.3 satisfies the entitlement of the person to any benefit in respect of the amount transferred or paid and the Trustee may agree with the person that it satisfies the entitlement of the person in full. Where the transfer involves another superannuation arrangement, the Trustee is not responsible for the manner in which the provider of the other superannuation arrangement deals with the amount transferred.

### **Death Benefits**

5.5 The Trustee must pay a Death Benefit in respect of a Member in accordance with the applicable Part Rules.

## 6 Records, Accounts and Reserves

### Records

- 6.1 The Trustee must keep records for the Fund:
- (a) of the matters; and
  - (b) for the period; and
  - (c) in the manner,  
prescribed by Superannuation Law.

### Accounts and audit

- 6.2 The Trustee must appoint an auditor.
- 6.3 For each Financial Year the Trustee must prepare any financial statements for the Fund.
- 6.4 The Trustee must ensure that, for each Financial Year, the auditor:
- (a) audits the accounts and records of the Fund; and
  - (b) reports in writing to the Trustee,  
within the time specified by Superannuation Law.

### Operational Risk Reserve Account

- 6.5 If the Trustee wishes to maintain an operational risk reserve in the Fund for the purposes of covering any or all of the operational risk relating to the Fund, it must keep one or more Operational Risk Reserve Accounts. An Operational Risk Reserve Account is to hold amounts:
- (a) contributed or transferred to the Fund by the Trustee;
  - (b) contributed or transferred to the Fund by or in respect of a Member which the Trustee determines are to be credited to the account;
  - (c) transferred from another account including a benefit account for the purposes of covering any or all of the operational risk relating to the Fund.
- 6.6 The Trustee may only apply amounts held in an Operational Risk Reserve Account:
- (a) to satisfy a liability of the Trustee relating to the Fund or for any other purpose permitted by Superannuation Law; and
  - (b) to the extent the amount exceeds the amount required, in the Trustee's opinion, to satisfy the operational risk requirement (**excessive amount**), in any way the Trustee determines.

### Reserves

- 6.7 The Trustee may establish and maintain one or more other reserve accounts with the balance to be applied for the purpose or purposes determined by the Trustee from time to time.

### Actuarial investigations

- 6.8 If required by the Superannuation Law, the Trustee must arrange for actuarial investigations of the Fund or a Part to be conducted in accordance with the Superannuation Law.

## **7 Investments**

### **Assets**

- 7.1 The assets of the Fund consist of:
- (a) money or other assets that the Trustee holds for the purposes of the Fund; and
  - (b) investments that the Trustee makes and all income on those investments.
- 7.2 The Trustee holds the assets of the Fund on trust to apply them in the manner set out in the Deed and the applicable Part Rules.

### **Investments**

- 7.3 The Trustee may invest Fund assets in any investments the Trustee considers appropriate.
- 7.4 The Trustee may:
- (a) mix investments with investments of other people or trusts; and
  - (b) vary, replace, encumber and deal with the investments, as if it were dealing with its own property.
- 7.5 The Trustee must invest in a manner which is consistent with Superannuation Law.
- 7.6 The Trustee may make a loan or give financial assistance to a person.
- 7.7 The Trustee may appoint nominees to hold investments.

### **Borrowing**

- 7.8 The Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which it thinks fit.

## **8 Trustee**

### **Nature**

- 8.1 The Trustee must be a Constitutional Corporation.

### **Removal**

- 8.2 The Trustee ceases to be the Trustee on the date:
- (a) specified in a written notice of retirement served on the Life Company by the Trustee; or
  - (b) it becomes a disqualified person under Superannuation Law; or
  - (c) it ceases to be a registrable superannuation entity licensee under Superannuation Law.

### **Appointment**

- 8.3 The Trustee must (even if it has already ceased to be the Trustee under rule 8.2(b) or 8.2(c)), with the written consent of the Life Company, appoint any body corporate as the new Trustee. The appointment must be made in writing.
- 8.4 A retiring Trustee must transfer all assets to the new Trustee or its nominee.

### **Trustee's powers**

- 8.5 The Trustee may do anything it considers appropriate including:



- (a) giving receipts and discharges;
- (b) conducting and settling legal proceedings;
- (c) referring claims to arbitration;
- (d) compromising any claim;
- (e) giving any guarantee or indemnity;
- (f) insuring any risks;
- (g) acting as an underwriter;
- (h) making rules for rounding off contributions and benefits;
- (i) making rules for the crediting or debiting of interest to a benefit which is paid after the date it becomes payable;
- (j) providing for and transferring liability for any tax;
- (k) electing to be bound by any legislation; and
- (l) anything which is not prohibited by Superannuation Law.

### **Manager**

8.6 The Trustee may appoint any person to administer the Fund or to manage investments of the Fund or both. The appointment must be in writing on terms which the Trustee considers appropriate.

### **Delegation**

8.7 The Trustee may delegate any of its powers, duties and discretions to any person.

### **Trustee's liability**

8.8 The Trustee is only liable for:

- (a) its acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) a monetary penalty under a civil penalty order (as defined in the SIS Act); or
- (c) both.

### **Trustee's indemnity**

8.9 The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund or the administration of the Trustee, unless:

- (a) it results from the Trustee's dishonesty or an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) the law prevents it; or
- (c) it is for a monetary penalty under a civil penalty order (as defined in the SIS Act).

8.10 The Trustee's right of indemnity under rule 8.9 is subject to the following:

- (a) the Trustee is not entitled to be indemnified from Fund assets for any amount expended out of capital of the Trustee managed and maintained by the Trustee to cover operational risk relating to the Fund;
- (b) the Trustee is not entitled to satisfy its right of indemnity from the Operational Risk Reserve Accounts in respect of any liability or expense which does not relate to

operational risk relating to the Fund unless the liability or expense is satisfied from an excessive amount (within the meaning of rule 6.6(b)); and

- (c) to the extent that the indemnity is for a liability or expense relating to operational risk relating to the Fund, the indemnity must be satisfied first from the amounts in the Operational Risk Reserve Accounts which are required to be maintained in those Accounts to satisfy the operational risk requirement and may only be satisfied from other accounts (including benefit accounts) to the extent that the relevant amounts in the Operational Risk Reserve Accounts are insufficient.

8.11 The benefit of rules 8.8 and 8.9 also applies to:

- (a) any directors or employees of the Trustee;
- (b) any other person nominated in writing by the Trustee;
- (c) a former Trustee; or
- (d) any person who previously fell within any of (a) and (b).

For the purposes of this rule 8.11, the operation of rule 8.10 is to be ignored to the maximum extent permitted by Superannuation Law.

### **Authorisations**

8.12 The Trustee may treat a written or oral authorisation purported to be given by a person entitled to a benefit as given by that person.

### **Trustee's discretions**

8.13 The Trustee and any of its officers may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise or may benefit from it or owes other duties in respect of it.

8.14 The Trustee is completely unrestricted in the exercise of its powers and discretions.

### **Remuneration**

8.15 The Trustee is entitled to be paid remuneration out of the Fund as set out in the applicable Part Rules.

### **Non-Member Spouse not a beneficiary**

8.16 To the maximum extent permitted by law, it is declared that:

- (a) any Non-Member Spouse is not a beneficiary of the trusts operating over the Fund by virtue of being a Non-Member Spouse;
- (b) the Trustee owes no duties, fiduciary or otherwise, to any Non-Member Spouse by virtue of being a Non-Member Spouse; and
- (c) the Trustee may take any steps it considers appropriate to notify any Non-Member Spouse about this provision.

## **9 Administration**

### **Expenses**

9.1 The Trustee is entitled to pay from the Fund or reimburse itself from the Fund for all expenses incurred in connection with the Fund or the administration of the Trustee.

**Information**

- 9.2 Every Member or person claiming a benefit must give the Trustee any information or documents that the Trustee requires to administer the Fund.
- 9.3 The Trustee may require a Member to have a medical examination.
- 9.4 The Trustee may modify a Member's benefit, as in its absolute discretion it thinks fit, if any information given to it about the Member is incomplete or incorrect.

**Confidentiality**

- 9.5 The Trustee may give to the Life Company or to any related body corporate (within the meaning of the *Corporations Act 2001*) of the Trustee (**Associate**), and the Life Company or the Associate (as applicable) may receive, information about any Member or other person who might benefit from the Fund, whether or not that information is confidential or held by the Trustee as a fiduciary. The Life Company or the Associate (as applicable) may use that information in the ordinary course of its business provided it complies with law.
- 9.6 The Trustee must otherwise treat as confidential any information relating to Members which it acquires as Trustee and use the information only for the purposes of the Fund or as required by law.

**Dispute resolution**

- 9.7 If Superannuation Law requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
  - (b) inquiries or complaints will be considered and dealt with within 90 days after they were made.

**Notices**

- 9.8 Any notice or other written communication in connection with the Fund is given to a person if it is:
- (a) handed to the person; or
  - (b) delivered to the person's last known address; or
  - (c) posted by ordinary post from within Australia to the person's last known address; or
  - (d) sent by facsimile to the person at the facsimile number notified by the person to the Trustee or the Former Fund Trustee; or
  - (e) sent by email to the person at the email address notified by the person to the Trustee or the Former Fund Trustee.
- 9.9 If the notice or communication is:
- (a) posted - it is taken to be received on the third business day after posting;
  - (b) sent by facsimile - it is taken to be received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the person;
  - (c) sent by email - it is taken to be received:
    - (i) when the sender receives an automated message confirming delivery; or

- (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,
- whichever happens first.

### **Power of attorney**

- 9.10 Each Employer, Member and any other person claiming a benefit irrevocably appoints the Trustee as their attorney to do all things which the Trustee considers appropriate to administer the Fund.

### **Governing law**

- 9.11 The Fund, the Deed and the Part Rules are governed by the law in force in the Australian Capital Territory.

## **10 Amendment of Deed**

### **Power to amend**

- 10.1 Subject to the applicable Part Rules, the Trustee may amend any of the provisions of the Deed including this rule 10. The Trustee must not remove the requirement for the written consent of the Life Company to the appointment of a new Trustee without the written consent of the Life Company.

### **Form of amendment**

- 10.2 An amendment must be in writing.

### **Date of effect**

- 10.3 An amendment may take effect from a date before or after the time it is made.

## **11 Termination of Fund**

### **General**

- 11.1 The Fund is to terminate if each Part, or if only one Part remains, that Part, is to terminate.

### **Application**

- 11.2 On termination of the Fund, the Trustee must apply the Fund assets to provide for all expenses and liabilities (other than benefits) for which the Trustee is or may become liable other than those for which the Life Company must indemnify the Trustee under rule 11.3 and must then apply the remaining assets identified with each Part in accordance with the applicable Part Rules.
- 11.3 The Life Company indemnifies the Trustee for the costs of winding up the Fund. These costs may only be met from the Fund if this indemnity cannot be enforced against the Life Company for any reason.

## **12 Compliance with Superannuation Law**

- 12.1 Any matters (including standards) required by Superannuation Law to be included in the governing rules of superannuation funds, from time to time, form part of this Deed whether or not they are explicitly stated in this Deed.
- 12.2 However, if:

- (a) a matter (including a standard) is no longer required to be included; or
  - (b) the Superannuation Authority does not require it to be complied with,
- then the matter ceases to be included by this rule 12.
- 12.3 In the event of any inconsistency or conflict between those requirements and this Deed, the Trustee must act or refrain from acting in order to comply with Superannuation Law. This rule applies notwithstanding anything to the contrary contained in this Deed.

N. M. Superannuation Proprietary Limited

## Part Rules for the SST Part

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## Rules

### 1 Definitions and Interpretation

1.1 Unless the contrary intention appears, capitalised terms used in these Part Rules which are defined in rule 1.1 of the Trust Deed for the National Mutual Retirement Fund have the same meaning in these Part Rules and:

**Account** means a Capital Guaranteed Account or Heritage Account.

**Account Balance** in relation to a Member at a particular time means the balance of all Benefit Accounts maintained for the Member at that time. It also refers to the balance of a Member's Benefit Account at a particular time, depending on the context.

**Benefit Accounts** means the Accounts referred to in rule 8.1.

**Binding Nomination** means a written direction given to the Trustee (as trustee of the Fund) by a Member to whom the Trustee has offered the right to give such a direction on terms and conditions determined by the Trustee, and which:

- (a) is given in a manner and form approved by the Trustee;
- (b) directs the Trustee to pay the Death Benefit in relation to the Member insofar as it relates to one or more Accounts to one or more Dependants named in the notice or, if permitted by the Trustee, to the Member's Legal Personal Representative or both;
- (c) is intended by the Member to be binding on the Trustee;
- (d) has not ceased to have effect under rule 7.9; and
- (e) is permitted by Superannuation Law.

A written direction given to ASL (as trustee of the SST) which was a 'Binding Nomination' for the purposes of the SST's trust deed and rules immediately before the Transfer Date is also a Binding Nomination for the purposes of the Deed and Rules in respect of the corresponding Account or Accounts in the Fund, unless and until it ceases to have effect under rule 7.9.

**Capital Guaranteed Policy** has the meaning given to that term in the *Retirement Savings Account Act 1997*.

**Capital Guaranteed Account** means the Account kept for a Capital Guaranteed Category Member under rule 8.1(a).

**Capital Guaranteed Category** means the category established under rule 2.2(a) and governed by Schedule A.

**Category** means:

- (a) Capital Guaranteed Category; or
- (b) Heritage Category,

and, in relation to a Member, means the Category or Categories to which the Member is admitted or transferred.

**Child**, in relation to a person, includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the person;
- (b) a child of the person's Spouse; and
- (c) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

**Death Benefit** means a benefit payable on the death of a Member under rule A4.2 or B8.2.

**Dependant** of a person means:

- (a) a Spouse;
- (b) a Child;
- (c) any person whom the Trustee believes is, or was at the date of death, a dependant within the meaning of Superannuation Law; or
- (d) any other person whom the Trustee believes is, or was at the date of death, dependent on the person.

**Employer** means, in respect of a Heritage Category Member, a person, firm or body corporate who pays or is liable to pay salary or wages. For the purposes of this definition, a body corporate is an employer of a person if that person is a member of the executive body of the body corporate (whether described as a board of directors or not).

**Guardian** has the meaning given in rule 7.22.

**Heritage Account** means the Account kept for a Heritage Category Member under rule B7 of Schedule B.

**Heritage Category** means the Category established under rule 2.2(b) and governed by Schedule B.

**Heritage Category Member** means a Member in the Heritage Category.

**Insolvent** in respect of a deceased Member's estate, means that the Trustee, after being put on notice, has formed the opinion that a significant proportion of the Death Benefit payable on the Member's death would be available to creditors of the deceased Member or the Member's estate if it was paid to the Member's Legal Personal Representative. The Trustee must not form such an opinion if to do so would cause any of the provisions of the Deed to be void under the *Bankruptcy Act 1966* or cause the Trustee or another person, to the Trustee's knowledge, to contravene that Act.

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

**Non-Lapsing Nomination** has the meaning given to it in rule 7.11. A written direction given to ASL (as trustee of the SST) which was a 'Non-Lapsing Nomination' for the purposes of the SST's trust deed and rules immediately before the Transfer Date is also a Non-Lapsing Nomination for the purposes of the Deed and Rules in respect of the corresponding Account or Accounts in the Fund, unless and until it ceases to have effect under rule 7.14.

**Preferred Nomination** means any of the following:

- (a) where the Trustee has offered the right to give such a notice on terms and conditions determined by the Trustee, a notice given by the Member which identifies the preferred beneficiary or beneficiaries of a Death Benefit insofar as it relates to one or more Accounts (which may at the Trustee's election include a notice which purports to be a binding nomination);
- (b) a notice which was a 'preferred nomination' under the trust deed and rules for the SST just before the Transfer Date (and this is so notwithstanding that the notice was given to ASL),

and the notice may include, if so decided by the Trustee either generally or in particular circumstances, a notice given in writing, over the telephone or in such other form as the Trustee may determine from time to time.

**Release Authority** means a 'release authority' or 'transitional release authority' within the meaning given to those terms in the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* respectively.

**Reversionary Beneficiary** means a Dependant nominated as such by a Heritage Category Member in a manner and in circumstances approved by the Trustee or, before the Transfer Date, by ASL.

**Spouse**, in relation to a person, includes:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

**SST Part** means the Part of the Fund governed by these Part Rules (and 'this Part' has a corresponding meaning).

**Superannuation Policy** means a life policy within the meaning of the Life Act held by the Trustee (either in its capacity as Trustee of the Fund or otherwise) and includes a Capital Guaranteed Policy and a Member's Insurance (as defined in Schedule B).

**Temporary Disablement** has the meaning given to that term or a similar term in the relevant insurance policy.

**Total and Permanent Disablement** has the meaning given to that term or a similar term in the relevant Superannuation Policy.

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or these Part Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) amend includes delete or replace;
- (f) including when introducing a list of items does not exclude a reference to other items of the same class;
- (g) person includes a firm, a body corporate, an unincorporated association or an authority;
- (h) tax includes any duty or government impost;
- (i) headings are for convenience only and do not affect interpretation.

1.3 If a provision of these Part Rules would otherwise be invalid in part or in whole because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request and in its discretion agree to act in a manner consistent with it.

1.4 If a provision of these Part Rules would otherwise be invalid in part or in whole because it permits a person to exercise a discretion without the consent of the Trustee, that provision is taken to require the Trustee's consent for the exercise of the discretion.

## **2 SST Part**

### **Application**

- 2.1 These Part Rules apply only to Members of the SST Part. A reference to a Member in these Part Rules is a reference to a Member of the SST Part.

### **Categories**

- 2.2 With effect from the Transfer Date, the SST Part provides benefits in respect of Members in the following Categories:
- (a) Capital Guaranteed; and
  - (b) Heritage.
- 2.3 A Member may belong to more than one Category at a time.

## **3 Eligibility and membership**

### **Eligibility**

- 3.1 The Trustee may admit a person as a Member of the SST Part if Superannuation Law permits.
- 3.2 The Trustee can impose special conditions or restrictions on admission to Membership in respect of a person, Category or other group of Members and can waive those conditions or restrictions in relation to any person, Category or group of Members.

### **Membership**

- 3.3 Except for a Transferring SST Member, before admitting a person as a Member, the Trustee may require the person to:
- (a) have a medical examination; and
  - (b) provide information which the Trustee considers relevant to the administration of this Part.
- 3.4 Except for a Transferring SST Member, a person becomes a Member on the date the Trustee approves the person's application or, if there is no application, the date determined by the Trustee.
- 3.5 The Trustee may:
- (a) reject an application; or
  - (b) impose special conditions or restrictions pursuant to rule 3.2 when accepting an application.
- 3.6 On admitting a person as a Member, the Trustee must notify the Member of:
- (a) the date of admission;
  - (b) the Category or Categories to which the Member is admitted; and
  - (c) any other matter prescribed by Superannuation Law or which the Trustee considers appropriate.

### **Binding effect**

- 3.7 Each Employer and each person entitled to or claiming a benefit is bound by these Part Rules.

**Transfer between Categories**

- 3.8 Subject to the Schedule applying in respect of a Category, the Trustee may transfer a Member to a different Category. The Trustee may do so on such terms as it determines.

**Transfer to Part**

- 3.9 The Trustee may make arrangements it considers appropriate with:

- (a) a Member or group of Members; or
- (b) any employer or previous employer of the Member or group of Members; or
- (c) the trustees of any superannuation fund of which the Member or group of Members is or has been a member; or
- (d) the issuer of an annuity held by the Member or group of Members; or
- (e) any other person,

to transfer assets to this Part and to provide benefits in respect of the Member or group of Members.

**4 Contributions****Manner and times**

- 4.1 Members may contribute in the manner and at the times stated in the Schedule for their Category.

- 4.2 The Trustee may accept a payment from any other person as a contribution in respect of a Member.

**Acceptance of money or other assets**

- 4.3 The Trustee may refuse to accept all or part of money or other assets from a person without giving any reason. However, a Schedule may specify that the Trustee may only refuse to accept a contribution in particular circumstances.

- 4.4 If the Trustee receives money or other assets contrary to Superannuation Law, the Trustee must return them, or any part of them, in accordance with any requirements under Superannuation Law. The Trustee may deduct an amount for insurance effected or expenses incurred in relation to the money or other assets.

- 4.5 If the Trustee returns all or part of any amount under rule 4.4, then it is authorised to take any action permitted by Superannuation Law, including adjusting the amount to be returned.

**Assumptions about contributions**

- 4.6 If the Trustee has agreed with any person to make contributions to this Part, the Trustee may assume that the person complies with the agreement and the Trustee has no duty to:
- (a) verify the accuracy of an assumption made under this rule;
  - (b) verify that the person has met its obligation to contribute to this Part in accordance with the agreement;
  - (c) notify the person that a contribution or any part of a contribution is overdue; or
  - (d) take any action to enforce the person's obligation to contribute under the agreement.

**Recovery of overdue contributions**

- 4.7 If any contribution or part of a contribution due by a person under an agreement is overdue:
- (a) the Member may:
    - (i) demand the payment of the contribution to this Part by the person; or
    - (ii) with the written approval of the Trustee and in the names of the people agreed between the Trustee and the Member (including in the name of the Member, if so agreed), commence proceedings against the person for the payment of the contribution to this Part by the person; and
  - (b) the person must not dispute the standing of the Member to take any action referred to in paragraph (a).

**5 Benefit entitlement****Benefits**

- 5.1 Members are entitled to the benefits calculated in accordance with the Schedule for their Category.

**Voluntary deferral**

- 5.2 The Trustee may defer payment of all or part of a benefit if the Member entitled to it requests.

**Preservation**

- 5.3 If the Trustee considers it necessary under Superannuation Law or convenient for the purposes of the administration of this Part to preserve any part of a benefit that would otherwise be payable to or in respect of a Member, the Trustee must:
- (a) pay that part of the benefit under rule 7.1, 7.2 or 7.3; or
  - (b) retain that part of the benefit in this Part, in which case, the Trustee may transfer the Member to another Category as the Trustee considers appropriate.

**Retained benefits**

- 5.4 Any part of a benefit retained under rule 5.2 or 5.3 remains credited to the appropriate Account until payment. If the Member dies before the benefit is paid in full, the Trustee must pay the remainder of the benefit as a Death Benefit.

**Early release**

- 5.5 If a benefit may be paid to a Member under Superannuation Law, the Trustee may pay that benefit and make any consequential modification to the Member's other benefit entitlements it considers appropriate.

**Trustee determinations**

- 5.6 A benefit is payable only if the applicable Schedule permits.
- 5.7 The Trustee may act on:
- (a) any proofs or presumptions which it considers satisfactory whether or not they are strictly legal proofs or presumptions;
  - (b) any authorisation or direction given by or on behalf of a Member even if the authorisation or direction was given by them as an SST member to ASL or the Life Company.

## 6 Restrictions on benefit entitlement

### Corporations law

- 6.1 If the Trustee believes that the payment of a benefit will contravene any law relating to corporations, the Trustee may:
- (a) reduce the contributions payable in respect of the Member; or
  - (b) deduct an amount from the Member's Benefit Accounts or otherwise reduce the benefit and transfer a corresponding amount to a reserve account maintained under rule 8.6; or
  - (c) apply a combination of (a) and (b),
- as it considers appropriate.

### Forfeiture

- 6.2 The Trustee may forfeit any benefit which is the subject of an order of the person otherwise entitled. This rule has no effect on the Member's bankruptcy to the extent that its operation would be contrary to the *Bankruptcy Act 1966*.
- 6.3 The Trustee must apply a forfeited benefit for one or more of the Member and the Member's Dependants as the Trustee considers appropriate.

### Assignments

- 6.4 The Trustee must not recognise any purported assignment of a benefit.

## 7 Payments and transfers of benefits

### Annuity or pension

- 7.1 The Trustee may, on such terms and conditions as it determines from time to time, apply all or part of any benefit payable to or for the benefit of a person to purchase an annuity or pension for the benefit of the person, if the person or the person's Guardian so requests in a manner approved by the Trustee.

### Transfer from Part or Category

- 7.2 If a person entitled to a benefit requests in a manner approved by the Trustee, the Trustee:
- (a) must pay all or part of the benefit to another superannuation arrangement; or
  - (b) may, subject to such terms and conditions as the Trustee determines, transfer all or part of the benefit to another Category or another Part.
- 7.3 The Trustee may pay an amount representing all or part of a person's interest in this Part to another superannuation arrangement without the consent of the person.
- 7.4 A transfer or payment under rules 7.1, 7.2 or 7.3 satisfies the entitlement of the person to any benefit in respect of the amount transferred or paid and the Trustee may agree with the person that it satisfies the entitlement of the person in full. Where the transfer involves another superannuation arrangement, the Trustee is not responsible for the manner in which the provider of the other superannuation arrangement deals with the amount transferred.

### Unclaimed benefits

- 7.5 The Trustee must comply with Superannuation Law in relation to benefits which Superannuation Law:

- (a) treats as unclaimed money; or
- (b) requires to be transferred to another superannuation arrangement.

### General

7.6 The Trustee must pay all benefits in a form consistent with Superannuation Law.

### Death Benefits - Binding Nomination

- 7.7 If permitted by Superannuation Law, subject to rule 7.8 and rule 7.13, the Trustee must pay the Death Benefit of a Member for whom it holds a Binding Nomination at death in accordance with the Member's Binding Nomination.
- 7.8 The Trustee is not required to comply with rule 7.7 in respect of a Member if the Trustee:
- (a) is subject to a court order that has the effect of restraining or prohibiting the Trustee from paying a benefit in respect of the Member in accordance with a Binding Nomination; or
  - (b) is aware that the Member is subject to a court order that:
    - (i) requires the Member to amend or revoke a Binding Nomination; or
    - (ii) has the effect of restraining or prohibiting the Member from giving a Binding Nomination.
- 7.9 A Member's Binding Nomination ceases to have effect on the earliest of the following dates:
- (a) the date the Binding Nomination ceases to have effect under Superannuation Law;
  - (b) the date a nominated beneficiary predeceases the Member;
  - (c) the date the Member marries (except where the Member marries a nominated beneficiary who is in a de-facto relationship with the Member);
  - (d) the date the Member enters into a de-facto relationship (including with a person of the same sex);
  - (e) the date the Member divorces or the Member's de-facto relationship (including with a person of the same sex) terminates;
  - (f) the date the Member revokes the Binding Nomination in writing;
  - (g) the date the Member provides a Preferred Nomination under paragraph (a) of the definition of that term (or under any predecessor provision) or a Non-Lapsing Nomination in relation to the Account or Accounts to which the Binding Nomination relates;
  - (h) the day before the date of the Member's death where, at the date of the Member's death, a nominated beneficiary is neither a Dependant or the Legal Personal Representative of the Member; or
  - (i) the date that any other circumstance, which the Trustee may determine from time to time, occurs in relation to the Member.

### Death Benefits - Preferred Nomination

- 7.10 The Trustee must, in the case of a Member who has a Preferred Nomination, pay the Death Benefit (insofar as it relates to the Account or Accounts to which the Preferred Nomination relates) to one or more of the Member's Dependents or Legal Personal Representative in proportions which the Trustee determines (or, if there is no Dependant and no Legal Personal Representative appointed within a reasonable time, to any other person or persons in proportions which the Trustee determines).



**Death Benefits – Non-Lapsing Nomination**

- 7.11 The Trustee may from time to time determine that this rule 7.11 applies in respect of a Category or group of Members, and may determine from time to time that this rule 7.11 no longer applies in respect of a Category or group of Members. Where the Trustee has determined that this rule 7.11 applies in respect of a Member (and has not determined that this rule 7.11 no longer applies in respect of the Member), where the Superannuation Law permits, the Member may give the Trustee a nomination in such form and manner as the Trustee determines from time to time (**Non-Lapsing Nomination**) that directs the Trustee to pay some or all of the Member's Death Benefit to a person or persons listed in the nomination (being the Legal Personal Representative and/or Dependants of the Member) on the death of the Member.
- 7.12 Where the Trustee receives a Non-Lapsing Nomination, the Trustee may provide its consent to the exercise of a Member's direction in a Non-Lapsing Nomination:
- (a) on an individual nomination basis; or
  - (b) on a general basis,
- where the Non-Lapsing Nomination satisfies such terms and conditions as the Trustee determines from time to time, in which case such consent becomes effective from the time that the Non-Lapsing Nomination is processed by or on behalf of the Trustee.
- 7.13 Subject to rule 7.14, if all the requirements of the Superannuation Law have been met, where:
- (a) the Trustee is in receipt of a current, valid Non-Lapsing Nomination; and
  - (b) the Trustee has consented to the Non-Lapsing Nomination in accordance with rule 7.12; and
  - (c) the Non-Lapsing Nomination complies with any terms and conditions determined by the Trustee pursuant to rule 7.12,
- the Trustee must pay the deceased Member's Death Benefit to the person or persons listed in the Non-Lapsing Nomination.
- 7.14 A Non-Lapsing Nomination ceases to be valid and effective upon the earlier of the following events:
- (a) the date the Non-Lapsing Nomination ceases to have effect under Superannuation Law;
  - (b) the date a nominated beneficiary predeceases the Member;
  - (c) the date the Member marries (except where the Member marries a nominated beneficiary who is in a de-facto relationship with the Member);
  - (d) the date the Member enters into a de-facto relationship (including with a person of the same sex);
  - (e) the date the Member divorces or the Member's de-facto relationship (including with a person of the same sex) terminates;
  - (f) the date the Member revokes the Non-Lapsing Nomination in writing;
  - (g) the date the Member provides a Preferred Nomination or a Binding Nomination in relation to the Account or Accounts in respect of which the Non-Lapsing Nomination was made;
  - (h) the day before the date of the Member's death where, at the date of the Member's death, a nominated beneficiary is neither a Dependiant or the Legal Personal Representative of the Member; or

- (i) the date that any other circumstance, which the Trustee may determine from time to time, occurs in relation to the Member.

#### **Death Benefits - no Binding Nomination, Non-Lapsing Nomination or Preferred Nomination**

- 7.15 Subject to rule 7.16, if a Member dies, the Death Benefit, to the extent it is not payable under rule 7.7, 7.10 or 7.13, must be paid:
- (a) unless the Member's estate is Insolvent or the Trustee otherwise considers it appropriate in relation to a particular class, Category or group of Members to provide for payment to the Member's Dependants, to the Member's Legal Personal Representative; or
  - (b) if paragraph (a) does not apply or if there is no Legal Personal Representative appointed within a reasonable time, to any:
    - (i) of the Member's Dependants; or
    - (ii) if none, other person,in proportions which the Trustee determines.

#### **Death Benefits – Reversionary Beneficiary**

- 7.16 Rule 7.15 does not apply to the extent that a Reversionary Beneficiary is entitled to the Death Benefit. To avoid any doubt, neither a Binding Nomination, a Non-Lapsing Nomination nor a Preferred Nomination has any effect to the extent it relates to one or more Accounts in relation to which a Reversionary Beneficiary has been specified.

#### **Death Benefits – No Account**

- 7.17 To the extent that a benefit does not relate to one or more Accounts, references to 'Account' in rules 7.9, 7.10 and 7.15 (and in the associated definitions) are to be read as references to the relevant part of the benefit.

#### **Death Benefits - form of payment**

- 7.18 Subject to Superannuation Law, the Trustee may pay a Death Benefit as one or more lump sums, pensions or annuities, or in any other form, as the Trustee considers appropriate.

#### **Transfer of assets**

- 7.19 If a person entitled to a benefit requests in a manner approved by the Trustee, the Trustee may pay all or part of the benefit by transferring assets of equivalent value to the person or the person's nominee.

#### **Trustee's discharge**

- 7.20 The Trustee is discharged from all obligations in respect of a benefit if:
- (a) the Trustee pays or applies it in good faith to or on behalf of a person the Trustee believes to be entitled to it; and
  - (b) in so doing, the Trustee acts honestly and exercises the degree of care and diligence required of it.
- 7.21 The Trustee is not required to inquire into, or seek further evidence about, a Binding Nomination or a confirmation, amendment or revocation of a Binding Nomination which on its face appears to comply with Superannuation Law.

**Incapacity - benefit payments**

7.22 If, in relation to a person entitled to a benefit:

- (a) the person is a minor;
- (b) the person is suffering from any form of legal incapacity;
- (c) the Trustee believes that the person is unable to manage their financial affairs; or
- (d) the Trustee otherwise considers it appropriate for any reason,

the Trustee may, subject to Superannuation Law pay the benefit to another person (**Guardian**) including, but not limited to a parent, guardian or Legal Personal Representative of that person to be applied for the benefit of the person.

**Incapacity - payment of pensions**

7.23 If, in relation to a person entitled to a benefit:

- (a) the person is a minor;
- (b) the person is suffering from any form of legal incapacity;
- (c) the Trustee believes that the person is unable to manage their financial affairs; or
- (d) the Trustee otherwise considers it appropriate for any reason,

the Trustee, subject to Superannuation Law, may pay any or all of any pension payments to a Guardian to be applied for the benefit of the person.

**Dealings with Guardians**

7.24

- (a) The Trustee may act (but shall not be obliged to act) on any direction given by a Guardian as if the Guardian was the person entitled to the benefit.
- (b) The receipt of a Guardian of any amount is a complete discharge to the Trustee in respect of that amount and the Trustee is not responsible for the application of any amount paid to a Guardian.
- (c) The Trustee may impose any terms and conditions on its dealings with a Guardian and on any payments to a Guardian that it considers appropriate.
- (d) Subject to Superannuation Law, the Trustee is not liable if it acts on instructions from or relies on information provided to it by a Guardian.

**Tax**

7.25 The Trustee may deduct from a payment from this Part any amount which it is required to deduct for tax.

**Release Authority**

7.26 If the Trustee receives a Release Authority in respect of a Member, the Trustee must pay an amount from this Part in respect of that Member in accordance with Superannuation Law.

7.27 Subject to Superannuation Law, the Trustee may adjust any amount, benefit or entitlement that a Member has in this Part in order to give effect to a payment under rule 7.26.

## 8 Accounts and Reserves

### Benefit Accounts

- 8.1 The Trustee must keep the following **Benefit Accounts**:
- (a) a Capital Guaranteed Account for each Capital Guaranteed Category Member; and
  - (b) a Heritage Account for each Heritage Category Member.
- 8.2 The Trustee may divide the Benefit Accounts into sub-accounts.
- 8.3 The Trustee must maintain the Heritage Accounts in accordance with rule B7 of Schedule B. The Trustee may maintain the Capital Guaranteed Accounts in a way it considers appropriate. This may include recording:
- (a) contributions and transfers to this Part in respect of the Member;
  - (b) any other amount received by the Trustee in respect of the Member;
  - (c) any liabilities of this Part (or of the Fund) which are attributable to the Member;
  - (d) amounts paid from this Part in respect of the Member including premiums paid by the Trustee in respect of any interest in a Superannuation Policy on the life of the Member or any other insurance policy maintained in respect of the Member;
  - (e) amounts transferred to or from a reserve;
  - (f) any provisions for any payments in respect of the Member;
  - (g) any other matters or amounts which the Trustee considers appropriate.
- 8.4 The Trustee must record in a Benefit Account kept for each Transferring SST Member, the value of the benefit transferred to this Part from the SST on the Transfer Date.

### Tax and expenses

- 8.5 The Trustee may record in the Capital Guaranteed Accounts (as to the Heritage Accounts, see rule B7 of Schedule B):
- (a) tax incurred by the Trustee;
  - (b) expenses of this Part (or of the Fund);
  - (c) administration expenses of the Trustee;
  - (d) provisions for (a), (b) and (c),
- in proportions which the Trustee considers fair.

### Reserves

- 8.6 The Trustee may establish and maintain one or more other reserve accounts with the balance to be applied for the purpose or purposes determined by the Trustee from time to time.

## 9 Investments

### Assets

- 9.1 The assets identified with this Part consist of:
- (a) money or other assets that the Trustee holds for the purposes of this Part; and
  - (b) investments that the Trustee makes and all income on those investments.

9.2 The Trustee must apply the assets identified with this Part in the manner set out in these Part Rules.

### **Investments (including Superannuation Policies)**

9.3 The Trustee may invest assets identified with this Part in:

- (a) Superannuation Policies and, in the case of assets held on behalf of Members of the Capital Guaranteed Category, a Capital Guaranteed Policy or Policies; and
- (b) subject to the requirements for the Capital Guaranteed Category, the Heritage Category and Schedules A and B, in any other investments the Trustee considers appropriate.

9.4 Subject to Schedules A and B, the Trustee may:

- (a) mix investments with investments of other people or trusts (including, without limitation, holding a Superannuation Policy which provides benefits in respect of Members of this Part as well as in respect of members of another Part or of any other superannuation fund of which the Trustee is also the trustee); and
- (b) vary, replace, encumber and deal with the investments, as if it were dealing with its own property.

## **10 Trustee and Life Company**

### **Life Company**

10.1 The Life Company may appoint another company (**Nominee**) which is registered as a life insurance company under the Life Act to replace it for the purposes of this Part if:

- (a) the Nominee agrees, by deed, to be bound by these Part Rules and any applicable Superannuation Policies;
- (b) the Trustee consents; and
- (c) the appointment complies with all relevant laws.

### **Remuneration**

10.2 The applicable life company may receive remuneration from a Superannuation Policy in accordance with the Superannuation Policy at a rate or in amounts or both notified to applicable Member or Members.

10.3 In the case of Members other than those who were 'Former Members' for the purposes of the SST immediately before the Transfer Date, the Trustee is entitled to be paid remuneration out of this Part (or the broader Fund) at the rate of 3% per annum of each Member's Account Balance.

### **Family law fees**

10.4 In addition to other fees, the Trustee is entitled to charge or retain for its own benefit from this Part (or the broader Fund) an amount equal to any fee that it would be entitled to charge any person under the Family Law (Superannuation) Regulations 2001. If, under the Family Law (Superannuation) Regulations 2001, the fee:

- (a) was charged; and
- (b) would be payable by a particular person; and
- (c) that person is presently or prospectively entitled to be paid a benefit or other amount from this Part (or the broader Fund),

the Trustee must deduct the amount to which it is entitled from that benefit or other amount. The Trustee may add interest, at a rate the Trustee determines, to any unpaid fee that the Trustee charges and may debit the interest to a benefit or an interest that the relevant Member or Non-Member Spouse has in this Part.

### **Life Company's discretions**

- 10.5 In exercising any power or discretion conferred on it under the Deed or these Part Rules, the Life Company may:
- (a) act in its own interests;
  - (b) is not bound to take into account the interests of Members or other beneficiaries unless expressly bound by law to do so; and
  - (c) is not bound to account to this Part or any other person for any profit or reward it may derive by acting in its own interests.

## **11 Amendment of Deed and Part Rules**

### **Power to amend**

- 11.1 The Trustee may amend any of the provisions of the Deed or these Part Rules including this rule 11. The Trustee must not amend the Deed (insofar as it relates to the SST Part and its Members and assets) or these Part Rules without the written consent of the Life Company.
- 11.2 An amendment to the Deed or these Part Rules has no effect in relation to a Heritage Category Member or their Dependants unless the Trustee forms the opinion before the amendment is made that the amendment would not be to their detriment.
- 11.3 An amendment to the Deed or these Part Rules has no effect in relation to a Heritage Category Member who was previously a member of AMP Personal Superannuation Fund or AMP Self Employed Persons Superannuation Fund or in relation to an Employer who was referable to either of those superannuation funds if the amendment would impose on them without their consent any increase in their liability to contribute to this Part.
- 11.4 Rules 11.2 and 11.3 do not apply in relation to any amendment required in order to comply with Superannuation Law.

### **Form of amendment**

- 11.5 An amendment must be in writing.

### **Date of effect**

- 11.6 An amendment may take effect from a date before or after the time it is made.

## **12 Termination of Part**

### **By Life Company**

- 12.1 This Part is to terminate:
- (a) on the expiry of three months' notice from the Life Company to the Trustee;
  - (b) on the date the Life Company ceases to carry out life insurance business as defined in the Life Act.

**Notification**

- 12.2 If the Life Company gives notice under rule 12.1 the Trustee must give written notice to each Member that this Part is to terminate. That notice must specify the termination date.

**Contributions**

- 12.3 The Trustee must not accept any contributions to this Part after the termination date other than contributions which were due and payable as at the termination date.

**Application of Part**

- 12.4 On termination of this Part, the Trustee must apply the assets identified with this Part to provide for all expenses and liabilities (other than benefits) for which the Trustee is or may become liable other than those for which the Life Company must indemnify the Trustee under rule 12.5 and then to apply:
- (a) the assets identified with the Heritage Category to provide the benefits of the Heritage Category Members;
  - (b) all other assets identified with this Part in the following order of priority:
    - (i) to provide in respect of each person entitled to a benefit, other than a benefit payable from the Heritage Category, any benefit which became payable before the termination date (**Termination Benefit**);
    - (ii) to provide, in respect of each Member, other than a Heritage Category Member, the Member's benefit under this Part, less the Termination Benefit, if any.
- 12.5 The Life Company indemnifies the Trustee for the costs of winding up this Part. These costs may only be met from this Part (or the broader Fund) if this indemnity cannot be enforced against the Life Company for any reason.

**Payment of benefits**

- 12.6 A Member may not receive a benefit under rule 12.4 before Superannuation Law permits.
- 12.7 If a Member dies before receiving a benefit provided under rule 12.4, the Trustee must pay it as if it were a Death Benefit.

**Application of other rules**

- 12.8 On termination of this Part and pending the final distribution of all the assets identified with this Part, the provisions of the Deed and these Part Rules continue to apply. However, to the extent of an inconsistency between this rule 12 and any provision of the Deed (but not of these Part Rules), rule 12 prevails.

**13 Compliance with Superannuation Law**

- 13.1 Any matters (including standards) required by Superannuation Law to be included in the governing rules of superannuation funds, from time to time, form part of these Part Rules whether or not they are explicitly stated in these Part Rules. In the event of any inconsistency or conflict between those requirements and these Part Rules, the Trustee must act or refrain from acting in order to comply with Superannuation Law. This rule applies notwithstanding anything to the contrary contained in these Part Rules.
- 13.2 However, if:
- (a) a matter (including a standard) is no longer required to be included; or

(b) the Superannuation Authority does not require it to be complied with,  
then the matter ceases to be included by this rule 13.



**Schedule A - Capital Guaranteed**

The provisions of this Schedule only apply to Members of the Capital Guaranteed Category.

A reference to a Member in this Schedule is a reference to a Member of the Capital Guaranteed Category.

The Trustee may admit an employer-sponsored Member to the Capital Guaranteed Category on terms and conditions determined by the Trustee.

**A1 Capital Guaranteed Fund**

- A1.1 The Trustee must ensure that the assets and Members of the Capital Guaranteed Category are separately identifiable at all times.
- A1.2 The Trustee must not transfer assets, benefits or money between the Capital Guaranteed Category and any other Category of this Part (or to another Part) without a transfer of a corresponding beneficial interest.
- A1.3 The Trustee must ensure that the insurance and administration costs of the Capital Guaranteed Category are attributable only to the Capital Guaranteed Category.

**A2 Investments**

The Trustee must ensure that the contributions and accumulated earnings of Members are not reduced by a reduction in the value of any Capital Guaranteed Policy held on behalf of Members in the Category.

**A3 Contributions**

A Member or any other person in respect of a Member may contribute in the amounts and at the times the Trustee permits.

**A4 Benefits**

- A4.1 A Member is entitled to a benefit on request equal to the Member's Account Balance.
- A4.2 On the death of a Member, a Death Benefit is payable in respect of the Member equal to the Member's Account Balance.

## Schedule B - Heritage

The provisions of this Schedule apply only to Members of the Heritage Category.

A reference to a Member in this Schedule is a reference to a Member of the Heritage Category.

Capitalised terms used in this Schedule which are not defined in rule 1.1 of the Part Rules are defined in rule B9.

### B1 Separate Category

- B1.1 The Trustee must ensure that the assets and Members of the Heritage Category are separately identifiable at all times.
- B1.2 The Trustee must not transfer assets, benefits or money between the Heritage Category and any other Category of this Part (or to another Part) without a transfer of a corresponding beneficial interest.
- B1.3 The Trustee must ensure that any insurance or administration costs of the Heritage Category are attributable only to the Heritage Category.

### B2 Transfer

- B2.1 The Trustee is not required to comply with Superannuation Law in connection with contributions or benefit payments relating to the Heritage Category to the extent that the Trustee reasonably considers that it has the benefit of a relevant exemption, modification or other concession granted by, or a relevant 'no action' or similar position taken by, a Superannuation Authority (including any predecessor government authority).
- B2.2 Any reserve maintained by ASL within the SST in respect of the 'Heritage Category' immediately before the Transfer Date will continue within the Part after the Transfer Date under rule 8.6 on the same terms and conditions (with any necessary changes) unless and until the Trustee determines otherwise.

### B3 Contributions

- B3.1 Subject to rule B3.2, a Member or any other person in respect of the Member may contribute for a Member.
- B3.2 For the purposes of rule 4.3 of these Part Rules, the Trustee may only refuse to accept a contribution if:
- (a) the Trustee considers it necessary to do so in order to comply with Superannuation Law;
  - (b) the Member is not someone who was a 'Former Member' under the SST's trust deed and rules;
  - (c) the Member was previously a member of AMP Personal Superannuation Fund and the contribution is not made by the Member or the Member's Employer;
  - (d) the Member was previously a member of AMP Self Employed Persons Superannuation Fund and the contribution is not made by the Member; or
  - (e) the Member was previously a member of AMP Personal Employer Sponsored Superannuation Fund and the contribution is not made by the Participating Employer.
- B3.3 The Trustee may determine minimum contributions that must be made for a Member.

**B4 Member's Insurance**

- B4.1 The Trustee must effect and maintain Member's Insurance:
- (a) for the amount;
  - (b) carrying the rights and benefits; and
  - (c) in consideration of the premium payable,
- as the Member approves and the Trustee is able to arrange.
- B4.2 The Trustee must, subject to rule B5, apply contributions received in respect of a Member to pay the premiums on the Member's Insurance.
- B4.3 The Trustee may effect and maintain the Member's Insurance by a separate policy or as part of the insurance provided in respect of multiple Members under a 'Group' or 'Master' policy issued to the Trustee.
- B4.4 The obligations of the Trustee under this rule B4 are conditional upon:
- (a) the Member submitting to any medical examination which the applicable life company requires; and
  - (b) the Trustee being able to obtain from the applicable life company and maintain in respect of the Member insurance of the type, with the benefits and on the conditions required by the Member.
- B4.5 If the Trustee is unable to obtain from the applicable life company or maintain the desired insurance, the Trustee may obtain other insurance from the applicable life company as the Trustee determines to be in the interests of the Member and, if so, the Trustee must notify the Member of the nature of the insurance effected.
- B4.6 If the Member's Insurance matures before the Member's benefit becomes payable, the Trustee may arrange for the proceeds of the Member's Insurance to be retained by, or deposited with, the applicable life company in a life insurance policy, on terms agreed between the Trustee and the applicable life company, until the benefit becomes payable.
- B4.7 The Member may exercise any option included in the Member's Insurance under which further insurance may be effected without the consent of the Trustee, subject to:
- (a) the Trustee's right to refuse to accept contributions;
  - (b) the Member's required contributions increasing consequentially, as notified by the Trustee to the Member.

**B5 Advance Premium Account**

- B5.1 The Trustee may permit the Member or any other person to make contributions in excess of the amount required to satisfy premiums due and, if so, the excess contributions may be credited to an Advance Premium Account maintained by the Trustee.
- B5.2 The Trustee must keep an individual account of each Member's share in the Advance Premium Account.
- B5.3 The Trustee must:
- (a) invest the contributions that are credited to the Advance Premium Account; and
  - (b) add to the Member's Credit at least once a year the income (if any) earned in respect of the Member's Credit.

B5.4 If contributions for a Member are insufficient to pay a premium that is due on the Member's Insurance, the Trustee may apply the Member's Credit to pay the premium.

## **B6 Restrictions on converting Member's Insurance into Paid-up Policy**

B6.1 If:

- (a) the Member's Credit is insufficient, or the contributions made for the Member are insufficient, to enable the premium on the Member's Insurance to be paid when due;
- (b) the Member's Insurance is not voided by the non-payment of the premium; and
- (c) no premium has been paid for 13 months after becoming due,

the Trustee may arrange with the applicable life company for the Member's Insurance to be converted into a Paid-up Policy, unless the Member was previously a member of AMP Personal Superannuation Fund or AMP Self Employed Persons Superannuation Fund and before the 13 month period expires the Member instructs the Trustee otherwise.

B6.2 If a Member was a 'Former Member' under the SST's trust deed and rules and ceases to be an Eligible Person, the Member must promptly notify the Trustee. The Trustee may make any arrangements that it determines regarding the Member's Insurance or any contributions received after the Member ceased to be an Eligible Person. However, where the Member was previously a member of AMP Personal Superannuation Fund or AMP Self Employed Persons Superannuation Fund, the Trustee may only arrange with the applicable life company for the Member's Insurance to be converted into a Paid-up Policy if the Member has not requested that the Trustee:

- (a) apply some or all of the Member's Credit (excluding any amount credited to the Advance Premium Account after the Member ceased to be an Eligible Person) to pay future premiums, in which case the Trustee must not arrange for the Member's Insurance to be converted into a Paid-up Policy until some or all of the Member's Credit has been so applied; or
- (b) arrange with the applicable life company for outstanding premiums to remain unpaid and for future premiums to be unpaid and for the unpaid premiums to accumulate at interest as a debt on the policy.

## **B7 Heritage Account**

B7.1 The Trustee may record in the Heritage Accounts tax incurred by the Trustee and provisions for tax in proportions which the Trustee considers fair.

B7.2 Subject to any deductions under rule B7.1 and to any adjustments made by the Trustee in order to reflect its obligations relating to pensions, the balance of a Heritage Account for a Member comprises:

- (a) the amount payable to the Trustee in respect of the Member under the Member's Insurance;
- (b) any amounts held by the applicable life company in respect of the Member under rule B4.6 including any interest paid by the applicable life company on those amounts;
- (c) the amount of any Member's Credit in the Advance Premium Account; and
- (d) any other amount credited to the Heritage Account for the Member.

## **B8 Benefits**

B8.1 A Member is entitled to a benefit on request equal to the Member's Account Balance.

B8.2 On the death of a Member, a Death Benefit is payable in respect of the Member equal to the Member's Account Balance.

## **B9 Definitions**

B9.1 In this Schedule, unless the contrary intention appears:

**Advance Premium Account** means the account maintained under rule B5.1.

**Eligible Person** means:

- (a) in respect of a Member who was previously a member of AMP Personal Superannuation Fund or AMP Self Employed Persons Superannuation Fund, a person for whom the Trustee is able to accept contributions in accordance with Superannuation Law;
- (b) in respect of a person who was previously a member of AMP Personal Employer Sponsored Superannuation Fund, a person who is an employee of the applicable Participating Employer.

**Member's Credit** means the total balance of a Member's individual account maintained under rule B5.2.

**Member's Insurance** means the policy or policies of insurance on the life of the Member to provide benefits under the Heritage Category.

**Paid-up Policy** means:

- (a) in the context of whole-of-life insurance policies or endowment insurance policies - a policy in respect of which no further premiums may be paid, the Trustee having requested the applicable life company to vary the policy in whatever manner the applicable life company considers equitable so as to provide for a payment in lieu of the amount originally payable;
- (b) in any other case - a policy in respect of which no further premiums may be paid, the Trustee having cancelled any protection cover and authorised the applicable life company to adjust the balance of the Member's Insurance to take into account the cessation of premium payments.

**Participating Employer** means an Employer whose application for an employee for membership of AMP Personal Employer Sponsored Superannuation Fund was accepted by ASL.

N. M. Superannuation Proprietary Limited

## Part Rules for the SDF Part

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## Rules

### 1 Definitions and Interpretation

#### Definitions

1.1 Unless the contrary intention appears, capitalised terms used in these Part Rules which are defined in rule 1.1 of the Trust Deed for the National Mutual Retirement Fund have the same meaning in these Part Rules and:

**Account** means a Contribution Account, a Reserve Account, such one or more sub-accounts thereof as may at any time and from time to time subsist, the Cash Float Account (if any) and any other account under this Part howsoever designated and established by the Trustee.

**Account Balance** means the balance of a Member's Contribution Accounts at a particular time.

**Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth) as the same shall from time to time stand amended.

**Additional Division** means a Division established pursuant to Rule 2.2.

**Allocated Pension** means a Pension payable to a Member of the Allocated Pension Division or to a Reversionary Pensioner, being a Pension which is intended to comply with the standards from time to time set out in Regulation 1.06(4) or Regulation 1.06(9A) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Allocated Pension Division** means one of the Divisions established and maintained pursuant to Rule 2.2 and which Division is governed by Schedule B hereto.

**Annuity Policy** means an annuity policy issued by a Life Assurance Company in respect of a Member, the terms, provisos and conditions of which have been agreed between the Member and the Trustee or in respect of a Dependant of a Member with the consent of the Trustee, the terms, provisos and conditions of which have been agreed between that Dependant and the Trustee and includes a policy which provides for payment of an allocated annuity.

**Application Form** means the form or forms specified by the Trustee for completion by an Employee, a self employed person, a person wishing to become a Member of the Allocated Pension Division or an Eligible Spouse, as the case may require.

**APRA** means the Australian Prudential Regulation Authority and includes any authorised delegate of that Authority.

**ASIC** means the Australian Securities and Investments Commission and includes any delegate appointed by that Commission.

**Assets of an Investment Portfolio** includes all the money or other assets held by the Trustee in relation to that Investment Portfolio including, at its option, amounts owing by debtors and excluding, at its option, any debts which in the opinion of the Trustee are bad or doubtful.

**Assets of a Plan** means the aggregate of the assets representing:

- (a) the Interests in the Plan of the Members; and
- (b) the balance of the Plan Reserve Account, Plan Reserve Transfer Account, Plan Reserve Charges Account and the Cash Float Account (if any) established in relation to the Plan,

**PROVIDED THAT** arrears of contributions in respect of the Plan or a Member of the Plan, as the case requires, shall not (unless the Trustee otherwise determines to the contrary) be included as an asset.

**Assets of the Part** means the aggregate of the Assets of all Plans in this Part.

**Associated Employer** means a person whose application to participate under Rule 4.1 has been accepted and whose participation has not been terminated under Rule 4.5. In relation to:

- (a) a Participating Employer, it means an employer whose application is accepted with the consent of the Participating Employer or its predecessor under Rule 4.1; and
- (b) a Plan, it means an Associated Employer who participates under the Plan.

**ATO** means the Australian Taxation Office.

**Award** means an agreement certified or an award made on or after 1 July 1986 or any other formal arrangement which, for all intents and purposes, the Employer and the Trustee shall mutually agree to treat as an Award for the purposes of this Part.

**Binding Nomination** means a nomination which:

- (a) is given to the Trustee by the Member in accordance with and subject to Rule 11.12A in such form and manner as the Trustee may from time to time specify (whether in the Binding Nomination Guidelines or otherwise);
- (b) requires the Trustee to pay the Member's benefits to one or more persons nominated in the nomination (being Dependents and/or Legal Personal Representatives of the deceased Member) in the proportions specified in the nomination; and
- (c) complies with Superannuation Law and any Binding Nomination Guidelines applicable both at the date on which the nomination was made, and on the date of death of the Member.

A written direction given to the Trustee (as trustee of the SDF) which was a 'Binding Nomination' for the purposes of the SDF's trust deed and rules immediately before the Transfer Date is also a **Binding Nomination** for the purposes of these Part Rules in respect of the corresponding Account or Accounts in this Part, unless and until it ceases to have effect under Rule 11.12EA.

**Binding Nomination Guidelines** means such conditions and restrictions relating to Binding Nominations as the Trustee may from time to time specify and which are consistent with Superannuation Law.

**Cash Float Account** means the account (if any) established and maintained for each Plan pursuant to Rule 17.17.

**Category** means category of membership provided for under Rule 33 applying in respect of a Member.

**Category Selection** means a Category Selection Form received by the Trustee.

**Category Selection Form** means a notice in a form acceptable to the Trustee under which a Member can specify a Category.

**Child:**

- (a) for the purposes of Rule 33 and subject to Rule 33.10 means surviving child of the Member at the date of the Member's death, including without limitation an adopted child, step-child and ex-nuptial child and a child of the member's spouse who was dependent on the Member for maintenance or support at the date of the Member's death;
- (b) for all other purposes includes:
  - (i) an adopted child, a step-child, an ex-nuptial child;
  - (ii) any person who, in the opinion of the Trustee is or was at the relevant date actually being maintained by the Member as the child of that Member;

- (iii) any child of the Member that is born after the death of the Member but where the paternity of that child is in issue, means a child that has obtained a Declaration of Paternity (in relation to the Member) from a relevant Court of law;
- (iv) a child of the Spouse of the Member; and
- (v) a child of the Member within the meaning of the *Family Law Act 1975* (Cth).

**Commissioner** includes any person the Trustee reasonably believes is or was authorised to give information on behalf of the Commissioner of Taxation.

**Complying Superannuation Fund** has the same meaning as in the Tax Act.

**Contribution Accounts** means any one or more of the following accounts as the context requires:

- (a) Member Regular Contributions Account;
- (b) Member Special Contributions Account;
- (c) Member Transfer Account;
- (d) Employer Super Guarantee/Award Account;
- (e) Employer SG/Award Special Contribution Account;
- (f) Employer Salary Sacrifice Contribution Account.

**Costs** means administration and transaction expenses relating to the relevant Member No TFN Contribution, including the relevant portion of any applicable insurance premium.

**Death Benefit:**

- (a) for the purposes of Rule 33 means a benefit payable on the death of a Member from a LPSP; and
- (b) for all other purposes means the benefit payable following the death of a Member.

**Deed of Adoption** means the deed, in the form or forms approved by the Trustee and executed by an Employer pursuant to Rule 3.1 and accepted by the Trustee, under which the Employer adopts the Fund as a superannuation fund for such of its Employees as become Members. The form may be entitled Deed of Adoption or have any other name approved by the Trustee for the purposes of this definition.

**Default Investment Portfolio** means the Investment Portfolio designated by the Trustee as the default investment portfolio pursuant to Rule 15.2.

**Dependant**, in relation to a Member, means:

- (a) the Spouse of the Member;
- (b) any Child of the Member;
- (ba) any person with whom the Member has an interdependency relationship;
- (c) any other person whom the Trustee believes is or was at the date of death, either wholly or in part, financially dependent on the Member or who has or had at the relevant date a legally enforceable right to look to that Member for financial support; or
- (d) any person considered to be a dependant by the Act.

**Division** means a division of this Part identified under Rule 2.2, and in relation to an Employer or Member means the Division under which the Employer or Member participates.

**Eligible Spouse** means a Spouse:

- (a) who is the spouse (within the meaning of that term as it applies for the purposes of eligible spouse contributions under the Tax Act) of an Employee; and
- (b) in respect of whom the Trustee is permitted to accept contributions under the Act.

**Eligible Termination Payment** means any amount comprising the whole or part of an eligible termination payment as that term is defined in the Tax Act.

**Employee** means:

- (a) an employee of an Employer;
- (b) a director of the Employer if the Employer is a company;
- (c) any other person for whom an Employer is required to pay Mandated Contributions in respect of that person; and
- (d) where the case requires, includes a self-employed person, and a partner in a partnership.

**Employer** means a Participating Employer or an Associated Employer.

**Employer Contribution Account** means such one or more accounts (if any) established and maintained for a Member under Rule 17 for the purposes of recording certain amounts contributed to a Plan by an Employer in respect of that Member.

**Estate** means the Legal Personal Representative of the Member on behalf of the deceased Member's estate.

**Former NM Fund** means either of:

- (a) the National Mutual Simple Superannuation Fund established by a trust deed dated 1 October 1978 (**Simple Super**); and
- (b) the National Mutual Tailored Superannuation Fund established by a trust deed dated 29 September 1986 (**Tailored Super**).

**Insurance Premium Refund** means the amount (if any) paid to the Trustee for crediting to this Part which represents a refund, rebate or bonus (or howsoever described) that has become payable under any group life insurance policy effected by the Trustee for the purposes of this Part having regard to the claims experience of that policy or the insurance pool in which the policy may participate (as the case requires) in each policy year.

**Interest in the Plan**, in the case of a Member, means the Member's Part Credit at the applicable date.

**Investment Portfolio** means an Investment Portfolio more particularly described in Rule 15.

**Legal Personal Representative** of a deceased person means the executor or the appointed administrator of that person's estate.

**Liabilities of an Investment Portfolio** includes:

- (a) amounts allocated to the Investment Portfolio pursuant to Rule 19;
- (b) costs and expenses in respect of the Investment Portfolio (including its share of the accrued but unpaid fees and expenses of the Trustee);
- (c) accrued charges in respect of or owing in relation to any of the Assets of the Investment Portfolio;
- (d) amounts which, in the opinion of the Trustee, should be taken into account in respect of Tax that has been or will or may be incurred in respect of income or gains (whether realized, unrealized or anticipated) by the Investment Portfolio;

- (e) any other liabilities, factors or provisions which the Trustee considers should be taken into account or made in relation to the Investment Portfolio.

**Life Assurance Company** means a company registered under the Life Insurance Act 1995 (Cth).

**LPSP** means the Life Protection Superannuation Plan unless otherwise determined by the Trustee.

**Mandated Contributions** means:

- (a) contributions an Employer of a Member makes for the benefit of that Member pursuant to an Award;
- (b) contributions an Employer of a Member makes for the benefit of that Member for the sole purpose of avoiding payment of any Superannuation Guarantee Charge; and
- (c) any Shortfall Components received by the Trustee for the benefit of a Member.

**Maximum Float Level** means the amount determined by the Trustee pursuant to Rule 17.

**Member.**

- (a) for the purposes of Rule 33, includes a person who was a Member at the time of his or her death; and
- (b) for all other purposes, means a person who has been admitted to membership of a Division and includes:
- (i) a Reversionary Pensioner unless otherwise determined by the Trustee;
- (ii) a Member who transfers membership from the Personal Division to the Allocated Pension Division pursuant to Rule A5 and has not ceased to be a Member of that Division;

and, in relation to a Division or a Plan, means a Member who participates under that Division or Plan whether within a group of members having a common Employer, a self-employed person or an individual person who has established his or her own Plan in this Part. This definition must be read together with Rule 2.1.

**Member No TFN Contribution** means a non-concessional contribution (as defined in the Tax Act) made to this Part by or in respect of a Member where the Trustee has not been provided with a TFN for the Member.

**Minor Child** means, subject to Rule 33.10, a Child under the age of 18 at the date of the Member's death.

**Net Assets of an Investment Portfolio** means the Assets of the Investment Portfolio less the Liabilities of the Investment Portfolio.

**Non-Lapsing Nomination** has the meaning given to it in clause 11.12G. A written direction given to the Trustee (as trustee of the SDF) which was a 'Non-Lapsing Nomination' for the purposes of the SDF's trust deed and rules immediately before the Transfer Date is also a **Non-Lapsing Nomination** for the purposes of these Part Rules in respect of the corresponding Account or Accounts in this Part, unless and until it ceases to have effect under rule 11.12J.

**Normal Retirement Date of a Member** means the Member's 65th birthday, unless some other date is specified in the relevant Schedule, Deed of Adoption, Schedule to the Deed of Adoption or Application Form or as expressed and advised to the Trustee in such other applicable manner that is acceptable to the Trustee.

**Part Credit** means in relation to a Member the aggregate balances standing to the credit of the Contribution Accounts of that Member at the applicable date.

**Participating Employer** means a person:

- (a) who has been accepted as a Participating Employer pursuant to Rule 3.1; or
- (b) who has replaced a Participating Employer pursuant to Rule 3.10;
- (c) whose participation has not been terminated pursuant to Rule 3.8,

and, in relation to an Associated Employer, means the Participating Employer or its successor who consented to the Associated Employer's admission.

**Pension** means a benefit taken to be a pension for the purposes of Superannuation Law.

**Personal Division** means one of the Divisions established and maintained pursuant to Rule 2.2 and which Division is governed by Schedule A hereto.

**Plan** means an arrangement established by the Trustee under which an Employer or Member participates in a Division or Divisions and, in relation to a Member, means the Plan to which the Member is admitted.

**Plan Reserve Account** means the account of that name established pursuant to Rule 17.5.

**Plan Reserve Charges Account** means the account of that name established pursuant to Rule 17.5.

**Plan Reserve Transfer Account** means the account of that name established pursuant to Rule 17.5.

**Policy** means a policy of the type more particularly described in Rule 9.10 and without limiting the generality of that Rule includes:

- (a) a policy of life insurance issued to the Trustee by a Life Assurance Company (together with the proposal for that Policy) which provides for payment of an insured benefit in the event of the death or total and permanent disablement or total but temporary disablement or such one or more of them and in such combinations (if any) as the Trustee considers to be appropriate; and
- (b) at the option of the Trustee, a policy issued to the Trustee by a Life Assurance Company (together with the proposal for that Policy) to wholly or partially represent the Assets of the Part, such Policy being represented by assets of that part of the relevant Statutory Fund to which the Policy relates of that Life Assurance Company,

and in circumstances where the Trustee contracts with the same Life Assurance Company for the issue of the relevant policies, evidence of that or those contractual arrangements may at the option of the Trustee, be by means of one or more policies or by means of one or more blanket policies, the terms and conditions of which shall include such number of supplementary rules relating to the operation of those policies and, ipso facto, a Rollover Plan in the Personal Division.

**Policy Committee** means a committee (if any) appointed in respect of a Plan pursuant to Rule 27.

**Prescribed Contribution Date** means the date at which the Trustee must cease to accept contributions in respect of a Member under Superannuation Law.

**Primary Beneficiary** means the Member to whom an Allocated Pension is payable in the first instance under Schedule B.

**Protection Portfolio** means the Investment Portfolio designated by the Trustee as the protection investment portfolio under Rule 15.2.

**Register** means the Register maintained under Rule 13.1.

**Required Payment Date** means any date at which a Member's benefit must be paid or commence to be paid under Superannuation Law.

**Reserve Account** means the account maintained for a Plan pursuant to Rule 17.

**Retrenchment** means the termination by the Employer of the Service of a Member for all or any of the following reasons:

- (a) that the work for which he was engaged has been completed or that his position has ceased to exist;
- (b) that the amount of work has diminished and has rendered a reduction necessary or expedient in the number of Employees.

**Reversionary Pensioner** means a person who receives a Death Benefit, in the form of an Allocated Pension, following the death of a Primary Beneficiary.

**Rollover Plan** means a Plan designated as such by the Trustee.

**Rules** means such one or more of the Rules forming part of these Part Rules and includes the Schedules hereto.

**Schedules** means any Schedule attached to these Part Rules, and in relation to a Division means the Schedule applicable to that Division.

**Schedule to the Deed of Adoption** means any document (other than a Deed of Adoption) signed by an Employer and accepted by the Trustee, in which the Employer specifies any of the current terms on which the Employer and its Employees will participate in a Plan. The Schedule to the Deed of Adoption may cross-refer to the trust deed and rules governing any other specified Superannuation Entity of which Employees of the Employer are or have been members.

**SDF Part** means the Part of the Fund governed by these Part Rules (and 'this Part' has a corresponding meaning).

**Securities System** means any securities, title, transfer or holding system which operates by any physical means, by an electronic medium or by any custom (whether located in Australia or elsewhere) and includes any clearing agency which acts as a securities depository or a book entry system for the centralized dealing with any investment authorised under Rule 14.1.

**Service** in relation to a Member means the most recent period of continuous service of the Member as an Employee, and includes:

- (a) any period during which the Member is off work because of injury or illness and receives workers' compensation, sickness pay or other regular income from either the Employer or any insurance scheme or policy sponsored by the Employer; and
- (b) any other period declared by the Employer and accepted by the Trustee to be Service for the purposes of this Part.

**Superannuation Holding Accounts Special Account** means the account administered by the ATO to receive and appropriate small superannuation amounts from employers unable to identify a superannuation fund that protects small account balances from erosion by fees and charges.

**Shortfall Component** has the same meaning as is ascribed to it in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Spouse:**

- (a) for the purposes of Rule 33 and subject to Rule 33.10, means a person who immediately before the Member's death lived with the Member as his or her spouse and includes a

person who, although not legally married to the Member, both lived with the Member immediately before his or her death on a bona fide domestic basis as the husband or wife of the Member and is accepted by the Trustee as being the Member's spouse; and

- (b) for all other purposes includes:
- (i) another person (whether of the same sex or a different sex) with whom the person is or was in a relationship that was registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* (Cth) as a kind of relationship prescribed for the purposes of that section; and
  - (ii) another person who, although not legally married to the person, in the opinion of the Trustee, lives or lived with the person on a genuine domestic basis in a relationship as a couple.

**Superannuation Authority** means (as the context requires) APRA or the ASIC or the ATO or any successor thereof or any other Governmental Department or authority responsible for administering the laws or any other rules governing the operation of Superannuation Entities or the availability of income tax concessions to Superannuation Entities.

**Superannuation Entity** means a superannuation fund, approved deposit fund, eligible rollover fund, retirement savings account or any other arrangement which the Trustee determines should be treated for the purposes of this Part as a Superannuation Entity.

**Superannuation Guarantee Charge** means a charge or tax imposed on employers for not making certain superannuation contributions or for not providing certain superannuation benefits.

**Superannuation Law** means any requirement under the Act or the Tax Act, the *Retirement Savings Account Act 1997* (Cth), the *Corporations Act 2001* (Cth), *Bankruptcy Act 1966* (Cth) or the *Superannuation Guarantee Charge Act 1992* (Cth) and any regulations made under those Acts or any other law (whether Commonwealth or State) or by a Superannuation Authority:

- (a) imposed on the Trustee; or
- (b) which the Fund must satisfy to qualify for the most favourable taxation treatment available to Superannuation Entities,

including any proposed requirements which the Trustee believes will have retrospective effect.

**Surcharge** means any surcharge or other amount of whatever description levied on the Fund, the Trustee, any Member or former Member pursuant to the *Superannuation Contributions Tax Imposition Act 1997* (Cth) and related legislation (including provisional or advance payments (if any) required under that legislation).

**Switching Request** means a switching request more particularly referred to in Rule 16.

**Tax** includes all actual or anticipated tax, Surcharge, levy or impost on income, capital gains and superannuation contributions, stamp, financial institutions, registration and other duties, bank accounts debits tax, goods and services tax and other taxes, levies, imposts, deductions and charges together with interest, fines and penalties (if any) and charges, fees or other amounts made or payable in respect of them.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or *Income Tax Assessment Act 1997* (Cth), as applicable.

**TFN** means a tax file number for the purposes of the Tax Act and Superannuation Law.



**Total and Permanent Disablement:**

- (a) in respect of a Member and for the purposes of life insurance under this Part, has the same meaning as that expression (or an expression corresponding to it) is given in any Policy or Policies effected by or transferred to the Trustee and applying to the Member under which insurance proceeds may become payable to the Trustee upon the total and permanent disablement of the Member; or
- (b) in respect of a Member and for the purposes of releasing from this Part the Member's Part Credit in circumstances where a Member is considered by the relevant Life Assurance Company to be not totally and permanently disabled under the Policy, means total and permanent incapacity (whether physical or mental) established to the reasonable satisfaction of the Trustee and being such that in the opinion of the Trustee having regard to medical advice, the Member is unlikely to ever again engage in gainful employment in any occupation for which the Member is reasonably qualified by education, training or experience.

**Total but Temporary Disablement** has the same meaning as that expression (or an expression corresponding to it) is given in any Policy or Policies effected by or transferred to the Trustee and applying to the Member under which insurance may become payable to the Trustee for the benefit of the Member upon the total but temporary disablement of that Member.

**Working Day** means any day, other than a Saturday or Sunday, when banks are open for business within the City of Melbourne, Australia.

**Interpretation**

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or these Part Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa and words denoting a particular gender include all genders as the case may require;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) headings are for convenience only and do not affect the interpretation of any provision;
- (f) if a period of time is specified and dates from a given day or the date of an act or event, it is to be calculated exclusive of that day;
- (g) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (h) if a notice period terminates on a day which is a Saturday or Sunday or a bank holiday, then the notice period is deemed to expire on the next following Working Day;
- (i) 'amend' includes delete or replace;
- (j) 'complies with' includes 'not inconsistent with';
- (k) 'including' when introducing a list of items does not by itself exclude a reference to other items of the same class;
- (l) 'permit' or 'permitted' when referring to Superannuation Law includes 'not prohibited';
- (m) 'person' includes a firm, a body corporate, an unincorporated association or an authority;

- (n) a word or expression defined in Superannuation Law has the meaning given to it in Superannuation Law.
- 1.3 Subject to Rule 1.4, all the standards, rules and covenants required by the Superannuation Law to be included in the governing rules of superannuation funds form part of these Part Rules, whether or not they are explicitly stated in these Part Rules.
- 1.4 If a standard, rule or covenant included under Rule 1.3 is no longer required to be included or the Superannuation Authority does not require it to be complied with, then that standard, rule or covenant ceases to be included by Rule 1.3.
- 1.5 A standard, rule or covenant included by Rule 1.3 prevails over any other provision in these Part Rules which is inconsistent with it.
- 1.6 If a provision of these Part Rules would otherwise be invalid in part or in whole because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request and in its discretion agree to act in a manner consistent with it.
- 1.7 If a provision of these Part Rules would otherwise be invalid in part or in whole because it permits a person to exercise a discretion without the consent of the Trustee, that provision is taken to require the Trustee's consent for the exercise of the discretion.
- 1.8 Each Schedule hereto shall form part of these Part Rules and shall apply in relation to the Division to which it is expressed to refer.

## **2 SDF Part, Divisions and Plans**

### **Application**

- 2.1 These Part Rules apply only to Members of the SDF Part. A reference to a Member in these Part Rules is a reference to a Member of the SDF Part.
- 2.2 With effect from the Transfer Date, the SDF Part comprises of the following Divisions:
- (a) the Personal Division; and
  - (b) the Allocated Pension Division.
- 2.3 Divisions do not constitute separate trust funds.

### **Additional Divisions**

- 2.4 The Trustee may by supplemental deed provide for the establishment of Additional Divisions.
- 2.5 The supplemental deed must include:
- (a) a declaration that the Additional Division will be governed by the Deed and these Part Rules as the same shall stand amended, adopted or applied by the supplemental deed;
  - (b) such terms, conditions and matters which the Trustee considers appropriate; and
  - (c) any consequential amendments to the Deed and these Part Rules which the Trustee considers to be expedient or appropriate.
- 2.6 The Trustee must establish:

- (a) in the **Personal Division**:
  - (i) one or more Rollover Plans; and
  - (ii) a Plan for each other Member in the Personal Division;
- (b) in the **Allocated Pension Division** - a Plan for each Primary Beneficiary in the Allocated Pension Division.

However, the Trustee may but is not required to establish a Plan for any Member or Primary Beneficiary if the Trustee already maintains a Plan for the Member or Primary Beneficiary in another Division.

- 2.7 The Trustee may establish such other Plans in a Division as it determines from time to time on such terms, conditions and matters as the Trustee considers appropriate.
- 2.8 Plans do not constitute separate trust funds.

### **No interference by Members**

- 2.9 Each Member is entitled to a beneficial interest in the Fund. However, unless expressly provided in the Deed, these Part Rules or required by law, the beneficial interest of a Member does not entitle that Member to:
- (a) interfere with the rights or powers of the Trustee in its dealings with the Assets of the Part;
  - (b) exercise any rights, powers or privileges in respect of any Assets of the Part;
  - (c) interfere in any way with any other Division constituted under these Part Rules;
  - (d) require the transfer to the Member of any of the Assets of the Part; or
  - (e) otherwise claim any interest in any particular Asset of the Part.

## **3 Participating Employers**

### **Application for participation**

- 3.1 If a person wishes to apply to participate in this Part as a Participating Employer, the person must:
- (a) by notice in writing (or such other form acceptable to the Trustee) to the Trustee, indicate the intention to contribute to this Part in respect of certain other persons and include such information as may otherwise have been included in a Schedule to the Deed of Adoption; or
  - (b) complete and execute a Deed of Adoption; and
  - (c) complete such one or more Schedules to the Deed of Adoption as the Trustee may require,

and lodge with the Trustee, the notice, Deed of Adoption and Schedule to the Deed of Adoption as the case requires at its registered office or as the Trustee may otherwise direct. The Trustee may accept as a Participating Employer a person that has not applied to participate in this Part, on such terms and conditions as the Trustee determines, where any employees of the person are Members and Superannuation Law permits.

### **Deed of Adoption and Schedule to the Deed of Adoption**

- 3.2 If any provision of the Deed of Adoption or a Schedule to that Deed of Adoption is inconsistent with a provision of the Deed or these Part Rules, the Trustee, in the exercise of its discretion, may

allow or disallow the provisions of the Deed of Adoption and the Schedule to that Deed of Adoption to prevail.

- 3.3 A Deed of Adoption and any Schedule to that Deed of Adoption entered into by a Participating Employer shall apply equally to relevant Associated Employers and their Employees.
- 3.4 The Trustee and the Participating Employer may agree to alter a Schedule to the Deed of Adoption at any time and from any date (including retrospectively) by such means as the Trustee may specify and so long as the alteration complies with Superannuation Law.

#### **Acceptance or rejection of application**

- 3.5 The Trustee may accept or reject an application made pursuant to Rule 3.1. If the Trustee rejects an application, the Trustee must:
- (a) as soon as reasonably practicable thereafter, notify the person; and
  - (b) return to the contributor any moneys paid to the Trustee in connection with the application.

#### **Notice of acceptance**

- 3.6 On a person being accepted as a Participating Employer pursuant to Rule 3.1, the Trustee must within any time specified by Superannuation Law:
- (a) record or cause to be recorded, the person's name as a Participating Employer;
  - (b) establish a Plan for the person;
  - (c) establish relevant Accounts and sub-accounts for the Plan; and
  - (d) may, by such means and in such manner as the Trustee considers to be reasonable or appropriate, advise the person of:
    - (i) the date of acceptance;
    - (ii) the Division to which the acceptance relates; and
    - (iii) any other matters which, in the opinion of the Trustee, are appropriate or which are required of it by Superannuation Law.

#### **Bound by Rules and Schedules**

- 3.7 Each Participating Employer is bound by these Part Rules and the relevant Schedule or Schedules.

#### **Termination of participation**

- 3.8 The participation of a Participating Employer and the relevant Plan terminates if:
- (a) the Participating Employer gives written notice to the Trustee; or
  - (b) the Trustee gives written notice to the Participating Employer; or
  - (c) the Participating Employer ceases to have any Employees who are Members and there is no Associated Employer in the Plan with Employees who are Members; or
  - (d) an order is made or an effective resolution is passed for the winding up of the Participating Employer, and the Trustee determines that no other person is likely to take the place of the Participating Employer.
- 3.9 A notice under Rule 3.8 must specify a termination date which is at least 30 days (or such other period agreed with or specified by the Trustee) after the date of the notice.

**Replacement of Participating Employer**

- 3.10 If a Participating Employer gives notice under Rule 3.8(a) but nominates an associated employer to take its place and the associated employer agrees to do so in a manner approved by the Trustee; then:
- (a) the associated employer shall, on and from the date specified by that Participating Employer or if not specified then specified by the Trustee become the Participating Employer; and
  - (b) the former Participating Employer may be regarded as an Associated Employer (for as long as the former Participating Employer has any Employees who are Members in the Plan); and
  - (c) Rule 4.7 shall apply on termination of participation by the former Participating Employer (instead of Rule 3.11).

**Application of Assets of a Plan**

- 3.11 Subject to Rule 3.10, on termination:
- (a) the Participating Employer, any Associated Employers and their Employees who are Members of the Plan must immediately pay to the Trustee the amount of any arrears of contributions up to the termination date but may make no further contributions;
  - (b) the Trustee must continue to pay out of the Plan benefits which have become payable on or before the termination date to or in respect of Employee-members of that Participating Employer;
  - (c) after providing for all expenses and liabilities (including Tax) for which the Trustee is or reasonably believes it is or may become liable and any fees to which it is or reasonably believes it is or will become entitled in respect of the Plan, the Trustee may pay the Assets of the Plan to:
    - (i) a Complying Superannuation Fund nominated by the Participating Employer; or
    - (ii) if the Participating Employer does not nominate a Complying Superannuation Fund within 30 days after the termination date, a Complying Superannuation Fund selected by the Trustee,in a manner consistent with Superannuation Law; and
  - (d) if the Trustee does not pay the Assets of the Plan under Rule 3.11(c), the Trustee must apply them in accordance with Rule 31.6.
- 3.12 If a Member dies before the Trustee has paid or applied the whole of the benefit in respect of that Member pursuant to Rule 3.11, the Trustee must pay so much of it as remains unpaid, as a death benefit or must forthwith pay or apply so much of it as remains unpaid at the date of death, in accordance with Rules 3.11(c) or 3.11(d), as the case requires.

**4 Associated Employers****Application for participation**

- 4.1 The Trustee may admit a person to participate in a Plan as an Associated Employer of a Participating Employer if:
- (a) the person is associated with the Participating Employer;

- (b) the person applies to the Trustee in the form prescribed by the Trustee and lodges the application with the Trustee either at its registered office or as the Trustee may specify; and
- (c) the Participating Employer first acknowledges its consent in writing (or such other form acceptable to the Trustee) to the application being accepted by the Trustee.

### Acceptance or rejection of application

- 4.2 The Trustee may accept or reject an application made pursuant to Rule 4.1. If the Trustee rejects an application, the Trustee must:
- (a) as soon as is reasonably practicable thereafter, notify the person and the relevant Participating Employer; and
  - (b) return to the contributor any moneys paid to the Trustee in connection with the application.

### Notice of acceptance

- 4.3 On accepting a person's application pursuant to Rule 4.1, the Trustee must within any time specified by Superannuation Law:
- (a) record or cause to be recorded, the person's name as an Associated Employer; and
  - (b) may, by such means and in such manner as the Trustee considers to be reasonable or appropriate, advise the person of:
    - (i) the date of acceptance;
    - (ii) the Division to which the acceptance relates; and
    - (iii) any other matters which, in the opinion of the Trustee, are appropriate or which are required of it by Superannuation Law.

### Bound by Rules and Schedules

- 4.4 Each Associated Employer is bound by the Deed and these Part Rules and the relevant Schedule or Schedules.

### Termination of participation

- 4.5 The participation of an Associated Employer terminates if:
- (a) the Associated Employer gives written notice to the Trustee; or
  - (b) the Trustee gives written notice to the Associated Employer; or
  - (c) the Participating Employer gives written notice to the Associated Employer and the Trustee; or
  - (d) the Associated Employer ceases to have any Employees who are Members in the Plan; or
  - (e) an order is made or an effective resolution is passed for the winding up of the Associated Employer.
- 4.6 A notice under Rule 4.5 must specify a termination date which is at least 30 days (or such other period agreed with or specified by the Trustee) after the date of the notice.

### Application of Assets of a Plan

- 4.7 Subject to Rule 3.10, on termination:

- (a) the Associated Employer and its Employees who are Members of the Plan must immediately pay to the Trustee the amount of any arrears of contributions up to the termination date but may make no further contributions to the Plan;
  - (b) the Trustee must continue to pay out of the Plan benefits which have become payable on or before the termination date to or in respect of Members then in the Service of that Associated Employer;
  - (c) after providing for all expenses and liabilities (including Tax) for which the Trustee is or reasonably believes it is or may become liable and any fees to which it is or reasonably believes it is or will become entitled in respect of the amount of the transfer, the Trustee may transfer the Interests in the Plan of the Members in the Associated Employer's Service, together with any share of the Plan Reserve Account, the Plan Reserve Transfer Account and the Plan Reserve Charges Account as shall be determined by the Trustee after consulting with the Participating Employer and the Associated Employer, to:
    - (i) a Complying Superannuation Fund nominated by the Associated Employer; or
    - (ii) if the Associated Employer does not nominate a Complying Superannuation Fund within 30 days after the termination date, a Complying Superannuation Fund selected by the Trustee,in a manner consistent with Superannuation Law;
  - (d) if the Trustee does not pay the Interests in the Plan of the relevant Members pursuant to Rule 4.7(c), the Trustee must hold those amounts **ON TRUST** to be applied by the Trustee in the following order of priority:
    - (i) to provide for all expenses and liabilities (including Tax) for which the Trustee reasonably believes it is or reasonably believes it may become liable and any fees to which it is or reasonably believes it will become entitled in respect of the amount;
    - (ii) to pay out of the Plan benefits which have become payable on or before the termination date to or in respect of Members then in the Service of the Associated Employer;
    - (iii) to pay a benefit for each of the Members then remaining in the Service of the Associated Employer calculated as if the Member had been Retrenched on the termination date;
    - (iv) to increase any benefits as the Deed of Adoption, Schedule to the Deed of Adoption, Application Form or as such other advice lodged with and accepted by the Trustee may require or as the Trustee and the Participating Employer may agree;
    - (v) otherwise for the general purposes of the Plan as the Trustee and the Participating Employer may agree,subject always to Superannuation Law.
- 4.8 A person may not receive a benefit under Rule 4.7 before Superannuation Law permits.
- 4.9 If a Member dies before being paid all the benefit to which the Member was entitled pursuant to Rule 4.7(d), the Trustee must pay as a Death Benefit, so much of it as remains unpaid at the date of death.

## 5 Eligibility and Membership

### Eligibility

- 5.1 A person is eligible to become a Member of a Division if they are a Transferring SDF Member or otherwise in accordance with the Schedule for that Division and having due regard to the relevant Deed of Adoption, Schedule to the Deed of Adoption, Application Form or to such other advice lodged with and accepted by the Trustee.

### Member of a Division

- 5.2 A person admitted as a Member of a Division will be a Member of one or more of the Divisions referred to in Rule 2.2.

### Information from prospective Members

- 5.3 Before admitting a person as a Member, the Trustee may require the person (except if they are a Transferring SDF Member):
- (a) to provide evidence of that person's good health which may also include the requirement that the person present for medical examination with one or more medical examiners;
  - (b) to provide such information that is reasonably requested by the Life Assurance Company which may issue (or have issued) a Policy under which that person is to be covered by insurance; and
  - (c) to provide such other information which the Trustee considers relevant to the effective administration of this Part.

### Membership

- 5.4 An Employee shall become a Member:
- (a) on the date on which the Trustee has accepted the Employee's application, the inclusion of the Employee's name on a notice supplied to the Trustee by that Employee's Employer or, if the Trustee has waived the requirement for an application, upon the acceptance by the Trustee of a contribution in respect of that Employee; or
  - (b) on any earlier or later date agreed between the Trustee and the relevant Employer.
- 5.5 The Trustee may:
- (a) reject an application or nomination; or
  - (b) impose special conditions when accepting an application or nomination.
- 5.6 If the Trustee rejects an application or a nomination, the Trustee shall:
- (a) as soon as practicable notify, the person and any relevant Employer; and
  - (b) cause to be returned to the contributor, any moneys paid to the Trustee in connection with the application or nomination.

### Bound by Rules and Schedules

- 5.7 Each Member is bound by these Part Rules and the relevant Schedule or Schedules including, where the context so requires, the relevant Schedule to the Deed of Adoption, Application Form and such other advice as may have been lodged with and accepted by the Trustee.



**Offering Categories of Membership**

5.7A The Trustee may:

- (a) offer a Member the option of selecting a category of membership provided for under Rule 33; and/or
- (b) determine that a Member is in a group of Members to whom Rule 33 applies.

If paragraph (a) and/or (b) of this clause applies to a Member, that Member's benefits are payable in accordance with the terms of Rule 33.

**Establishing, Deleting and Varying Categories of Membership**

5.7B The Trustee may establish, close, delete or vary Categories of membership within a Division or a Plan in a Division at any time.

**Notice of admissions**

5.8 Upon a person being admitted as a Member, the Trustee shall within any time specified by Superannuation Law:

- (a) record or cause to be recorded, that person's name;
- (b) where the case so requires, establish or cause to be established Contribution Accounts for the Member;
- (c) may, by such means and in such manner as the Trustee considers to be reasonable or appropriate, advise the person in writing of:
  - (i) the date of acceptance;
  - (ii) the Division and Category to which the acceptance relates; and
  - (iii) any other matters which, in the opinion of the Trustee, are appropriate or which are required of it by Superannuation Law.

**Transfer of Service**

5.9 The transfer of a Member from Service with one Employer to Service with another Employer in the same Plan does not constitute a termination of Service unless the Participating Employer of each Plan and the Trustee declare otherwise.

**Membership ceases**

5.10 A person shall cease to be a Member of a Division when:

- (a) all of that person's entitlement to benefits from each Plan of the Division of which that person is a Member have been paid; or
- (b) a transfer is made to another Division or Part or any Superannuation Entity in satisfaction of all the Member's entitlement to benefits from each Plan of the Division; or
- (c) all of the Member's entitlement to benefits from each Plan of the Division cease.

**6 Transfers to and from the Fund****Transfer to a Plan**

6.1 The Trustee may make such arrangements it considers appropriate with:

- (a) a Member;
- (b) any previous employer of the Member;

- (c) the trustee of any Superannuation Entity of which the Member is or has been a member;  
or
  - (d) the owner of an annuity policy held by the Member,
- to transfer assets in respect of the Member to a Plan and to provide benefits in respect of the Member, which may be calculated in a different manner from that set out in the relevant Schedule and any Deed of Adoption, Schedule to the Deed of Adoption, Application Form or other advice lodged with and accepted by the Trustee, as the case may be. The Trustee may specify a minimum transfer amount and impose such other conditions on the transfer as it considers to be appropriate and reasonable in all the circumstances.
- 6.2 Any arrangements made pursuant to Rule 6.1 must:
- (a) if applicable, specify how the transferred assets are to be allocated as between Investment Portfolios; and
  - (b) comply with Superannuation Law.
- 6.3 Assets other than cash may be transferred to this Part if the Trustee so permits but any such assets must first be valued in the manner described in Rule 18.3 before being transferred to this Part.
- 6.3A The arrangements made pursuant to Rule 6.1 may include the Trustee accepting into the fund from the trustee of another Superannuation Entity, by way of transfer, assets identified by that trustee to be surplus to the requirement to make adequate provision for the benefits which immediately before the transfer had accrued in respect of the transferring members of that other Superannuation Entity, and which that trustee considers to be appropriate to transfer to this Part. The Trustee shall credit such assets to the Plan Reserve Transfer Accounts of the applicable Employers, or otherwise in respect of the applicable Members or as the Trustee considers equitable.

### Transfer from a Plan

- 6.4 If a Member is, or is eligible to be, a member of another Plan, Part or Superannuation Entity, that Member may request the Trustee to transfer assets to the other Plan, Part or Superannuation Entity and the Trustee in its discretion may do so. However:
- (a) the transfer must comply with Superannuation Law; and
  - (b) the Trustee must not transfer assets having a value in excess of:
    - (i) the Interest in the Plan of the Member; or
    - (ii) the amount requested by the Member to be transferred.
- The Trustee may specify a minimum transfer amount and impose such other conditions on the transfer as it considers to be appropriate and reasonable in the circumstances.
- 6.5 Assets other than cash must first be valued pursuant to Rule 18.3 before being transferred from this Part.
- 6.6 A transfer made pursuant to Rule 6.4 shall be made in full satisfaction of the Member's entitlement to any benefit in respect of the amount transferred. The Trustee shall not be responsible for the manner in which the trustee of any other Superannuation Entity deals with the amount transferred.
- 6.7 To satisfy a transfer of assets pursuant to Rule 6.4, the Trustee must debit the Contribution Accounts of the relevant Member in accordance with Rule 17 or otherwise adjust the Member's

benefits or give effect to the transfer in such other manner as the Trustee considers appropriate in the circumstances.

### Successor Fund Transfers

6.8 Despite anything to the contrary expressed or implied in these Part Rules the Trustee may accept a transfer of assets and Members into a Plan, or agree to a transfer of assets or Members out of a Plan, without the consent of the Member or Members provided the transfer is consistent with the Superannuation Law.

### Transfers in respect of Divisions

6.9 Without limiting Rule 6.4 or the provisions for transfer to the Personal Division or Allocated Pension Division:

- (a) if a Member is, or is eligible to be, a Member of more than one Division of this Part, the Trustee may designate the Member as a Member of any of those Divisions and allocate the Member's Part Credit wholly to the designated Division;
- (b) if a Member is, or is eligible to be, a Member of more than one section of a Division of this Part, the Trustee may designate the Member as a Member of any of those sections and allocate the Member's Part Credit wholly to the designated section.

### Transfers between classes

6.10 The Trustee may transfer a Member's interest in the Fund, or part of their interest, from a class of beneficial interest to another class of beneficial interest if permitted by Superannuation Law.

## 7 Contributions

### Amount, manner and times

7.1 Each Employer and each Member must in relation to a period, contribute to the relevant Plan the amount (if any) and in the manner and at the times specified in the relevant Schedule with due regard to the relevant Deed of Adoption, Schedule to the Deed of Adoption, Application Form or such other advice as has been accepted by the Trustee.

### General

7.2 The Trustee may refuse to accept all or part of any contribution, including but not limited to a Member No TFN Contribution, from a person without giving any reason.

7.3 The Trustee must not accept contributions contrary to Superannuation Law.

7.4 If the Trustee finds that any contributions have been accepted contrary to Superannuation Law, the Trustee must repay them to the contributor. If Superannuation Law permits, the Trustee may deduct an amount for insurance effected or Tax or expenses incurred in relation to those contributions.

7.4A If the Trustee receives a Member No TFN Contribution, it:

- (a) must, if required by Superannuation Law, refuse to accept the Member No TFN Contribution;
- (b) must, if required by Superannuation Law, return the Member No TFN Contribution to the relevant Member within 30 days of the amount being received by the Trustee;

- (c) may, in its absolute discretion, return the Member No TFN Contribution to the relevant member after deducting amounts from these contributions to take account of:
  - (i) a reduction in the value of the Member No TFN Contribution owing to losses sustained as a result of its investment during the period it was held by the Trustee; or
  - (ii) reasonable Costs incurred in respect of this Part, or both.

### **Mandated Employer Contributions**

7.5 If an Employer makes contributions for a Member in relation to a period and:

- (a) the contributions are intended to:
  - (i) satisfy the Employer's obligations under any Award in relation to the period; or
  - (ii) avoid a liability for the Superannuation Guarantee Charge in relation to the period; and
- (b) the contributions in the opinion of the Trustee do not satisfy the Award or avoid the Superannuation Guarantee Charge in relation to the period,

the Employer may request the Trustee to repay the contributions to the Employer, less any charge which the Trustee may make for any insurance effected or Tax or expenses incurred in relation to those contributions or at its option, the Employer may request that the contributions be applied by the Trustee in full or partial satisfaction of the Employer's obligation to make such contributions in respect of a later period.

7.6 The Trustee shall consent to the Employer's request under Rule 7.5 unless:

- (a) the Trustee is not satisfied that the circumstances described in Rule 7.5(a) and (b) exist; or
- (b) to do so is not permitted by Superannuation Law.

7.7 If an Employer is required to make contributions to the Plan for a Member for a period but has not yet made them and the Trustee is satisfied that the Employer has become bound to:

- (a) make contributions under an Award to another Superannuation Entity for the Member in relation to the period; or
- (b) pay the Superannuation Guarantee Charge for the Member in relation to the period,

then the Employer's liability to contribute under the relevant Schedule, Deed of Adoption, Schedule to the Deed of Adoption, Application Form or such other advice that has been accepted by the Trustee, shall be reduced to the extent that the Employer must make the Award contributions or pay the Shortfall Component of the Member.

### **Shortfall Component**

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

## **8 Application of Contributions, Transfers & Other Receipts**

### **Application**

8.1 On acceptance of any contribution, transfer or other receipt of this Part pursuant to these Part Rules in circumstances where the Assets of the Part are represented wholly by a Policy, the amount of such contribution, transfer or other receipt shall forthwith be applied by the Trustee as

a premium under that Policy for allocation and investment thereunder in accordance with the Member's requirements as expressed in the Schedule to the Deed of Adoption, Application Form or in such other manner acceptable to the Trustee as the case may be and in circumstances where the Assets of the Part are not represented wholly by a Policy, then subject only to Rule 9:

- (a) each such contribution and other receipt of this Part must be paid into the Cash Float Account (if any) or into such other Accounts of the relevant Plan as the Trustee considers to be appropriate; and
- (b) each such transfer must be paid into the Cash Float Account (if any) or into such other Accounts of the relevant Plan as the Trustee considers to be appropriate.

### Receipt by Trustee

8.2 Each contribution, transfer or other receipt of this Part under these Part Rules must be held by the Trustee **ON TRUST**. If the contribution, transfer or other receipt of this Part is rejected, the Trustee must forthwith return the moneys to the contributor, transferor or payer as the case requires and may account to the said contributor, transferor or payer for any interest gained or capital loss incurred while such moneys were being held on trust.

### Cooling off period

8.3 If the Trustee accepts from or in respect of a Member whose employer does not contribute to the Plan in respect of that Member, a contribution, transfer or other receipt in relation to this Part and:

- (a) the contributor, transferor or payer requests repayment of the contribution, transfer or other receipt of this Part within the period of 14 days immediately following admission to membership of this Part; and
- (b) Superannuation Law permits the Trustee to do so,

the Trustee must pay to the contributor, transferor or payer as the case requires, the amount accepted less any deductions which the Trustee is entitled to make under Superannuation Law together with any further amount stipulated by Superannuation Law.

## 9 Policies

### Trustee to effect Policy

9.1 The Trustee may effect or extend the application of a Policy in respect of:

- (a) a Member; or
- (b) a group of Members,

and the terms of the Policy shall bind each relevant Member and any person who becomes entitled to a benefit in respect of the Member. The Trustee covenants that it will apply every reasonable endeavour to ensure that to the greatest extent practicable, the terms and conditions of the Policy are consistent with the provisions of the Deed and these Part Rules.

### Premiums payable

9.2 In circumstances where the Assets of the Part are represented wholly by a Policy the Trustee must apply pursuant to Rule 8 all contributions, transfers and other receipts of this Part as the premium under that Policy but in any other circumstance, the Trustee must pay premiums in respect of each Policy from the Cash Float Account (if any) or from such other Accounts as the Trustee considers to be appropriate and where the context so requires, shall debit the amount paid to:

- (a) the Contribution Accounts of the relevant Member; or
  - (b) any other Account of the relevant Plan,
- or partly from one and partly from the other and in such proportion as the Trustee shall determine.

### Claims

- 9.3 If the Trustee becomes aware that there is a reasonable basis for making a claim under a Policy, the Trustee must as soon as reasonably practicable thereafter make that claim in writing to the relevant Life Assurance Company.

### Policy proceeds

- 9.4 In circumstances where the Assets of the Part are:
- (a) represented wholly by a Policy, all premiums paid by the Trustee in respect of that Policy and all benefits payable to the Trustee under that Policy shall be effected in accordance with the terms and conditions of that Policy consistent with the express wish of the Member as the same has been advised to and accepted by the Trustee;
  - (b) not represented wholly by a Policy, the Trustee must pay the proceeds of any Policy to the Cash Float Account and credit the amount of the proceeds to:
    - (i) the Contribution Accounts of the relevant Member; or
    - (ii) any other Account of the relevant Plan in accordance with these Part Rules,or partly to one and partly to the other of them in such proportions as the Trustee shall determine.

### Benefit payable

- 9.5 The Trustee shall not be obliged to make a payment in respect of a Policy that is greater in amount than the amount actually received by the Trustee under the Policy, net of any deductions which the Trustee is entitled to make under these Part Rules and under the Policy.

### Sum Assured refused, varied or declined

- 9.6 If the Life Assurance Company that has issued the relevant Policy under which life insurance is provided:
- (a) refuses to provide or to increase the insurance under that Policy in respect of a Member on its standard terms; or
  - (b) terminates the insurance under that Policy or terminates the obligation to accept any additional Members under that Policy; or
  - (c) does not admit a claim (either wholly or partially) under that Policy; or
  - (d) varies the Policy,
- then the Trustee must forthwith reduce or vary accordingly, the amount which would otherwise have been payable under this Part.
- 9.7 The Trustee must advise each Member (or cause each Member to be advised) of the amount of insurance that has been accepted or declined under the relevant Policy in respect of that Member.
- 9.8 If a Life Assurance Company, in response to an application by the Trustee pursuant to Rule A3.2, declines to provide (either wholly or partially) insurance for any Member under the relevant Policy,

the Trustee shall not be obliged or required to arrange any other policy of insurance in respect of that Member.

### **Increase in premiums**

- 9.9 If a Life Assurance Company, in response to an application by the Trustee pursuant to Rule A3.2, increases or varies the premium rates under a Policy, the Trustee must advise (or cause to be advised) the Employer and Member of the increase or variation as soon as it is practicable so to do. The Trustee may pay the increased or varied premiums until the Trustee determines that:
- (a) the insured benefit is not to be provided under that Policy; or
  - (b) a reduced benefit is to be provided at a reduced premium; or
  - (c) the said Policy is to be terminated from a specified date and another policy is effected in substitution therefor with effect from that date with the same or with another Life Assurance Company.

### **Policy types**

- 9.10 Notwithstanding anything to the contrary whether express or implied in the Deed and these Part Rules, the Trustee may effect in its name one or more policies of life insurance (including where the context requires, an 'investment only policy'; a 'group life insurance policy' and an 'Annuity Policy') with a Life Assurance Company to provide the insured and any other benefits which may become payable under this Part pursuant to the Deed and these Part Rules.
- 9.10A Notwithstanding anything to the contrary whether express or implied in the Deed and these Part Rules, the Trustee may effect in its name one or more policies of life insurance with a Life Assurance Company which pays proceeds in circumstances where a Member is diagnosed by a medical practitioner as having a terminal illness and on receipt of the proceeds of any such policy, the Trustee will pay the proceeds to the Member, subject to the terms of the Deed and these Part Rules.
- 9.11 The Trustee is empowered to and may give full and effectual receipts, releases and discharges in respect of payment of any moneys under the said Policy or Policies as may be required of it and which it considers to be proper having regard to the circumstances.
- 9.12 In the event that the Trustee has elected to secure the benefits payable under this Part pursuant to these Part Rules by means of a policy of a type referred to in Rule 9.10 then to the extent that one such policy is wholly or partially an 'investment only policy', that policy shall be sufficient, if the Trustee so decides, to remove any requirement in these Part Rules for the Trustee to maintain a separate Cash Float Account under this Part.
- 9.13 For the avoidance of doubt, the provisions of the various State and Territory Trustee Acts relating to investments shall not apply to the Fund and all matters relating to the investment of the Assets of the Part shall be governed by the Deed and these Part Rules.

### **Powers in relation to Policies**

- 9.14 Only the Trustee is entitled to enforce any rights, remedies or contract in connection with a Policy.
- 9.15 No Employer, Member or a person claiming through either of them, may claim nor shall have any right, title or interest in or over any Policy.

**Insurance Premium Refund**

9.16 Where premiums for life insurance have been deducted from a Member's Contribution Account or from an Employer's Contribution Account, the amount of any refund of insurance premiums under the Policy shall be fully distributed by the Trustee amongst those of the Members in respect of whom the life insurance premiums had been deducted and who, at the date of distribution remain in the Service, by crediting it to the respective Member's Contribution Accounts and Employer's Contribution Accounts in such proportions as in the opinion of the Trustee, is equitable in the circumstances.

For the avoidance of doubt, any refund of life insurance premiums will be credited to a Member's Contribution Account only if the Member remains a Member in accordance with the provisions of the Deed and these Part Rules at the date of distribution.

**10 Benefit Entitlement****Benefit**

10.1 Each Member shall be presumptively entitled to a benefit calculated under the relevant Schedule for that Member's Division having regard to the relevant Schedule to the Deed of Adoption or the Application Form or to such other advice lodged with and accepted by the Trustee.

**Benefits for Non-Member Spouse**

10.1A In the event that a Non-Member Spouse does not become a Member, the Trustee may, subject to Superannuation Law and in accordance with the provisions of this Deed, pay to a Non-Member Spouse or pay or transfer to another Superannuation Entity (including an eligible rollover fund) any amount which becomes payable in respect of the Non-Member Spouse because the Member's interest in this Part is subject to a Payment Split. The receipt in those circumstances is a sufficient discharge for the Trustee of any obligation it has in respect of the Non-Member Spouse.

**Adjusting benefits for Payment Splits**

10.1B The Trustee may adjust any benefit payable or which may become payable from this Part in respect of a Member to take account of any Payment Split under Part VIII B of the *Family Law Act 1975* (Cth) in respect of the Member or in respect of benefits payable from this Part for or in respect of that Member. Subject to Superannuation Law, any adjustment will be on such terms as the Trustee determines.

**Required Payment Date**

10.2 If:

- (a) a Member reaches the Required Payment Date; and
- (b) if applicable, having regard to that Member's Division, remains in Service,

the Trustee must pay the Member a benefit calculated under the Schedule for the Member's Division having regard to the relevant Schedule to the Deed of Adoption, Application Form or to such other advice lodged with and accepted by the Trustee, or shall otherwise apply it pursuant to Rule 11. The Member does not thereafter become entitled to any further benefit by reason of leaving Service or dying in Service.



**Premature release of benefit**

10.3 The Trustee may pay a benefit to a Member (including in the circumstance of the Member having not left Service) where:

- (a) the Member requests payment;
- (b) the benefit does not exceed the Interest in the Plan of the Member; and
- (c) Superannuation Law permits.

The Trustee may impose such conditions and penalties on the premature payment of benefits pursuant to this Rule, as it considers to be appropriate in the circumstances.

**Trustee determinations**

10.4 A benefit is payable only if these Part Rules so permit.

10.5 The Trustee may act on:

- (a) any proofs or presumptions which it considers satisfactory (whether or not they are strictly legal proofs or presumptions);
- (b) any authorisation or direction given by or on behalf of a Member even if the authorisation or direction was given by them as an SDF member to the Trustee or the Life Company.

**Unclaimed benefits and lost Members**

10.6 The Trustee must comply with Superannuation Law in relation to the Interest in the Plan of Members which Superannuation Law:

- (a) treats as unclaimed money; or
- (b) requires, in the case of a Member whose present whereabouts is unknown to the Trustee, to be transferred to another Superannuation Entity,

and no person shall thereafter have any claim whatsoever under the Deed and these Part Rules, to or in respect of the amount of that Member's Interest in the Plan.

**Assignments**

10.7 The Trustee is not bound to recognise any purported assignment or charge or alienation of benefit. However:

- (a) Where a Member or Dependant in the opinion of the Trustee becomes physically, mentally or otherwise incapable for any reason whatsoever of managing his own affairs -
  - (i) all benefits which have become payable to or on behalf of that Member or Dependant but which have not yet been paid or otherwise applied in terms of the Deed and these Part Rules; and
  - (ii) all benefits to which that Member or Dependant is contingently entitled or which may become payable to that Member or Dependant under this Part,are forfeited to the Trustee but shall nevertheless be applied by the Trustee in accordance with paragraph (c).
- (b) If:
  - (i) a Member or Dependant purports to assign, charge or alienate; or
  - (ii) any other event occurs which results in another person becoming entitled to,

all or part of the benefit of the Member or Dependant which may become payable (but which has not become payable at the date of the purported assignment, charge, alienation or other event), then subject to Superannuation Law, that benefit or part thereof shall be forfeited and applied in accordance with paragraph (c) below **PROVIDED THAT** Rule 10.7 shall have no effect on the bankruptcy or insolvency of the Member or Dependant to the extent that its operation would be contrary to the Superannuation Law.

- (c) Any benefit which the Trustee determines has been forfeited shall be applied by the Trustee for the maintenance and benefit of that person and that person's Dependents or such one or more of them to the exclusion of the other or others of them and in such manner and proportions as the Trustee in its absolute discretion determines **PROVIDED THAT** application of the forfeited benefit shall be in accordance with Superannuation Law.

### **Debt or wrongdoing**

- 10.8 If at any time a benefit becomes payable to a Member or available for transfer, then subject to Superannuation Law, the Trustee may reduce that benefit by any amount that the Trustee can reasonably demonstrate to be owed by the Member to the Trustee.
- 10.9 If a Member becomes bankrupt (within the meaning of subsection 5(1) of the Bankruptcy Act) the amount of that Member's Interest in the Plan (subject to any minimum amount prescribed under Superannuation Law) at the commencement of the bankruptcy and payments to the Member under this Part received on or after the date of bankruptcy (other than by way of pension) shall not constitute property that is divisible amongst the Member's creditors and shall be protected to the extent described in the Superannuation Law.

## **11 Payment of Benefit**

### **Benefit not to be paid in contravention of law**

- 11.1 The Trustee must not pay a benefit to or in respect of a Member if the payment would result in the Trustee or an Employer contravening:
- (a) Superannuation Law; or
  - (b) any law relating to corporations.

### **Voluntary deferral**

- 11.2 The Trustee may defer payment of all or part of a benefit if the Member entitled to it requests (***Deferred Benefit***).
- 11.2A Subject to the Superannuation Law, the Trustee:
- (a) must pay part or all of the Deferred Benefit to the Member upon request;
  - (b) must pay part or all of the Deferred Benefit to another Superannuation Entity upon request of the Member;
  - (c) must pay the Deferred Benefit to or in respect of the Member when the Member reaches the Required Payment Date; or
  - (d) must pay the remainder of the benefit as a death benefit, if the Member dies before the Deferred Benefit is paid in full.

**Preservation**

- 11.3 If the Trustee considers it necessary under Superannuation Law to preserve any part of a benefit that has become payable from this Part, then it must:
- (a) pay that part of the benefit under Rule 11.6 or 11.9 to a Superannuation Entity which also preserves it under Superannuation Law; or
  - (b) if the Member does not nominate a Superannuation Entity and Superannuation Law permits:
    - (i) pay it to a Superannuation Entity nominated by the Trustee; or
    - (ii) retain it in this Part until it may be paid in accordance with Superannuation Law.

**Deferred and preserved benefits**

- 11.4 If payment of any amount of a benefit is deferred pursuant to Rule 11.2 or if any amount of a benefit is preserved pursuant to Rule 11.3, the Trustee must adjust the amount of the benefit in such manner and to such extent (if any) as it determines to be appropriate in the circumstances. If the Member dies before the benefit is paid under this Part in full, the Trustee must pay the remainder of the benefit as a Death Benefit.

**Purchase of an Annuity Policy**

- 11.5 If a person who is entitled under this Part to receive a lump sum benefit:
- (a) requests the Trustee in writing to pay or apply all or part of that lump sum benefit to purchase an Annuity Policy or an allocated pension in the name and for the benefit of:
    - (i) the Member; or
    - (ii) the Member and one or more Dependants of the Member; or
    - (iii) a Dependant of the Member; and
  - (b) such payment, application and purchase as the case requires complies with Superannuation Law,

then the Trustee, in the exercise of its absolute discretion, may comply with the request.

**Purchase of an Annuity Policy**

- 11.6 If a person who is entitled under this Part to receive a lump sum benefit:
- (a) requests the Trustee in writing to pay or apply all or part of that lump sum benefit to purchase an Annuity Policy or another appropriate policy under this Part for the benefit of that person; and
  - (b) such payment, application and purchase as the case requires, complies with Superannuation Law,

then the Trustee, in the exercise of its absolute discretion, may comply with the request.

**Payment of pension under Part**

- 11.7 Payment under this Part of a pension (including an allocated pension) shall be made by the Trustee in accordance with the terms and conditions of the Annuity Policy or such other policy including an allocated pension as may have been purchased by the Trustee for the purpose and to that extent, in accordance with the wishes of the person referred to in Rule 11.6.

**Payment of benefit to another fund**

- 11.8 If a person who is entitled under this Part to receive a lump sum benefit:
- (a) requests the Trustee to pay all or part of that lump sum benefit to another Superannuation Entity; and
  - (b) such payment complies with Superannuation Law,
- then the Trustee, in the exercise of its absolute discretion may comply with the request.

**Payment to another fund or purchase of annuity without consent**

- 11.9 The Trustee may pay all or part of a benefit to:
- (a) another Superannuation Entity; or
  - (b) the provider of a deferred annuity,
- without the consent of the person entitled, so long as Superannuation Law permits.

**Payment of Death Benefit to a Dependant or to the Legal Personal Representative or to another person**

- 11.10 Subject to Rule 11.12A, Rule 11.12I, Rule 33 and the Superannuation Law, the Trustee must pay or apply a Member's Death Benefit to or for the benefit of such one or more, as determined by the Trustee, of:
- (a) the Dependants of the deceased Member;
  - (b) the Legal Personal Representative of the deceased Member;
  - (c) any other person to whom the payment of the Benefit is permitted under Superannuation Law,
- in such form and manner, at the times and in such proportions between them (if more than one) as the Trustee in its absolute discretion shall determine.

**Member's preference for payment of Death Benefit**

- 11.11 A Member may give to the Trustee a non-binding nomination in such form and manner as the Trustee specifies from time to time requesting the Trustee to pay some or all of the Member's Death Benefit to a person or persons mentioned in the nomination (being the Legal Personal Representative and/or Dependants of the deceased Member) (**Non-Binding Nomination**) but the Trustee is not bound to follow a Non-Binding Nomination. This applies even if the nomination was given to the Trustee as trustee of the SDF.
- 11.12 [Deleted]

**Binding Nominations**

- 11.12A If the Superannuation Law has been met, where:
- (a) the Trustee has determined that this Rule 11.12A will apply in respect of a Member or a group of Members to which the Member belonged at the date of death;
  - (b) the Trustee is in receipt of a current, valid nomination which was given to the Trustee by the Member in such form and manner as the Trustee specifies from time to time requiring the Trustee to pay some or all of the Member's Benefit to a person or persons mentioned in the nomination (being the Legal Personal Representative and/or Dependants of the deceased Member) (**Binding Nomination**); and

- (c) the nomination referred to in paragraph (b) complies with any Binding Nomination Guidelines applicable at the date on which the nomination was made,

then the deceased Member's Death Benefit must be paid by the Trustee in accordance with the Binding Nomination.

11.12B [Deleted]

11.12C [Deleted]

11.12D [Deleted]

11.12E [Deleted]

11.12EAA Member's Binding Nomination ceases to have effect upon the earliest of the following dates:

- (a) the date the Binding Nomination ceases to have effect under Superannuation Law;
- (b) the date a nominated beneficiary predeceases the Member;
- (c) the date the Member marries (except where the Member marries a nominated beneficiary who is in a de-facto relationship with the Member);
- (d) the date the Member enters into a de-facto relationship (including with a person of the same sex);
- (e) the date the Member divorces or the member's de-facto relationship (including with a person of the same sex) terminates;
- (f) the date the Member revokes the Binding Nomination in writing;
- (g) the date the Member provides a Non-Binding Nomination or a Non-Lapsing Nomination in relation to the Member's Interest or Interests in respect of which the Binding Nomination was made;
- (h) the day before the date of the Member's death where, at the date of the Member's death, a nominated beneficiary is neither a Dependant or the Legal Personal Representative of the Member; or
- (i) the date that any other circumstance, which the Trustee may determine from time to time, occurs in relation to the Member.

11.12EB The Trustee may from time to time specify conditions and restrictions relating to Binding Nominations (***Binding Nomination Guidelines***) which must be complied with in order for a Binding Nomination to be valid.

11.12EC For the avoidance of doubt:

- (j) a Non-Binding Nomination and/or a Binding Nomination may form part of the Application Form lodged by the Member with the Trustee at the time of his or her application to become a Member; and
- (k) the Trustee may pay the deceased Member's Benefit as a lump sum or as a pension or a combination of both, as the Trustee in its absolute discretion considers appropriate, notwithstanding any request contained in a Non-Binding Nomination or a direction contained in a Binding Nomination to pay the deceased Member's Benefit in a particular form.

### **Payment of Death Benefit to Infants**

11.12F Where any Dependant to whom a benefit is to be paid under Rule 11.10 or Rule 11.12A is an infant, the payment shall be made **IN TRUST** to the person appearing to the Trustee to be the guardian or the person having actual custody or control of such infant or to the person with whom

such infant will permanently reside or to such other person or institution and generally subject to such directions as to the manner in which the payment is to be applied for the benefit of the infant as the Trustee shall think fit and the receipt of such person or of the appropriate official of such institution shall be a good and effectual discharge to the Trustee for any money so paid and the Trustee shall not be bound to see to the application thereof nor to the carrying out of their directions as aforesaid.

### Non-Lapsing Nominations

11.12G The Trustee may from time to time determine that this Rule 11.12G applies in respect of a particular Division, Plan, category or group of Members, and may determine from time to time that this Rule 11.12G no longer applies in respect of a Division, Plan category or group of Members. Where the Trustee has determined that this Rule 11.12G applies in respect of a Member (and has not determined that this Rule 11.12G no longer applies in respect of the Member), where the Superannuation Law permits, the Member may give the Trustee a nomination in such form and manner as the Trustee determines from time to time (**Non-Lapsing Nomination**) that directs the Trustee to pay some or all of the Member's Death Benefit to a person or persons listed in the nomination (being the Legal Personal Representative and/or Dependants of the Member) on the death of the Member.

11.12H Where the Trustee receives a Non-Lapsing Nomination, the Trustee may provide its consent to the exercise of a Member's direction in a Non-Lapsing Nomination:

- (a) on an individual nomination basis; or
- (b) on a general basis,

where the Non-Lapsing Nomination satisfies such terms and conditions as the Trustee determines from time to time, in which case such consent becomes effective from the time that the Non-Lapsing Nomination is processed by or on behalf of the Trustee.

11.12I Subject to Rule 11.12J, if all the requirements of the Superannuation Law have been met, where:

- (a) the Trustee is in receipt of a current, valid Non-Lapsing Nomination; and
- (b) the Trustee has consented to the Non-Lapsing Nomination in accordance with Rule 11.12H; and
- (c) the Non-Lapsing Nomination complies with any terms and conditions determined by the Trustee pursuant to Rule 11.12H,

the Trustee must pay the deceased Member's Death Benefit to the person or persons listed in the Non-Lapsing Nomination.

11.12J A Non-Lapsing Nomination ceases to be valid and effective upon the earlier of the following events:

- (a) the date the Non-Lapsing Nomination ceases to have effect under Superannuation Law;
- (b) the date a nominated beneficiary predeceases the Member;
- (c) the date the Member marries (except where the Member marries a nominated beneficiary who is in a de-facto relationship with the Member);
- (d) the date the Member enters into a de-facto relationship (including with a person of the same sex);
- (e) the date the Member divorces or the member's de-facto relationship (including with a person of the same sex) terminates;
- (f) the date the Member revokes the Non-Lapsing Nomination in writing;

- (g) the date the Member provides a Non-Binding Nomination or a Binding Death Benefit Nomination in relation to the Member's Interest or Interests in respect of which the Non-Lapsing Nomination was made;
- (h) the day before the date of the Member's death where, at the date of the Member's death, a nominated beneficiary is neither a Dependant or the Legal Personal Representative of the member; or
- (i) the date that any other circumstance, which the Trustee may determine from time to time, occurs in relation to the Member.

### **Nature of payment of Death Benefit**

11.13 Subject to Rule 33 and Rule B2.4, the Trustee, in the exercise of its absolute discretion, may determine that a Death Benefit be paid as a lump sum, pension, annuity or in any other form as it considers to be appropriate in the circumstances and as permitted by Superannuation Law.

### **Transfer of Assets**

11.14 Except in circumstances where the Assets of the Part are represented wholly by a Policy, the Trustee may pay a benefit to a person entitled to the benefit by transferring assets of equivalent value to the person or to the person's nominee if:

- (a) Superannuation Law permits; and
- (b) the person so requests; and
- (c) the Trustee agrees.

11.15 Assets must first be valued pursuant to Rule 18 before being transferred in accordance with Rule 11.14.

### **Incapacity**

11.16 If the Trustee considers or reasonably believes that a person who is entitled to a benefit is unable to give a proper receipt or discharge or is unfit or is unable to manage his or her financial affairs and Superannuation Law permits, the Trustee may:

- (a) pay the benefit to another person ON TRUST to be used solely for the advantage of the person determined by the Trustee to be entitled to it; and
- (b) accept that other person's receipt as a good and complete discharge.

The Trustee shall not be responsible to see to the application of the benefit by the person to whom it is paid.

### **Payment period**

11.17 Subject to Superannuation Law and to Rule 15.12, a benefit must be paid or transferred within such period after the Member has become entitled to receive it as is reasonable in the circumstances.

### **Payments to third parties**

11.18 Where a benefit becomes payable under Superannuation Law or Superannuation Law permits the release of benefits in specified circumstances, the Trustee is not prevented from paying the benefit to a nominated third party upon receipt of a written request from the Member or person if it considers such payment appropriate.

**Clearance of funds**

11.19 Where an amount is paid to this Part by cheque or payment order in respect of a person, the Trustee shall not be under any obligation to make a payment under this Part in relation to that person until the proceeds of that cheque or payment order as the case may be is in cleared funds.

**Trustee's discharge**

11.20 To the extent permitted by Superannuation Law, the Trustee is discharged from all obligations in respect of a benefit if it is paid in good faith to or on behalf of a person whom the Trustee reasonably believes to be entitled to it.

**Lump sum benefits**

11.21 Subject to the Superannuation Law, any benefit payable under this Part as a lump sum is payable either as a single sum or by instalments over such period and at such time or times as the Trustee determines.

**12 Records and Accounts****Records**

12.1 The Trustee shall establish and maintain or cause to be established and maintained all appropriate records of this Part including (but not limited to):

- (a) Members and Employers under each Plan within each Division;
- (b) Deeds of Adoption, Schedules to the Deeds of Adoption, Application Forms and such electronic or other means by which relevant data in relation to this Part, a Plan or a Member has been advised to and accepted by the Trustee;
- (c) assets and liabilities (including all sales and purchases);
- (d) income and expenditure;
- (e) the payment of all benefits and transfers;
- (f) the receipt of all contributions and transfers;
- (g) the balance in each Contribution Account and the other Accounts;
- (h) investments of each Plan;
- (i) nominated beneficiaries of each Member;
- (j) all dates, names and addresses relevant to the proper administration of the Plan, Division and Fund; and
- (k) all other matters and information (including the Tax File Number of each Member) which the Trustee considers appropriate or which is required by Superannuation Law,

in the manner (including use of the electronic medium) and for such period specified by Superannuation Law or otherwise as determined by the Trustee.

**Minutes and other evidence**

12.2 The Trustee must, in relation to this Part, keep minutes and keep or cause to be kept, other appropriate documentary evidence of all matters specified by Superannuation Law, in the manner (including electronic image) and for such period specified by Superannuation Law or otherwise as determined by the Trustee.



**General**

- 12.3 Employers and Members must notify the Trustee of any change of name or address. An Employer may notify on behalf of a Member. Upon being satisfied with the proof of the change, the Trustee must accordingly alter or caused to be altered, the relevant record.

**13 Register****Register**

- 13.1 The Trustee shall establish and maintain or cause to be established and maintained a Register which shall include:
- (a) the name, current address or principal place of business of each Participating Employer and Associated Employer;
  - (b) the Division and Plan of which the Employees of that Employer are admitted to membership of this Part; and
  - (c) any other information which the Trustee considers appropriate or which is required by Superannuation Law.
- 13.2 At the option of the Trustee, the information described in Rule 13.1 need not be maintained in a separate and distinct Register but may instead be incorporated and maintained with other records of this Part established and maintained by or on behalf of the Trustee under Rule 12.1.

**14 Investments****Authorised investments**

- 14.1 The Assets of the Part shall be acquired by the Trustee on an arms length basis. Subject only to Superannuation Law, the Trustee, in the exercise of its absolute discretion, may elect to invest all the Assets of the Part in a Policy. In circumstances where the Trustee has decided to invest all the Assets of the Part otherwise than in a Policy it may invest all the Assets of the Part which are not required to meet current payments in any manner in which it could invest if it were personally entitled to the money or assets. This includes, but is not limited to:
- (a) investments not prohibited by any law relating to the investment of trust funds;
  - (b) policies of life insurance;
  - (c) trusts or common funds;
  - (d) a deposit or loan, with or without security;
  - (e) real property;
  - (f) shares, stocks, notes, options, debentures or other securities;
  - (g) stock lending arrangements;
  - (h) options, hedging contracts, futures contracts and other financial instruments.
- 14.2 If Superannuation Law permits, the Trustee may:
- (a) mix investments with investments of other people or trusts; and
  - (b) vary, replace, encumber and deal with the investments,
- as if it were dealing with its own property and specifically, the Trustee may vary, transpose and replace any investment of this Part in such manner as it determines without being responsible for any loss occasioned by such variation, transposition and replacement.

**Related trusts**

14.3 The Trustee may:

- (a) invest in a trust or fund of which the Trustee or a related body corporate of the Trustee is the promoter, manager or trustee; or
- (b) invest in a policy of insurance issued by the Trustee as insurer or by a related body corporate of the Trustee as insurer,

and need not account to this Part or to Members of this Part for fees, profit or any other remuneration earned in that capacity otherwise than may be required by Superannuation Law.

**Compliance with Superannuation Law**

14.4 The Trustee must invest in a manner which complies with Superannuation Law.

**Loans and financial assistance**

14.5 The Trustee may make a loan or give financial assistance only in a manner which complies with Superannuation Law.

**Borrowing**

14.6 The Trustee may in its absolute discretion borrow or raise money up to any amount and may secure payment or repayment in any manner. However, the Trustee may do so only if or to the extent that Superannuation Law permits.

**Custodians**

14.7 The Trustee may appoint a custodian to hold investments within or outside Australia. Such appointment must be in writing and be in compliance with Superannuation Law. The custodian may be a related body corporate of the Trustee and the Trustee may be reimbursed out of the relevant Plans for the fees of that body corporate, so long as the appointment is on arm's length terms.

14.8 A custodian appointed pursuant to Rule 14.7 may hold an investment directly or through a sub-custodian. The custodian must pay out of its own fees, the fees of any sub-custodian.

14.9 A custodian or sub-custodian must be a body corporate which satisfies Superannuation Law.

**Engagement of Securities System**

14.10 The Trustee may engage the services of one or more Securities Systems on such terms as it determines to:

- (a) receive and hold on behalf of the Trustee in safe custody any investments of this Part and any documents of title relating to them;
- (b) record and settle any transactions involving those investments; and
- (c) perform any other function approved by the Trustee in writing.

**15 Investment Portfolios****Investment Portfolios**

15.1 The Trustee shall hold and maintain the Assets of the Part in separate portfolios being Investment Portfolios unless the Trustee, in the exercise of its discretion determines that the Assets of the

Part are pursuant to Rules 9.12 and 14.1, to be wholly invested in a Policy in which case, the assets of the Policy shall be represented by separate investment portfolios.

- 15.2 Unless the Trustee determines otherwise, it must specify a Default Investment Portfolio and a Protection Portfolio for each Plan as at the date on which the Plan is established.
- 15.3 The Trustee may transfer assets between different Investment Portfolios.
- 15.4 Investment Portfolios do not constitute separate trust funds.

#### **Designation and variation of Investment Portfolios**

- 15.5 The Trustee may at any time and from time to time designate Investment Portfolios and specify:
- (a) the kinds of assets to be held in each Portfolio;
  - (b) the proportion of assets of different kinds to be held in each Portfolio; and
  - (c) any other matters that the Trustee considers to be expedient or appropriate.
- 15.6 The Trustee may vary the specification for an Investment Portfolio as it considers appropriate.
- 15.7 The Trustee must specify the Cash Float Account (if any) as an Investment Portfolio.
- 15.8 An Investment Portfolio must not be designated or varied in a manner that is inconsistent with Superannuation Law.

#### **Investment Portfolios - Range of, selection of and Rules in relation to**

- 15.9 The Trustee in the exercise of its discretion may:
- (a) divide an Investment Portfolio into two or more separate Investment Portfolios;
  - (b) amalgamate two or more separate Investment Portfolios into one Investment Portfolio;
  - (c) extend the available range of Investment Portfolios; and
  - (d) reduce the available range of Investment Portfolios.
- 15.10 Subject to Superannuation Law and Rule 15.11, a Member or an Employer may select:
- (a) Investment Portfolios to which contributions or transfers are to be applied; and
  - (b) the proportions of contributions or transfers to be allocated as between the Investment Portfolios.
- 15.11 The Trustee may make rules in relation to the:
- (a) Default Investment Portfolio; and
  - (b) Protection Portfolio; and
  - (c) range and number (which may be one) of available Investment Portfolios including the maximum number of such Portfolios that may be selected by and maintained concurrently for a Member or group of Members under this Part; and
  - (d) whether, when and how the wishes of Members or Employers, as the case requires, concerning the application by the Trustee of contributions, transfers and other receipts of this Part to Investment Portfolios generally, may be advised to the Trustee; and
  - (e) such other matters concerning the application of contributions, transfers and other receipts of this Part and the operation of Investment Portfolios generally, as the Trustee considers to be appropriate or expedient.

The rules must be communicated in writing (or such other form acceptable to the Trustee) to Employers and to Members affected by or likely to be affected by these rules must be consistent with Superannuation Law.

### **Postponement of application and repayment**

- 15.12 The Trustee may, due to circumstances beyond its control or influence, postpone the application of any amount to an Investment Portfolio or the repayment of any amount from an Investment Portfolio or for any other reason which the Trustee considers to be equitable having regard to the particular circumstances.

## **16 Switching**

### **Switching between Investment Portfolios**

- 16.1 An amount in an Investment Portfolio may, at the discretion of the Trustee, be switched into an amount in one or more other Investment Portfolios.

### **Switching Requests**

- 16.2 A switch under Rule 16.1 may be made by the Trustee:
- (a) at any time; or
  - (b) following the making of a Switching Request by a Member or, if permitted by Superannuation Law, a Switching Request by any relevant Employer.
- 16.3 A Switching Request must be made in writing or in such form as the Trustee may from time to time prescribe and must be lodged at the registered office of the Trustee or as the Trustee may otherwise permit.

### **Operation of switching**

- 16.4 A switch under Rule 16.1 operates as if it were a request for a repayment of the relevant amount in the existing Investment Portfolio and an application of the relevant amount to the other Investment Portfolios.
- 16.5 The Trustee may:
- (a) specify any conditions (including the number of Switching Requests that may be lodged free of charge by or in respect of the same Member within a prescribed period and the payment of fees or charges generally) in relation to Switching Requests; and
  - (b) make rules on whether, when and how Members or Employers may make and lodge Switching Requests. The rules must be communicated to Employers and to Members and must be consistent with Superannuation Law.

## **17 Accounts**

### **Contribution Accounts**

- 17.1 If appropriate to the benefit design of a particular Division, the Trustee must maintain or cause to be maintained, Contribution Accounts for each Member in that Division.

- 17.2 Subject to Rule 7, if appropriate to the benefit design of a particular Division, the Trustee must record or cause to be recorded for each Member in that Division:
- (a) in a **Member Regular Contributions Account** — Member contributions and contributions made for a Member who is an Eligible Spouse, being in each case, contributions that are fully vested in the Member;
  - (b) in a **Member Special Contributions Account** — Member contributions of irregular amount and made at irregular intervals, being contributions that are fully vested in the Member;
  - (c) in a **Member Transfer Account**:
    - (i) that portion of the total amount transferred to this Part in respect of a Member from another Complying Superannuation Fund, being a portion at the relevant date that is fully vested in the Member; or
    - (ii) any benefit which becomes payable in respect of a Member from a Plan in the Personal Division, which is transferred to the Allocated Pension Division.
  - (d) in an **Employer Super Guarantee/Award Account** — Mandated Contributions in respect of a Member determined pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth) as that Act may stand amended from time to time or pursuant to the terms of an Award, being contributions that are fully vested in the Member;
  - (e) in an **Employer SG/Award Special Contribution Account** — Mandated Contributions in respect of a Member determined pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth) as that Act may stand amended from time to time or pursuant to the terms of an Award or the amount received by the Trustee for the benefit of a Member from the ATO representing:
    - (i) the net Superannuation Guarantee Charge payable by the ATO in respect of that Member; or
    - (ii) the Superannuation Holding Accounts Special Account amount payable in respect of that Member,being contributions that are fully vested in the Member;
  - (f) in an **Employer Salary Sacrifice Contribution Account** — Employer contributions in respect of a Member pursuant to an agreement between that Member and the Employer of that Member such that the amount to be contributed by the Employer shall be contributed in lieu of salary and shall accordingly represent the foregone portion of that Member's pre-tax income specified in the said agreement, such contributions being fully vested in the Member;
  - (g) in such other Contribution Account or accounts howsoever described and established by the Trustee for the purposes of that particular Division as the Trustee considers to be expedient or necessary.

Notwithstanding the provisions of this Rule 17.2 the Trustee, in the exercise of its discretion, may apply the amount of any contribution, transfer or receipt of this Part otherwise than specified in this Rule 17 in circumstances where it has formed the reasonable belief that to do so is appropriate and reasonable having regard to the particular circumstances of the case.

- 17.3 Subject to Rule 7, if appropriate to the benefit design of a particular Division, the Trustee must also record or cause to be recorded in the appropriate Contribution Account:

- (a) amounts transferred from sources other than Superannuation Entities which the Trustee elects to credit to the account;
- (b) premiums on Policies which the Trustee elects to debit to the account;
- (c) proceeds of Policies which the Trustee elects to credit to the account;
- (d) amounts which the Trustee elects to allocate to the account in respect of losses, expenses and liabilities pursuant to Rule 19.1;
- (e) allocations to the account for earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios;
- (f) amounts or allocations which the Trustee elects to credit, debit or apply to the account in respect of any Tax pursuant to Rule 22;
- (g) amounts paid as benefits or transferred to other Superannuation Entities from the account;
- (h) amounts transferred to and from any other Account;
- (i) any other amounts or allocations that the Trustee in the exercise of its discretion elects to credit, debit or apply to the account.

17.4 The Trustee may divide each Contribution Account into sub-accounts if it considers such division to be expedient or necessary and may establish more than one Contribution Account of the same name **PROVIDED THAT** the nature of the contributions to be recorded in each such Contribution Account and the specific rules for the proper operation of each such Contribution Account shall be as specified in the relevant Schedule to the Deed of Adoption, Application Form or in such other manner as is acceptable to the Trustee.

17.4AA The Trustee must record in a Contribution Account kept for each Transferring SDF Member, the value of the benefit transferred to this Part from the SDF on the Transfer Date.

#### **Consolidation of member accounts**

17.4A The Trustee may, in such manner as the Trustee considers appropriate, identify Members with more than one interest or account in this Part and may merge or consolidate those interests or accounts.

#### **Reserve Accounts generally**

17.5 If applicable to a Plan, the Trustee must maintain or cause to be maintained, the following Reserve Accounts for each Plan that is to say, the Plan Reserve Account, the Plan Reserve Transfer Account and the Plan Reserve Charges Account and such number of additional Reserve Accounts as the Trustee may at any time and from time to time deem to be necessary or expedient.

#### **Plan Reserve Account**

17.6 Subject to Rule 7, amounts to be credited, debited or applied to this account include:

- (a) amounts which are not credited to Contribution Accounts in accordance with Rule 19;
- (b) amounts which the Trustee considers appropriate to allocate to the account in respect of losses, expenses and liabilities pursuant to Rule 19;
- (c) amounts or allocations credited, debited or applied to the account for earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios;
- (d) amounts or allocations which the Trustee elects to debit, credit or apply to the account in respect of any Tax pursuant to Rule 22;

- (e) any Assets of the Plan no longer required to pay benefits for a Member of that Plan;
  - (f) any other amounts or allocations that the Trustee considers appropriate to credit, debit or apply to the account.
- 17.7 The Trustee may divide each Plan Reserve Account into sub-accounts if it considers such division to be expedient or necessary.
- 17.8 Subject to Rule 7, the Trustee must apply amounts held in the Plan Reserve Account for one or more of the following purposes in relation to the Plan at such times and on such terms as it considers appropriate:
- (a) as a credit to such one or more of the Contribution Accounts of all or certain Members as the Trustee and the Employer may agree;
  - (b) any other purpose which the Trustee may determine.
- 17.9 The Trustee may apply amounts pursuant to Rule 17.8 only as permitted by Superannuation Law and must apply all amounts:
- (a) within any time limits imposed by Superannuation Law; and
  - (b) unless Superannuation Law requires otherwise, at least once in each Financial Year on such basis as the Trustee shall from time to time prescribe or permit.

#### **Plan Reserve Transfer Account**

- 17.10 Amounts to be credited, debited or applied to this account include:
- (a) amounts transferred from other Superannuation Entities which the Trustee agrees to credit to the account in accordance with any transfer arrangements described in Rule 6.1;
  - (b) amounts which the Trustee may consider appropriate to allocate to the account in respect of losses, expenses and liabilities pursuant to Rule 19;
  - (c) amounts or allocations credited, debited or applied to the account for earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios;
  - (d) amounts or allocations which the Trustee considers appropriate to debit, credit or apply to the account in respect of any Tax pursuant to Rule 22; and
  - (e) any other amounts or allocations that the Trustee considers appropriate to credit, debit or apply to the account.
- 17.11 The Trustee may divide each Plan Reserve Transfer Account into sub-accounts if it considers such division to be expedient or necessary.
- 17.12 The Trustee may apply amounts held in a Plan Reserve Transfer Account for one or more of the following purposes related to the Plan at it considers appropriate:
- (a) meeting contributions or expenses;
  - (b) providing additional benefits for Members of the Plan or the Member's Dependants (by transfers to relevant Contribution Accounts or otherwise) on such basis as the Trustee shall from time to time prescribe or permit;
  - (c) any other purposes which the Trustee may determine.
- 17.13 The Trustee may apply amounts pursuant to Rule 17.12 only as permitted by Superannuation Law and must apply all amounts within any time limits imposed by Superannuation Law.

**Plan Reserve Charges Account**

- 17.14 Amounts to be credited, debited or applied to this account include:
- (a) Employer contributions from time to time being not in respect of a particular Member but being an amount contributed to subsidise or offset the costs, charges and expenses relating to this Part;
  - (b) amounts which the Trustee may consider appropriate to allocate to the account in respect of losses, expenses and liabilities pursuant to Rule 19;
  - (c) amounts or allocations credited, debited or applied to the account for earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios;
  - (d) amounts or allocations which the Trustee considers appropriate to debit, credit or apply to the account in respect of any Tax pursuant to Rule 22; and
  - (e) any other amounts or allocations that the Trustee considers appropriate to credit, debit or apply to the account.
- 17.15 The Trustee may divide each Plan Reserve Charges Account into sub-accounts if it considers such division to be expedient or necessary.
- 17.16 Amounts standing to the credit of the Plan Reserve Charges Account shall be applied in respect of a Plan, to subsidise, offset, or meet the costs, charges and expenses relating to this Part or such one or more of them as the Trustee considers appropriate, including as follows:
- (a) amounts or allocations attributable to earnings or losses (whether realized, unrealized or anticipated) of the relevant Investment Portfolios being credited, debited or applied to the account as the case requires; and
  - (b) amounts or allocations in respect of Tax pursuant to Rule 22 being debited, credited or applied to the account as the case requires.

**Cash Float Account**

- 17.17 In circumstances where the Assets of the Part are not represented by an investment Policy issued to the Trustee for the purposes of this Part, the Trustee must establish and maintain a Cash Float Account for each Plan and may divide the Cash Float Account into sub-accounts if it considers such division to be expedient or necessary. For so long as the Assets of the Part are represented by an investment Policy, then in accordance with Rule 9.12 the operation of Rules 17.17 to 17.19 inclusive is suspended.
- 17.18 The Trustee must designate a Maximum Float Level for the Cash Float Account. The Maximum Float Level may be varied by the Trustee from time to time.
- 17.19 The Trustee must pay into the Cash Float Account all amounts received in respect of the Plans, including:
- (a) contributions;
  - (b) amounts transferred;
  - (c) proceeds of Policies; and
  - (d) transfers from other Investment Portfolios; and
  - (e) any such other amounts as the Trustee may receive from time to time,



and the Trustee must pay from the Cash Float Account all amounts payable in respect of the Plans including:

- (f) payment and transfers of benefits;
- (g) fees, charges and expenses (including Tax);
- (h) payment of insurance premiums;
- (i) transfers to other Investment Portfolios;
- (j) any other purposes which the Trustee shall determine and the assets of the Cash Float Account must be invested in the Cash Investment Portfolio.

### **Investment of Accounts**

17.20 A Contribution Account must be:

- (a) invested in Investment Portfolios designated by the Trustee for the relevant Plan; or
- (b) dealt with in any other manner as may be determined by the Trustee.

17.21 The Investment Portfolio of a Plan Reserve Account must be the Default Investment Portfolio.

17.22 The Investment Portfolio of a Plan Reserve Charges Account must be the Default Investment Portfolio.

17.23 The Investment Portfolio of a Plan Reserve Transfer Account may be any of the Investment Portfolios available under this Part but the whole amount standing to the credit of that Account must be invested in one Investment Portfolio only at any time.

### **Investment fee refund**

17.24 Any amount determined by the Trustee to constitute the refund or rebate of an investment fee or charge shall be recredited to the Member's Contribution Account, the Employer's Contribution Account and to each of the Plan Reserve Account, Plan Reserve Transfer Account and the Plan Reserve Charges Account, of the relevant Principal Employer in the same ratio that the assets in each of those accounts bears to the Assets of the Plan or the Member's Part Credit, as the case requires.

## **18 Valuation of Assets**

### **Valuation of Assets**

18.1 In circumstances where all the Assets of the Part are invested in a Policy the value of the net assets of that Policy will be the value ascribed to it at the relevant date by the Appointed Actuary (or his delegate) of the Life Assurance Company by whom the Policy has been issued to the Trustee.

18.2 In any other circumstance, the Trustee must cause the current value of the Net Assets of each Investment Portfolio to be determined as frequently as it considers necessary or desirable but such valuations must occur at least once in each Financial Year or more frequently if necessary to comply with Superannuation Law and Rules 18.3, 18.4 and 18.5 shall apply but not otherwise.

### **Valuation methodology**

18.3 The Assets of the Part must be valued on such basis as the Trustee considers appropriate in the circumstances.

**Change to valuation methodology**

18.4 The Trustee may at any time and from time to time vary the valuation methodology referred to in this Rule 18.

**Valuation by approved valuer**

18.5 The Trustee may instruct a suitably qualified valuer or such one or more other persons having relevant experience and expertise to value such one or more of any particular Assets of the Part. The costs of such valuations may be borne by this Part.

**Interim valuations**

18.6 The Trustee may make or cause to be made interim valuations of all or part of the Net Assets of each Investment Portfolio after the date of the last valuation made pursuant to Rule 18 as frequently as it considers necessary or desirable and in accordance with such procedures as it considers to be equitable.

**19 Allocation of Earnings and Expenses****Allocation of losses, expenses and liabilities**

19.1 Losses, expenses and liabilities (including Tax), not included in the valuation of the Policy and whether realized, unrealized or anticipated, must be allocated in a manner determined by the Trustee to be equitable as between:

- (a) all the Members of this Part; and
- (b) the various kinds of benefits of each Member of this Part.

**Method of allocation**

19.2 When allocating amounts pursuant to Rule 19.1, the Trustee must comply with Superannuation Law.

**Deduction of losses, expenses and liabilities**

19.3 Any such losses, expenses and liabilities may be allocated to:

- (a) the Contribution Accounts of relevant Members; or
- (b) the other Accounts of relevant Plans in accordance with these Part Rules,

or apportioned between each of the Accounts referred to in paragraphs (a) and (b) of this Rule in such manner as the Trustee sees fit.

**Provision for losses, expenses and liabilities**

19.4 To the extent that the same may not be included in the valuation of a Policy representing all or part of the net Assets of the Part the Trustee may make provision for losses, expenses or liabilities (whether realized or anticipated) which are to be allocated to an Investment Portfolio.

19.5 If applicable to a Plan in circumstances where at least some of the Assets of the Part are invested otherwise than in a Policy, the Trustee must allocate earnings or losses (whether realized, unrealized or anticipated) based on the net assets of each Investment Portfolio, to Accounts in the manner in which the Trustee considers to be equitable.

**20 Trustee**

20.1 [Deleted]

## 21 General Trustee Powers

### Absolute discretion

21.1 Except as otherwise provided in these Part Rules, the Trustee shall have an absolute and uncontrolled discretion as to the exercise of all the trusts, powers, authorities and discretions vested in it (including if, when or how the same shall be exercised).

### Trustee's powers generally

21.2 The Trustee may:

- (a) enter into and execute all contracts, deeds and documents and do all acts, matters or things which it may deem expedient for giving effect to, carrying out and enforcing the authorities, powers and discretions conferred upon the Trustee by these Part Rules;
- (b) determine who may sign for and on behalf of the Trustee, documents relating to this Part;
- (c) make and give receipts, releases and other discharges of whatsoever kind in relation to this Part;
- (d) open bank accounts and retain moneys on current or deposit account at any bank or financial institution as it considers proper and make regulations for the operation of those accounts including the signing and endorsing of cheques;
- (e) pay benefits under this Part to persons entitled;
- (f) make Rules for rounding off contributions and benefits;
- (g) provide for liability for any Tax in respect of this Part;
- (h) transfer liability for any Tax in respect of this Part;
- (i) conduct and settle legal proceedings for any purpose whatsoever;
- (j) enter into arrangements with any person in relation to the conduct and settlement of legal proceedings;
- (k) refer claims to conciliation and/or arbitration;
- (l) compromise any claim;
- (m) give any guarantee or indemnity;
- (n) effect insurance policies;
- (o) elect to be bound by any legislation;
- (p) determine the terms and conditions of and create infant beneficiary trusts under Rule 11.12F and appoint trustees thereof;
- (q) determine the persons to whom the Death Benefit of the Member is to be paid, subject to Rule 33.

### Delegation and appointments

21.3 The Trustee may at any time:

- (a) delegate to any of its directors, officers and employees or to any related body corporate of the Trustee or to any other person, such powers, authorities and discretions (not exceeding those vested in the Trustee) and on such terms as the Trustee determines; and

- (b) appoint any person to be an attorney or agent of the Trustee for such purposes and with such powers, authorities or discretions (not exceeding those vested in the Trustee) and on such terms (excluding the power of sub-delegation) as the Trustee determines.

21.4 Notwithstanding Rule 21.3, the Trustee may engage any person by written agreement, to provide services in connection with the investment or administration of this Part on such terms as it determines (including fees, commissions and like matters) so long as this is consistent with Superannuation Law.

#### **Fees and expenses of delegates and appointees**

21.5 The Trustee may be reimbursed out of this Part in relation to any costs, charges and expenses incurred by a person referred to in Rules 21.3 or 21.4 which the Trustee has reimbursed or will be obliged to reimburse to the person.

#### **Commission and brokerage**

21.6 The Trustee may pay any commission, procuration or other fees or brokerage to such person and on such terms as the Trustee determines. Payment as aforesaid must be made only in accordance with Superannuation Law.

#### **Power over Assets**

21.7 Subject to Rule 14, the Trustee has all the powers over and in respect of the Assets of the Part which it could exercise as if it were the absolute and beneficial owner of those Assets.

#### **Dealings by Trustee**

21.8 Subject to Superannuation Law the directors, officers or employees of the Trustee may effect any transaction or exercise individually or jointly any duty, power, authority or discretion, even though that person has another interest directly or indirectly in the result of the transaction or exercise.

#### **Compensation payments**

21.9 The Trustee may do all such acts and things and sign all documents it consider expedient or necessary to compensate Members or former Members, including (but not limited to) payments of any amount to any third party, including (but not limited to) a charity, in respect of any Member or former Member.

## **22 Trustee's Taxation Powers**

#### **Taxation amounts**

22.1 If the Trustee is liable, or believes that it or the Fund will become liable, for any Tax in respect of:

- (a) amounts contributed or transferred to or the receipt of Contributions or transfers to this Part;
- (b) the holding or disposal of the Assets of the Part;
- (c) the receipt of income or gains of or relating to this Part;
- (d) any transaction or document concerning this Part;
- (e) any payment under this Part; or
- (f) any other event in circumstances where the law so requires,

the Trustee may:

- (g) deduct an amount equal to the Tax or an amount which in the opinion of the Trustee represents a fair and reasonable estimate of the Tax from those contributions or transfers or this Part generally as it thinks proper; and
  - (h) reduce any benefit payable or which may become payable from this Part to take account of the Tax and any related amounts (such as foregone investment earnings), and pay the necessary amounts to the relevant Government authority as and when appropriate.
- 22.2 Any amount which is deemed to be contributed, transferred, credited, allocated or otherwise set apart in respect of a Member or other person must be reduced or adjusted in the manner and to the extent that the Trustee, in the exercise of its discretion, determines to take account of the Tax referred to in Rule 22.1.

### Recalculation of Tax

- 22.3 The Trustee may at any time recalculate the Tax in respect of a person who is or has been a Member.

### Surplus on recalculation

- 22.4 If the Tax in respect of a Member as recalculated pursuant to Rule 22.3 is less than the Tax in respect of that person as previously determined, the Trustee may:
- (a) if the person remains a Member on the recalculation date, allocate the difference to the Contribution Accounts of the Member or otherwise increase the Member's benefit; or
  - (b) if the person is not a Member on the recalculation date, pay an amount under this Part, equal to the difference, to or for the benefit of the person;
  - (c) if in the particular circumstances and in the opinion of the Trustee it is reasonable and appropriate so to do, the Trustee may elect to deal with the matter in some other manner as it considers to be equitable in the circumstances.

### Deficiency on recalculation

- 22.5 If the Tax in respect of a Member as recalculated exceeds the Tax as previously determined in respect of the person then:
- (a) if the person remains a Member on the recalculation date, the Trustee may deduct the amount of the additional Tax from the Interest in the Plan of the Member as it considers appropriate, and any shortfall shall constitute a debt immediately due and payable by the Member to the Trustee and the Trustee may sue for that debt; or
  - (b) if the person is not a Member on the recalculation date but the liability for the Tax rests with the Trustee, the additional Tax shall constitute a debt due and be payable by the person to the Trustee and the Trustee may sue for that debt; and
  - (c) the Trustee may deduct the amount of the excess Tax from one or more of the Plan Reserve Account, Plan Reserve Transfer Account and Plan Reserve Charges Account for the relevant Plan; but
  - (d) if in the particular circumstances and in the opinion of the Trustee it is reasonable and appropriate so to do, the Trustee may elect to give effect the adjustment in such other manner as it considers to be equitable in the circumstances.

### Failure to provide particulars

- 22.6 If under Rule 28.1 or 28.2 a person fails to provide the required particulars within 30 days of a request or such later date as may be specified in a request, the Trustee may determine the Tax in

respect of the person on the basis of any assumptions which in the circumstances appear to the Trustee to be reasonable. Subject to Superannuation Law, the person has no claim against the Trustee or this Part for any loss suffered as a result of any such assumptions being incorrect or otherwise deemed by the person to be inappropriate or unreasonable.

### **Incorrect particulars**

- 22.7 Where a person makes or has made a statement to the Trustee that:
- (a) in the opinion of the Trustee, is relevant to the Trustee's determination of Tax in respect of the person; and
  - (b) is reasonably believed by the Trustee to be untrue or misleading,
- the Trustee may recalculate the Tax in respect of the person having regard to what the Trustee reasonably considers to be the true circumstances of the person.

## **23 Trustee's Duties**

### **Management of the Part**

- 23.1 The Trustee must:
- (a) manage this Part; and
  - (b) carry out and perform the duties and obligations imposed upon it under these Part Rules.

### **Holding of Assets**

- 23.2 Except as otherwise provided in these Part Rules, the Trustee must:
- (a) retain or cause to be retained in safe custody the scrip, certificates, Policies and any other evidence of the Assets of the Part; and
  - (b) not sell, mortgage, charge or part with the possession of any of the Assets of the Part except where consistent with Superannuation Law and as otherwise permitted in the Deed and these Part Rules.

### **Acting as trustee of other funds**

- 23.3 Nothing in these Part Rules shall prevent the Trustee from establishing or acting as manager or trustee of funds other than the Fund.

### **Trustee and Trustee director covenants**

- 23.4 If Superannuation Law requires it, the Trustee and each of the directors of the Trustee must comply with any covenants which Superannuation Law imposes on the Trustee and/or the directors of the Trustee.

## **24 Trustee's Liability**

### **Non-exclusion of liability**

- 24.1 Notwithstanding the effect of Rules 24.2 to 24.8 inclusive, the Trustee is liable for:
- (a) a breach of trust where the Trustee has:
    - (i) failed to act honestly in relation to a matter concerning the Fund; or
    - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required or reasonably expected to exercise; or

- (b) any monetary penalty imposed on the Trustee under Superannuation Law.

**Lack of instructions**

24.2 The Trustee is not liable for any loss or damage incurred as a result of it:

- (a) concurring, refusing or otherwise failing to concur in the exercise or proposed exercise of any discretion or power under these Part Rules; or
- (b) failing to carry out any of its duties or obligations,  
by reason of the fact that it has not received (or has received insufficient, inadequate or contradictory) instructions or information from any person at any time.

**Taxation and charges**

24.3 The Trustee is not liable to account to any Employer or Member for:

- (a) any payments in respect of Tax made by the Trustee in good faith to any Government authority; or
- (b) other charges upon the Assets of the Part or with respect to any transaction under these Part Rules,

even if it is conclusively established that the payment or charge need not have been made.

**Dealings with corporations**

24.4 If, because of the liquidation of any corporation or for any other reason beyond the control of the Trustee, it becomes impossible or impracticable for the Trustee to carry out the provisions of these Part Rules, the Trustee is not liable by reason of any error of law or any matter or thing done or suffered or omitted to be done by it.

**Dealings by Trustee**

24.5 The Trustee is not liable to account to:

- (a) the Fund; or
- (b) the Employers or Members,

for any fees, profit, profit shares, commission, brokerage, benefits or remuneration made or received to a transaction or exercise of power or discretion referred to in Rule 21.8.

**Liability for delegates, agents and service providers**

24.6 The Trustee is not liable for the acts or omissions of:

- (a) any attorney or agent who is appointed under Rule 21.3; or
- (b) any person who is engaged under Rule 21.4.

**Limitation on recourse to the Trustee**

24.7 Subject to Superannuation Law, no person to whom the Trustee is liable under these Part Rules may have recourse in satisfaction of that liability to any assets held by the Trustee:

- (a) in its personal capacity; or
- (b) in its capacity as trustee of any trust other than the Fund.

**Reliance on others**

- 24.8 Subject to Superannuation Law, the Trustee is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
- (a) the Trustee relies upon the services of, or information or advice from, any adviser or other person which the Trustee is entitled to employ, engage, appoint or contract with under these Part Rules;
  - (b) the Trustee acts or fails to act as required by any present or future law, order or judgement of any competent court or other competent authority; or
  - (c) the Trustee relies upon any signature, notice, instrument or other document believed by the Trustee to be genuine and to have been properly passed, executed or approved.

**Persons covered**

- 24.9 To the extent permitted under Superannuation Law, all references to the Trustee in this Rule 24 shall be deemed to include references to:
- (a) any directors of the Trustee;
  - (b) any officers or employees of the Trustee;
  - (c) a former Trustee;
  - (d) any person who previously fell within this Rule 24.9;
  - (e) any body corporate related to the Trustee;
  - (f) any current or former representatives of a Policy Committee; and
  - (g) any other person nominated in writing by the Trustee.

**25 Trustee's Indemnity****Indemnity not to apply**

- 25.1 Despite the effect of Rules 25.2 to 25.5 inclusive, the Trustee is not entitled to be indemnified under Rule 25 for:
- (a) liability for a breach of trust where the Trustee has:
    - (i) failed to act honestly in relation to a matter concerning the Fund; or
    - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required or reasonably expected to exercise; or
  - (b) any monetary penalty imposed on the Trustee under Superannuation Law.

**General indemnity**

- 25.2 In addition to any indemnity allowed by law, the Trustee is entitled to be indemnified from the Fund in respect of any expense or liability incurred (directly or indirectly) in connection with prosecuting or defending any action or suit relating to the Fund.
- 25.3 The Trustee is not required to effect any transaction or dealing in relation to the Fund on behalf of or for the benefit of or at the request of any person unless the person has first paid or otherwise provided to the satisfaction of the Trustee for all duties, Taxes, governmental charges, brokerage, registration fees, valuation fees, legal fees or other charges which may be or become payable in respect of the transaction or dealing.



- 25.4 The Trustee may pay and discharge any of the amounts referred to in Rule 25.3 on behalf of the relevant person and retain the amount so paid out of any moneys or property to which the relevant person may be or become entitled.

### **Indemnity from Member**

- 25.5 The Trustee is entitled to be indemnified by a Member or a person claiming a benefit under these Part Rules who:
- (a) fails to supply any information or document requested by the Trustee;
  - (b) supplies incorrect information; or
  - (c) fails to notify the Trustee that information previously provided has ceased to be correct, for any loss suffered by the Trustee or the Fund as a result of that act or omission.

### **Persons covered**

- 25.6 To the extent permitted under Superannuation Law, all references to the Trustee in this Rule 25 shall be deemed to include references to:
- (a) any directors of the Trustee;
  - (b) any officers or employees of the Trustee;
  - (c) a former Trustee;
  - (d) any person who previously fell within this Rule 25.6;
  - (e) any body corporate related to the Trustee;
  - (f) any current or former representatives of a Policy Committee; and
  - (g) any other person nominated in writing by the Trustee.

## **26 Trustee's Fees**

### **Entitlement to fees**

- 26.1 The Trustee is entitled to recover out of the Assets of the Part the fees incurred in connection with a Plan. For this purpose, the Trustee may debit amounts from the Contribution Accounts of the relevant Member or any other Account of the relevant Plan as it considers appropriate.

### **Reimbursement of expenses**

- 26.2 Without limiting Rule 25 and Rule 26.1, the Trustee is entitled to recover out of the Assets of the Part all costs, charges and expenses incurred in connection with the administration, maintenance, management or operation of this Part (other than the usual overhead expenses of the Trustee including in-house administration costs in the nature of rent for premises, computer charges, salaries, research costs and like expenses).

## **27 Policy Committees**

### **Policy Committee**

- 27.1 For each Plan, the Trustee shall apply its best endeavours to establish a Policy Committee if the same is required under Superannuation Law.

**Rules for the appointment and removal of representatives and operation generally**

27.2 The Trustee must determine rules for the appointment and removal of representatives of a Policy Committee as well as for the operations of the Policy Committee.

**28 Information****Giving of information to Trustee**

28.1 Every Participating Employer, Member and other person claiming a benefit under these Part Rules must, whenever required by the Trustee, provide any information and produce any documents which are necessary or desirable for the purpose of enabling the Trustee to:

- (a) perform any duties or obligations; or
  - (b) exercise any powers or discretions,
- under these Part Rules or at law.

**Payment of benefit**

28.2 A benefit is not payable to a Member or a person claiming a benefit under these Part Rules unless the Member or person has supplied, to the satisfaction of the Trustee, all information which is relevant to determining whether:

- (a) the Member or person is entitled to that benefit;
- (b) that benefit is required to be preserved under Rule 11.3; or
- (c) Tax is required to be deducted from that benefit pursuant to Rule 22.

**Confidentiality**

28.3 The Trustee must treat as confidential any information relating to Members or Employers which it acquires as Trustee and shall use the information for the purposes of this Part only or as permitted under Rule 28.4.

28.4 The Trustee may supply any information or document obtained pursuant to Rule 28.1 or 28.2 to any person who:

- (a) has a right under any law; or
- (b) in the opinion of the Trustee, has a need for it based on that person's connection or involvement with this Part.

**Medical examination**

28.5 The Trustee may require a Member to have a medical examination at any time and from time to time for such purposes, including the provision of insurance benefits for that member, as the Trustee considers to be necessary.

**Giving of information by Trustee**

28.6 The Trustee must give or cause to be given to:

- (a) each Member,
- (b) each prospective Member,
- (c) each Employer,
- (d) the Superannuation Authority;

- (e) each former member;
- (f) the trustee of any other Superannuation Entity to which a transfer is made or the issuer of any annuity to which assets are transferred,

the information that must be given under Superannuation Law in the manner and at the times required under Superannuation Law.

## **29 Amendment of Part Rules**

### **Power to amend**

29.1 The Trustee may amend any of the provisions of these Part Rules including this Rule 29.

### **Form of amendment**

29.2 An amendment must be in writing.

### **Date of effect**

29.3 An amendment may take effect from a date before or after the time it is made.

### **Limitation of power**

29.4 No amendment may alter a benefit entitlement contrary to Superannuation Law.

29.5 No amendment may enable an individual to be appointed as Trustee unless Superannuation Law permits.

### **Notification**

29.6 The Trustee must, where and when required by Superannuation Law, notify the Employers and Members of the nature, purpose and effect of any amendment. However, any failure by the Trustee to notify as aforesaid shall not, unless Superannuation Law so provides, invalidate the amendment.

## **30 Liability of Members and Employers**

### **Limitation of liability**

30.1 Subject to Rule 30.3 and any relevant law, an Employer or Member is not, by reason alone of:

- (a) being an Employer or Member; or
- (b) the relationship created under the Deed or these Part Rules with the Trustee,

under any obligation to indemnify the Trustee or any creditor of the Fund or Trustee in the event of there being any deficiency of Assets of the Part as compared with the liabilities to be met from it.

### **Limitation on indemnity**

30.2 Subject to Rule 30.3 and any relevant law, any rights of the Trustee or of a creditor of the Fund or Trustee to seek indemnity:

- (a) are limited to having recourse to the Fund; and
- (b) do not extend to an Employer or Member in their respective capacities as an Employer or Member.

- 30.3 Rules 30.1 and 30.2 inclusive do not extend to an Employer or Member if in the opinion of the Trustee, the deficiency was caused by that Employer or Member.

### **31 Termination of Part or Division or Plan**

#### **Duration of Part, Division or Plan**

- 31.1 The Part, each Division and each Plan continues until terminated pursuant to these Part Rules.

#### **When terminated**

- 31.2 The Trustee may, by written notice to each Employer and Member affected, terminate:

- (a) this Part; or
- (b) a Division; or
- (c) a Plan.

The notice must specify a termination date at least 30 days after the date of the notice unless, in the opinion of the Trustee, an earlier termination date is justified by the nature and potential or actual effect of unforeseen circumstances and such earlier date is in the interests of the Members affected or in the case of a Division or a Plan, is in the best interests of the Members of other Plans remaining under this Part.

- 31.3 On the termination date:

- (a) if Rule 31.2(a) applies, this Part is terminated; or
- (b) if Rule 31.2(b) applies, the relevant Division is terminated; or
- (c) if Rule 31.2(c) applies, the relevant Plan is terminated,

unless the Trustee in writing withdraws the notice on or before the termination date or otherwise determines, in the exercise of its discretion, to cancel the effect of the notice.

#### **Contributions and benefits**

- 31.4 Subject to the provisions of any agreement between the Member and the Employer of that Member, any contributions in arrears at the termination date must be paid immediately and if not paid upon demand shall represent a debt owed by the relevant Employer to the Members concerned.

- 31.5 The Trustee shall not be required to:

- (a) accept any other contributions or transfers after the termination date; or
- (b) pay any benefits or make any transfers after the termination date except as required pursuant to Rule 31.6.

#### **Application of Part on termination**

- 31.6 On termination of this Part or a Division, all Plans comprised in this Part or the Division (as the case may be) must terminate and on termination of a Plan, that Plan must terminate. Subject to Superannuation Law, the Trustee must apply the Assets of a terminated Plan:

- (a) to provide for all expenses and liabilities (including Tax) for which the Trustee reasonably believes it is or reasonably believes it may become liable and any fees to which it is or reasonably believes it will become entitled in respect of the Plan;
- (b) to pay in respect of each Member:
  - (i) any benefit which became payable before the termination date; or

- (ii) if Rule 31.6(b)(i) does not apply — a benefit equal to the Interest in the Plan of that Member;
  - (c) to increase any benefits as the Deed of Adoption or any current Schedule to the Deed of Adoption for the Plan may require or as the Trustee may decide;
  - (d) to pay affected Employers in proportions which the Trustee decides.
- 31.7 A person may not receive a benefit pursuant to Rule 31.6 before Superannuation Law permits.

### **Death Benefit**

- 31.8 If a Member dies before being paid all of the benefit to which the Member was entitled pursuant to Rule 31.6, the Trustee must pay as a Death Benefit, so much of it as remains unpaid as at the date of death.

## **32 Administration**

### **Deed and Rules**

- 32.1 A Member or Employer or representative of a Policy Committee may inspect a copy of the Deed and these Part Rules at the Trustee's office or at any other mutually convenient location during the usual business hours of the Trustee and as required by Superannuation Law.

### **Employer authorisation**

- 32.2 The Trustee may treat a written, electronic or oral authorisation given or purported to be given by or on behalf of an Employer, as a valid authorisation by the Employer.

### **Member authorisation**

- 32.3 The Trustee may treat a written, electronic or oral authorisation given or purported to be given by a Member, as a valid authorisation by the Member.

### **Notices**

- 32.4 Any notice or other written communication in connection with this Part is given to a person by a responsible officer for the Trustee, Employer or the Policy Committee (if any) as the case requires and is:
- (a) handed to the person; or
  - (b) delivered to the person's last known address; or
  - (c) posted by ordinary post within Australia to the person's last known address; or
  - (d) transmitted by facsimile or other electronic means to the person's last-known point of contact.
- 32.5 If the notice or communication is posted within Australia, it shall be taken to have been received on the third Working Day after posting and if transmitted by electronic means, it shall be taken to have been received on the next Working Day after transmission.

### **Replacement of notices**

- 32.6 If a notice of acceptance, admission or of whatsoever nature issued to an Employer or to a Member is lost or destroyed, the Trustee may issue or cause to be issued a duplicate notice on such terms and subject to payment of such fee as it may determine.

### Appointment of Receiver

32.7 If at any time a receiver or a receiver and manager is appointed to any property of an Employer the Trustee may, within 60 days of its receiving notice of the appointment of such receiver, give notice in writing (or such other form as the Trustee determines) to the Employer that the Trustee regards such receiver as being such Employer for the purposes of the Deed and these Part Rules, and as from the date of the Trustee's notice, such receiver shall be such Employer for the Purposes of the Deed and these Part Rules.

### Dispute resolution

32.8 The Trustee must take reasonable steps to ensure that arrangements that satisfy the requirements of the Act are in place under which:

- (a) any person so entitled under Superannuation Law has the right to make an inquiry into, or to complain about, the operation or management of this Part in relation to that person; and
- (b) each enquiry or complaint will be considered and determined by the Trustee within 90 days after it is made or within such other period as may be permitted under Superannuation Law.

## 33 Categories of Membership

### Category Selection

33.1 A Member who is given an option under Rule 5.6A may give the Trustee a Category Selection Form.

33.2 The Member may give the Trustee a new Category Selection Form at any time in a manner approved by the Trustee. A new Category Selection will have the effect of permanently revoking any previous Category Selection of the Member.

33.3 Subject to Rule 33.14:

- (a) a Member becomes a member of the membership category which the Member specifies in a Category Selection; and
- (b) the Member's Category applies from the date the Category Selection is received by the Trustee.

33.4 If the Trustee has not received a Category Selection from a Member and the Member:

- (a) has been offered the option of selecting a Category under Rule 5.6A; or
- (b) is in a group of Members who the Trustee determines is a Member to whom Rule 33 applies,

that Member is a Category 1 Member.

### Benefit Payments

33.5 For Members of Category 1:

- (a) benefits are payable under the relevant provisions in the Deed unless the Member has died;
- (b) the Trustee must pay the Death Benefit to one or more of the Member's Dependants or Estate or any other person permitted by Superannuation Law, in proportions which the Trustee considers appropriate;

- (c) the Trustee may determine that the Death Benefit be paid a lump sum, pension or annuity or in any other form that the Trustee considers appropriate; and
  - (d) Rules 33.9 to 33.13 and 33.15 to 33.19 do not apply.
- 33.6 For Members of Categories 2 to 8:
- (a) benefits are payable under the relevant provisions in the Deed unless the Member has died;
  - (b) on the death of a Member, subject to Rules 33.12 to 33.14, the Trustee must:
    - (i) if the Member is a Category 2 Member:
      - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
      - (B) [not used];
    - (ii) if the Member is a Category 3 Member:
      - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
      - (B) [not used];
    - (iii) if the Member is a Category 4 Member:
      - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
      - (B) [not used];
    - (iv) if the Member is a Category 5 Member:
      - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
      - (B) [not used];
    - (v) if the Member is a Category 6 Member:
      - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
      - (B) [not used];
    - (vi) if the Member is a Category 7 Member:
      - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
      - (B) [not used];
    - (vii) if the Member is a Category 8 Member:
      - (A) pay the Member's Death Benefit to the Member's Children as a lump sum; and
      - (B) [not used];
  - (c) benefits to Children (including Minor Children) will be paid in equal shares; and
  - (d) if there is more than one Spouse, each Spouse will be paid in equal shares.
- 33.7 Benefits to the Estate are to be paid at the Trustee's discretion to the Legal Personal Representative of the Member upon production of probate or letters of administration.

- 33.8 Any benefit payable to a Minor Child will be paid on trust subject to the same terms as those regarding infant beneficiary trusts set out in Rule 11.12F of the Deed.
- 33.9 If there is no person to whom part or all of a Death Benefit can be otherwise paid, the part of the Death Benefit that cannot be paid under Rule 33 may be paid to any other person or persons determined by the Trustee if Superannuation Law permits.
- 33.10 A person is not a Spouse, Child or Minor Child of a Member unless the Trustee is satisfied as to that person's identity, eligibility and location within 3 months of the date of the Member's death.
- 33.11 The Trustee is not required to make any inquires to determine the eligibility, identity or location of potential recipients of a Death Benefit.

### Exceptions

- 33.12 If the Trustee is unable to identify or locate at least one person capable of qualifying for payment of the part of the Member's Death Benefit that is payable as a lump sum under Rule 33.6(b), the Trustee will pay:
- (a) the part of the benefit that would have been payable as a lump sum to Children under Rule 33.6(b) - to the Spouse; and
  - (b) the part of the benefit that would have been payable as a lump sum to a Spouse under Rule 33.6(b) - to the Member's Estate.
- 33.13 [not used]
- 33.14 If the Trustee believes in good faith that:
- (a) a Category Selection is not sufficiently clear to allow the Trustee to pay a Death Benefit;
  - (b) a Category Selection is incomplete; or
  - (c) a Category Selection is not consistent with Superannuation Law,
- the Trustee may refuse to accept or give effect to all or any part of the Category Selection and may at any time, including before and/or after a Member's death, deem the Member to be a Category 1 Member. A refusal by the Trustee under this Rule does not cause a previous Category Selection of the Member to become valid.

### Mode of Payment

- 33.15 The Trustee will pay a Death Benefit under Rule 33.6(b) by lump sum.
- 33.16 [not used]
- 33.17 [not used]
- 33.18 [not used]
- 33.19 A person who may qualify as a beneficiary under the Member's Category Selection has no rights or entitlements under this Deed during the lifetime of the Member.
- 33.20 If any doubt or dispute arises as to the validity of a Category Selection, subject to the jurisdiction of any relevant Court or Tribunal, the decision of the Trustee shall be binding on all interested persons.



**Schedule A Personal Division****A1 Personal Division****Personal Division**

A1.1 The Personal Division comprises:

- (a) one or more Rollover Plans for Members who are admitted to a Rollover Plan pursuant to Rule A1.2 or Rule A1.2A; and
- (b) Plans for the benefit of Eligible Spouses; and
- (c) Plans for the benefit of employed persons who apply to the Trustee for membership of the Personal Division; and
- (d) Plans for the benefit of self-employed persons who apply to the Trustee for membership of the Personal Division; and
- (e) Plans for the benefit of such other persons as the Trustee determines from time to time who apply to the Trustee for membership of the Personal Division.

The Rules applying to persons who become Members of Plans in the Personal Division are described in this Schedule A.

**Membership of Rollover Plans**

A1.2 The Trustee must admit as a Member of a Rollover Plan in the Personal Division a person who held a 'Rollover Plan' in the 'Personal Division' of the SDF immediately before the Transfer Date.

A1.2A The Trustee may admit as a Member of a Rollover Plan in the Personal Division a person:

- (a) whose benefit is transferred or rolled over to this Part from another Superannuation Entity; and
- (b) who immediately before the transfer or rollover was entitled to benefits from that Superannuation Entity as a former employee of a participating employer in that Superannuation Entity.

A1.2B A person admitted under Rule A1.2A becomes a Member of a Rollover Plan in the Personal Division on such date, and on such terms and conditions, as the Trustee determines.

A1.3 No other persons, including a Non-Member Spouse of a Member of the Rollover Plan, may become a Member of a Rollover Plan.

**Membership of Eligible Spouses**

A1.4 An Eligible Spouse becomes a Member of a Plan in the Personal Division if:

- (a) the Eligible Spouse applies to the Trustee in the Application Form prescribed by the Trustee within such time as the Trustee may specify; and
- (b) the Trustee accepts the Application made pursuant to Rule A1.4(a) and approves admission to membership of a Plan in this Division; and
- (c) Superannuation Law permits that person to become a Member.

A1.5 The Trustee may waive the need for the Eligible Spouse to complete an Application Form under Rule A1.4, and approve the person's admission without having received an Application Form.

A1.5A The Trustee may refuse to accept an Eligible Spouse as a Member of a Plan in the Personal Division without giving any reason, and the provisions of Rule 5.6 shall apply.

### **Membership of other persons**

A1.6 A person becomes a Member of a Plan in the Personal Division as specified in the Deed or if:

- (a) that person lodges an Application Form with the Trustee; and
- (b) the Trustee accepts the Application Form and approves admission to membership of a Plan in this Division; and
- (c) Superannuation Law permits that person to become a Member.

A1.6A Where Superannuation Law permits, the Trustee may waive the need for the person to complete an Application Form under Rule A1.6, and approve the person's admission without having received an Application Form.

### **Rejection of application**

A1.7 The Trustee may decline to admit to membership of a Plan in this Division, without giving any reason, a person who lodges an application pursuant to Rule A1.6(a) and thereupon the provisions of Rule 5.6 shall apply.

## **A2 Contributions, Roll-Overs and Transfers**

A2.1 Subject to Superannuation Law and any terms and conditions determined by the Trustee from time to time, the Trustee may accept contributions into this Part from a Member of a Rollover Plan or any other person in respect of the Member.

A2.2 Subject to Rule 7, contributions may be accepted by the Trustee in respect of a Member of a Plan in this Division if:

- (a) the contributions are made in respect of the Member referred to in Rule A1.4(a); and
- (b) Superannuation Law permits.

The Trustee may impose restrictions on the timing and amount of the contributions.

A2.3 Subject to Rules 7, A2.1 and A2.2, contributions may be accepted by the Trustee in respect of any other Member of the Personal Division on such basis as shall be specified in the Member's Application Form or as agreed between the Member and the Trustee.

A2.4 The Trustee may, in respect of a Member in the Personal Division who so requests, accept into this Part in respect of that Member, an amount transferred from another Complying Superannuation Fund of which the Member is a member.

## **A3 Benefits**

### **Benefit on request**

A3.1 A Member of the Personal Division is entitled to a benefit equal to the Part Credit of the Member where:

- (a) he or she requests payment; and
- (b) Superannuation Law permits.

A3.1A Where the conditions of Rule A3.1 are satisfied and the Member is not entitled to a benefit under any other Rule of this Division, the Trustee will pay the benefit determined under that rule from

this Part subject to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

### **Insured amounts**

A3.2 Subject to the terms and conditions of the Policy, the Deed and these Part Rules, where the Deed of Adoption, Schedule to the Deed of Adoption, Application Form or such other means of notification that is acceptable to the Trustee specifies that a benefit in respect of a Member may include an insured amount, the Trustee shall make every reasonable endeavour to effect appropriate insurance as the case requires, in accordance with Rule 9.1, with the Life Assurance Company selected by the Trustee.

A3.2A Where an insured benefit is paid to the Trustee in respect of the death or Total and Permanent Disablement of a Member of the Personal Division, the insured benefit must be credited to one or more of the Member's Contribution Accounts, as determined by the Trustee from time to time.

### **Death**

A3.3 If a Member dies, the Death Benefit is equal to the Part Credit of the Member, the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

### **Total and Permanent Disablement**

A3.4 A Member who becomes Totally and Permanently Disabled is entitled to a benefit equal to the Part Credit of the Member, the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

### **Total but Temporary Disablement**

A3.5 To the extent permitted by Superannuation Law, a Member (other than a Member in a Rollover Plan) who becomes Totally but Temporarily Disabled is entitled to a benefit:

- (a) of the amount and payable in the manner specified in the relevant Policy until the first to occur of the following events:
  - (i) the Member ceases to be Totally but Temporarily Disabled;
  - (ii) the Member becomes entitled to another benefit under this Rule A3;
  - (iii) the Part Credit of the Member is exhausted; and
- (b) the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

A3.5A To the extent permitted by Superannuation Law, where the Trustee has determined to apply this Rule A3.5A to a Rollover Plan, a Member in the Rollover Plan who becomes Totally but Temporarily Disabled is entitled to a benefit:

- (a) of the amount and payable in the manner specified in the relevant Policy until the first to occur of the following events:
  - (i) the Member ceases to be Totally but Temporarily Disabled;
  - (ii) the Member becomes entitled to another benefit under this Rule A3;
  - (iii) the Part Credit of the Member is exhausted; and

- (b) the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

#### **Unrestricted non-preserved benefits**

- A3.6 A Member of the Personal Division who has an unrestricted non-preserved benefit may at any time apply to the Trustee for that benefit to be paid from this Part to the Member or as the Member may direct and pursuant to Rule 10.3, the Trustee shall thereupon release (or cause to be released) from this Part, the amount of that benefit net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

#### **A4 General**

- A4.1 The Trustee may impose such restrictions on the membership of a Member of a Plan in the Personal Division as it considers appropriate. The Trustee must advise the Member in writing (or such other form permitted by Superannuation Law) of the restrictions, but an accidental failure to do so shall not cause the restriction to be ineffective.
- A4.2 The Trustee may make such rules and specify such terms and conditions and charges as it considers appropriate regarding Members of a Plan in the Personal Division.

#### **A5 Transfer to Allocated Pension Division**

- A5.1 The Trustee must transfer a Member from a Plan in the Personal Division to the Allocated Pension Division where:
- (a) a benefit becomes payable in respect of the Member from the Personal Division; and
  - (b) the Member applies and the Trustee approves the Member's admission as a Member of the Allocated Pension Division.
- A5.2 For the purposes of Rule A5.1, the Trustee may make such rules and specify such terms conditions and charges as it considers appropriate regarding the transfer of Members from a Plan in the Personal Division to the Allocated Pension Division.

## **Schedule AA          Personal Division Special Provisions for Rollover Members of Simple Super and Tailored Super**

### **AA1. Application of Schedule AA**

#### **Simple Super and Tailored Super Rollover Members**

- AA1.1 This Schedule AA applies to Members who were members of a Former NM Fund immediately before 30 April 2011, and were identified under the governing rules of a Former NM Fund as 'Rollover Members' (Transferred Rollover Members).
- AA1.2 A Transferred Rollover Member may, if the Trustee offers and the Member applies in the prescribed form, become, a Member of a Rollover Plan that has terms of membership applicable to other Rollover Members.

### **AA2. Exclusion of Provisions for Simple Super and Tailored Super Rollover Members**

#### **Excluded provisions**

- AA2.1 The following provisions of this Deed do not apply in respect of Transferred Rollover Members:
- (1) Rules 9.14 and 9.15;
  - (2) Rule 10.8;
  - (3) Rule 25.5.
- AA2.2 The exclusion of the Rules listed in Rule BA4.1 does not limit or otherwise affect the rights of the Trustee or the Transferred Rollover Members at law that would otherwise apply if those Rules were not included in this Deed in respect of any Members.

#### **Modified provisions**

- AA2.3 The following provisions of this Deed are modified in respect of Transferred Rollover Members:
- The following provision applies instead of Rule 22.5:
- '22.5 If the Tax in respect of a Member as recalculated exceeds the Tax as previously determined in respect of the person then:
- (a) if the person remains a Member on the recalculation date, the Trustee may deduct the amount of the additional Tax from the Interest in the Plan of the Member as it considers appropriate; or
  - (b) the Trustee may deduct the amount of the excess Tax from one or more of the Plan Reserve Account, Plan Reserve Transfer Account and Plan Reserve Charges Account for the relevant Plan; but
  - (c) if in the particular circumstances and in the opinion of the Trustee it is reasonably and appropriate to do so, the Trustee may elect to give effect to the adjustment in such other manner as it considers to be equitable in the circumstances.'

**Schedule B Allocated Pension Division****B1 Allocated Pension Division****Allocated Pension Division**

B1.1 The Allocated Pension Division comprises Plans for the benefit of:

- (a) a Member who transfers from the Personal Division pursuant to Rule A5.1; and
- (b) any other person who applies to the Trustee for Membership of the Allocated Pension Division and is accepted by the Trustee.

The Rules applying to persons who become Members of Plans in the Allocated Pension Division are described in this Schedule B.

**Eligibility of existing Members**

B1.2 A Member of a Plan in the Personal Division is eligible to become a Member of a Plan in the Allocated Pension Division if their Part Credit consists wholly or partially of unrestricted non-preserved benefits which may be transferred under Rule A5.1, to a Member Transfer Account in a Plan in the Allocated Pension Division and out of which the Trustee agrees that an Allocated Pension will be paid.

**Eligibility of other persons**

B1.3 Any other person is eligible to become a Member of a Plan in the Allocated Pension Division if they are in receipt of an Eligible Termination Payment which may be deposited in, or transferred under Rule 6.1, to a Member Transfer Account in a Plan in the Allocated Pension Division and:

- (a) that person lodges an Application Form with the Trustee;
- (b) the Trustee accepts the Application Form;
- (c) the Trustee agrees that an Allocated Pension will be paid out of the Member's Transfer Account; and
- (d) the Trustee approves admission to Membership of a Plan in this Division, and Superannuation Law permits that person to become a Member.

**Rejection of Application**

B1.4 The Trustee may decline to admit to Membership of a Plan in this Division without giving any reason, a person who lodges an Application Form pursuant to Rule B1.3(a) and thereupon, the provisions of Rule 5.6 shall apply.

**B2 Benefits**

B2.1 A Member is entitled to payment of an Allocated Pension on the terms and conditions agreed between the beneficiary and the Trustee or, in the absence of agreement, as determined by the Trustee and only to the extent that the Member's Transfer Account and Superannuation Law will allow.

B2.2 Where the conditions of Rule B2.1 are satisfied the Trustee will pay the benefit determined under that Rule, subject to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member and/or as a consequence of such payment by the Trustee.

- B2.3 If and to the extent allowed by Superannuation Law, and subject at all times to the terms and conditions upon which it has been agreed or determined that an Allocated Pension will be paid under Rule B2.1, the Trustee may, at the request of the Member or Reversionary Pensioner, decide in its absolute discretion to commute part or all of any Allocated Pension to a lump sum payment upon such terms and conditions as the Trustee determines from time to time. The lump sum payment arising from the commutation of part or all of the Allocated Pension must not exceed the balance in the Member's, or Reversionary Pensioner's, Member Transfer Account.
- B2.4 If a Member or Reversionary Pensioner dies, the Death Benefit is equal to the balance in his or her Member Transfer Account, the amount of which benefit shall be paid from this Part pursuant to Rule 11, net of all applicable fees, charges and Tax due by or in respect of that Member or as a consequence of such payment by the Trustee subject at all times to:
- (a) any terms and conditions agreed between the beneficiary of the Death Benefit and the Trustee or, in the absence of agreement, as determined by the Trustee; and/or
  - (b) any terms and conditions upon which it was agreed or determined that an Allocated Pension would be paid to the Member (under Rule B2.1), or prior Reversionary Pensioner (under paragraph (a) above) of this Rule.

N. M. Superannuation Proprietary Limited

## Part Rules for the NMRF Part

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## Part 1 Preliminary

### Application

- 1 These Part Rules apply only to Members of the NMRF Part. A reference to a Member in these Part Rules is a reference to a Member of the NMRF Part.
- 2 [Not used]

### Interaction with the Applicable Requirements

- 2A. (a) All the standards, rules and covenants required by the Applicable Requirements to be included in the governing rules of superannuation funds form part of these Part Rules, whether or not they are explicitly stated in these Part Rules. However, if a standard, rule or covenant is no longer required to be included or the Commissioner does not require it to be complied with, then that standard, rule or covenant ceases to be included by this clause. A standard, rule or covenant included by this clause prevails over any other provision in these Part Rules which is inconsistent with it.
- (b) If a provision of these Part Rules would otherwise be invalid in whole or in part because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request only.
- (c) If a provision of these Part Rules would otherwise be invalid in whole or in part because it permits a person to exercise a discretion without the consent of the Trustee then that provision is taken to require the Trustee's consent for the exercise of the discretion.

### Definitions

- 3 Where the context permits and unless the contrary intention appears, capitalised terms used in these Part Rules which are defined in rule 1.1 of the Trust Deed for the National Mutual Retirement Fund have the same meaning in these Part Rules and:

**Act** means:

- (a) the *Superannuation Industry (Supervision) Act 1993 (Cth)*, the *Income Tax Assessment Act 1936 (Cth)*, the *Income Tax Assessment Act 1997 (Cth)* and the *Corporations Act 2001 (Cth)* and any other act relating to superannuation with which the Trustee must comply or which provides for the concessional taxation of superannuation funds and all regulations made under those Acts (as modified in their application to the Fund by any subsisting declaration, modification or exemption granted by the Commissioner);
- (b) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which applies to the Fund, the Deed, these Part Rules or the Trustee with the force of law; and
- (c) any present or future law of the Commonwealth of Australia or any State or Territory of Australia which does not fall within paragraph (a) or (b) of this definition but which the Trustee determines from time to time to be an Act for the purposes of the whole or any particular provision of the Deed or these Part Rules.

**Annuity Policy** means a benefit taken to be an Annuity for the purposes of the Act.

**Applicable Requirement** means:

- (a) such of the provisions of the Act and the Regulations; and

- (b) such circulars guidelines and rulings issued from time to time by the Commissioner in relation to superannuation funds; and
- (c) such other material issued from time to time by the Commissioner or by any other government authority responsible for the operation of superannuation funds and whether or not having the force of law,

as the Trustee considers it prudent to observe for the purpose of establishing or maintaining exemption relief or concession from or in respect of taxation.

**Benefit** in relation to a Member or Undischarged Ex-Member means the Policy or Policies effected or held with the applicable life company on the life of the Member or Undischarged Ex-Member concerned and the money payable thereunder and any other money or investments held under these Part Rules in respect of the Member or Undischarged Ex-member and includes any payment under a Pension.

**Category** means category of membership provided for under Part 2A applying in respect of a Member.

**Category Selection** means a Category Selection Form received by the Trustee.

**Category Selection Form** means a notice in a form acceptable to the Trustee under which a Member can specify a Category.

**Children** means, subject to clause 6A.10, surviving children of the Member at the date of the Member's death, including without limitation adopted children, step-children and ex-nuptial children and children of the member's spouse who were dependent on the Member for maintenance or support at the date of the Member's death.

**Commissioner** means:

- (a) for the purposes of Part 2A, includes any person the Trustee reasonably believes is or was authorised to give information on behalf of the Commissioner of Taxation; and
- (b) for all other purposes, as the case requires means the Commissioner of Taxation, the Australian Securities and Investments Commission or the Australian Prudential Regulation Authority.

**Costs** means administration and transaction expenses relating to the relevant Member No TFN Contribution, including the relevant portion of any applicable insurance premium.

**Death Benefit** means a Benefit payable from the SLPP on the death of a Member.

**Deed of Entitlement** means the Deed dated 13 June 1995 between National Mutual Holdings Limited, AXA Société Anonyme and Perpetual Trustees Victoria Limited as amended (including amendments made by a deed dated 5 July 1996).

**Dependant** in respect of a Member means a spouse de facto spouse widow widower child adopted child step-child or ex-nuptial child of a Member or Undischarged Ex-Member any person considered to be a dependant by the Act or any person who in the opinion of the Trustee is at the relevant date (or in the case of a deceased person was at his death) wholly or partially dependent on that Member or Undischarged Ex-Member or who has or had at the relevant date a right to look to that Member or Undischarged Ex-Member for support.

**Deposit Administration Policy** means the policy maintained by the Trustee pursuant to clause 36.

**Directed Termination Payment** means a transitional employment termination payment

(as defined in the Tax Act) which a Member directs be made to this Part.

**Eligible Member** means a person who as at 21 June 1995:

- (a) was not a standard employer sponsored member as defined in section 16 of the *Superannuation Industry (Supervision) Act 1993* (Cth); and
- (b) fell within the definition of Member or Undischarged Ex-Member in the Deed.

**Employer No TFN Contribution** means a concessional contribution (as defined in the Tax Act) made to this Part in respect of a Member where the Trustee has not been provided with a TFN for the Member.

**Employer-Supported Member** means any Member of this Part whose employer has agreed to contribute to this Part in respect of the Member.

**Estate** means the legal personal representative of the Member on behalf of the deceased Member's estate.

**Full-Time Employment** means Gainful Employment for a period of not less than 30 hours per week.

**Gainful Employment** means employment (either as an employee or self-employed person) for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages and 'gainfully employed' has a similar meaning.

**Individual NMH Entitlements** means that portion (if any) of the value of the NMH Share Entitlement which the Trustee determines was attributable to the Member under the Deed as at the date on which the NMH Share Entitlement was allocated to the Trustee.

**Life Insurance Policy** means a life policy as defined in the *Life Insurance Act 1995* (Cth) or any other Act that may be substituted therefor.

**Member:**

- (a) for the purposes of Part 2A, includes a person who was a Member at the time of his or her death; and
- (b) for all other purposes means, a person who has been accepted as a Member of this Part and who has not ceased to be a Member as hereinafter provided,

but does not include a Non-Member Spouse. This definition must be read together with Rule 1.

**Member No TFN Contribution** means a non-concessional contribution (as defined in the Tax Act) made to this Part by or in respect of a Member where the Trustee has not been provided with a TFN for the Member.

**Memorandum of Allocation** has the meaning ascribed to that term in the Deed of Entitlement.

**Merged Funds** means The UC Retirement Fund, the Flexipol Personal Superannuation Fund, the Flexipol Self-Employed Persons Superannuation Fund, the National Mutual Employer-Supported Retirement Fund and the National Mutual Self-Employed Superannuation Fund.

**Merged Funds Transfer Date** means 30 September 1990.

**Minor Children** means, subject to clause 6A.10, Children under the age of 18 at the date of the Member's death.

**National Mutual** means The National Mutual Life Association of Australasia Limited.

**NMH Share** has the meaning ascribed to that term in the Memorandum of Allocation.

**NMH Share Entitlement** means the number of NMH Shares which the board of National Mutual allocated to the Trustee in relation to the Fund on the basis of the principles set out in the Memorandum of Allocation.

**NMRF Part** means the Part of the Fund governed by these Part Rules (and 'this Part' has a corresponding meaning).

**Nominee** means any Dependant of a Member or Undischarged Ex-Member who is nominated by the Member or Undischarged Ex-Member in a manner approved by the Trustee as a person to whom that Member or Undischarged Ex-Member desires to be paid in the event of his death either the whole or such portion as he may specify in that nomination of the Benefit in respect of him.

**Paid-up** in relation to a Policy means reduced in amount in consideration of no further premiums being payable thereunder.

**Parliamentary Member** means a person who is engaged and working:

- (a) under an agreement pursuant to Section 20 of the *Members of Parliament (Staff) Act 1984* whereby that person has been appointed to the Staff of a Senator or a Member of the House of Representatives; or
- (b) under an agreement pursuant to Section 13 of the *Members of Parliament (Staff) Act 1984* where that person has been appointed to the Staff of an Office Holder; or
- (c) under an agreement pursuant to Section 4 of the *Members of Parliament (Staff) Act 1984* whereby that person has been appointed as a Consultant to a Minister of the Crown; or
- (d) as a Senior Executive Service Officer appointed on a fixed-term basis pursuant to Section 42 and to Section 44 of the *Public Service Act 1922*; or
- (e) as a Departmental Secretary appointed on a fixed-term basis pursuant to Section 36 and to Section 39 of the *Public Service Act 1922*.

For the purposes of this definition any reference to either of the Acts more particularly specified herein shall be to the relevant Act as the same may from time to time be amended or re-enacted and includes every Statute substituted therefore and any reference to a Section thereof shall be to the corresponding section of any amended or re-enacted Act.

**Part-Time Employment** means Gainful Employment for a period of 10 hours or more per week but less than 30 hours per week.

**Pension** means a benefit taken to be a pension for the purposes of the Act.

**Plan** means any superannuation arrangement made by the Trustee pursuant to clause 61.

**Policy** means a Life Insurance Policy, a Pure Endowment Policy or an Annuity Policy as the case requires (with or without the provision of additional benefits) effected or held for the purposes of this Part.

**Preserved Benefit** in relation to a Member means that portion of any Benefit arising under this Part in respect of him which in accordance with the preservation standards set out in the Regulations is required to be preserved.

**Pure Endowment Policy** means a policy which provides subject to the conditions therein stated for the payment of the policy moneys on the survival throughout the term of that

policy of the person on whose life it has been effected or if he dies before the expiry of the selected term for the repayment of premiums which have been paid thereunder with interest added at the rate therein stated.

**Regulations** means any Regulations made under the Act.

**Reversionary Pensioner** means a person who being a Dependant at the time of death of the Member or Undischarged Ex-Member who is in receipt from this Part of a reversionary pension has been nominated by that Member or Undischarged Ex-Member as the person who should continue to receive the remainder of that pension.

**Selected Retirement Date** means the retirement date selected by a Member at the date he becomes a Member which shall not be earlier than his 55th birthday and not later than his 65th birthday (except where the Member has already attained the age of 65 years) **PROVIDED THAT** subject to the limitations hereinbefore contained a Member may at any time and from time to time by notice in writing given to the Trustee substitute for the date so selected or for any date substituted therefor such other date as may be selected by him.

**SLPP** means the Superannuation Life Protection Plan and includes the Superannuation Life Protection Plan as renamed or replaced, unless otherwise determined by the Trustee.

**Spouse** means subject to clause 6A.10, the spouse of a Member, and includes a person who, although not legally married to a Member, lives with the Member on a genuine domestic basis as the husband or wife of the Member.

**Successor Fund** has the meaning given to that term in the Regulations.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or *Income Tax Assessment Act 1997* (Cth), as applicable.

**TFN** means a tax file number pursuant to the Act or Regulations.

**Undischarged Ex-Member** means a former Member who has ceased to be a Member in manner provided in these Part Rules and who has not received the whole of his Benefit.

- 3A The headings in these Part Rules are for convenience only and shall not affect the interpretation hereof.
- 3B Words denoting the masculine gender shall include the feminine gender. Words denoting the singular number shall include the plural number and vice versa.
- 3C Words and expressions used herein but not defined in this clause, shall, if they are defined in the Act, have the meanings given to them respectively in the Act.
- 3D A reference to any legislation or legislative provision includes any statutory modification or re-enactment of or legislative provision substituted for and any statutory instrument issued under that legislation or legislative provision.

## Part 2 Membership

### Eligibility/Applications

- 4 (a) The following categories of people (other than Non-Member Spouses) may apply for membership of this Part:
- (i) any person who is in Full-Time Employment;
  - (ii) any person who is in Part-Time Employment;
  - (iii) any person whose employer has agreed to contribute in respect of him mandated employer contributions (as that expression is defined in the Regulations);
  - (iv) any person who is otherwise permitted under the Act or Regulations to become a superannuation fund member,
- and who has not attained the age of 65 years except where Members who have attained their 65th birthday are permitted in accordance with the Act or Regulations.
- (b) Any person desirous of becoming a Member shall apply to the Trustee in writing on the form prescribed from time to time by the Trustee wherein the applicant shall inter alia agree to be bound by the provisions of these Part Rules.
- (c) The Trustee may in its absolute discretion accept or reject any such application **PROVIDED THAT** the Trustee must not intentionally or recklessly accept any application for membership unless the Trustee is satisfied on reasonable grounds that the applicant has received documents that contain all the information required under the Act or Regulations with regard to membership of this Part.
- (d) Every applicant for membership and every Member shall whenever requested by the Trustee provide to the Trustee such information documents and other evidence in connection with this Part as the Trustee may reasonably request. It shall be the obligation of every Member to give prompt notification to the Trustee in writing of any circumstance affecting his eligibility for membership of this Part and his ability to make contributions to this Part in accordance with the Act and the Regulations.
- (e) Upon acceptance by the Trustee of any application for membership of this Part and the payment by or in respect of him of a contribution to this Part such applicant shall be deemed to be a Member and he shall thereupon be bound by the terms and conditions of these Part Rules.
- (f) The Trustee may:
- (i) offer a Member the option of selecting a category of membership provided for under Part 2A; and/or
  - (ii) determine that a Member is in a group of Members to whom Part 2A applies.
- If subparagraphs (f)(i) and/or (ii) of this clause applies to a Member, that Member's Benefits are payable in accordance with the terms of Part 2A.
- (g) The Trustee may establish, delete or vary categories of membership at any time.

### Non-Member Spouse

4A. For the avoidance of doubt, if:

- (a) a Member's interest in this Part is subject to a Payment Split; and

- (b) a Non-Member Spouse requests a new interest in this Part be created for the Non-Member Spouse in connection with the Payment Split,

the Trustee must not create a new interest in this Part for the Non-Member Spouse in those circumstances and the Non-Member Spouse has no interest in this Part because of those circumstances.

### **Former Members of the Merged Funds**

- 5 Where to apply the provisions of these Part Rules would have a detrimental effect on the value of the Benefit of a former member of one of the Merged Funds who transferred into the Fund on the Merged Funds Transfer Date or on any right conferred under the trust deed for that fund the Trustee may apply the provisions of that trust deed in substitution for or in addition to the provisions of these Part Rules to ensure that the Member's former rights and benefits are retained PROVIDED THAT the Trustee will not thereby cause the Fund to cease to comply with the Applicable Requirements.

### **Cessation of Membership**

- 6 A Member shall cease to be a Member on the occurrence of the first of the following events:
- (a) when he has received the whole of his Benefit; or
  - (b) on the transfer of the whole of the Benefit of the Member or Undischarged Ex-Member in accordance with clause 7(b); or
  - (c) when this Part no longer contains any Benefit in respect of the Member or Undischarged Ex-Member.



## Part 2A Category Selection

### Category Selection Form

6A.1 A Member who is given an option under clause 4(f) of these Part Rules may give the Trustee a Category Selection Form.

### New Category Selection Form

6A.2 A Member to whom clause 6A.1 applies may give the Trustee a new Category Selection Form at any time in a manner approved by the Trustee. A new Category Selection will have the effect of immediately and permanently revoking any previous Category Selection of the Member.

### Applicable Membership Category

6A.3 Subject to clause 6A.14:

- (a) a Member becomes a member of the Category which the Member specifies in a Category Selection;
- (b) the Member's Category applies from the date the Category Selection is received by the Trustee.

### Deemed Category 1 Member

6A.4 If the Trustee has not received a Category Selection from a Member and:

- (a) the Member has been offered the option of selecting a Category under clause 4(f) of these Part Rules; or
- (b) the Trustee determines that the Member is in a group of Members to whom Part 2A applies,

that Member is a Category 1 Member.

### Benefit Payments Category 1

6A.5 For Members of Category 1:

- (a) benefits are payable under the relevant provisions in these Part Rules unless the Member has died;
- (b) the Trustee must pay the Death Benefit to one or more of the Members' Dependants or legal personal representative or any other person permitted by the Applicable Requirements at the absolute discretion of the Trustee, in proportions which the Trustee considers appropriate;
- (c) the Trustee may determine that the Death Benefit be paid as a lump sum, pension or annuity or in any other form that the Trustee considers appropriate; and
- (d) clauses 6A.9 to 6A.13 and 6A.15 to 6A.19 do not apply.

### Benefit Payments - Categories 2 to 8

6A.6 For Members of Categories 2 to 8:

- (a) benefits are payable under the relevant provisions in these Part Rules unless the Member has died;

- (b) on the death of a Member, subject to clauses 6A.12 to 6A.14, the Trustee must:
- (i) if the Member is a Category 2 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (ii) if the Member is a Category 3 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (iii) if the Member is a Category 4 Member:
    - (A) pay the Member's Death Benefit to the Member's Spouse as a lump sum; and
    - (B) [not used];
  - (iv) if the Member is a Category 5 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (v) if the Member is a Category 6 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (vi) if the Member is a Category 7 Member:
    - (A) pay the Member's Death Benefit to the Member's Estate as a lump sum; and
    - (B) [not used];
  - (vii) if the Member is a Category 8 Member:
    - (A) pay the Member's Death Benefit to the Member's Children as a lump sum; and
    - (B) [not used];
- (c) Benefits to Children (including Minor Children) will be paid in equal shares; and
- (d) if there is more than one Spouse, each Spouse will be paid in equal shares.

### **Benefits to an Estate**

6A.7 Benefits to the Estate are to be paid at the Trustee's discretion to the legal personal representative of the Member upon production of probate or letters of administration.

### **Benefits to Minor Children**

6A.8 Any Benefit payable to a Minor Child will be paid on trust subject to the same terms as those regarding infant trusts set out in clause 19(a) of these Part Rules.

**Death Benefit Payment**

6A.9 If there is no person to whom part or all of a Death Benefit can be otherwise paid under this Part 2A, the part of the Death Benefit that cannot be paid may be paid to any other person or persons determined by the Trustee in the exercise of its absolute discretion if the Applicable Requirements permit.

**Qualification for Payment**

6A.10 A person is not a Spouse, Child or Minor Child of a Member unless the Trustee is satisfied as to that person's identity, eligibility and location within 3 months of the date of the Member's death or such longer period as the Trustee may determine.

**Trustee not required to Inquire**

6A.11 The Trustee is not required to make any inquiries to determine the eligibility, identity or location of potential recipients of a Death Benefit.

**Exception**

6A.12 If the Trustee is unable to identify or locate at least one person capable of qualifying for payment of the part of the Member's Death Benefit that is payable as a lump sum under clause 6A.6(b), the Trustee will pay:

- (a) the part of the Benefit that would have been payable as a lump sum to Children under clause 6A.6(b) - to the Spouse; and
- (b) the part of the Benefit that would have been payable as a lump sum to a Spouse under clause 6A.6(b) - to the Member's Estate.

6A.13 [not used]

**Rejection of Category Selection**

6A.14 If the Trustee believes in good faith that:

- (a) a Category Selection is not sufficiently clear to allow the Trustee to pay a Death Benefit;
- (b) a Category Selection is incomplete; or
- (c) a Category Selection is not consistent with the Applicable Requirements,

the Trustee may refuse to accept or give effect to all or any part of the Category Selection and may at any time, including before and/or after a Member's death, deem the Member to be a Category 1 Member. A refusal by the Trustee under this clause does not cause a previous Category Selection of the Member to become invalid.

**Mode of Payment - Death Benefits**

6A.15 The Trustee will pay a Death Benefit under this Part 2A by lump sum

6A.16 [not used]

6A.17 [not used]

6A.18 [not used]

**Status of Person who may Benefit under Category Selection Form**

6A.19 A person who may qualify as a beneficiary under the Member's Category Selection has no rights or entitlements under these Part Rules during the lifetime of the Member.

**Validity of Category Selection**

6A.20 If any doubt or dispute arises as to the validity of a Category Selection, subject to the jurisdiction of any relevant Court or Tribunal, the decision of the Trustee shall be binding on all interested persons.

**Part 3 Transfers of Benefits To or From Other Existing Funds**

- 7 (a) The Trustee may from time to time subject to the Applicable Requirements and to the conditions of this clause accept into this Part in respect of a Member assets or investments to the extent that those assets and investments are acceptable to the Trustee and including any policy or policies issued by a life insurance company which are transferred from another superannuation fund in which the Member has participated or from an approved deposit fund in which the Member has been a depositor or from an Annuity purchased by or on behalf of the Member whereupon the Trustee shall ensure that the Member's benefits arising from the assets and investments so transferred are preserved to such extent as it necessary in accordance with the standards under the Regulations having regard to the advice received from the trustees of the fund from which the assets or investments are transferred.
- (aa) The Trustee may, in its absolute discretion:
- (i) refuse to accept into this Part assets, investments or other benefits from untaxed superannuation funds or other untaxed sources; or
  - (ii) return the relevant assets, investments or other benefits to the relevant untaxed superannuation fund or other untaxed source.
- (b) If at any time:
- (i) a Member requests his membership to be transferred to a superannuation fund administered in compliance with the Applicable Requirements and the trustees of such fund agree to accept the transfer;
  - (ii) a Member who has not attained the age of sixty five years requests that the whole or part of his Benefit be transferred to an approved deposit fund administered in compliance with the Applicable Requirements and which is required to preserve any Benefit so transferred in accordance with the standards set out in the Regulations and the trustees of the approved deposit fund agree to accept the transfer; or
  - (iii) a Member requests that the whole or part of his Benefit be transferred to an Annuity issued by a corporation which agrees to accept as consideration therefor such Benefit,
- PROVIDED THAT** the transfer of any Preserved Benefit in respect of the Member is in accordance with the standards prescribed in the Regulations the Trustee may transfer to the trustees of that other superannuation fund or approved deposit fund or to the corporation issuing the Annuity the whole or part of the Benefit (including any Policy or Policies) held by the Trustee in respect of the Member under this Part.
- (c) Any assets and investments taken over by the Trustee pursuant to paragraph (a) of this clause shall thereafter be subject to the terms of these Part Rules.
- (d) The transfer of the whole or part of a Benefit in accordance with paragraph (b) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under this Part in respect of the Benefit or that part of the Benefit so transferred. The Trustee shall neither be responsible for nor be liable in respect of the disposal or otherwise by the trustee or trustees of that other superannuation fund or approved deposit fund or by the corporation issuing the deferred annuity for the Benefit or the part of the Benefit so transferred.

- (e) For all the purposes of these Part Rules the Benefit of any member in respect of whom paragraph (a) of this clause applies shall be deemed to include the policy or policies investments and any other moneys taken over by the Trustee in respect of him **PROVIDED THAT** the value of such assets shall for the purpose of these Part Rules not be deemed to be a contribution to this Part.
- (f) Notwithstanding anything contained in these Part Rules, the Trustee may, subject to the Applicable Requirements, transfer a Member's Benefit without having obtained the Member's consent if in the opinion of the Trustee the transferee fund is a Successor Fund.

## Part 4 Contributions

### Regular Contributions

- 8 Subject to these Part Rules, the regular contributions:
- (a) by the Member or in respect of the Member shall be made to this Part yearly or at such other intervals of time as the Trustee may allow and accept;
  - (b) payable under this Part in respect of an Employer Supported Member shall include the amounts payable by that Member and by the employer of that Member in respect of him.

### Amount of Contributions

- 9 The amount of the regular contributions referred to in the preceding clause 8 shall be determined:
- (a) in respect of a Member other than an Employer Supported Member or a Parliamentary Member according to the requirements of that Member as notified to the Trustee at any time and from time to time;
  - (b) in respect of an Employer Supported Member but excluding a Parliamentary Member according to the requirements of that Member and/or the employer of that Member as notified to the Trustee at any time and from time to time;
  - (c) in respect of a Parliamentary Member:
    - (i) according to the rules prescribed from time to time by the Department of Finance (or such other responsible authority) of the Commonwealth of Australia; or
    - (ii) according to the provisions in that regard more particularly set forth in the relevant Statute referred to in that definition as the case may require.

### Limits on Contributions

- 10 (a) The Trustee shall not accept contributions by or in respect of a Member:
- (i) who has attained 65 years of age except in such circumstances as permitted by the Regulations.
  - (ii) who has ceased for a continuous period of two years to be in either Full Time Employment or Part Time Employment unless:
    - (A) the contributions are mandated employer contributions (as that expression is defined in the Regulations);
    - (B) the Member has ceased Full Time Employment or Part Time Employment because of ill health (whether physical or mental) that at the date of making the contribution prevents the Member from engaging in the employment of the kind that the Member engaged in at the onset of the ill health; or
    - (C) otherwise permitted by the Applicable Requirements.
- (aa) The Trustee:
- (i) must, if required by the Applicable Requirements:
    - (A) refuse to accept Member No TFN Contributions;
    - (B) return Member No TFN Contributions to the relevant Member within 30 days of the amount being received by the Trustee;
  - (ii) may, in its absolute discretion:

- (A) refuse to accept one or more of the following: Employer No TFN Contributions or Directed Termination Payments;
  - (B) return Employer No TFN Contributions or Directed Termination Payments (or both of them) to the relevant Member or Employer at any time;
- (iii) may, in its absolute discretion, return the Member No TFN Contributions to the relevant Member after deducting amounts from these contributions to take account of:
  - (A) a reduction in the value of the Member No TFN Contribution owing to losses sustained as a result of its investment during the period it was held by the Trustee; or
  - (B) reasonable Costs incurred by the Fund,or both.
- (b) Any contributions accepted by the Trustee in breach of paragraph (a) of this clause shall be refunded within a period of two months of the Trustee becoming aware that the Member satisfied either of the criteria described in sub paragraphs (1) and (2) of paragraph (a) of this clause (save that where such refund cannot be made out of that portion of his Benefit other than the Policy effected or held on his life the amount to be refunded to him shall be the surrender value of the contributions concerned) and in respect of any Policy held in respect of him in this Part the Trustee shall be at liberty to apply to the applicable life company to have so much of the said Policy surrendered as will permit such refund to be made and to have the reduced Policy then remaining made Paid-up. That Member shall thereupon become and until he shall seek reinstatement as a Member on again becoming eligible to make contributions to this Part remain an Undischarged Ex Member and whilst so remaining an Undischarged Ex Member no contribution to this Part by or in respect of him shall be accepted by the Trustee.
- (c) If in any case where he has been requested so to do a Member fails to furnish the Trustee with the information, documents or other evidence referred to in paragraph (d) of clause 4 within the time stated in the request the Trustee (subject to the provisions of the immediately preceding paragraph (b) in the event of the Member ceasing to be eligible to contribute to this Part):
  - (i) may refuse to accept any contributions by or in respect of a Member;
  - (ii) may subject to any limitation contained in the Applicable Requirements adjust or withhold the whole or part of the Benefit payable in respect of the Member;
  - (iii) shall be at liberty to have the Policy on the life of that Member made Paid-up and that Member shall thereupon become an Undischarged Ex Member and whilst remaining an Undischarged Ex Member no contribution by or in respect of him shall be accepted by the Trustee **PROVIDED ALWAYS THAT** if at any time thereafter that Undischarged Ex Member establishes to the satisfaction of the Trustee that he had not otherwise ceased to be eligible for membership of this Part he shall be reinstated to membership as from the date he became an Undischarged Ex Member as aforesaid and his Benefit in this Part shall as far as practicable and upon such terms and conditions as the Trustee and the applicable life company may then agree be reinstated to that which he would have obtained had he not become an Undischarged Ex Member as aforesaid.



- (d) Where a Member or Undischarged Ex Member furnishes information required pursuant to these Part Rules that affects or is likely to affect his Benefit and the information supplied is incorrect or misleading then subject to any limitation contained in the Applicable Requirements the Trustee may in its discretion adjust the Benefit in respect of the Member or Undischarged Ex Member to an amount that would have applied had full and accurate information been supplied.

**Additional Contributions**

- 11 Subject to the Applicable Requirements and to any minimum or maximum limits or other conditions advised by the Trustee additional contributions may be made to this Part by or in respect of a Member at any time and from time to time.

## Part 5 Policies

### Policies to be Effected

- 12 (a) On a Member joining this Part and from time to time thereafter whenever any regular contributions additional to those which have hitherto been made in respect of the Member are agreed to be provided a Policy shall be effected by the Trustee with a life company on the life of the Member for an amount to be determined between the Trustee and the applicable life company having regard to the moneys which the Trustee shall in its absolute discretion determine are or are likely to be held in this Part in respect of that Member and according to his age at the commencing date of that Policy the type of Policy (with or without additional benefits) selected by the Member and approved by the Trustee and the conditions imposed by the applicable life company.
- (b) If at any time a Member is possessed of a policy on his life which has been effected with the applicable life company and which provides a benefit of the same or substantially the same type as that which the Trustee is pursuant to the preceding paragraph of this clause obliged to effect or cause to be effected in respect of that Member subject to any limitation contained in the Applicable Requirements the Trustee may upon such terms and conditions and for such monetary consideration (if any) as the Trustee shall in the exercise of its absolute discretion determine agree to acquire the same in substitution or partial substitution for the Policy which the Trustee would otherwise be obliged to effect or cause to be effected in respect of him **PROVIDED ALWAYS THAT** in any case where a policy has been acquired by the Trustee as aforesaid then the Member in the Financial Year in which that policy was so acquired shall be deemed for the purposes of these Part Rules to have made a contribution to this Part.

### Health and other Evidence

- 13 Every Member shall supply such information documents and other evidence including such evidence of his health and as to the date of his birth as the applicable life company may require and do all things necessary on his part to enable the applicable life company to issue any Policy to the Trustee in respect of him.

### Payment of Premiums

- 14 The Trustee save as herein otherwise provided shall out of the moneys held in this Part in respect of a Member punctually pay the premiums on all Policies held in this Part in respect of him.

### Policies under Trustee's Control

- 15 The Trustee is hereby authorised and empowered to arrange for the issue of the Policies required to be effected as hereinbefore provided and to give full and effectual receipts releases and discharges in respect thereof as the Trustee from time to time thinks proper and the applicable life company requires. Any such Policy shall either be effected in the name of the Trustee or if already effected be assigned or transferred so that it shall be subject to and remain under the control of the Trustee during the time it is subject to the provisions of these Part Rules. The Trustee only shall be entitled in respect of any such Policy to receive all moneys payable thereunder and to enforce any rights remedies or contract in connection therewith or incidental thereto and shall be solely entitled to the full benefits and advantages thereof and no Member or Undischarged Ex Member shall have or claim save as herein provided any right title or interest in or to any such Policy or contract or in respect of the moneys payable thereunder. The applicable life company shall not be concerned to see or inquire if any of the events has happened by

reason whereof the Trustee has become entitled under these Part Rules to assign or transfer any such Policy to vary the contract hereunder to terminate the whole or any portion of such Policy for cash or to have the whole or any portion of such Policy made Paid-up and these Part Rules together with any request by the Trustee to the applicable life company to register a duly executed assignment or the transfer of any such Policy to vary the contract thereunder to terminate the whole or any portion of such Policy for cash or to have the whole or any portion of such Policy made Paid-up shall as against such Member or Undischarged Ex Member and any person claiming through or under him be conclusive evidence in respect of that Policy of the consent and authority of that Member or Undischarged Ex Member or such person as the case may be to the applicable life company to effect and complete such registration variation or termination accordingly.

### **Blanket Policies**

- 16 Notwithstanding anything to the contrary in these Part Rules otherwise contained the Trustee may with the consent of the applicable life company arrange for the whole of the Benefits then secured by individual Policies on the lives of Members and Undischarged Ex Members or in respect of specified groups of Members and Undischarged Ex Members or thereafter to be secured in respect of such persons or groups of persons to be secured by one or more blanket policies issued by the applicable life company and providing when requested by the Trustee for the purposes of these Part Rules for the issue in substitution of the Benefit otherwise secured by the blanket policy in respect of a Member or Undischarged Ex Member of an individual policy on his life either in the name of that Member or Undischarged Ex Member or in the name of the Trustee as the Trustee requires and securing so much of the Benefit to which that Member or Undischarged Ex Member or any person claiming through him may then be entitled under these Part Rules at the time of the issue of that individual policy.

### **Maintenance of Policies**

- 17 If at any time the full amount of contribution to this Part payable by or in respect of a Member is not paid when due and no additional contributions pursuant to clause 11 have been paid or the amount of any additional contributions so paid together with interest (if any) is not sufficient for the purpose of paying the premium or instalment thereof on the Policy effected or held on his life then that Policy shall be kept on foot so long as the surrender value (if any) thereof will permit unless the Member concerned shall have requested the Trustee in manner hereinafter appearing to have the Policy made Paid-up.

### **Paid-up Policies**

- 18 Upon the receipt of a written request by a Member requiring the Trustee so to do the Trustee shall subject to the consent of the applicable life company have the Policy held in respect of him in this Part made Paid-up.

## Part 6 Payment of Benefits

### Payment on Death

- 19 Upon the death of a Member or Undischarged Ex Member then his Benefit (or so much of his Benefit as remains unpaid at his death) shall subject to clauses 4(f), 19A, 27, 28, 29A and 53 be paid or shall in the case of a pension commence to be paid at the option of the Trustee -
- (a) to or for the benefit of his Dependants (including his Nominee or Nominees) or such one or more of them and to the exclusion of the other or others of them and in such proportions and manner (including but without limiting the generality thereof by way of Annuity or Pension as the Trustee in its absolute discretion shall think fit **PROVIDED THAT** and subject to the foregoing provisions of this paragraph (a) where any Dependant as aforesaid to whom or for whose benefit the payment is to be made by the Trustee is an infant such payment may be made in trust to the person appearing to the Trustee to be the guardian or the person having actual custody or control of such infant or to the person with whom or institution in which such infant will permanently reside to such other person or institution as the Trustee may determine by such instalments and at such time or times and subject to such directions as to the manner in which the payment is to be applied for the benefit of that infant as the Trustee shall in its absolute discretion think fit and the receipt of such guardian or person or the appropriate official of such institution shall be a good and valid discharge to the Trustee for any moneys so paid and the Trustee shall not be bound to see to the application thereof nor to the carrying out of the directions of the Trustee as aforesaid; or
  - (b) to the legal personal representatives of that Member or Undischarged Ex Member upon production of probate or letters of administration to be held by them by way of direct trust operating under these Part Rules for the person beneficially entitled to that Member's or Undischarged Ex Member's residuary estate under his Will or on his intestacy and in the shares and upon the trusts which affect the Member's or Undischarged Ex Member's residuary estate but such moneys shall not be part of that Member's or Undischarged Ex Member's estate or be liable for his liabilities or for the liabilities of his estate; or
  - (c) upon the production of a grant of probate or letters of administration and on the production of such evidence (including the original last Will of that Member or Undischarged Ex Member or a declaration that the Member or Undischarged Ex Member has died intestate) as the Trustee may deem satisfactory and under such terms and conditions as the Trustee may in its absolute discretion think fit in payment or part payment of any duties charges whether death probate succession estate duty or otherwise payable to any Government or other authority as a result of the death of the Member or Undischarged Ex Member; or
  - (d) any other person to whom the payment of the Benefit is permitted under the Applicable Requirements.

### Payment of Reversionary Pension

- 19A Subject only to clause 19:
- (a) Where the Benefit payable to a Member or Undischarged Ex-Member is a reversionary pension, the Member or Undischarged Ex-Member may request that upon his death the Trustee shall pay the remainder of that Benefit to the Reversionary Pensioner nominated by the Member or Undischarged Ex-Member.

- (b) Where a Member or Undischarged Ex-Member requests the Trustee as contemplated by sub-clause 19A(a), the Trustee shall SUBJECT ALWAYS to the Applicable Requirements, pay that Benefit to the Reversionary Pensioner nominated in writing by the Member or Undischarged Ex-Member.
- (c) Upon the death of the person nominated as a Reversionary Pensioner and in respect of whom the reversionary pension shall have been paid pursuant to paragraph (b) of this clause, the Trustee shall determine the amount of any death Benefit payable in respect of that deceased person and determine the payment of such death Benefit in accordance with clause 19 of this Trust Deed.

### Mandatory Payments

- 20 Subject to clauses 27, 28, 29A and 53 the Benefit of a Member or Undischarged Ex Member shall be paid or in the case of a Pension shall commence to be paid as soon as practicable pursuant to the Applicable Requirements.

### Permitted Payments

- 21 Subject to clauses 27, 28, 29A and 53 that part of the Benefit of a Member or Undischarged Ex Member that is made up of any preserved or restricted non preserved benefits (within the meaning of those expressions in the Regulations) may subject to any conditions the Trustee may in its absolute discretion determine be paid in whole or in part on or after the occurrence of the following events:
- (a) where the Member or Undischarged Ex Member has attained age 55 when an arrangement under which the Member or Undischarged Ex Member was Gainfully Employed has come to an end and the Trustee is reasonably satisfied that the Member intends never to again to enter into Full Time Employment or Part Time Employment;
  - (b) where the Member or Undischarged Ex Member has attained age 60 when an arrangement under which the Member or Undischarged Ex Member was Gainfully Employed has come to an end on or after the Member or Undischarged Ex Member attaining that age;
  - (c) on the permanent incapacity of the Member or Undischarged Ex Member (as that term is defined in the Regulations);
  - (d) on the departure from Australia of the Member or Undischarged Ex Member where the Trustee is reasonably satisfied that departure is for the purpose of permanent residence outside Australia;
  - (e) on attaining age 65;
  - (f) on the Commissioner's determination in writing that the Member or Undischarged Ex Member is in financial hardship **PROVIDED THAT** payment is in a form that satisfies the Applicable Requirements;
  - (g) termination of Gainful Employment with an employer who had or any of whose associates had at any time contributed to this Part in respect of the Member or Undischarged Ex Member **PROVIDED THAT** any Preserved Benefit is paid in a form that satisfies the Applicable Requirements;
  - (h) on the Member's or Undischarged Ex Member's temporary incapacity (within the meaning of that term in the Regulations) **PROVIDED THAT** payment is in a form that satisfies the Applicable Requirements;

- (i) on any other condition of release approved by the Commissioner being satisfied for the purposes of the Applicable Requirements; or
- (j) on a condition of release, not otherwise specified in this clause 21, being satisfied for the purposes of the Applicable Requirements **PROVIDED THAT** payment is in a form that satisfies the Applicable Requirements,

**PROVIDED THAT:**

- (i) if by reason of the happening of any event referred to in the Policy on the life of a Member or Undischarged Ex Member effected, held or acquired pursuant to the provisions of these Part Rules a supplemental insured benefit becomes payable under that Policy the amount of that supplemental benefit shall be then payable to the Member or Undischarged Ex Member.
- (ii) the Trustee shall be at liberty to arrange with the applicable life company for the Policy on the life of a Member to be made Paid-up upon that Member becoming an Undischarged Ex Member.

**21A Vesting of Individual NMH Entitlement in Eligible Members**

Notwithstanding anything contained in these Part Rules, if and to the extent that the Trustee has any right, title or interest in the Individual NMH Entitlement of an Eligible Member and so long as this is consistent with the Applicable Requirements or is permitted by the Commissioner, the Individual NMH Entitlement is vested in that Eligible Member or in the legal personal representative of that person and the Trustee has no obligation to call in or hold in this Part that Individual NMH Entitlement.

- 22 Subject to clauses 27, 28 and 53 that part of the Benefit of a Member or Undischarged Ex Member that is made up of unrestricted non preserved benefits (within the meaning of that expression in the Regulations) may subject to any conditions advised by the Trustee be paid in whole or in part on the written request of the Member or Undischarged Ex Member.

**22A Benefits for Non-Member Spouse**

The Trustee may, subject to the Act and in accordance with the provisions of these Part Rules, pay to a Non-Member Spouse or pay or transfer to another entity with the superannuation system (including an eligible rollover fund) any amount which becomes payable in respect of the Non-Member Spouse because the Member's interest in this Part is subject to a Payment Split. The receipt in those circumstances is a sufficient discharge for the Trustee of any obligation it has in respect of the Non-Member Spouse.

**22B Adjusting Benefits for Payment Splits**

The Trustee may adjust any Benefit payable or which may become payable from this Part in respect of a Member to take account of any Payment Split under Part VIIIB of the Family Law Act 1975 (Cth) in respect of the Member or in respect of Benefits payable from this Part for or in respect of that Member. Subject to the Act, any adjustment will be on such terms as the Trustee determines.

**Payment Provision for Certain Members**

- 23 Subject to the Applicable Requirements the Benefit in respect of a Member or Undischarged Ex Member who transferred into the Fund from either the Flexipol Self Employed Persons Superannuation Fund or the National Mutual Self Employed Superannuation Fund on the Merged Funds Transfer Date may:
- (a) be paid or commence to be paid as the case may be when the Member or Undischarged Ex Member reaches his Selected Retirement Date;

- (b) be retained in this Part until the Member or Undischarged Ex Member reaches an age not exceeding 75 years.

### **Pension and Roll over Facility Options**

24 Subject to Part 2A:

- (a) a Benefit payable pursuant to the provisions of these Part Rules may if the Member requests and the Trustee agrees be paid wholly or in part in the form of a Pension or an Annuity;
- (b) the Trustee shall before payment of the first instalment of such Pension or Annuity confirm to the Member the amount and terms of payment thereof;
- (c) on the written application of a Member Undischarged Ex Member or beneficiary, the Trustee may in its discretion commute to a lump sum a part or whole of the Pension or Annuity that remains to be paid from this Part in respect of a Member or Undischarged Ex Member **PROVIDED THAT** the commutation will not cause the Fund to breach the Applicable Requirements;
- (d) on receipt of a notice in writing from the Commissioner the Trustee shall commute to a lump sum so much of the Pension payable from this Part in respect of a Member or Undischarged Ex Member as the Commissioner has determined exceeds the reasonable benefit limits (within the meaning of that expression in the Regulations) of the Member or Undischarged Ex Member; and
- (e) subject to the Applicable Requirements where a Benefit in respect of a Member or Undischarged Ex Member becomes payable from this Part in accordance with the provisions of this part the Trustee may at the direction of the Member or Undischarged Ex Member pay to such person, institution or superannuation entity the whole or part of such Benefit as the Member or Undischarged Ex Member advises.

### **Payment of Benefits to former Flexipol Fund Members**

- 25 (a) In addition to the foregoing provisions of this Part the Trustee shall have regard to the provisions of Schedule A when paying assigning or commencing to pay as the case may be the Benefit in respect of a Member or Undischarged Ex Member who was transferred into the Fund from the Flexipol Personal Superannuation Fund on the Merged Funds Transfer Date or when making any determination in connection therewith.
- (b) In addition to the foregoing provisions of this Part the Trustee shall have regard to the provisions of Schedule B when paying assigning or commencing to pay as the case may be the Benefit in respect of a Member or Undischarged Ex Member who was transferred into the Fund from the Flexipol Self Employed Persons Superannuation Fund on the Merged Funds Transfer Date or when making any determination in connection therewith.

### **Compliance with Superannuation Fund Conditions**

- 26 Notwithstanding anything to the contrary expressed or implied in these Part Rules if at any time in the opinion of the Trustee the terms and conditions of payment of any contribution or the whole or part of any Benefit payable under this Part in respect of any Member or Undischarged Ex Member or any other action required to be taken pursuant to the terms of these Part Rules would cause the Fund to cease to comply with the superannuation fund conditions as specified in the Applicable Requirements then the Trustee may to such extent and for such period as it considers to be necessary to maintain compliance with the said superannuation fund conditions alter the terms and conditions of payment of the contribution or Benefit or take such other action as it considers to be appropriate in the circumstances.

## Part 7 Application of Benefit in Certain Cases

### Forfeiture of Benefits

- 27 If:
- (a) a Member or Undischarged Ex Member purports to assign alienate or charge; or
  - (b) any other event occurs which results in another person becoming entitled to, all or part of the Benefit of the Member or Undischarged Ex-Member which may become payable (but which has not become payable at the date of the purported assignment, alienation, charge or other event), then subject to the Applicable Requirements that benefit or part thereof shall be forfeited **PROVIDED THAT** this clause shall have no effect on the bankruptcy or insolvency of the Member or Undischarged Ex Member to the extent that its operation would be contrary to the *Bankruptcy Act 1966*.

### Application of Forfeited Benefits

- 28
- (a) Subject to the Applicable Requirements the Trustee shall apply a forfeited benefit for the benefit of the Member or Undischarged Ex Member or such one or more of his Dependants as the Trustee may in its absolute discretion determine.
  - (b) Any part of the Benefit of a Member or Undischarged Ex Member forfeited pursuant to clause 27 which is not applied by the Trustee in pursuance of the immediately preceding paragraph shall on the death of the Member or Undischarged Ex Member be held upon trust for the legal personal representatives of that Member or Undischarged Ex Member.
  - (c) The application of any moneys pursuant to this clause shall be a complete discharge to the Trustee therefor.

### Assignments and Charges

- 29
- (a) The Trustee shall not recognise encourage or sanction:
    - (i) an assignment of the Benefit of a Member or Undischarged Ex Member;
    - (ii) a charge over or in relation to the minimum benefit or preserved benefit (within the meaning of those expressions in the Regulations) of a Member or Undischarged Ex Member;
    - (iii) a charge over or in relation to a non commutable income stream (within the meaning of that expression in the Regulations).
  - (b) Except to the extent permitted by the Act or the Regulations the Trustee shall not give a charge over or in relation to an asset of the Fund.

### Unclaimed Benefits

- 29A
- (a) No benefit shall become payable under these Part Rules until the Trustee has determined that the Benefit is payable because either:
    - (i) the Member or Undischarged Ex-Member has attained age 65; or
    - (ii) pursuant to the Applicable Requirements payment of the Benefit is required to be made by the Trustee; or
    - (iii) both of the following are satisfied:
      - (A) the Trustee has received notice that a condition of release has been satisfied in relation to that Benefit; and



- (B) the Trustee has received a claim or request for payment from a person entitled under these Part Rules and the Applicable Requirements to receive payment of that benefit.
- (b) Notwithstanding sub-clause 29A(a) if payment of a Benefit is required to be made under the Applicable Requirements, the Trustee may determine that the Benefit is immediately payable whether or not any person has applied to the Trustee to have the amount paid to him or her.
- (c) In circumstances where, in accordance with the Applicable Requirements, a benefit:
  - (i) may be transferred from this Part; or
  - (ii) must be paid to the Commissioner or otherwise transferred from this Part,by reason of the Trustee being unable to locate the Member or Undischarged Ex-Member if living or if not the Dependants of that Member or Undischarged Ex-Member or by reason of the Trustee being satisfied that written communications from the Trustee to the Member or Undischarged Ex-Member have not been received by the addressee, the Trustee may at its discretion or shall where the Applicable Requirements so require pay or transfer the Benefit from this Part in accordance with the Applicable Requirements. In respect of a benefit so paid or transferred, no person shall thereafter have any claim whatsoever under these Part Rules to or in respect of that benefit, but may thereafter claim in accordance with the Applicable Requirements.

**Part 8 Investment Standards****Investment of moneys by Trustee**

30 All moneys in the hands of the Trustee arising upon the death of a Member or Undischarged Ex Member and not immediately required for payment to the Dependents or legal personal representatives of the Member or Undischarged Ex Member under and pursuant to clauses 4(f), 19 or 19A hereof may at the discretion of the Trustee:

- (a) be invested in forms of investment which comply with the standards contained in the Applicable Requirements and subject thereto may be invested either individually or in a common fund established by the Trustee for the purpose:
  - (i) in any investment in which by the laws of any State or Territory of the Commonwealth of Australia trustees are authorised to invest; or
  - (ii) in interest bearing deposits with any bank savings bank or building society in any State or Territory of the Commonwealth of Australia or with a life company, with power from time to time to sell or get in any such investments and to vary or transpose them for other investments of any of the classes specified in this clause; or
- (b) be paid by way of premium to the applicable life company under and pursuant to the Deposit Administration Policy.

31 [Not used]

**31A Trustee Act 1958 (Vic)**

For the avoidance of doubt, the provisions of Part I of the *Trustee Act 1958 (Vic)* relating to investments shall not apply and all matters relating to the investment of this Part's assets shall be governed by the Deed and these Part Rules.

## Part 9 Financial Assistance

### Prohibition of Financial Assistance

- 32 Subject to clause 33 the Trustee shall not:
- (a) lend money of the Fund or give any other financial assistance using the resources of the Fund to a Member or Undischarged Ex Member or to a relative of a Member or Undischarged Ex Member;
  - (b) intentionally acquire an asset from a Member or Undischarged Ex Member or a relative of a Member or Undischarged Ex Member unless such acquisition is permitted by the Act.

### Loans to Members

- 33 (a) The Trustee may make an advance to a Member or Undischarged Ex Member by way of loan out of this Part upon such terms and conditions of repayment and at such rate of interest as the Trustee thinks fit **PROVIDED THAT:**
- (i) the amount lent to any Member or Undischarged Ex Member together with any other loan made to him pursuant to the provisions of this clause shall not exceed the aggregate at the date of such loan of:
    - (A) the amount of contributions to this Part in respect of him;
    - (B) the amount of any additional benefit which has become payable pursuant to the terms thereof under any Policy on his life affected or acquired pursuant to the provisions of these Part Rules; and
    - (C) any other accretions of a capital nature to his Benefit in this Part;
  - (ii) the loan shall only be granted to a Member or Undischarged Ex Member if the Trustee is satisfied that the Member or Undischarged Ex Member is unable to borrow from any other source from which money may usually be borrowed on reasonable terms and that he would be in serious financial difficulties if such loan were not granted by the Trustee.

For the purposes of this clause the Trustee may subject to clause 32 of these Part Rules if the surrender value of the Policy on the life of that Member or Undischarged Ex Member held in this Part will permit borrow from the applicable life company on the security of that Policy the amount to be so lent upon such terms and conditions and at such rate of interest as the applicable life company charges from time to time in respect of loans made on the security of its policies and the applicable life company shall not be concerned to enquire as to whether the necessity of any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

- (b) Notwithstanding anything to the contrary (whether expressed or implied) in these Part Rules
- (i) but subject to any limitation contained in the Applicable Requirements the amount of any loan together with interest shall unless previously repaid be deducted from the Benefit when the same becomes payable to that Member or Undischarged Ex Member or to any person claiming through him.
  - (ii) the Trustee shall not make any amendment modification or variation to these Part Rules where such amendment modification or variation would have the effect of removing or lessening any restriction or limitation on the power of the Trustee to make an advance to a Member or Undischarged Ex Member under this clause.

## Part 10 Financial Assistance

### Prepayment Account

- 34 (a) The Trustee shall maintain as part of this Part an account to be called the 'Prepayment Account'.
- (b) The Trustee may pay to the Prepayment Account for the individual credit of the Member concerned so much of the contribution in respect of the Member as is not immediately required for the payment of premiums on the Policy or Policies held in this Part in respect of him.
- (c) Any moneys for the time being standing to the individual credit of a Member or Undischarged Ex Member in the Prepayment Account may be paid by way of premium to the applicable life company in respect of that Member or Undischarged Ex Member under and pursuant to the Deposit Administration Policy.
- 35 In the event that the contribution in respect of a Member is not paid or that such contribution is not sufficient to pay a premium payable on a Policy or Policies held in this Part in respect of that Member the Trustee shall be at liberty to and shall apply so much of the amount standing to the individual credit of the Member in the Prepayment Account as the case requires in or towards payment of that premium.

**Part 11 Deposit Administration Policy**

- 36 The Trustee shall maintain the Deposit Administration Policy held in its name with a life company and shall hold that Policy and the moneys payable thereunder as part of this Part.
- 37 Any interest or other benefit accruing to the Trustee under and pursuant to the Deposit Administration Policy in respect of payments made to the credit of a Member or Undischarged Ex Member shall not less frequently than annually be added to the credit of that Member or Undischarged Ex Member as the case may be.

**Part 12 Administration**

38 [Not used]

39 [Not used]

**Records and Accounts**

- 40 (a) The Trustee shall keep:
- (i) minutes of the decisions of its Directors and officers relating to the carrying out of the provisions of these Part Rules; and
  - (ii) a record for each Member and Undischarged Ex Member showing his full name and address and the particulars of the Policies held in respect of him pursuant to these Part Rules and the premiums payable to keep the same on foot  
**PROVIDED THAT** the Trustee may appoint a life company as its agent to keep the records referred to in this paragraph and in such case the keeping by the applicable life company of those records which it is required to keep pursuant to any Statute from time to time in force shall be deemed to be the keeping by the Trustee of the records it is required to keep pursuant to this paragraph.
- (b) The Trustee shall maintain or cause to be maintained such records and accounts and in such form as shall be necessary to satisfy the Applicable Requirements.
- (c) The Trustee shall cause the said records and accounts referred to in paragraph (b) of this clause to be audited annually or at such other time or times as shall be required pursuant to the Applicable Requirements by an approved auditor (within the meaning of that expression in the Act).
- 41 [Not used]

**Payment of Charges/Deductions**

- 42 (a) If any tax or other government imposition shall be payable in respect of any Benefit due to a Member or Undischarged Ex Member from this Part then the Trustee (if compelled by law or requested by the Member or Undischarged Ex Member so to do) shall deduct or arrange to have deducted the amount of such tax or other government imposition (including any interest payable thereon) and shall account for the same to the proper authorities before paying any such Benefit or any portion thereof to the Member or Undischarged Ex Member so entitled thereto and may if necessary postpone payment of such Benefit until such tax or other government imposition and any interest thereon has been paid or provided for to the satisfaction of the Trustee.
- (b) The Trustee shall pay to the Commissioner all moneys required to be paid pursuant to the Act or Regulations.
- (c) The Trustee may cause to be deducted from this Part:
- (i) any tax duty or impost payable by the Trustee in connection with this Part or the investment earnings thereof or in relation to or as a consequence of any contribution to this Part and shall account for the same to the proper authorities; or
  - (ii) any fee or charge (howsoever described) payable by the Trustee as consideration for the transfer of liability for any such tax duty or impost to any agent of the Trustee properly appointed by the Trustee.

- (d) To the extent that a deduction pursuant to paragraph (b) of this clause is directly attributable to a contribution to this Part then upon such contribution being received by the Trustee or at such other time as the Trustee in its absolute discretion considers expedient in the circumstances the Trustee may deduct or cause to be deducted from such contribution such amount as it considers appropriate to provide for the relevant amount of tax duty impost fee or charge and may retain such amount within this Part until the Trustee gives effect to the provisions of paragraph (b) of this clause.
- (e) Notwithstanding anything to the contrary (whether expressed or implied) in these Part Rules any amount for the time being retained within this Part pursuant to paragraph (b) of this clause shall be treated in similar manner to a lien on this Part.

### Determination of Interest Rate

- 43 If during the period of any Financial Year the Trustee is obliged for the purposes of these Part Rules to determine the amount of interest which has accrued on the whole or any portion of the Benefit of a Member since the expiration of the preceding Financial Year then the Trustee is hereby empowered and shall determine a rate or rates per centum per annum which shall be the rate or rates applicable for that purpose during each Financial Year thereafter until the Trustee shall determine a different rate or rates which shall themselves be subject to alteration in manner aforesaid.

### Exercise of Trustee's Powers and Discretions

- 44 The Trustee in the exercise of the authorities powers and discretions hereby vested in it shall have an absolute discretion and may exercise or enforce all or any of such powers authorities or discretions from time to time and at any time or may refrain from exercising all or any of such powers authorities or discretions from time to time or at all.
- 45 Any power authority or discretion vested in the Trustee hereunder may be exercised on its behalf by its Directors as a Board, and the Board may appoint such of the employees of the Trustee as it thinks fit to exercise for or on behalf of the Trustee all or any of the powers authorities and discretions exercisable by the Trustee under the provisions of these Part Rules.
- 46 The Trustee may in carrying out and performing the duties, discretions and obligations on its part to be carried out or performed by Power of Attorney by writing or otherwise appoint any person to be the attorney or agent of the Trustee for such purposes and with such powers authorities and discretions (not exceeding those vested in the Trustee) as it thinks fit with power for any such attorney or agent to sub delegate any such power or authority subject to the Trustee's approval **AND** authorise the issue in the name of the Trustee of documents bearing facsimile signatures of officers of an applicable life company or of the attorney or agent either with or without the proper manuscript signatures of its officers thereon **AND** remove supersede or suspend any such attorney or agent for such cause or reason as the Trustee in its sole discretion thinks sufficient and either absolutely or for such time as it may think proper **PROVIDED THAT** the Trustee in any such Power of Attorney and the attorney or agent by the terms of any such sub delegation may insert such provisions for the protection and convenience of those dealing with any such attorney agent or sub delegate as it or they may think fit.
- 47 (a) The Trustee subject to any limitation contained in the Applicable Requirements may in its absolute discretion enter into and execute all such contracts, deeds and documents and do all such acts matters and things as it deems expedient for the carrying out of the trusts authorities powers and discretions conferred upon it by these Part Rules **PROVIDED THAT** the Trustee shall not discriminate against any Member or Undischarged Ex

- Member in such a manner as to infringe any law of the Commonwealth of Australia or of any State or Territory in respect of discrimination.
- (b) The Trustee may create additional classes or categories of membership of this Part or may subdivide an existing class of Members in order to secure taxation advantages to Members or to this Part or otherwise and may subject to the Applicable Requirements impose such qualifications restrictions and conditions on the said classes or categories of membership as it considers appropriate.
- (c) The Trustee may do all such acts and things and sign all documents it considers expedient or necessary to compensate Members or former Members, including (but not limited to) payments of any amount to any third party, including (but not limited to) a charity, in respect of any Member or former Member.
- 48 The Trustee is hereby authorised and empowered for the purpose of carrying out any provision or requirement of these Part Rules to surrender to the applicable life company the whole or any portion of the amount assured or endowed or the amount of the annuity as the case may be under any Policy held in respect of a Member or Undischarged Ex Member in this Part.
- 49 The Trustee may act on the advice or opinion of any actuary, barrister, solicitor, accountant, medical practitioner or any other professional person (whether or not such advice or opinion shall be or have been obtained by it) and shall not be responsible for anything done or suffered by it in good faith in reliance on such opinion or advice.

### Limits of Trustee's Liability

- 50 The provisions of clauses 51 to 53 inclusive are subject to any limitation contained in the Applicable Requirements.
- 51 Neither the Trustee nor the directors of the Trustee shall be liable for:
- (a) any losses except losses arising from its own wilful default or the wilful default of any of its Directors or officers;
- (b) any act or acts done bona fide in conformity with the decision of its Directors hereunder; or
- (c) the neglect or default of any solicitor, banker, accountant or other agent employed in good faith by the Trustee.
- 52 (a) Neither the Trustee nor the directors of the Trustee shall be liable for any failure to perform or do any act or thing which by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory thereof or any Ordinance rule regulation or by law made pursuant thereto or of any decree order or judgement of any competent Court the Trustee shall be hindered prevented or forbidden from doing or performing.
- (b) Neither the Trustee nor the directors of the Trustee shall be liable to account to any Member Undischarged Ex Member or otherwise for any payments made by the Trustee in good faith to any duly empowered fiscal authority of the Commonwealth of Australia or any State or Territory thereof for taxes or other charges upon this Part or with respect to any transaction under these Part Rules notwithstanding that any such payment ought to or need not have been made.
- (c) Neither the Trustee nor the directors of the Trustee shall incur any liability by reason of any false or incorrect statement in any proposal or other document made by a Member or Undischarged Ex Member in relation to a Policy effected on his life whereby that Policy is cancelled or voided in any way by the applicable life company or whereby the amount



assured or endowed or the amount of the annuity as the case may be under that Policy is reduced.

- (d) Neither the Trustee nor the directors of the Trustee shall in any event be liable to the Members or Undischarged Ex Members to any greater extent than in respect of this Part or any such part thereof which ought to be vested in the Trustee.

53 [Not used]

### Payment to Trustee

54 The Trustee shall be at liberty to receive and apply for its own use and benefit any payment made to it by the applicable life company by way of commission or otherwise in respect of any policy or any premium or instalment of premium paid in respect thereof.

55 [Not used]

### Amendment of Part Rules

56 (a) Subject to paragraph (b) of this clause the Trustee may from time to time in the exercise of its absolute discretion make any amendment modification or variation to these Part Rules (including if it thought fit the revocation or restriction of this present clause) which in its opinion may be expedient for the more convenient economical or advantageous working or management or administration of the trusts herein declared and contained or which is required as a condition of the continuance of the approval of the Commissioner\* and the Minister administering the Duties Act 2000 (Vic) to the terms and conditions of this Part and which the Trustee may think proper having regard to all the circumstances of the case. Upon any such amendment modification or variation being made these Part Rules shall take effect as amended modified or varied accordingly.

\* Applicable in Victoria only.

(b) [Not used]

(c) After any such amendment modification or variation as aforesaid has been made the Trustee shall give to each Member and Undischarged Ex Member as soon as practicable thereafter a written statement explaining the nature and purpose of the amendment modification or variation and the effect (if any) of the amendment modification or variation on the entitlements of the Member or Undischarged Ex Member.

(d) Any amendment modification or variation made pursuant to this clause shall be in writing made by the Trustee and any amendment modification or variation so made and for the time being in force shall have the same validity as if it had been contained in these Part Rules when executed and shall be itself subject in like manner to amendment modification or variation PROVIDED ALWAYS THAT the Benefit of any Member or Undischarged Ex Member already secured at the date of any such amendment modification or variation shall not be detrimentally affected thereby unless the amendment modification or variation meets the relevant standards in the Applicable Requirements and the consent of the Member or Undischarged Ex Member to the amendment modification or variation has been obtained in writing.

57 [Not used]

**Part 13 General**

58 [Not used]

**Cooling off Period**

59 Notwithstanding anything to the contrary herein otherwise contained if:

- (a) the Policy effected by the Trustee with the applicable life company on a life of a Member does not meet the needs of that Member; and
- (b) the copy of that Policy is returned to the Trustee within 14 days of:
  - (i) the date of the postmark on the envelope in which the copy of the Policy was posted to the Member; or
  - (ii) the date on which the copy of the Policy was otherwise delivered to the registered address of the Member,

then upon receipt by the Trustee of the copy of the Policy as aforesaid together with a request to cancel the Policy and refund all contributions made to this Part by and in respect of the Member in relation to that Policy and if that Policy was the only Policy under this Part on the life of that Member the Member shall cease to be a Member upon cancellation of the Policy.

**Part 14 Crystallisation of this Part**

- 60 After the number of Members and Undischarged Ex Members of this Part falls below twenty the Trustee shall continue to administer this Part in accordance with the provisions of these Part Rules except that no further contributions shall be accepted from the Members no new Policy shall be effected in respect of any Member and no new Members shall be admitted and when all the Benefits of Members and Undischarged Ex Members have been paid assigned or applied pursuant to these Part Rules this Part shall be deemed to be dissolved and these Part Rules shall cease to have effect.

## **Part 15 Plans**

### **Trustee May Make a Plan**

- 61 (a) The Trustee may determine:
- (1) to establish one or more plans within this Part; or
  - (2) that one or more existing superannuation arrangements within this Part is a plan for the purposes of this clause 61.
- (b) In making a determination under clause 61(a), the Trustee shall have regard to all relevant matters including the provisions of any Applicable Requirements.
- (c) Any Plan may be made on such terms and conditions as the Trustee thinks fit not being inconsistent with the provisions of these Part Rules or any Applicable Requirements relating to the Fund.
- (d) Notwithstanding any other provision of these Part Rules, if the Trustee has made a Plan comprising a certain Member or Members of this Part, any information, reports, documents and statements required or permitted by these Part Rules to be given to that Member or those Members may, unless contrary to the Applicable Requirements, relate specifically to such Plan comprising that Member or those Members and not to any other segment of this Part.
- (e) A Plan may bear such name or style as the Trustee may from time to time determine.
- (f) The Trustee may close any Plan from time to time.

### **Transfer to or from a Plan**

- 62 The Trustee may transfer a Member to a Plan or from a Plan on such terms and conditions as the Trustee in its discretion determines subject to the Applicable Requirements and any terms and conditions the Trustee has made for any relevant Plan under clause 61.

## Schedule A

### **Additional Benefit Provisions for Former Members of the Flexipol Personal Superannuation Fund**

- 1 A benefit in respect of a Member or Undischarged Ex Member shall be paid:
  - (a) if the Member suffers disablement, permanent and total disablement or physical incapacity (if a benefit is payable on such occurrence under the Policy or Policies held by the Trustee in respect of the Member); or
  - (b) if the Member suffers temporary total disablement (if a benefit is payable on such occurrence under the Policy or Policies held by the Trustee in respect of the Member).
- 2
  - (a) Where a Member is presently entitled to be paid any Benefit pursuant to the provisions of these Part Rules then a transfer to the Member of a Policy or Policies being part of this Part and equivalent to but in lieu of payment of the whole or any part of the said Benefit shall be made by the Trustee on the prior written authority of the Member.
  - (b) The transfer of the whole or part of the Benefit to the Member in accordance with paragraph (a) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under this Part in respect of the Benefit or that part of the Benefit so transferred.

## Schedule B

### **Additional Benefit Provisions for Former Members of the Flexipol Self Employed Persons Superannuation Fund**

- 1 (a) A Member who has become presently entitled to receive any Benefit pursuant to the provisions of these Part Rules may with the prior approval of the Trustee accept a Policy or Policies in lieu of the whole or part of such Benefit.
- (b) The receipt of the whole or part of his Benefit by the Member in accordance with paragraph (a) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under this Part in respect of the Benefit or that part of the Benefit so transferred.
- 2 Upon the death of a Member or Undischarged Ex Member then his Benefit (or so much of his Benefit as remains unpaid at his death) may subject to clauses 27, 28, 29A and 53 of these Part Rules be applied by the Trustee in accordance with the Member's or Undischarged Ex Member's election pursuant to the provisions of the Flexipol Self Employed Persons Superannuation Fund.

# National Mutual Retirement Fund

## 20th Supplemental Deed

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N.M. Superannuation Proprietary Limited (Trustee)

MinterEllison

LAWYERS

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)

# Details

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Date 2nd September 2008

## Parties

Name	<b>N.M. Superannuation Proprietary Limited</b>
ABN	31 008 428 322
Short form name	<b>Trustee</b>
Notice details	Level 10, 750 Collins Street, Docklands, Victoria 3008

## Background

- A The National Mutual Retirement Fund (**Trust**) was established by a deed dated 28 December 1973 as amended by the deeds referred to in Appendix 1 (**Trust Deed**).
- B The Trustee is the current trustee of the Trust.
- C Clause 56 of the Trust Deed gives the Trustee the power to amend the Trust Deed in certain circumstances. However, paragraph (d) prevents any amendments which will detrimentally affect the benefit of any member or undischarged ex-member already secured at the date of the amendment unless the amendment meets the relevant standards in the Applicable Requirements (as defined in the Trust Deed).
- D Regulation 13.16 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) provides that a beneficiary's right or claim to accrued benefits, and the amount of those accrued benefits, must not be altered adversely to the beneficiary by the amendment of the governing rules or by any other act carried out or consented to, by the Trustee.
- E The Trust Deed was amended to include the amendments set out in the 16th Supplemental Deed dated 21 February 2007. However, those amendments were mistakenly deleted by the 17th Supplemental Deed dated 29 June 2007.
- F In order to rectify the mistake, the Trustee has resolved to amend the Trust Deed in the manner contained in this Supplemental Deed.



# Agreed terms

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## 1. Amendments

The Trustee amends the Trust Deed by:

- (a) deleting from the Trust Deed the words, numbers and symbols which are struck out in Appendix 2 to this Supplemental Deed; and
- (b) inserting into the Trust Deed the words, numbers and symbols which are underlined in Appendix 2 to this Supplemental Deed.

## 2. Effective time

The amendments in clause 1 take effect from 29 June 2007.

## 3. Saving Provision

Notwithstanding any other provision in this deed to the contrary, if any amendment contained in this Deed of Amendment is not consistent with, or breaches the restrictions in, the amendment power contained in clause 56 of the Trust Deed, that amendment shall be of no effect and the provisions purported to be amended shall continue to be determined in accordance with the provisions of the Trust Deed as they existed prior to the date of the amendment.

## 4. No re-settlement of trust

This Deed of Amendment shall be construed only as operating to amend the Trust Deed and not establishing a new or different trust or superannuation fund.

# Signing page

**EXECUTED** as a deed.

The **common seal** of **N.M. Superannuation Proprietary Limited** is affixed in accordance with its Constitution by authority of its directors in the presence of:



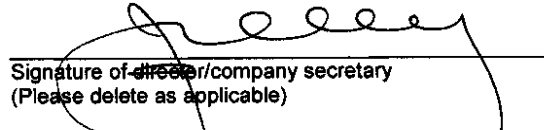
2008/079

  
Signature of director

Signature of director

**Milena Ickeringill**

Name of director (print)

  
Signature of ~~director~~/company secretary  
(Please delete as applicable)

Signature of ~~director~~/company secretary  
(Please delete as applicable)

JANE FRAWLEY

Name of director/company secretary (print)

# Appendix 1

## List of previous Supplemental Deeds

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Appendix 1 to 20th Supplemental Deed

# List of previous Supplemental Deeds

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The Trust Deed has been amended from time to time as follows:

Date of Amendment	Deed description
22 September 1975	1st Supplemental Deed
10 March 1976	2nd Supplemental Deed
6 March 1979	3rd Supplemental Deed
24 October 1985	4th Supplemental Deed
26 September 1990	5th Supplemental Deed
28 September 1990	6th Supplemental Deed
29 June 1992	7th Supplemental Deed
10 June 1993	8th Supplemental Deed
28 September 1994	9th Supplemental Deed
8 July 1996	10th Supplemental Deed
10 December 1996	11th Supplemental Deed
24 April 2002	12th Supplemental Deed
29 June 2004	13th Supplemental Deed
22 February 2005	14th Supplemental Deed
29 September 2005	15th Supplemental Deed
21 February 2007	16th Supplemental Deed
29 June 2007	17th Supplemental Deed
16 April 2008	18th Supplemental Deed
20 August 2008	19th Supplemental Deed

# Appendix 2

## Trust Deed for the National Mutual Retirement Fund

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Appendix 2 to 20th Supplemental Deed

# Trust Deed for the National Mutual Retirement Fund

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# Part 1 Preliminary

## Establishment

1. The Trustee hereby acknowledges that it is trustee of the Fund upon the terms and conditions and with the duties powers authorities and discretions hereinafter more particularly set forth.

## Perpetuity Period

2. The trusts and provisions of this Deed shall (subject to clause 60) continue in operation until the death of the last survivor of the descendants now living of Her Majesty Queen Elizabeth II and for such further period as may be permitted by law. The period of the trust shall be known as 'the perpetuity period'. Notwithstanding anything contained in this Deed no variation of the Fund or of this Deed shall be effective to create trusts or discretionary powers which would or might operate after the expiry of the perpetuity period other than trusts for the immediate distribution of trust property upon the expiration of the Fund among such persons then absolutely entitled thereto. Any variation thereto which would otherwise be involved under this clause shall be considered for the purpose of this Deed to be intended to operate during perpetuity period.

## Interaction with the Applicable Requirements

- 2A (a) All the standards, rules and covenants required by the Applicable Requirements to be included in the governing rules of superannuation funds form part of this Deed, whether or not they are explicitly stated in the Deed. However, if a standard, rule or covenant is no longer required to be included or the Commissioner does not require it to be complied with, then that standard, rule or covenant ceases to be included by this clause. A standard, rule or covenant included by this clause prevails over any other provision in this Deed which is inconsistent with it.
- (b) If a provision of this Deed would otherwise be invalid in whole or in part because it subjects the Trustee to direction by another person then the provision is taken not to subject the Trustee to direction by that person but to give the Trustee the power to treat such a direction as a request only.
- (c) If a provision of this Deed would otherwise be invalid in whole or in part because it permits a person to exercise a discretion without the consent of the Trustee then that provision is taken to require the Trustee's consent for the exercise of the discretion.
- (d) Notwithstanding any other provision of this Deed, the Trustee is empowered but not required (other than as specified in this Deed) to do or procure to be done or refrain from doing such acts matters and things as in the opinion of the Trustee may be necessary or desirable to enable the Fund to become and continue to be a 'complying superannuation fund' for the purposes of the Act and in order to comply with or satisfy any provision or requirement of the Applicable Requirements.

## Definitions

3. (a) In this Deed where the context permits and unless the contrary intention appears:

**Act means:**

- (a) the Superannuation Industry (Supervision) Act 1993 (Cth), the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth) and the Corporations Act 2001 (Cth) and any other act relating to superannuation with

which the Trustee must comply or which provides for the concessional taxation of superannuation funds and all regulations made under those Acts (as modified in their application to the Fund by any subsisting declaration, modification or exemption granted by the Commissioner);

- (b) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which applies to the Fund the Deed or the Trustee with the force of law; and
- (c) any present or future law of the Commonwealth of Australia or any State or Territory of Australia which does not fall within paragraph (a) or (b) of this definition but which the Trustee determines from time to time to be an Act for the purposes of the whole or any particular provision of the Deed.

**Actuary** means a person who is ordinarily resident in Australia and who:

- (a) is a Fellow of The Institute of Actuaries of Australia; or
- (b) is approved by the Commissioner under the Life Insurance Act 1995 (Cth) or any other Act that may be substituted therefor.

**Annuity Policy** means a benefit taken to be an Annuity for the purposes of the Act.

**Applicable Requirement** means:

- (a) such of the provisions of the Act and the Regulations; and
- (b) such circulars guidelines and rulings issued from time to time by the Commissioner in relation to superannuation funds; and
- (c) such other material issued from time to time by the Commissioner or by any other government authority responsible for the operation of superannuation funds and whether or not having the force of law,

as the Trustee considers it prudent to observe for the purpose of establishing or maintaining exemption relief or concession from or in respect of taxation.

**Benefit** in relation to a Member or Undischarged Ex-Member means the Policy or Policies effected with National Mutual on the life of the Member or Undischarged Ex-Member concerned and the money payable thereunder and any other money or investments held in the Fund in respect of the Member or Undischarged Ex-member and includes any payment under a Pension.

**Category** means category of membership provided for under Part 2A applying in respect of a Member.

**Category Selection** means a Category Selection Form received by the Trustee.

**Category Selection Form** means a notice in a form acceptable to the Trustee under which a Member can specify a Category.

**Children** means, subject to clause 6A.10, surviving children of the Member at the date of the Member's death, including without limitation adopted children, step-children and ex-nuptial children and children of the member's spouse who were dependent on the Member for maintenance or support at the date of the Member's death.

**Commissioner** means:

- (a) for the purposes of Part 2A, includes any person the Trustee reasonably believes is or was authorised to give information on behalf of the Commissioner of Taxation; and



- (b) for all other purposes, as the case requires means the Commissioner of Taxation, the Australian Securities and Investments Commission or the Australian Prudential Regulation Authority.

**Costs** means administration and transaction expenses relating to the relevant Member No TFN Contribution, including the relevant portion of any applicable insurance premium.

**Death Benefit** means a Benefit payable from the SLPP on the death of a Member.

**Deed** means and includes the Trust Deed and any Schedules appended to this Deed as the same may at any time and from time to time be amended in the manner hereinafter provided.

**Deed of Entitlement** means the Deed dated 13 June 1995 between National Mutual Holdings Limited, AXA Société Anonyme and Perpetual Trustees Victoria Limited as amended to the date of this Deed (including amendments made by a deed dated 5 July 1996).

**Dependant** in respect of a Member means a spouse de facto spouse widow widower child adopted child step-child or ex-nuptial child of a Member or Undischarged Ex-Member any person considered to be a dependant by the Act or any person who in the opinion of the Trustee is at the relevant date (or in the case of a deceased person was at his death) wholly or partially dependent on that Member or Undischarged Ex-Member or who has or had at the relevant date a right to look to that Member or Undischarged Ex-Member for support.

**Deposit Administration Policy** means the policy maintained by the Trustee pursuant to clause 36.

**Directed Termination Payment** means a transitional employment termination payment (as defined in the Tax Act) which a Member directs be made to the Fund.

**Eligible Member** means a person who as at 21 June 1995:

- (a) was not a standard employer sponsored member as defined in section 16 of the Superannuation Industry (Supervision) Act 1993 (Cth); and
- (b) fell within the definition of Member or Undischarged Ex-Member in the Trust Deed.

**Employer No TFN Contribution** means a concessional contribution (as defined in the Tax Act) made to the Fund in respect of a Member where the Trustee has not been provided with a TFN for the Member.

**Employer-Supported Member** means any Member of the Fund whose employer has agreed to contribute to the Fund in respect of the Member.

**Estate** means the legal personal representative of the Member on behalf of the deceased Member's estate.

**Financial Year** means any continuous period of twelve calendar months ending on the thirtieth day of June.

**Full-Time Employment** means Gainful Employment for a period of not less than 30 hours per week.

**Fund** means the fund constituted pursuant to the trusts herein set forth and all moneys from time to time held by or on account of the Trustee in pursuance of this Deed and the investments (including the Policy or Policies) for the time being representing the same and all accretions thereto and the income derived therefrom.

**Gainful Employment** means employment (either as an employee or self-employed person) for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages and 'gainfully employed' has a similar meaning.

**Individual NMH Entitlements** means that portion (if any) of the value of the NMH Share Entitlement which the Trustee determines is attributable to the Member under this Deed as at the date on which the NMH Share Entitlement is allocated to the Trustee.

**Insurable Member** means a Member on whose life National Mutual agrees to issue a life insurance policy on such terms and subject to such conditions as it considers appropriate.

**Life Insurance Policy** means a life policy as defined in the Life Insurance Act 1995 (Cth) or any other Act that may be substituted therefor.

**Lump Sum Death Benefit** means:

- (a) if the Trustee receives information from the Commissioner within 3 months after the Member's death about either the Member's entitlement to a transitional pension RBL or the Member's Previous Benefits - the lesser of:
  - (i) the Member's Death Benefit; and
  - (ii) the amount determined by subtracting from the Member's Plan Pension RBL the sum of the Member's Other Benefits and the Member's Previous Benefits; or
- (b) in any other case, the lesser of the Member's Death Benefit and the pension RBL that would apply to the Member at the date of his or her death under the Tax Act assuming that the Member had no entitlement to a transitional RBL.

**Member** means:

- (a) for the purposes of Part 2A includes a person who was a Member at the time of his or her death; and
- (b) for all other purposes means a person who has been accepted as a Member of the Fund pursuant to the provisions of Part 2 of this Deed and who has not ceased to be a Member as hereinafter provided and includes a Pension Beneficiary unless otherwise determined by the Trustee,

but does not include a Non-Member Spouse.

**Member No TFN Contribution** means a non-concessional contribution (as defined in the Tax Act) made to the Fund by or in respect of a Member where the Trustee has not been provided with a TFN for the Member.

**Memorandum of Allocation** has the meaning ascribed to that term in the Deed of Entitlement.

**Merging Funds** means The UC Retirement Fund, the Flexipol Personal Superannuation Fund, the Flexipol Self-Employed Persons Superannuation Fund, the National Mutual Employer-Supported Retirement Fund and the National Mutual Self-Employed Superannuation Fund.

**Minor Children** means, subject to clause 6A.10, Children under the age of 18 at the date of the Member's death.

**National Mutual** means The National Mutual Life Association of Australasia Limited.

**NMH Share** has the meaning ascribed to that term in the Memorandum of Allocation.

**NMH Share Entitlement** means the number of NMH Shares which the board of National Mutual allocates to the Trustee in relation to the Fund on the basis of the principles set out in the Memorandum of Allocation.

**Nominee** means any Dependant of a Member or Undischarged Ex-Member who is nominated by the Member or Undischarged Ex-Member in manner approved by the Trustee as a person to whom that Member or Undischarged Ex-Member desires to be paid in the event of his death either the whole or such portion as he may specify in that nomination of the Benefit in respect of him under this Deed.

**Non-Member Spouse** means a non-member spouse within the meaning of that term under Part VIIIIB of the Family Law Act 1975 (Cth) and in respect of whom the Trustee has received notice of a Payment Split and the Trustee has not yet given effect to the Payment Split.

**Other Benefits** means the RBL amounts for the purposes of the Tax Act of a Benefit payable on the Member's death, calculated at the date of the Member's death, other than benefits referable to a SLPP policy held by the Trustee on the Member's life, and includes amounts payable to the Trustee in respect of the Member's death under a policy of life insurance (other than a SLPP policy) to the extent that those amounts would not otherwise form part of a Benefit which is payable from the Fund, and calculated at the date of the Member's death.

**Paid-up** in relation to a Policy means reduced in amount in consideration of no further premiums being payable thereunder.

**Parliamentary Member** means a person who is engaged and working:

- (a) under an agreement pursuant to Section 20 of the Members of Parliament (Staff) Act 1984 whereby that person has been appointed to the Staff of a Senator or a Member of the House of Representatives; or
- (b) under an agreement pursuant to Section 13 of the Members of Parliament (Staff) Act 1984 where that person has been appointed to the Staff of an Office Holder; or
- (c) under an agreement pursuant to Section 4 of the Members of Parliament (Staff) Act 1984 whereby that person has been appointed as a Consultant to a Minister of the Crown; or
- (d) as a Senior Executive Service Officer appointed on a fixed-term basis pursuant to Section 42 and to Section 44 of the Public Service Act 1922; or
- (e) as a Departmental Secretary appointed on a fixed-term basis pursuant to Section 36 and to Section 39 of the Public Service Act 1922.

For the purposes of this definition any reference to either of the Acts more particularly specified herein shall be to the relevant Act as the same may from time to time be amended or re-enacted and includes every Statute substituted therefore and any reference to a Section thereof shall be to the corresponding section of any amended or re-enacted Act.

**Part-Time Employment** means Gainful Employment for a period of 10 hours or more per week but less than 30 hours per week.

**Payment Split** has the meaning given to that term in Part VIIIIB of the Family Law Act 1975 (Cth).

**Pension** means a benefit taken to be a pension for the purposes of the Act.

**Pension Beneficiary** means a person entitled to a pension under Part 2A.

Plan means any superannuation arrangement made by the Trustee pursuant to clause 61.

**Plan Pension RBL means:**

- (a) if the Trustee receives information from the Commissioner within 3 months after the Member's death concerning the Member's transitional pension RBL entitlement (if any) and is satisfied, based on that information, as to the Member's entitlement to a transitional pension RBL and as to the amount (if any) of that entitlement - the amount of the Member's transitional pension RBL; or
- (b) in any other case - the pension RBL that would apply to the Member at the date of his or her death assuming that the Member had no entitlement to a transitional pension RBL.

**Policy** means a Life Insurance Policy, a Pure Endowment Policy or an Annuity Policy as the case requires (with or without the provision of additional benefits) effected for the purposes of the Fund.

**Preserved Benefit** in relation to a Member means that portion of any Benefit arising under the Fund in respect of him which in accordance with the preservation standards set out in the Regulations is required to be preserved.

**Previous Benefits** means the sum of:

- (a) in respect of any eligible termination payments received by the Member within the 12 months prior to his or her death, the RBL amounts of those payments specified in information provided to the Trustee by the Commissioner in the period of 3 months commencing on the date of the Member's death; and
- (b) in respect of any other eligible termination payments received by the Member, the RBL amounts for the purposes of the Tax Act of any eligible termination payments received by the Member prior to his or her death specified in information provided to the Trustee by the Commissioner in the period of 3 months commencing on the date of the Member's death, indexed in accordance with the formula in the Tax Act for calculating the adjusted RBL amounts of previous benefits for RBL purposes.

**Pure Endowment Policy** means a policy which provides subject to the conditions therein stated for the payment of the policy moneys on the survival throughout the term of that policy of the person on whose life it has been effected or if he dies before the expiry of the selected term for the repayment of premiums which have been paid thereunder with interest added at the rate therein stated.

**RBL** means reasonable benefit limit for the purposes of the Tax Act.

**Regulations** means any Regulations made under the Act.

**Reversionary Pensioner** means a person who being a Dependant at the time of death of the Member or Undischarged Ex-Member who is in receipt from the Fund of a reversionary pension has been nominated by that Member or Undischarged Ex-Member as the person who should continue to receive the remainder of that pension.

**Selected Retirement Date** means the retirement date selected by a Member at the date he becomes a Member which shall not be earlier than his 55th birthday and not later than his 65th birthday (except where the Member has already attained the age of 65 years)

**PROVIDED THAT** subject to the limitations hereinbefore contained a Member may at any time and from time to time by notice in writing given to the Trustee substitute for the date so selected or for any date substituted therefor such other date as may be selected by him.

**SLPP** means the Superannuation Life Protection Plan and includes the Superannuation Life Protection Plan as renamed or replaced, unless otherwise determined by the Trustee.

**Spouse** means subject to clause 6A.10, the spouse of a Member, and includes a person who, although not legally married to a Member, lives with the Member on a genuine domestic basis as the husband or wife of the Member.

**Successor Fund** has the meaning given to that term in the Regulations.

**Tax Act** means the Income Tax Assessment Act 1936 (Cth) or Income Tax Assessment Act 1997 (Cth), as applicable.

**TFN** means a tax file number pursuant to the Act or Regulations.

**Transfer Date** means the date that the former members of the Merged Funds became Members of the Fund, being the 30th day of September 1990.

**Trustee** means N.M. Superannuation Proprietary Limited or any other trustee or trustees for the time being of the Fund appointed pursuant to clause 38.

**Undischarged Ex-Member** means a former Member who has ceased to be a Member in manner provided in this Deed and who has not received the whole of his Benefit.

**Uninsurable Member** means a Member on whose life National Mutual does not agree at the relevant time to issue a Life Insurance Policy.

- (b) The headings in this Deed are for convenience only and shall not affect the interpretation hereof.
- (c) Words denoting the masculine gender shall include the feminine gender. Words denoting the singular number shall include the plural number and vice versa.
- (d) Words and expressions used herein but not defined in this clause, shall, if they are defined in the Act, have the meanings given to them respectively in the Act.
- (e) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of or legislative provision substituted for and any statutory instrument issued under that legislation or legislative provision.
- (f) This Deed shall be governed by and be construed in accordance with the laws of the Australian Capital Territory.

# Part 2 Membership

## Eligibility/Applications

4. (a) The following categories of people (other than Non-Member Spouses) may apply for membership of the Fund:
- (i) any person who is in Full-Time Employment;
  - (ii) any person who is in Part-Time Employment;
  - (iii) any person whose employer has agreed to contribute in respect of him mandated employer contributions (as that expression is defined in the Regulations);
  - (iv) any person who is otherwise permitted under the Act or Regulations to become a superannuation fund member,

and who has not attained the age of 65 years except where Members who have attained their 65th birthday are permitted in accordance with the Act or Regulations.

- (b) Any person desirous of becoming a Member shall apply to the Trustee in writing on the form prescribed from time to time by the Trustee wherein the applicant shall inter alia agree to be bound by the provisions of this Deed.
- (c) The Trustee may in its absolute discretion accept or reject any such application **PROVIDED THAT** the Trustee must not intentionally or recklessly accept any application for membership unless the Trustee is satisfied on reasonable grounds that the applicant has received documents that contain all the information required under the Act or Regulations with regard to membership of the Fund.
- (d) Every applicant for membership and every Member shall whenever requested by the Trustee provide to the Trustee such information documents and other evidence in connection with the Fund as the Trustee may reasonably request. It shall be the obligation of every Member to give prompt notification to the Trustee in writing of any circumstance affecting his eligibility for membership of the Fund and his ability to make contributions to the Fund in accordance with the Act and the Regulations.
- (e) Upon acceptance by the Trustee of any application for membership of the Fund and the payment by or in respect of him of a contribution to the Fund such applicant shall be deemed to be a Member and he shall thereupon be bound by the terms and conditions of this Deed.
- (f) The Trustee may:
  - (i) offer a Member the option of selecting a category of membership provided for under Part 2A; and/or
  - (ii) determine that a Member is in a group of Members to whom Part 2A applies.If subparagraphs (f)(i) and/or (ii) of this clause applies to a Member, that Member's Benefits are payable in accordance with the terms of Part 2A.
- (g) The Trustee may establish, delete or vary categories of membership at any time.

## Non-Member Spouse

4A For the avoidance of doubt, if:

- (a) a Member's interest in the Fund is subject to a Payment Split; and

- (b) a Non-Member Spouse requests a new interest in the Fund be created for the Non-Member Spouse in connection with the Payment Split,

the Trustee must not create a new interest in the Fund for the Non-Member Spouse in those circumstances and the Non-Member Spouse has no interest in the Fund because of those circumstances.

## Non-Member Spouse not a beneficiary

4B. To the maximum extent permitted by law, it is declared that:

- (a) any Non-Member Spouse is not a beneficiary of the trusts operating over the Fund by virtue of being a Non-Member Spouse;
- (b) the Trustee owes no duties, fiduciary or otherwise, to any Non-Member Spouse by virtue of being a Non-Member Spouse;
- (c) the Trustee may take any steps it considers appropriate to notify any Non-Member Spouse about this provision.

## Former Members of the Merging Funds

- 5. (a) Notwithstanding the foregoing provisions of this Part where assets or investments in respect of a member of one of the Merging Funds are accepted into the Fund under clause 7, the member shall:
  - (i) thereupon become a Member of the National Mutual Retirement Fund;
  - (ii) be deemed to have agreed to be bound by the provisions of this Deed.
- (b) Notwithstanding the provisions of sub-paragraph (ii) of paragraph (a) of this clause where to apply the provisions of this Deed would have a detrimental effect on the value of the Benefit of a former member of one of the Merging Funds who transferred into the Fund on the Transfer Date or on any right conferred under the trust deed for that fund the Trustee may apply the provisions of that trust deed in substitution for or in addition to the provisions of this Deed to ensure that the Member's former rights and benefits are retained **PROVIDED THAT** the Trustee will not thereby cause the Fund to cease to comply with the Applicable Requirements.

## Cessation of Membership

- 6. A Member shall cease to be a Member on the occurrence of the first of the following events:
  - (a) when he has received the whole of his Benefit; or
  - (b) on the transfer of the whole of the Benefit of the Member or Undischarged Ex-Member in accordance with clause 7(b); or
  - (c) when the Fund no longer contains any Benefit in respect of the Member or Undischarged Ex-Member.

## Part 2A Category Selection

### Category Selection Form

6A.1 A Member who is given an option under clause 4(f) of the Deed may give the Trustee a Category Selection Form.

### New Category Selection Form

6A.2 A Member to whom clause 6A.1 applies may give the Trustee a new Category Selection Form at any time in a manner approved by the Trustee. A new Category Selection will have the effect of immediately and permanently revoking any previous Category Selection of the Member.

### Applicable Membership Category

6A.3 Subject to clause 6A.14:

- (a) a Member becomes a member of the Category which the Member specifies in a Category Selection;
- (b) the Member's Category applies from the date the Category Selection is received by the Trustee.

### Deemed Category 1 Member

6A.4 If the Trustee has not received a Category Selection from a Member and:

- (a) the Member has been offered the option of selecting a Category under clause 4(f) of the Deed; or
- (b) the Trustee determines that the Member is in a group of Members to whom Part 2A applies,

that Member is a Category 1 Member.

### Benefit Payments Category 1

6A.5 For Members of Category 1:

- (a) benefits are payable under the relevant provisions in the Deed unless the Member has died;
- (b) the Trustee must pay the Death Benefit to one or more of the Members' Dependents or legal personal representative or any other person permitted by the Applicable Requirements at the absolute discretion of the Trustee, in proportions which the Trustee considers appropriate;
- (c) the Trustee may determine that the Death Benefit be paid as a lump sum, pension or annuity or in any other form that the Trustee considers appropriate; and
- (d) clauses 6A.9 to 6A.13 and 6A.15 to 6A.19 do not apply.



# Benefit Payments - Categories 2 to 8

## 6A.6 For Members of Categories 2 to 8:

- (a) benefits are payable under the relevant provisions in the Deed unless the Member has died;
- (b) on the death of a Member, subject to clauses 6A.12 to 6A.14, the Trustee must:
  - (i) if the Member is a Category 2 Member:
    - (A) pay the Member's Lump Sum Death Benefit to the Member's Spouse as a lump sum; and
    - (B) pay the balance of the Death Benefit as one or more Pensions to the Member's Minor Children;
  - (ii) if the Member is a Category 3 Member:
    - (A) pay the Member's Lump Sum Death Benefit to the Member's Spouse as a lump sum; and
    - (B) pay the balance of the Death Benefit as one or more Pensions to the Member's Spouse;
  - (iii) if the Member is a Category 4 Member:
    - (A) pay the Member's Lump Sum Death Benefit to the Member's Spouse as a lump sum; and
    - (B) pay the balance of the Death Benefit as one or more Pensions, with 50% to the Member's Spouse and the remaining 50% to the Member's Minor Children;
  - (iv) if the Member is a Category 5 Member:
    - (A) pay the Member's Lump Sum Death Benefit to the Member's Estate as a lump sum; and
    - (B) pay the balance of the Death Benefit as one or more Pensions to the Member's Minor Children;
  - (v) if the Member is a Category 6 Member:
    - (A) pay the Member's Lump Sum Death Benefit to the Member's Estate as a lump sum; and
    - (B) pay the balance of the Death Benefit as one or more Pensions to the Member's Spouse;
  - (vi) if the Member is a Category 7 Member:
    - (A) pay the Member's Lump Sum Death Benefit to the Member's Estate as a lump sum; and
    - (B) pay the balance of the Death Benefit as one or more Pensions, with 50% to the Member's Spouse and the remaining 50% to the Member's Minor Children;
  - (vii) if the Member is a Category 8 Member:
    - (A) pay the Member's Lump Sum Death Benefit to the Member's Children as a lump sum; and

- (B) pay the balance of the Death Benefit as one or more Pensions to the Member's Minor Children;
- (c) Benefits to Children (including Minor Children) will be paid in equal shares; and
- (d) if there is more than one Spouse, each Spouse will be paid in equal shares.

## Benefits to an Estate

6A.7 Benefits to the Estate are to be paid at the Trustee's discretion to the legal personal representative of the Member upon production of probate or letters of administration.

## Benefits to Minor Children

6A.8 Any Benefit payable to a Minor Child will be paid on trust subject to the same terms as those regarding infant trusts set out in clause 19(a) of the Deed.

## Death Benefit Payment

6A.9 If there is no person to whom part or all of a Death Benefit can be otherwise paid under this Part 2A, the part of the Death Benefit that cannot be paid may be paid to any other person or persons determined by the Trustee in the exercise of its absolute discretion if the Applicable Requirements permit.

## Qualification for Payment

6A.10 A person is not a Spouse, Child or Minor Child of a Member unless the Trustee is satisfied as to that person's identity, eligibility and location within 3 months of the date of the Member's death or such longer period as the Trustee may determine.

## Trustee not Required to Inquire

6A.11 The Trustee is not required to make any inquiries to determine the eligibility, identity or location of potential recipients of a Death Benefit.

## Exception - Lump Sum Death Benefits

6A.12 If the Trustee is unable to identify or locate at least one person capable of qualifying for payment of the part of the Member's Death Benefit that is payable as a lump sum under clause 6A.6(b), the Trustee will pay:

- (a) the part of the Benefit that would have been payable as a lump sum to Children under clause 6A.6(b) - to the Spouse; and
- (b) the part of the Benefit that would have been payable as a lump sum to a Spouse under clause 6A.6(b) - to the Member's Estate.

## Exception - Pension Death Benefits

6A.13 If the Trustee is unable to identify or locate at least one person capable of qualifying for payment of the part of the Member's Death Benefit that is payable as a Pension under clause 6A.6(b), the Trustee will pay:

- (a) the part of the Benefit that would have been payable as a Pension to a Spouse under clause 6A.6(b) - as a lump sum to the Member's Estate; and

- (b) the part of the Benefit that would have been payable as a Pension to Minor Children under clause 6A.6(b) - as a lump sum to the Spouse.

## Rejection of Category Selection

6A.14 If the Trustee believes in good faith that:

- (a) a Category Selection is not sufficiently clear to allow the Trustee to pay a Death Benefit;
- (b) a Category Selection is incomplete; or
- (c) a Category Selection is not consistent with the Applicable Requirements,

the Trustee may refuse to accept or give effect to all or any part of the Category Selection and may at any time, including before and/or after a Member's death, deem the Member to be a Category 1 Member. A refusal by the Trustee under this clause does not cause a previous Category Selection of the Member to become invalid.

## Mode of Payment - Death Benefits

6A.15 The Trustee will pay a Death Benefit under this Part 2A in the following manner:

- (a) for the Lump Sum Death Benefit - by lump sum; and
- (b) the remainder - by Pension.

## Mode of Payment - Pensions

6A.16 A Pension payable under this Part 2A may be paid on such terms and conditions as the Trustee determines, subject to the Applicable Requirements and after the Trustee receives the Pension Beneficiary's consent.

## Notification of Pension Details

6A.17 The Trustee must make all reasonable efforts to notify each Pension Beneficiary of the proposed terms and conditions of the Pension within a reasonable period of the Trustee determining to whom the Death Benefit is to be paid.

## If Pension not Offered or Agreed

6A.18 If Pensions are not offered by the Fund at the time of a Member's death or if the Trustee and a Pension Beneficiary do not agree on the terms and conditions of the Pension within 6 months of the Trustee notifying the Pension Beneficiary under clause 6A.17, the Trustee may pay to the Pension Beneficiary:

- (a) a Pension on such terms and conditions as the Trustee determines; or
- (b) a lump sum benefit equal to the part of the Member's Death Benefit which the Trustee would otherwise have been required under clause 6A.6(b) to apply in payment of a Pension to that Pension Beneficiary.

Payment of a Pension or a lump sum to a Pension Beneficiary under this clause discharges the Trustee from any liability to pay a Benefit to the Pension Beneficiary under clause 6A.6.

## Status of Person who may Benefit under Category Selection Form

6A.19 A person who may qualify as a beneficiary under the Member's Category Selection has no rights or entitlements under this Deed during the lifetime of the Member.

## Validity of Category Selection

6A.20 If any doubt or dispute arises as to the validity of a Category Selection, subject to the jurisdiction of any relevant Court or Tribunal, the decision of the Trustee shall be binding on all interested persons.

## Part 3

# Transfers of Benefits To or From Other Existing Funds

7. (a) The Trustee may from time to time subject to the Applicable Requirements and to the conditions of this clause accept into the Fund in respect of a Member assets or investments to the extent that those assets and investments are acceptable to the Trustee and including any policy or policies whether effected with National Mutual or any other life insurance company which are transferred from another superannuation fund in which the Member has participated or from an approved deposit fund in which the Member has been a depositor or from an Annuity purchased by or on behalf of the Member whereupon the Trustee shall ensure that the Member's benefits arising from the assets and investments so transferred are preserved to such extent as it necessary in accordance with the standards under the Regulations having regard to the advice received from the trustees of the fund from which the assets or investments are transferred.
- (aa) The Trustee may, in its absolute discretion:
- (i) refuse to accept into the Fund assets, investments or other benefits from untaxed superannuation funds or other untaxed sources; or
  - (ii) return the relevant assets, investments or other benefits to the relevant untaxed superannuation fund or other untaxed source.
- (b) If at any time:
- (i) a Member requests his membership to be transferred to a superannuation fund administered in compliance with the Applicable Requirements and the trustees of such fund agree to accept the transfer;
  - (ii) a Member who has not attained the age of sixty five years requests that the whole or part of his Benefit be transferred to an approved deposit fund administered in compliance with the Applicable Requirements and which is required to preserve any Benefit so transferred in accordance with the standards set out in the Regulations and the trustees of the approved deposit fund agree to accept the transfer; or
  - (iii) a Member requests that the whole or part of his Benefit be transferred to an Annuity issued by a corporation which agrees to accept as consideration therefor such Benefit,
- PROVIDED THAT** the transfer of any Preserved Benefit in respect of the Member is in accordance with the standards prescribed in the Regulations the Trustee may transfer to the trustees of that other superannuation fund or approved deposit fund or to the corporation issuing the Annuity the whole or part of the Benefit (including any Policy or Policies) held by the Trustee in respect of the Member under the Fund.
- (c) Any assets and investments taken over by the Trustee pursuant to paragraph (a) of this clause shall thereafter be subject to the terms of this Deed.
- (d) The transfer of the whole or part of a Benefit in accordance with paragraph (b) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under the Fund in respect of the Benefit or that part of the Benefit so transferred. The Trustee shall neither be responsible for nor be liable in respect of the disposal or otherwise by the trustee or trustees of that other superannuation fund or approved deposit fund or by the corporation issuing the deferred annuity for the Benefit or the part of the Benefit so transferred.

- (e) For all the purposes of this Deed the Benefit of any member in respect of whom paragraph (a) of this clause applies shall be deemed to include the policy or policies investments and any other moneys taken over by the Trustee in respect of him **PROVIDED THAT** the value of such assets shall for the purpose of this Deed not be deemed to be a contribution to the Fund.
- (f) Notwithstanding anything contained in this Deed, the Trustee may, subject to the Applicable Requirements, transfer a Member's Benefit without having obtained the Member's consent if in the opinion of the Trustee the transferee fund is a Successor Fund.

# Part 4 Contributions

## Regular Contributions

8. Subject to this Deed, the regular contributions:
- (a) by the Member or in respect of the Member shall be made to the Fund yearly or at such other intervals of time as the Trustee may allow and accept;
  - (b) payable under the Fund in respect of an Employer Supported Member shall include the amounts payable by that Member and by the employer of that Member in respect of him.

## Amount of Contributions

9. The amount of the regular contributions referred to in the preceding clause 8 shall be determined:
- (a) in respect of a Member other than an Employer Supported Member or a Parliamentary Member according to the requirements of that Member as notified to the Trustee at any time and from time to time;
  - (b) in respect of an Employer Supported Member but excluding a Parliamentary Member according to the requirements of that Member and/or the employer of that Member as notified to the Trustee at any time and from time to time;
  - (c) in respect of a Parliamentary Member:
    - (i) according to the rules prescribed from time to time by the Department of Finance (or such other responsible authority) of the Commonwealth of Australia; or
    - (ii) according to the provisions in that regard more particularly set forth in the relevant Statute referred to in that definition as the case may require.

## Limits on Contributions

10. (a) The Trustee shall not accept contributions by or in respect of a Member:
- (i) who has attained 65 years of age except in such circumstances as permitted by the Regulations.
  - (ii) who has ceased for a continuous period of two years to be in either Full Time Employment or Part Time Employment unless:
    - (A) the contributions are mandated employer contributions (as that expression is defined in the Regulations);
    - (B) the Member has ceased Full Time Employment or Part Time Employment because of ill health (whether physical or mental) that at the date of making the contribution prevents the Member from engaging in the employment of the kind that the Member engaged in at the onset of the ill health; or
    - (C) otherwise permitted by the Applicable Requirements.
- (aa) The Trustee:
- (i) must, if required by the Applicable Requirements:
    - (A) refuse to accept Member No TFN Contributions;

- (B) return Member No TFN Contributions to the relevant Member within 30 days of the amount being received by the Trustee;
- (ii) may, in its absolute discretion:
  - (A) refuse to accept one or more of the following: Employer No TFN Contributions or Directed Termination Payments;
  - (B) return Employer No TFN Contributions or Directed Termination Payments (or both of them) to the relevant Member or Employer at any time;
- (iii) may, in its absolute discretion, return the Member No TFN Contributions to the relevant Member after deducting amounts from these contributions to take account of:
  - (A) a reduction in the value of the Member No TFN Contribution owing to losses sustained as a result of its investment during the period it was held by the Trustee; or
  - (B) reasonable Costs incurred by the Fund,
 or both.
- (b) Any contributions accepted by the Trustee in breach of paragraph (a) of this clause shall be refunded within a period of two months of the Trustee becoming aware that the Member satisfied either of the criteria described in sub paragraphs (1) and (2) of paragraph (a) of this clause (save that where such refund cannot be made out of that portion of his Benefit other than the Policy effected on his life the amount to be refunded to him shall be the surrender value of the contributions concerned) and in respect of any Policy held in respect of him in the Fund the Trustee shall be at liberty to apply to National Mutual to have so much of the said Policy surrendered as will permit such refund to be made and to have the reduced Policy then remaining made Paid up. That Member shall thereupon become and until he shall seek reinstatement as a Member on again becoming eligible to make contributions to the Fund remain an Undischarged Ex Member and whilst so remaining an Undischarged Ex Member no contribution to the Fund by or in respect of him shall be accepted by the Trustee.
- (c) If in any case where he has been requested so to do a Member fails to furnish the Trustee with the information, documents or other evidence referred to in paragraph (d) of clause 4 within the time stated in the request the Trustee (subject to the provisions of the immediately preceding paragraph (b) in the event of the Member ceasing to be eligible to contribute to the Fund):
  - (i) may refuse to accept any contributions by or in respect of a Member;
  - (ii) may subject to any limitation contained in the Applicable Requirements adjust or withhold the whole or part of the Benefit payable in respect of the Member;
  - (iii) shall be at liberty to have the Policy on the life of that Member made Paid up and that Member shall thereupon become an Undischarged Ex Member and whilst remaining an Undischarged Ex Member no contribution by or in respect of him shall be accepted by the Trustee **PROVIDED ALWAYS THAT** if at any time thereafter that Undischarged Ex Member establishes to the satisfaction of the Trustee that he had not otherwise ceased to be eligible for membership of the Fund he shall be reinstated to membership as from the date he became an Undischarged Ex Member as aforesaid and his Benefit in the Fund shall as far as practicable and upon such terms and conditions as the Trustee and National Mutual may then agree be reinstated to that which he would have obtained had he not become an Undischarged Ex Member as aforesaid.



- (d) Where a Member or Undischarged Ex Member furnishes information required pursuant to this Deed that affects or is likely to affect his Benefit and the information supplied is incorrect or misleading then subject to any limitation contained in the Applicable Requirements the Trustee may in its discretion adjust the Benefit in respect of the Member or Undischarged Ex Member to an amount that would have applied had full and accurate information been supplied.

## Additional Contributions

11. Subject to the Applicable Requirements and to any minimum or maximum limits or other conditions advised by the Trustee additional contributions may be made to the Fund by or in respect of a Member at any time and from time to time.

## Part 5 Policies

### Policies to be Effected

12. (a) On a Member joining the Fund and from time to time thereafter whenever any regular contributions additional to those which have hitherto been made in respect of the Member are agreed to be provided a Policy shall be effected by the Trustee with National Mutual on the life of the Member for an amount to be determined between the Trustee and National Mutual having regard to the moneys which the Trustee shall in its absolute discretion determine are or are likely to be held in the Fund in respect of that Member and according to his age at the commencing date of that Policy the type of Policy (with or without additional benefits) selected by the Member and approved by the Trustee and the conditions imposed by National Mutual.
- (b) If at any time a Member is possessed of a policy on his life which has been effected with National Mutual and which provides a benefit of the same or substantially the same type as that which the Trustee is pursuant to the preceding paragraph of this clause obliged to effect or cause to be effected in respect of that Member subject to any limitation contained in the Applicable Requirements the Trustee may upon such terms and conditions and for such monetary consideration (if any) as the Trustee shall in the exercise of its absolute discretion determine agree to acquire the same in substitution or partial substitution for the Policy which the Trustee would otherwise be obliged to effect or cause to be effected in respect of him **PROVIDED ALWAYS THAT** in any case where a policy has been acquired by the Trustee as aforesaid then the Member in the Financial Year in which that policy was so acquired shall be deemed for the purposes of this Deed to have made a contribution to the Fund.

### Health and other Evidence

13. Every Member shall supply such information documents and other evidence including such evidence of his health and as to the date of his birth as National Mutual may require and do all things necessary on his part to enable National Mutual to issue any Policy to the Trustee in respect of him.

### Payment of Premiums

14. The Trustee save as herein otherwise provided shall out of the moneys held in the Fund in respect of a Member punctually pay the premiums on all Policies held in the Fund in respect of him.

### Policies under Trustee's Control

15. The Trustee is hereby authorised and empowered to arrange for the issue of the Policies required to be effected as hereinbefore provided and to give full and effectual receipts releases and discharges in respect thereof as the Trustee from time to time thinks proper and National Mutual requires. Any such Policy shall either be effected in the name of the Trustee or if already effected be assigned or transferred so that it shall be subject to and remain under the control of the Trustee during the time it is subject to the provisions of this Deed. The Trustee only shall be entitled in respect of any such Policy to receive all moneys payable thereunder and to enforce any rights remedies or contract in connection therewith or incidental thereto and shall be solely entitled to the full benefits and advantages thereof and no Member or Undischarged Ex Member shall have or claim save as herein provided any right title or interest in or to any such Policy or contract or in respect of the moneys payable thereunder. National Mutual shall not be concerned to see or

inquire if any of the events has happened by reason whereof the Trustee has become entitled under this Deed to assign or transfer any such Policy to vary the contract hereunder to terminate the whole or any portion of such Policy for cash or to have the whole or any portion of such Policy made Paid up and this Deed together with any request by the Trustee to National Mutual to register a duly executed assignment or the transfer of any such Policy to vary the contract thereunder to terminate the whole or any portion of such Policy for cash or to have the whole or any portion of such Policy made Paid up shall as against such Member or Undischarged Ex Member and any person claiming through or under him be conclusive evidence in respect of that Policy of the consent and authority of that Member or Undischarged Ex Member or such person as the case may be to National Mutual to effect and complete such registration variation or termination accordingly.

## Blanket Policies

16. Notwithstanding anything to the contrary in this Deed otherwise contained the Trustee may with the consent of National Mutual arrange for the whole of the Benefits then secured by individual Policies on the lives of Members and Undischarged Ex Members or in respect of specified groups of Members and Undischarged Ex Members or thereafter to be secured in respect of such persons or groups of persons to be secured by one or more blanket policies issued by National Mutual and providing when requested by the Trustee for the purposes of this Deed for the issue in substitution of the Benefit otherwise secured by the blanket policy in respect of a Member or Undischarged Ex Member of an individual policy on his life either in the name of that Member or Undischarged Ex Member or in the name of the Trustee as the Trustee requires and securing so much of the Benefit to which that Member or Undischarged Ex Member or any person claiming through him may then be entitled under this Deed at the time of the issue of that individual policy.

## Maintenance of Policies

17. If at any time the full amount of contribution to the Fund payable by or in respect of a Member is not paid when due and no additional contributions pursuant to clause 11 have been paid or the amount of any additional contributions so paid together with interest (if any) is not sufficient for the purpose of paying the premium or instalment thereof on the Policy effected on his life then that Policy shall be kept on foot so long as the surrender value (if any) thereof will permit unless the Member concerned shall have requested the Trustee in manner hereinafter appearing to have the Policy made Paid up.

## Paid up Policies

18. Upon the receipt of a written request by a Member requiring the Trustee so to do the Trustee shall subject to the consent of National Mutual have the Policy held in respect of him in the Fund made Paid up.

## Part 6 Payment of Benefits

### Payment on Death

19. Upon the death of a Member or Undischarged Ex Member then his Benefit (or so much of his Benefit as remains unpaid at his death) shall subject to clauses 4(f), 19A, 27, 28, 29A and 53 be paid or shall in the case of a pension commence to be paid at the option of the Trustee -
- (a) to or for the benefit of his Dependants (including his Nominee or Nominees) or such one or more of them and to the exclusion of the other or others of them and in such proportions and manner (including but without limiting the generality thereof by way of Annuity or Pension as the Trustee in its absolute discretion shall think fit **PROVIDED THAT** and subject to the foregoing provisions of this paragraph (a) where any Dependand as aforesaid to whom or for whose benefit the payment is to be made by the Trustee is an infant such payment may be made in trust to the person appearing to the Trustee to be the guardian or the person having actual custody or control of such infant or to the person with whom or institution in which such infant will permanently reside to such other person or institution as the Trustee may determine by such instalments and at such time or times and subject to such directions as to the manner in which the payment is to be applied for the benefit of that infant as the Trustee shall in its absolute discretion think fit and the receipt of such guardian or person or the appropriate official of such institution shall be a good and valid discharge to the Trustee for any moneys so paid and the Trustee shall not be bound to see to the application thereof nor to the carrying out of the directions of the Trustee as aforesaid; or
  - (b) to the legal personal representatives of that Member or Undischarged Ex Member upon production of probate or letters of administration to be held by them by way of direct trust operating under this Deed for the person beneficially entitled to that Member's or Undischarged Ex Member's residuary estate under his Will or on his intestacy and in the shares and upon the trusts which affect the Member's or Undischarged Ex Member's residuary estate but such moneys shall not be part of that Member's or Undischarged Ex Member's estate or be liable for his liabilities or for the liabilities of his estate; or
  - (c) upon the production of a grant of probate or letters of administration and on the production of such evidence (including the original last Will of that Member or Undischarged Ex Member or a declaration that the Member or Undischarged Ex Member has died intestate) as the Trustee may deem satisfactory and under such terms and conditions as the Trustee may in its absolute discretion think fit in payment or part payment of any duties charges whether death probate succession estate duty or otherwise payable to any Government or other authority as a result of the death of the Member or Undischarged Ex Member; or
  - (d) any other person to whom the payment of the Benefit is permitted under the Applicable Requirements.

### Payment of Reversionary Pension

19A. Subject only to clause 19:

- (a) Where the Benefit payable to a Member or Undischarged Ex-Member is a reversionary pension, the Member or Undischarged Ex-Member may request that upon his death the Trustee shall pay the remainder of that Benefit to the Reversionary Pensioner nominated by the Member or Undischarged Ex-Member.

- (b) Where a Member or Undischarged Ex-Member requests the Trustee as contemplated by sub-clause 19A(a), the Trustee shall **SUBJECT ALWAYS** to the Applicable Requirements, pay that Benefit to the Reversionary Pensioner nominated in writing by the Member or Undischarged Ex-Member.
- (c) Upon the death of the person nominated as a Reversionary Pensioner and in respect of whom the reversionary pension shall have been paid pursuant to paragraph (b) of this clause, the Trustee shall determine the amount of any death Benefit payable in respect of that deceased person and determine the payment of such death Benefit in accordance with clause 19 of this Trust Deed.

## Mandatory Payments

20. Subject to clauses 27, 28, 29A and 53 the Benefit of a Member or Undischarged Ex Member shall be paid or in the case of a Pension shall commence to be paid as soon as practicable pursuant to the Applicable Requirements, after the Member or Undischarged Ex Member
- (a) has attained age 65 but not age 70 and is not in Full Time Employment or Part Time Employment.
  - (b) has attained age 70 and is not in Full Time Employment.
  - (c) dies.

## Permitted Payments

21. Subject to clauses 27, 28, 29A and 53 that part of the Benefit of a Member or Undischarged Ex Member that is made up of any preserved or restricted non preserved benefits (within the meaning of those expressions in the Regulations) may subject to any conditions advised by the Trustee may in its absolute discretion determine be paid in whole or in part on or after the occurrence of the following events:
- (a) where the Member or Undischarged Ex Member has attained age 55 when an arrangement under which the Member or Undischarged Ex Member was Gainfully Employed has come to an end and the Trustee is reasonably satisfied that the Member intends never to again to enter into Full Time Employment or Part Time Employment;
  - (b) where the Member or Undischarged Ex Member has attained age 60 when an arrangement under which the Member or Undischarged Ex Member was Gainfully Employed has come to an end on or after the Member or Undischarged Ex Member attaining that age;
  - (c) on the permanent incapacity of the Member or Undischarged Ex Member (as that term is defined in the Regulations);
  - (d) on the departure from Australia of the Member or Undischarged Ex Member where the Trustee is reasonably satisfied that departure is for the purpose of permanent residence outside Australia;
  - (e) on attaining age 65;
  - (f) on the Commissioner's determination in writing that the Member or Undischarged Ex Member is in financial hardship **PROVIDED THAT** payment is in a form that satisfies the Applicable Requirements;
  - (g) termination of Gainful Employment with an employer who had or any of whose associates had at any time contributed to the Fund in respect of the Member or Undischarged Ex Member **PROVIDED THAT** any Preserved Benefit is paid in a form that satisfies the Applicable Requirements;

- (h) on the Member's or Undischarged Ex Member's temporary incapacity (within the meaning of that term in the Regulations) **PROVIDED THAT** payment is in a form that satisfies the Applicable Requirements; ~~or~~
- (i) on any other condition of release approved by the Commissioner being satisfied for the purposes of the Applicable Requirements; ~~or~~
- (j) on a condition of release, not otherwise specified in this clause 21, being satisfied for the purposes of the Applicable Requirements PROVIDED THAT payment is in a form that satisfies the Applicable Requirements.

**PROVIDED THAT:**

- (i) if by reason of the happening of any event referred to in the Policy on the life of a Member or Undischarged Ex Member effected or acquired pursuant to the provisions of this Deed a supplemental insured benefit becomes payable under that Policy the amount of that supplemental benefit shall be then payable to the Member or Undischarged Ex Member.
- (ii) the Trustee shall be at liberty to arrange with National Mutual for the Policy on the life of a Member to be made Paid up upon that Member becoming an Undischarged Ex Member.

**21A. Vesting of Individual NMH Entitlement in Eligible Members**

Notwithstanding anything contained in this Deed, if and to the extent that the Trustee has any right, title or interest in the Individual NMH Entitlement of an Eligible Member and so long as this is consistent with the Applicable Requirements or is permitted by the Commissioner, the Individual NMH Entitlement is vested in that Eligible Member or in the legal personal representative of that person (if he or she dies between 21 June 1995 and the date of this Deed) and the Trustee has no obligation to call in or hold in the Fund that Individual NMH Entitlement.

22. Subject to clauses 27, 28 and 53 that part of the Benefit of a Member or Undischarged Ex Member that is made up of unrestricted non preserved benefits (within the meaning of that expression in the Regulations) may subject to any conditions advised by the Trustee be paid in whole or in part on the written request of the Member or Undischarged Ex Member.

**22A. Benefits for Non-Member Spouse**

The Trustee may, subject to the Act and in accordance with the provisions of this Deed, pay to a Non-Member Spouse or pay or transfer to another entity with the superannuation system (including an eligible rollover fund) any amount which becomes payable in respect of the Non-Member Spouse because the Member's interest in the Fund is subject to a Payment Split. The receipt in those circumstances is a sufficient discharge for the Trustee of any obligation it has in respect of the Non-Member Spouse.

**22B. Adjusting Benefits for Payment Splits**

The Trustee may adjust any Benefit payable or which may become payable from the Fund in respect of a Member to take account of any Payment Split under Part VIIB of the Family Law Act 1975 (Cth) in respect of the Member or in respect of Benefits payable from the Fund for or in respect of that Member. Subject to the Act, any adjustment will be on such terms as the Trustee determines.

## Payment Provision for Certain Members

23. Subject to the Applicable Requirements the Benefit in respect of a Member or Undischarged Ex Member who transferred into the Fund from either the Flexipol Self Employed Persons Superannuation Fund or the National Mutual Self Employed Superannuation Fund on the Transfer Date may:

- (a) be paid or commence to be paid as the case may be when the Member or Undischarged Ex Member reaches his Selected Retirement Date;
- (b) be retained in the Fund until the Member or Undischarged Ex Member reaches an age not exceeding 75 years.

## Pension and Roll over Facility Options

### 24. Subject to Part 2A:

- (a) a Benefit payable pursuant to the provisions of this Deed may if the Member requests and the Trustee agrees be paid wholly or in part in the form of a Pension or an Annuity;
- (b) the Trustee shall before payment of the first instalment of such Pension or Annuity confirm to the Member the amount and terms of payment thereof;
- (c) on the written application of a Member Undischarged Ex Member or beneficiary, the Trustee may in its discretion commute to a lump sum a part or whole of the Pension or Annuity that remains to be paid from the Fund in respect of a Member or Undischarged Ex Member **PROVIDED THAT** the commutation will not cause the Fund to breach the Applicable Requirements;
- (d) on receipt of a notice in writing from the Commissioner the Trustee shall commute to a lump sum so much of the Pension payable from the Fund in respect of a Member or Undischarged Ex Member as the Commissioner has determined exceeds the reasonable benefit limits (within the meaning of that expression in the Regulations) of the Member or Undischarged Ex Member; and
- (e) subject to the Applicable Requirements where a Benefit in respect of a Member or Undischarged Ex Member becomes payable from the Fund in accordance with the provisions of this part the Trustee may at the direction of the Member or Undischarged Ex Member pay to such person, institution or superannuation entity the whole or part of such Benefit as the Member or Undischarged Ex Member advises.

## Payment of Benefits to former Flexipol Fund Members

- 25. (a) In addition to the foregoing provisions of this Part the Trustee shall have regard to the provisions of Schedule A when paying assigning or commencing to pay as the case may be the Benefit in respect of a Member or Undischarged Ex Member who was transferred into the Fund from the Flexipol Personal Superannuation Fund on the Transfer Date or when making any determination in connection therewith.
- (b) In addition to the foregoing provisions of this Part the Trustee shall have regard to the provisions of Schedule B when paying assigning or commencing to pay as the case may be the Benefit in respect of a Member or Undischarged Ex Member who was transferred into the Fund from the Flexipol Self Employed Persons Superannuation Fund on the Transfer Date or when making any determination in connection therewith.

## Compliance with Superannuation Fund Conditions

- 26. Notwithstanding anything to the contrary expressed or implied in this Deed if at any time in the opinion of the Trustee the terms and conditions of payment of any contribution or the whole or part of any Benefit payable under the Fund in respect of any Member or Undischarged Ex Member or any other action required to be taken pursuant to the terms of this Deed would cause the Fund to cease to comply with the superannuation fund conditions as specified in the Applicable Requirements then the Trustee may to such extent and for such period as it considers to be necessary to maintain compliance with the said superannuation fund conditions alter the

terms and conditions of payment of the contribution or Benefit or take such other action as it considers to be appropriate in the circumstances.



## Part 7

### Application of Benefit in Certain Cases

#### Forfeiture of Benefits

27. If:
- (a) a Member or Undischarged Ex Member purports to assign alienate or charge; or
  - (b) any other event occurs which results in another person becoming entitled to,
- all or part of the Benefit of the Member or Undischarged Ex-Member which may become payable (but which has not become payable at the date of the purported assignment, alienation, charge or other event), then subject to the Applicable Requirements that benefit or part thereof shall be forfeited **PROVIDED THAT** this clause shall have no effect on the bankruptcy or insolvency of the Member or Undischarged Ex Member to the extent that its operation would be contrary to the Bankruptcy Act 1966.

#### Application of Forfeited Benefits

28. (a) Subject to the Applicable Requirements the Trustee shall apply a forfeited benefit for the benefit of the Member or Undischarged Ex Member or such one or more of his Dependants as the Trustee may in its absolute discretion determine.
- (b) Any part of the Benefit of a Member or Undischarged Ex Member forfeited pursuant to clause 27 which is not applied by the Trustee in pursuance of the immediately preceding paragraph shall on the death of the Member or Undischarged Ex Member be held upon trust for the legal personal representatives of that Member or Undischarged Ex Member.
- (c) The application of any moneys pursuant to this clause shall be a complete discharge to the Trustee therefor.

#### Assignments and Charges

29. (a) The Trustee shall not recognise encourage or sanction:
- (i) an assignment of the Benefit of a Member or Undischarged Ex Member;
  - (ii) a charge over or in relation to the minimum benefit or preserved benefit (within the meaning of those expressions in the Regulations) of a Member or Undischarged Ex Member;
  - (iii) a charge over or in relation to a non commutable income stream (within the meaning of that expression in the Regulations).
- (b) Except to the extent permitted by the Act or the Regulations the Trustee shall not give a charge over or in relation to an asset of the Fund.

#### Unclaimed Benefits

- 29A. (a) No benefit shall become payable under this Deed until the Trustee has determined that the Benefit is payable because either:
- (i) the Member or Undischarged Ex-Member has attained age 65; or
  - (ii) pursuant to the Applicable Requirements payment of the Benefit is required to be made by the Trustee; or
  - (iii) both of the following are satisfied:

- (A) the Trustee has received notice that a condition of release has been satisfied in relation to that Benefit; and
  - (B) the Trustee has received a claim or request for payment from a person entitled under the Deed and the Applicable Requirements to receive payment of that benefit.
- (b) Notwithstanding sub-clause 29A(a) if payment of a Benefit is required to be made under the Applicable Requirements, the Trustee may determine that the Benefit is immediately payable whether or not any person has applied to the Trustee to have the amount paid to him or her.
- (c) In circumstances where, in accordance with the Applicable Requirements, a benefit:
  - (i) may be transferred from the Fund; or
  - (ii) must be paid to the Commissioner or otherwise transferred from the Fund,by reason of the Trustee being unable to locate the Member or Undischarged Ex-Member if living or if not the Dependants of that Member or Undischarged Ex-Member or by reason of the trustee being satisfied that written communications from the Trustee to the Member or Undischarged Ex-Member have not been received by the addressee, the Trustee may at its discretion or shall where the Applicable Requirements so require pay or transfer the Benefit from the Fund in accordance with the Applicable Requirements. In respect of a benefit so paid or transferred, no person shall thereafter have any claim whatsoever under this Deed to or in respect of that benefit, but may thereafter claim in accordance with the Applicable Requirements.

## Part 8 Investment Standards

### Investment of moneys by Trustee

30. All moneys in the hands of the Trustee arising upon the death of a Member or Undischarged Ex Member and not immediately required for payment to the Dependants or legal personal representatives of the Member or Undischarged Ex Member under and pursuant to clauses 4(f), 19 or 19A hereof may at the discretion of the Trustee:
- (a) be invested in forms of investment which comply with the standards contained in the Applicable Requirements and subject thereto may be invested either individually or in a common fund established by the Trustee for the purpose:
    - (i) in any investment in which by the laws of any State or Territory of the Commonwealth of Australia trustees are authorised to invest; or
    - (ii) in interest bearing deposits with any bank savings bank or building society in any State or Territory of the Commonwealth of Australia or with National Mutual,with power from time to time to sell or get in any such investments and to vary or transpose them for other investments of any of the classes specified in this clause; or
  - (b) be paid by way of premium to National Mutual under and pursuant to the Deposit Administration Policy.

### Borrowing by Trustee

31. (a) The Trustee shall not on or after 12 June 1986 borrow or maintain any existing borrowing of money whether secured or unsecured other than as permitted by the Applicable Requirements.
- (b) To the extent that the Trustee had before 12 June 1986 borrowed moneys other than in accordance with the provisions of sub paragraph (a) of this clause then the Trustee shall as soon as practicable but not later than 30 June 1995 make such arrangements as are necessary to ensure that such borrowings comply with the provisions of sub paragraph (a) of this clause.

#### 31A. **Trustee Act 1958 (Vic)**

For the avoidance of doubt, the provisions of Part I of the Trustee Act 1958 (Vic) relating to investments shall not apply to the Fund and all matters relating to the investment of the Fund's assets shall be governed by this Deed.

## Part 9 Financial Assistance

### Prohibition of Financial Assistance

32. Subject to clause 33 the Trustee shall not:
- (a) lend money of the Fund or give any other financial assistance using the resources of the Fund to a Member or Undischarged Ex Member or to a relative of a Member or Undischarged Ex Member;
  - (b) intentionally acquire an asset from a Member or Undischarged Ex Member or a relative of a Member or Undischarged Ex Member unless such acquisition is permitted by the Act.

### Loans to Members

33. (a) The Trustee may make an advance to a Member or Undischarged Ex Member by way of loan out of the Fund upon such terms and conditions of repayment and at such rate of interest as the Trustee thinks fit **PROVIDED THAT:**
- (i) the amount lent to any Member or Undischarged Ex Member together with any other loan made to him pursuant to the provisions of this clause shall not exceed the aggregate at the date of such loan of:
    - (A) the amount of contributions to the Fund in respect of him;
    - (B) the amount of any additional benefit which has become payable pursuant to the terms thereof under any Policy on his life affected or acquired pursuant to the provisions of this Deed; and
    - (C) any other accretions of a capital nature to his Benefit in the Fund;
  - (ii) the loan shall only be granted to a Member or Undischarged Ex Member if the Trustee is satisfied that the Member or Undischarged Ex Member is unable to borrow from any other source from which money may usually be borrowed on reasonable terms and that he would be in serious financial difficulties if such loan were not granted by the Trustee.

For the purposes of this clause the Trustee may subject to clause 32 of this Deed if the surrender value of the Policy on the life of that Member or Undischarged Ex Member held in the Fund will permit borrow from National Mutual on the security of that Policy the amount to be so lent upon such terms and conditions and at such rate of interest as National Mutual charges from time to time in respect of loans made on the security of its policies and National Mutual shall not be concerned to enquire as to whether the necessity of any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

- (b) Notwithstanding anything to the contrary (whether expressed or implied) in this Deed
  - (i) but subject to any limitation contained in the Applicable Requirements the amount of any loan together with interest shall unless previously repaid be deducted from the Benefit when the same becomes payable to that Member or Undischarged Ex Member or to any person claiming through him.
  - (ii) the Trustee shall not make any amendment modification or variation to this Deed where such amendment modification or variation would have the effect of removing or lessening any restriction or limitation on the power of the Trustee to make an advance to a Member or Undischarged Ex Member under this clause.

## Part 10 Financial Assistance

### Prepayment Account

34. (a) The Trustee shall maintain as part of the Fund an account to be called the 'Prepayment Account'.
- (b) The Trustee may pay to the Prepayment Account for the individual credit of the Member concerned so much of the contribution in respect of the Member as is not immediately required for the payment of premiums on the Policy or Policies held in the Fund in respect of him.
- (c) Any moneys for the time being standing to the individual credit of a Member or Undischarged Ex Member in the Prepayment Account may be paid by way of premium to National Mutual in respect of that Member or Undischarged Ex Member under and pursuant to the Deposit Administration Policy.
35. In the event that the contribution in respect of a Member is not paid or that such contribution is not sufficient to pay a premium payable on a Policy or Policies held in the Fund in respect of that Member the Trustee shall be at liberty to and shall apply so much of the amount standing to the individual credit of the Member in the Prepayment Account as the case requires in or towards payment of that premium.

## Part 11

# Deposit Administration Policy

36. The Trustee shall maintain the Deposit Administration Policy effected in its name with National Mutual and shall hold that Policy and the moneys payable thereunder as part of the Fund.
37. Any interest or other benefit accruing to the Trustee under and pursuant to the Deposit Administration Policy in respect of payments made to the credit of a Member or Undischarged Ex Member shall not less frequently than annually be added to the credit of that Member or Undischarged Ex Member as the case may be.

## Part 12 Administration

### Appointment/Replacement of Trustee

38. The Fund shall be administered by a trustee being
- (a) an approved trustee or RSE licensee (within the meaning of that expression in the Act); and
  - (b) a limited liability company which satisfies the requirement to be a constitutional corporation (within the meaning of that expression in the Act).
39. (a) The office of trustee shall become vacant if:
- (i) a resolution is passed or an order made for the winding up of the Trustee; or
  - (ii) the Trustee resigns from that office by notice in writing signed on its behalf by two of its Directors and causes a copy of such notice to be published in a daily newspaper circulating in the capital city of each of the States of the Commonwealth of Australia, in the Australian Capital Territory and in the Northern Territory.
- (b) Upon the office of trustee becoming vacant National Mutual shall forthwith appoint a new Trustee for the purposes of this Deed.

### Records and Accounts

40. (a) The Trustee shall keep:
- (i) minutes of the decisions of its Directors and officers relating to the carrying out of the provisions of this Deed; and
  - (ii) a record for each Member and Undischarged Ex Member showing his full name and address and the particulars of the Policies effected in respect of him pursuant to this Deed and the premiums payable to keep the same on foot **PROVIDED THAT** the Trustee may appoint National Mutual as its agent to keep the records referred to in this paragraph and in such case the keeping by National Mutual of those records which it is required to keep pursuant to any Statute from time to time in force shall be deemed to be the keeping by the Trustee of the records it is required to keep pursuant to this paragraph.
- (b) The Trustee shall maintain or cause to be maintained such records and accounts and in such form as shall be necessary to satisfy the Applicable Requirements.
- (c) The Trustee shall cause the said records and accounts referred to in paragraph (b) of this clause to be audited annually or at such other time or times as shall be required pursuant to the Applicable Requirements by an approved auditor (within the meaning of that expression in the Act).

### Reporting Requirements

41. The Trustee shall give or cause to be given to each Member prospective Member or Undischarged Ex Member and to the Commissioner all information statements certificates reports and notices required to be given pursuant to the Applicable Requirements within such period (if any) as may be specified or within such extended period as the Commissioner may allow.

## Payment of Charges/Deductions

42. (a) If any tax or other government imposition shall be payable in respect of any Benefit due to a Member or Undischarged Ex Member from the Fund then the Trustee (if compelled by law or requested by the Member or Undischarged Ex Member so to do) shall deduct or arrange to have deducted the amount of such tax or other government imposition (including any interest payable thereon) and shall account for the same to the proper authorities before paying any such Benefit or any portion thereof to the Member or Undischarged Ex Member so entitled thereto and may if necessary postpone payment of such Benefit until such tax or other government imposition and any interest thereon has been paid or provided for to the satisfaction of the Trustee.
- (b) The Trustee shall pay to the Commissioner all moneys required to be paid pursuant to the Act or Regulations.
- (c) The Trustee may cause to be deducted from the Fund:
- (i) any tax duty or impost payable by the Trustee in connection with the Fund or the investment earnings thereof or in relation to or as a consequence of any contribution to the Fund and shall account for the same to the proper authorities; or
  - (ii) any fee or charge (howsoever described) payable by the Trustee as consideration for the transfer of liability for any such tax duty or impost to any agent of the Trustee properly appointed by the Trustee.
- (d) To the extent that a deduction pursuant to paragraph (b) of this clause is directly attributable to a contribution to the Fund then upon such contribution being received by the Trustee or at such other time as the Trustee in its absolute discretion considers expedient in the circumstances the Trustee may deduct or cause to be deducted from such contribution such amount as it considers appropriate to provide for the relevant amount of tax duty impost fee or charge and may retain such amount within the Fund until the Trustee gives effect to the provisions of paragraph (b) of this clause.
- (e) Notwithstanding anything to the contrary (whether expressed or implied) in this Deed any amount for the time being retained within the Fund pursuant to paragraph (b) of this clause shall be treated in similar manner to a lien on the Fund.

## Determination of Interest Rate

43. If during the period of any Financial Year the Trustee is obliged for the purposes of this Deed to determine the amount of interest which has accrued on the whole or any portion of the Benefit of a Member since the expiration of the preceding Financial Year then the Trustee is hereby empowered and shall determine a rate or rates per centum per annum which shall be the rate or rates applicable for that purpose during each Financial Year thereafter until the Trustee shall determine a different rate or rates which shall themselves be subject to alteration in manner aforesaid.

## Exercise of Trustee's Powers and Discretions

44. The Trustee in the exercise of the authorities powers and discretions hereby vested in it shall have an absolute discretion and may exercise or enforce all or any of such powers authorities or discretions from time to time and at any time or may refrain from exercising all or any of such powers authorities or discretions from time to time or at all.



45. Any power authority or discretion vested in the Trustee hereunder may be exercised on its behalf by its Directors as a Board, and the Board may appoint such of the employees of the Trustee as it thinks fit to exercise for or on behalf of the Trustee all or any of the powers authorities and discretions exercisable by the Trustee under the provisions of this Deed.
46. The Trustee may in carrying out and performing the duties, discretions and obligations on its part to be carried out or performed by Power of Attorney by writing or otherwise appoint any person to be the attorney or agent of the Trustee for such purposes and with such powers authorities and discretions (not exceeding those vested in the Trustee) as it thinks fit with power for any such attorney or agent to sub delegate any such power or authority subject to the Trustee's approval **AND** authorise the issue in the name of the Trustee of documents bearing facsimile signatures of officers of National Mutual or of the attorney or agent either with or without the proper manuscript signatures of its officers thereon **AND** remove supersede or suspend any such attorney or agent for such cause or reason as the Trustee in its sole discretion thinks sufficient and either absolutely or for such time as it may think proper **PROVIDED THAT** the Trustee in any such Power of Attorney and the attorney or agent by the terms of any such sub delegation may insert such provisions for the protection and convenience of those dealing with any such attorney agent or sub delegate as it or they may think fit.
47. (a) The Trustee subject to any limitation contained in the Applicable Requirements may in its absolute discretion enter into and execute all such contracts, deeds and documents and do all such acts matters and things as it deems expedient for the carrying out of the trusts authorities powers and discretions conferred upon it by this Deed **PROVIDED THAT** the Trustee shall not discriminate against any Member or Undischarged Ex Member in such a manner as to infringe any law of the Commonwealth of Australia or of any State or Territory in respect of discrimination.
- (b) The Trustee may create additional classes or categories of membership of the Fund or may subdivide an existing class of Members in order to secure taxation advantages to Members or to the Fund or otherwise and may subject to the Applicable Requirements impose such qualifications restrictions and conditions on the said classes or categories of membership as it considers appropriate.
- (c) The Trustee may do all such acts and things and sign all documents it considers expedient or necessary to compensate Members or former Members, including (but not limited to) payments of any amount to any third party, including (but not limited to) a charity, in respect of any Member or former Member.
48. The Trustee is hereby authorised and empowered for the purpose of carrying out any provision or requirement of this Deed to surrender to National Mutual the whole or any portion of the amount assured or endowed or the amount of the annuity as the case may be under any Policy held in respect of a Member or Undischarged Ex Member in the Fund.
49. The Trustee may act on the advice or opinion of any actuary, barrister, solicitor, accountant, medical practitioner or any other professional person (whether or not such advice or opinion shall be or have been obtained by it) and shall not be responsible for anything done or suffered by it in good faith in reliance on such opinion or advice.

## Limits of Trustee's Liability

50. The provisions of clauses 51 to 53 inclusive are subject to any limitation contained in the Applicable Requirements.
51. Neither the Trustee nor the directors of the Trustee shall be liable for:
- (a) any losses except losses arising from its own wilful default or the wilful default of any of its Directors or officers;

- (b) any act or acts done bona fide in conformity with the decision of its Directors hereunder; or
  - (c) the neglect or default of any solicitor, banker, accountant or other agent employed in good faith by the Trustee.
52. (a) Neither the Trustee nor the directors of the Trustee shall be liable for any failure to perform or do any act or thing which by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory thereof or any Ordinance rule regulation or by law made pursuant thereto or of any decree order or judgement of any competent Court the Trustee shall be hindered prevented or forbidden from doing or performing.
- (b) Neither the Trustee nor the directors of the Trustee shall be liable to account to any Member Undischarged Ex Member or otherwise for any payments made by the Trustee in good faith to any duly empowered fiscal authority of the Commonwealth of Australia or any State or Territory thereof for taxes or other charges upon the Fund or with respect to any transaction under this Deed notwithstanding that any such payment ought to or need not have been made.
- (c) Neither the Trustee nor the directors of the Trustee shall incur any liability by reason of any false or incorrect statement in any proposal or other document made by a Member or Undischarged Ex Member in relation to a Policy effected on his life whereby that Policy is cancelled or voided in any way by National Mutual or whereby the amount assured or endowed or the amount of the annuity as the case may be under that Policy is reduced.
- (d) Neither the Trustee nor the directors of the Trustee shall in any event be liable to the Members or Undischarged Ex Members to any greater extent than in respect of the Fund or any such part thereof which ought to be vested in the Trustee.

## Trustee's Indemnity

53. Except in the case of dishonesty or the wilful commission or omission of an act known to be a breach of trust the Trustee and each director of the Trustee shall be indemnified out of the Fund to the maximum extent permissible under the Act against all liabilities incurred by it in the execution or attempted execution or arising from the non execution of the trusts authorities powers and discretions hereof and shall subject to any limitation contained in the Applicable Requirements have a lien on and may use any moneys for the time being in its hands for such indemnity and generally for the payment of all proper legal and other costs of administering the Fund and otherwise performing its duties under this Deed. The indemnity hereby provided shall extend to any payment made to any person whom the Trustee bona fide believes to be entitled to the same.

## Payment to Trustee

54. The Trustee shall be at liberty to receive and apply for its own use and benefit any payment made to it by National Mutual by way of commission or otherwise in respect of any policy or any premium or instalment of premium paid in respect thereof.

## Inquiries and Complaints Resolution

55. The Trustee must take reasonable steps to ensure that arrangements that satisfy the requirements of the Act are in place under which:
- (a) any Member or Undischarged Ex Member may make inquiries into or complaints about the operation or management of the Fund in relation to that Member or Undischarged Ex Member;

- (b) inquiries or complaints will be considered and dealt with within 90 days after they are made.

## Amendment of Deed

56. (a) Subject to paragraph (b) of this clause the Trustee may from time to time in the exercise of its absolute discretion make any amendment modification or variation to this Deed (including if it thought fit the revocation or restriction of this present clause) which in its opinion may be expedient for the more convenient economical or advantageous working or management or administration of the trusts herein declared and contained or which is required as a condition of the continuance of the approval of the Commissioner \*and the Minister administering the Duties Act 2000 (Vic) to the terms and conditions of the Fund and which the Trustee may think proper having regard to all the circumstances of the case. Upon any such amendment modification or variation being made this Deed shall take effect as amended modified or varied accordingly.

\* Applicable in Victoria only.

- (b) An amendment modification or variation may not enable an individual to be appointed as trustee of the Fund unless the Act or Regulations so permit.
- (c) After any such amendment modification or variation as aforesaid has been made the Trustee shall give to each Member and Undischarged Ex Member as soon as practicable thereafter a written statement explaining the nature and purpose of the amendment modification or variation and the effect (if any) of the amendment modification or variation on the entitlements of the Member or Undischarged Ex Member.
- (d) Any amendment modification or variation made pursuant to this clause shall be in writing made by the Trustee and any amendment modification or variation so made and for the time being in force shall have the same validity as if it had been contained in this Deed when executed and shall be itself subject in like manner to amendment modification or variation **PROVIDED ALWAYS THAT** the Benefit of any Member or Undischarged Ex Member already secured at the date of any such amendment modification or variation shall not be detrimentally affected thereby unless the amendment modification or variation meets the relevant standards in the Applicable Requirements and the consent of the Member or Undischarged Ex Member to the amendment modification or variation has been obtained in writing.

57. [Deleted]

## Part 13 General

### Service of Notice

58. (a) Any notice required to be given to a Member or Undischarged Ex Member hereunder shall be deemed to have been duly given if given in writing to that Member or Undischarged Ex Member as the case requires by letter addressed to him at his respective address appearing in the register. Any notice given by post shall be deemed to have been served at the time when it was posted and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted and a statement signed by the Trustee that it was so posted and when shall be conclusive evidence of that fact.
- (b) Any notice or document sent by post to or left at the registered address of a Member or Undischarged Ex Member in pursuance of these presents shall notwithstanding that such Member or Undischarged Ex Member be then dead and whether or not the Trustee shall have had notice of his death be deemed sufficient service on any person claiming to be interested.

### Cooling off Period

59. Notwithstanding anything to the contrary herein otherwise contained if:
- (a) the Policy effected by the Trustee with National Mutual on a life of a Member does not meet the needs of that Member; and
- (b) the copy of that Policy is returned to the Trustee within 14 days of:
- (i) the date of the postmark on the envelope in which the copy of the Policy was posted to the Member; or
  - (ii) the date on which the copy of the Policy was otherwise delivered to the registered address of the Member,

then upon receipt by the Trustee of the copy of the Policy as aforesaid together with a request to cancel the Policy and refund all contributions made to the Fund by and in respect of the Member in relation to that Policy and if that Policy was the only Policy under the Fund on the life of that Member the Member shall cease to be a Member upon cancellation of the Policy.

## Part 14

### Crystallisation of the Fund

60. After the death of the last survivor of the descendants now living of Her Majesty Queen Elizabeth II or upon the expiration of such further period of time as may be permitted by law or after the number of Members and Undischarged Ex Members of the Fund falls below twenty the Trustee shall continue to administer the Fund in accordance with the provisions of this Deed except that no further contributions shall be accepted from the Members no new Policy shall be effected in respect of any Member and no new Members shall be admitted and when all the Benefits of Members and Undischarged Ex Members have been paid assigned or applied pursuant to this Deed the Fund shall be deemed to be dissolved and this Deed shall cease to have effect **PROVIDED THAT** if at the expiration of 21 years after the death of such last survivor there shall be any Benefit of a Member or Undischarged Ex Member remaining unpaid unassigned or not applied as aforesaid the same shall be paid out assigned or applied forthwith to the persons entitled thereto and the Fund shall be dissolved and this Deed shall cease to have effect.

## PART 15

### Plans

#### Trustee May Make a Plan

61. (a) The Trustee may determine:
- (1) to establish one or more plans within the Fund; or
  - (2) that one or more existing superannuation arrangements within the Fund is a plan for the purposes of this clause 61.
- (b) In making a determination under clause 61(a), the Trustee shall have regard to all relevant matters including the provisions of any Applicable Requirements.
- (c) Any Plan may be made on such terms and conditions as the Trustee thinks fit not being inconsistent with the provisions of this Deed or any Applicable Requirements relating to the Fund.
- (d) Notwithstanding any other provision of this Deed, if the Trustee has made a Plan comprising a certain Member or Members of the Fund, any information, reports, documents and statements required or permitted by this Deed to be given to that Member or those Members may, unless contrary to the Applicable Requirements, relate specifically to such Plan comprising that Member or those Members and not to any other segment of the Fund.
- (e) A Plan may bear such name or style as the Trustee may from time to time determine.
- (f) The Trustee may close any Plan from time to time.

#### Transfer to or from a Plan

62. The Trustee may transfer a Member to a Plan or from a Plan on such terms and conditions as the Trustee in its discretion determines subject to the Applicable Requirements and any terms and conditions the Trustee has made for any relevant Plan under clause 61.

## Schedule A

# Additional Benefit Provisions for Former Members of the Flexipol Personal Superannuation Fund

1. A benefit in respect of a Member or Undischarged Ex Member shall be paid:
  - (a) if the Member suffers disablement, permanent and total disablement or physical incapacity (if a benefit is payable on such occurrence under the Policy or Policies held by the Trustee in respect of the Member); or
  - (b) if the Member suffers temporary total disablement (if a benefit is payable on such occurrence under the Policy or Policies held by the Trustee in respect of the Member).
2.
  - (a) Where a Member is presently entitled to be paid any Benefit pursuant to the provisions of this Deed then a transfer to the Member of a Policy or Policies being part of the Fund and equivalent to but in lieu of payment of the whole or any part of the said Benefit shall be made by the Trustee on the prior written authority of the Member.
  - (b) The transfer of the whole or part of the Benefit to the Member in accordance with paragraph (a) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under the Fund in respect of the Benefit or that part of the Benefit so transferred.

## Schedule B

### Additional Benefit Provisions for Former Members of the Flexipol Self Employed Persons Superannuation Fund

1.
  - (a) A Member who has become presently entitled to receive any Benefit pursuant to the provisions of this Deed may with the prior approval of the Trustee accept a Policy or Policies in lieu of the whole or part of such Benefit.
  - (b) The receipt of the whole or part of his Benefit by the Member in accordance with paragraph (a) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under the Fund in respect of the Benefit or that part of the Benefit so transferred.
2. Upon the death of a Member or Undischarged Ex Member then his Benefit (or so much of his Benefit as remains unpaid at his death) may subject to clauses 27, 28, 29A and 53 of this Deed be applied by the Trustee in accordance with the Member's or Undischarged Ex Member's election pursuant to the provisions of the Flexipol Self Employed Persons Superannuation Fund.



THIS TRUST DEED is made BY N.M. SUPERANNUATION PROPRIETARY LIMITED a Company incorporated in the Australian Capital Territory and having its registered office in that Territory at National Mutual Centre, Darwin Place, Canberra (hereinafter called "the Trustee")

WHEREAS

- (i) The Trustee is a wholly owned subsidiary of The National Mutual Life Association of Australasia Limited (hereinafter called "National Mutual").
- (ii) One of the objects for which the Trustee was established is to undertake and conduct any fund or scheme for the provision of superannuation disability or other benefits and to act as trustee of any such fund or scheme.
- (iii) National Mutual has decided to establish and maintain an indefinitely continuing fund to be known as the National Mutual Retirement Fund (hereinafter called "the Fund") solely for the purpose of providing superannuation benefits for the Members of the Fund in the event of their retirement or in the circumstance of incapacity for work attributable to illness or accident as is approved by the Commissioner and for the dependants of each of the Members of the Fund in the event of the death of the Member.
- (iv) National Mutual has requested the Trustee to act as trustee of the Fund and the Trustee has agreed to do so.

NOW THIS DEED WITNESSETH and IT IS HEREBY DECLARED as follows:-

PART 1  
PRELIMINARY

1. The Trustee hereby acknowledges that it is trustee of the Fund upon the terms and conditions and with the duties powers authorities and discretions hereinafter more particularly set forth.

2. (a) In this Deed where the context permits and unless the contrary intention appears -

"Act" means the Income Tax Assessment Act 1936-1973 as the same may from time to time be amended or re-enacted and any reference to a Section thereof shall be to the corresponding section of any amended or re-enacted Act.

"Annuity Policy" means a policy which provides subject to the conditions therein stated for periodical payments being made during a defined term beginning on the survival of the person on whose life the policy has been effected to a date stated in the policy or if he dies before that date for the repayment of premiums which have fallen due thereunder with interest added at the rate therein stated.

"National Mutual" means The National Mutual Life Association of Australasia Limited.

"Benefit" in relation to a Member or Undischarged Ex-Member means the Policy or Policies effected with National Mutual on the life of the Member or Undischarged Ex-Member concerned and the money payable thereunder and any other money or investments (including any amounts held in respect of the Member or Undischarged Ex-Member under the Deposit Administration Policy) held in the Fund in respect of the Member or Undischarged Ex-Member.

"Commissioner" means the Commissioner of Taxation for the time being appointed pursuant to the Act.

"Deed" means and includes this Trust Deed as the same may at any time and from time to time be amended in the manner hereinafter provided.

"Dependant "  
in respect of a  
Member means -

- (1) the wife husband widow child or children (including any adopted child step-child or ex nuptial child) of a Member or Undischarged Ex-Member.

(2) any other person who in the opinion of the Trustee is either wholly or in part dependant on a Member or Undischarged Ex-Member or was dependant on a Member or Undischarged Ex-Member at the time of the happening of the event in respect of which the Trustee makes such determination.

"Deposit Administration Policy"

means the policy effected by the Trustee pursuant to clause 21.

"Eligible Person"

means a person who is gainfully working in a business trade profession vocation calling occupation or employment.

"Financial Year"

means any continuous period of twelve calendar months ending on the thirtieth day of June.

"Fund" means the Fund constituted pursuant to the trusts herein set forth and all moneys from time to time held by or on account of the Trustee in pursuance of this Deed and the investments (including the Policy or Policies) for the time being representing the same and all accretions thereto and income derived therefrom.

"Insurable Member" means a Member on whose life National Mutual agrees to issue a Life Assurance Policy on such terms and subject to such conditions as it considers appropriate.

"Life Assurance Policy" means a policy which provides subject to the conditions therein stated for the payment of the policy money on the survival of the life thereby assured to the maturity date of that policy or on his prior death.

"Member" means a person who has been accepted as a member of the Fund pursuant to clause 3 of this Deed and has made a contribution to the Fund and who has not ceased to be a Member as hereinafter provided.

"Nominee" means any Dependent of a Member or Undischarged Ex-Member who is nominated by the Member or Undischarged Ex-Member in manner approved by the Trustee as a person to whom that Member or Undischarged Ex-Member desires to be paid in the event of his death either the whole or such portion as he may specify in that nomination of the Benefit in respect of him under this Deed.

"Paid-up" in relation to a Policy means reduced in amount in consideration of no further premiums being payable.

"Policy" means a Life Assurance Policy, a Pure Endowment Policy or an Annuity Policy as the case requires (with or without the provision of additional benefits) effected for the purposes of the Fund.

"Pure  
Endowment  
Policy"

means a policy which provides subject to the conditions therein stated for the payment of the policy moneys on the survival of the person on whose life it has been effected to the maturity date of that policy or if he dies before that date for the repayment of premiums which have been paid thereunder with interest added at the rate therein stated.

"Selected  
Retirement  
Date"

means the retirement date selected by a Member at the date he becomes a Member which shall not be earlier than his 60th birthday and not later than his 70th birthday PROVIDED THAT subject to the limitations hereinbefore contained a Member may at any time and from time to time by notice in writing given to the Trustee substitute for the date so selected or for any date substituted therefor such other date as may be selected by him.

"Trustee"

means N.M. Superannuation Proprietary Limited or any other trustee or trustees for the time being of the Fund appointed pursuant to clause 24.

"Undischarged  
Ex-Member"

means a former Member who has ceased to be a Member in manner provided in this Deed and has not been paid his benefit.

"Uninsurable  
Member"

means a Member on whose life National Mutual does not agree at the relevant time to issue a Life Assurance Policy.

Words denoting the masculine gender shall include the feminine gender. Words denoting the singular member shall include the plural number and vice versa.

- (b) Words and expressions used herein but not defined in this clause, shall, if they are defined in the Act, have the meanings given to them respectively in the Act.
- (c) This Deed shall be governed and constructed and shall take effect in accordance with the laws of the Australian Capital Territory.

MEMBERSHIP

3. (a) Any Eligible Person who has not attained the age of 70 years may apply for membership of the Fund.
- (b) Any Eligible Person desirous of becoming a Member shall apply to the Trustee in writing on the form prescribed from time to time by the Trustee wherein the applicant shall inter alia agree to be bound by the provisions of this Deed and make contributions to the Fund.
- (c) The Trustee may in its absolute discretion accept or reject any such application.
- (d) An applicant for membership of the Fund shall make and deliver to the Trustee a statement in writing or statutory declaration as required by the Trustee and in such form as the Trustee may prescribe as to any matter relating to his eligibility for membership of the Fund including his membership of any other fund to which paragraph (ja) of Section 23, paragraph (jaa) of Section 23, Section 23F or Section 79 of the Act applies and a Member shall at any time thereafter and whenever from time to time requested by the Trustee so to do furnish such further statement or statutory declaration as the Trustee shall require. It shall be the obligation of every Member to give prompt notification to the Trustee in writing of any circumstance affecting his eligibility for membership of the Fund or of his becoming a member of any other fund to which paragraph (ja) of Section 23, paragraph (jaa) of Section 23, Section 23F or Section 79 of the Act applies without being called upon by the Trustee so to do.
- (e) Upon acceptance by the Trustee of any application for membership of the Fund and the payment by him of a contribution to the Fund such applicant shall be deemed to be a Member and he shall thereupon be bound by the terms and conditions of this Deed.
4. A Member shall cease to be a Member -
- (a) subject to the proviso (2) to clause 14 - upon the happening of any of the events mentioned in paragraph (a), (b) or (c) of that clause, or
- (b) in the case of a Member to whom the said proviso (2) to clause 14 applies - when he has received the whole of his Benefit, or
- (c) upon the happening of any of the events mentioned in clause 16, or

- (d) if he ceases to be an Eligible Person, or
- (e) subject to clause 6 if that Member whenever requested so to do fails to furnish the Trustee with the statement or statutory declaration referred to in paragraph (d) of clause 3.

PART 3

TRANSFERS OF BENEFITS TO OR FROM OTHER EXISTING FUNDS

5. (a) The Trustee may from time to time subject to the conditions of this clause arrange with the trustee or trustees of -
- (1) any other superannuation fund which has been approved by the Commissioner under paragraph (ja) of Section 23, paragraph (jaa) of Section 23, Section 23F or Section 79 of the Act \*and by the Minister administering the Stamps Act of Victoria to take over from such trustee or trustees on the terms of this trust the whole or part of the assets and investments to the extent that these assets and investments are acceptable to the trustee and including any policy or policies whether effected with National Mutual or any other life insurance company held by such trustee or trustees in respect of a Member under that superannuation fund
  - or (2) any other superannuation fund which has been approved by the Commissioner under Section 79 of the Act \*and by the Minister administering the Stamps Act of Victoria to transfer to such trustee or trustees the whole or part of the Benefit (including any Policy or Policies) held by the Trustee in respect of a Member under the fund PROVIDED THAT the trusts of such fund are defined in a trust deed acceptable to the Trustee PROVIDED FURTHER THAT the provisions of this sub-paragraph (2) shall not preclude the transfer of a Benefit or part of a Benefit to the trustee or trustees of a superannuation fund which has been approved by the Commissioner under paragraph (ja) of Section 23, paragraph (jaa) of Section 23, or Section 23F of the Act if prior approval is obtained from the Commissioner in respect of such transfer.
- (b) Any assets and investments taken over by the Trustee pursuant to paragraph (a) of this clause shall thereafter be subject to the terms of this Deed.

\*applicable in Victoria only

- (c) The transfer of the whole or part of a Benefit to the trustee or trustees of another superannuation fund in accordance with sub-paragraph (2) of paragraph (a) of this clause shall be a complete and valid discharge to the Trustee of its liability to the Member concerned under the Fund in respect of the Benefit or that part of the Benefit so transferred. The Trustee shall neither be responsible for nor be liable in respect of the disposal or otherwise by the trustee or trustees of that other superannuation fund for the Benefit or the part of the Benefit so transferred.
- (d) For all the purposes of this Deed the Benefit of any Member in respect of whom sub-paragraph (1) of paragraph (a) of this clause applies shall be deemed to include the policy or policies investments and any other moneys taken over by the Trustee in respect of him PROVIDED THAT the value of such assets shall for the purposes of this Deed not be deemed to be a contribution to the Fund.

PART 4  
CONTRIBUTIONS

6. (a) Subject to this clause regular contributions of an amount determined from time to time by the Member may be made to the Fund yearly or at such lesser intervals of time as the Trustee and that Member may mutually agree. Such contribution shall as far as possible be made by instalments of equal amount and shall in the absence of any direction or request by the Trustee to the contrary be paid to the Trustee at Canberra.
- (b) A Member shall not in any Financial Year make a contribution to the Fund the amount of which when aggregated with the amount of any other contributions made by him in the same Financial Year to the Fund and to any other fund to which paragraph (ja) of Section 23, paragraph (jaa) of Section 23, Section 23F or Section 79 of the Act applies would bring the total amount of his contributions for that Financial Year to the Fund and to such other fund above the maximum amount applicable to that Member according to the following table (or such greater amount as may be approved from time to time by the Commissioner of Taxation \*and by the Minister administering the Stamps Act of Victoria).

\*applicable in Victoria only



Table

<u>Age of Member at the end of Financial Year</u>	<u>Maximum Amount of Contributions for the Financial Year</u>
Under 40 years	\$1200
40 years but less than 55 years	\$2000
55 years or over	\$2800

PROVIDED THAT if a Member is unable by reason of a fluctuation of his income to make in any Financial Year the maximum contributions permissible for him under the above table for that Financial Year he may with the approval of the Trustee by additional contributions (in excess of the maximum) in either or both of the next two Financial Years make up any such deficiency or part thereof.

- (c) Subject to the limitations imposed by the preceding paragraph of this clause any Member may at any time and from time to time make an additional contribution to the Fund of an amount being not less than \$50.
- (d) Notwithstanding anything herein otherwise contained a Member shall not at any time make a contribution to the Fund if in the opinion of the Trustee its acceptance would make the Benefit payable in respect of that Member under this Deed at his Selected Retirement Date with the addition of any amount accrued or payable in respect of such Member under any other fund to which paragraph (ja) of Section 23, paragraph (jaa) of Section 23, Section 23F or Section 79 of the Act applies exceed a sum of \$100,000 or such other sum as the Commissioner of Taxation \*and the Minister administering the Stamps Act of Victoria may from time to time permit.
- (e) If any Member shall cease to be an Eligible Person the Trustee shall within two months of becoming aware of that fact refund an amount equal to all contributions made by that Member after he ceased to be an Eligible Person (save that where such refund cannot be made out of that portion of his Benefit other than the Policy effected on his life the amount to be refunded to him shall be the surrender value of the contributions concerned) and in respect of any Policy held in respect of him in the Fund the Trustee shall be at liberty to apply to National Mutual to have so much of the said Policy surrendered as will permit such refund to be made and to have the reduced Policy then remaining made Paid-up. That Member shall thereupon become and until he shall seek reinstatement as a Member upon again becoming an Eligible Person shall remain an Undischarged Ex-Member and shall whilst so remaining an Undischarged Ex-Member

\*applicable in Victoria only

make no contribution to the Fund.

- (f) If in any case where he has been requested so to do a Member fails to furnish the Trustee with the statement or statutory declaration referred to in paragraph (d) of clause 3 within the time stated in the request the Trustee shall (subject to the provisions of the immediately preceding paragraph (e) in the event of him ceasing to be an Eligible Person) be at liberty to have the Policy on the life of that Member made Paid-up and that Member shall thereupon become an Undischarged Ex-Member and whilst remaining an Undischarged Ex-Member shall make no contribution to the Fund PROVIDED ALWAYS THAT if at any time thereafter that Undischarged Ex-Member establishes to the satisfaction of the Trustee that he had not otherwise ceased to be an Eligible Person he shall be reinstated to membership as from the date he became an Undischarged Ex-Member as aforesaid and his Benefit in the Fund shall as far as practicable and upon such terms and conditions as the Trustee and National Mutual may then agree be reinstated to that which he would have obtained had he not become an Undischarged Ex-Member as aforesaid.

PART 5  
POLICIES

7. (a) On an Eligible Person becoming a Member and from time to time thereafter whenever the Member undertakes pursuant to clause 6 to make any regular contribution to the Fund additional to that which the Member has hitherto been making a Policy shall be effected by the Trustee with National Mutual on the life of that Member for an amount to be determined between the Trustee and National Mutual having regard to the moneys which the Trustee shall in its absolute discretion determine are or are likely to be held in the Fund in respect of that Member and according to his age at the commencing date of that Policy his Selected Retirement Date the type of Policy (with or without additional benefits) selected by the Member and approved by the Trustee and the conditions imposed by National Mutual. Such Policy shall in the case of an Insurable Member be a Life Assurance Policy a Pure Endowment Policy or an Annuity Policy and in the case of an Uninsurable Member be a Pure Endowment Policy or an Annuity Policy.
- (b) If at any time a Member is possessed of a policy on his life which has been effected with National Mutual and which provides a benefit of the same or substantially the same type as that which the Trustee is pursuant to the preceding paragraph of this clause

obliged to effect or cause to be effected in respect of that Member the Trustee may upon such terms and conditions and for such monetary consideration (if any) as the Trustee shall in the exercise of its absolute discretion determine agree to acquire the same in substitution or partial substitution for the Policy which the Trustee would otherwise be obliged to effect or cause to be effected in respect of him PROVIDED ALWAYS THAT in any case where a policy has been acquired by the Trustee as aforesaid then the Member in the Financial Year in which that policy was so acquired shall be deemed for the purposes of this Deed to have made a contribution to the Fund.

8. Every Member shall supply such evidence of his health and as to the date of his birth as National Mutual may require and to do all things necessary on his part to enable National Mutual to issue any Policy to the Trustee in respect of him.
9. The Trustee save as herein otherwise provided shall out of the moneys held in the Fund in respect of a Member punctually pay the premiums on all Policies held in the Fund in respect of him.
10. (a) The Trustee is hereby authorised and empowered to arrange for the issue of the Policies required to be effected as hereinbefore provided and to give full and effectual receipts releases and discharges in respect thereof as the Trustee from time to time thinks proper and National Mutual requires. Any such Policy shall either be effected in the name of the Trustee or if already effected be assigned so that it shall be subject to and remain

under the control of the Trustee during the time it is subject to the provisions of this Deed. The Trustee only shall be entitled in respect of any such Policy to receive all moneys payable thereunder and to enforce any rights remedies or contract in connection therewith or incidental thereto and shall be solely entitled to the full benefits and advantages thereof and no Member or Undischarged Ex-Member shall have or claim save as herein provided any right title or interest in or to any such Policy or contract or in respect of the moneys payable thereunder. National Mutual shall not be concerned to see or enquire if any of the events has happened by reason whereof the Trustee has become entitled under this Deed to assign any such Policy to vary the contract thereunder to terminate the whole or any portion of such Policy for cash or to have the whole or any portion of such Policy made Paid-up and this Deed together with any request by the Trustee to National Mutual to register a duly executed assignment of any such policy to vary the contract thereunder to terminate the whole or any portion of such Policy for cash or to have the whole or any portion of such Policy made Paid-up shall as against such Member or Undischarged Ex-Member and any person claiming through or under him be conclusive evidence in respect of that Policy of the consent and authority of that Member or Undischarged Ex-Member or such person as the case may be to National Mutual to effect and complete such registration variation or termination accordingly.

- (b) Notwithstanding anything to the contrary in this Deed otherwise contained the Trustee may with the consent of National Mutual arrange for the whole of the Benefits then secured by individual Policies on the lives of Members and Undischarged Ex-Members or in respect of specified groups of Members and Undischarged Ex-Members or thereafter to be secured in respect of such persons or groups of persons to be secured by one or more blanket policies issued by National Mutual and providing when requested by the Trustee for the purposes of this Deed for the issue in substitution of the Benefit otherwise secured by the blanket policy in respect of a Member or Undischarged Ex-Member of an individual policy on his life either in the name of that Member or Undischarged Ex-Member or in the name of the Trustee as the Trustee requires and securing so much of the Benefit to which that Member or Undischarged Ex-Member or any person claiming through him may then be entitled under this Deed at the time of the issue of that individual policy.

11. (a) If a Member at any time fails to pay in full the amount of his regular contribution to the Fund and he has paid no additional contributions pursuant to clause 6 or the amount of any additional contributions so paid together with interest (if any) is not sufficient for the purpose of paying the premium or instalment thereof on the Policy effected on his life then that Policy shall be kept on foot so long as the surrender value (if any) thereof will permit unless the Member concerned shall have requested the Trustee in manner hereinafter appearing to have the Policy made Paid-up.
- (b) Upon the receipt of a written request by a Member requiring the Trustee so to do the Trustee shall subject to the consent of National Mutual have the Policy held in respect of him in the Fund made Paid-up.

PART 6  
PAYMENT OF BENEFITS

13. Upon the death of a Member or Undischarged Ex-Member his Benefit (or so much of his Benefit as remains unpaid at the date of his death) shall subject to clauses 16, 17, 27 and 33 be paid at the option of the Trustee -
- (a) to or for the benefit of his Dependants (including his Nominee or Nominees) or of such one or more of them and to the exclusion of the other or others of them and in such proportions and manner (including but without limiting the generality thereof by way of annuity or pension) as the Trustee in its absolute discretion shall think fit PROVIDED THAT and subject to the foregoing provisions of this paragraph (a) where any Dependant as aforesaid to whom or for whose benefit a payment is to be made by the Trustee is an infant such payment may be made to the person appearing to the Trustee to be the guardian or other person having actual custody or control of such infant or to the person with whom or institution in which such infant is residing or to such other person or institution as the Trustee may determine by such instalments and at such time or times and subject to such directions as to the manner in which the payment is to be applied for the benefit of that infant as the Trustee shall in its absolute discretion think fit and the receipt of such guardian or other person or the appropriate official of such institution shall be a good and valid discharge to the Trustee for any moneys so paid and the Trustee shall not be bound to

see to the application thereof nor to the carrying out of the directions of the Trustee as aforesaid, or

- (b) to the legal personal representatives of that Member or Undischarged Ex-Member upon production of probate or letters of administration to be held by them by way of direct trust operating under this Deed for the persons beneficially entitled to that Member's or Undischarged Ex-Member's residuary estate under his Will or on his intestacy and in the shares and upon the trusts which affect the Member's or Undischarged Ex-Member's residuary estate but such moneys shall not be part of that Member's or Undischarged Ex-Member's estate or be liable for his liabilities or for the liabilities of his estate, or
- (c) upon the production of a grant of probate or letters of administration and on production of such evidence (including the original last Will of that Member or Undischarged Ex-Member or a declaration that the Member or Undischarged Ex-Member has died intestate) as the Trustee may deem satisfactory and under such terms and conditions as the Trustee may in its absolute discretion think fit in payment or part payment of any duties or charges whether death probate succession estate duty or otherwise payable to any Government or other authority as a result of the death of the Member or Undischarged Ex-Member.

14. Subject to clause 16, 17, 27 and 33 and the provisos to this clause the Benefit of a Member or Undischarged Ex-Member shall be paid or assigned as the case may require in the events and at the times and to the persons set out hereunder that is to say -

- (a) if he reaches his Selected Retirement Date before he ceases to be an Eligible Person - to him upon reaching that date;
- (b) if he ceases to be an Eligible Person before reaching his Selected Retirement Date by reason of permanent ill-health established to the satisfaction of the Trustee or by reason of any other special circumstance approved by the Commissioner - to him upon so ceasing to be an Eligible Person;

- (c) if he ceases to be an Eligible Person before reaching his Selected Retirement Date otherwise than for either of the reasons mentioned in paragraph (b) above or by reason of any of the events mentioned in clause 16 - to him when he reaches his Selected Retirement Date or suffers permanent ill-health established to the satisfaction of the Trustee;
- (d) if he dies before reaching his Selected Retirement Date or after his benefit has become payable under paragraph (a), (b) or (c) of this clause but before he has received the whole of his Benefit - his Benefit or so much thereof as remains unpaid shall be paid or applied as soon as practicable after his death in manner provided by clause 13

PROVIDED THAT

- (1) if by reason of the happening of any event referred to in the Policy on the life of a Member or Undischarged Ex-Member effected or acquired pursuant to the provisions of this Deed an additional benefit becomes payable under that Policy by reason of accident involving a loss of one or more limbs and/or the sight of one or both eyes of the Member or Undischarged Ex-Member the amount of that additional benefit shall be then payable to the Member or Undischarged Ex-Member notwithstanding that he may not have then attained his Selected Retirement Date;
- (2) notwithstanding paragraph (a) of this clause a Member who after reaching his Selected Retirement Date continues to be an Eligible Person may allow his Benefit to remain in the Fund in which case the provisions of this Deed shall continue to apply to him in relation to his Benefit as if he had not reached his Selected Retirement Date and his Benefit shall be paid or assigned to him as the case may be -
  - (aa) at the expiration of one month's notice in writing given by him to the Trustee of his intention to withdraw it, or
  - (bb) when he ceases to be an Eligible Person, or
  - (cc) when he dies, or
  - (dd) when he reaches the age of 70 years

whichever first occurs PROVIDED ALWAYS THAT if the Member shall die before the payment or assignment of the Benefit to him such Benefit shall be paid or applied as soon as possible after his death in manner provided by paragraph (d) of this clause;

- (3) the Trustee shall be at liberty to arrange with National Mutual for the Policy on the life of a Member to be made Paid-up upon that Member becoming an Undischarged Ex-Member;
- (4) notwithstanding paragraph (a) of this clause a Member or Undischarged Ex-Member may elect by notice in writing given by him to the Trustee to have his Benefit paid or assigned to him as the case may be at any time after the earliest Selected Retirement Date which could have otherwise applied to him under the Fund according to his age at the date he first became a Member.

15. The amount of the Benefit payable out of the Fund pursuant to paragraph (a), (b) or (c) of clause 14 in respect of a Member or Undischarged Ex-Member shall not when aggregated with the amount of any benefit payable in respect of him out of any other fund to which paragraph (ja) of Section 23, paragraph (jaa) of Section 23, Section 23F or Section 79 of the Act applies exceed the sum of \$100,000 or such other amount as may from time to time be approved or permitted by the Commissioner \*and by the Minister administering the Stamps Act of Victoria (herein called "the maximum benefit") PROVIDED THAT for the purpose of calculating the amount of the maximum benefit as aforesaid the amount to be taken into account in respect of any Policy which has not matured shall be its surrender value.

#### PART 7

#### APPLICATION OF BENEFIT IN CERTAIN CASES

16. If a Member or Undischarged Ex-Member
- (a) becomes bankrupt or insolvent, or
  - (b) does or attempts to do or suffers any act or thing or if any event happens whereby if his Benefit or any part thereof were payable to him absolutely he would be deprived of the right to receive it or any part of it or it would be disposed of or dealt with otherwise than in accordance with this Deed, or

\* applicable in Victoria only



(c) is or becomes of unsound mind or incapable of managing his own affairs or is suffering from any disability which in the opinion of the Trustee renders him unable to manage his own affairs or to receive the whole or any portion of his Benefit whether by his own acts operation of law or otherwise

he and his Dependants shall cease to be presently or presumptively entitled to his Benefit or any part thereof.

17. (a) The whole or any part of the Benefit of a Member or Undischarged Ex-Member which but for the provisions of clause 16 would have been otherwise payable by virtue of the provisions of this Deed may if the Trustee in its discretion so decides be applied by the Trustee from time to time in such amounts as the Trustee thinks fit for the maintenance and support or otherwise for the benefit of that Member or Undischarged Ex-Member or such one or more of his Dependants as the Trustee may in its absolute discretion determine PROVIDED THAT if such event is either event (a) or (b) of clause 16 and the Member has not attained age 60 years no application shall be made by the Trustee as provided in this clause until the Benefit would otherwise become payable under the provisions of clause 13.
- (b) Any part of the Benefit of a Member or Undischarged Ex-Member forfeited pursuant to clause 16 which is not applied by the Trustee in pursuance of the last preceding paragraph shall be held upon trust for the legal personal representatives of that Member or Undischarged Ex-Member.
- (c) The application of any moneys pursuant to this clause shall be a complete discharge to the Trustee therefor.

PART 8  
INVESTMENT OF MONEYS

18. All moneys in the hands of the Trustee arising upon the death of a Member or Undischarged Ex-Member and not immediately required for payment to the Dependants or legal personal representatives concerned of benefits under and pursuant to clause 13 hereof may at the discretion of the Trustee

(a) be invested either individually or in a common fund established by the Trustee for the purpose -

(1) in any investment in which by the laws of any State or Territory of the Commonwealth of Australia trustees are authorised to invest, or

(2) in interest-bearing deposits with any bank savings bank or building society in any State or Territory of the Commonwealth of Australia or with National Mutual

with power from time to time to sell or get in any such investments and to vary or transpose them for other investments of any of the classes specified in this clause

or (b) be paid by way of premium to National Mutual under and pursuant to the Deposit Administration Policy.

PART 9  
PREPAYMENT ACCOUNT

19. (a) The Trustee shall establish and maintain as part of the Fund an account to be called the "Prepayment Account".

(b) The Trustee shall pay to the Prepayment Account for the individual credit of the Member concerned so much of his contribution as is not immediately required for the payment of premiums on the Policy or Policies held in the Fund in respect of him.

(c) Any moneys for the time being standing to the individual credit of a Member or Undischarged Ex-Member in the Prepayment Account shall be paid by way of premium to National Mutual in respect of that Member or Undischarged Ex-Member under and pursuant to the Deposit Administration Policy.

20. In the event of a Member failing to pay the whole or any portion of his contribution to the Fund sufficient to pay a premium payable on a Policy or Policies held in the Fund in respect of that Member the Trustee shall be at liberty to and shall apply so much of the amount standing to the individual credit of the Member in the Prepayment Account as the case requires in or towards payment of that premium.

PART 10

DEPOSIT ADMINISTRATION POLICY

21. The Trustee shall effect in its name with National Mutual a Deposit Administration Policy under National Mutual's No. 1 Statutory Fund and upon its issue shall hold that Policy and the moneys payable thereunder as part of the Fund.
22. Any interest or other benefit accruing to the Trustee under and pursuant to the Deposit Administration Policy in respect of payments made to the credit of a Member or Undischarged Ex-Member shall not less frequently than annually be added to the credit of that Member or Undischarged Ex-Member as the case may be.

PART 11

ADMINISTRATION

23. The Fund shall be administered by a trustee which shall be a limited company having power so to act and carry out the trusts hereof.
24. (a) The office of Trustee shall become vacant if -
- (1) a resolution is passed or an order made for the winding up of the Trustee or
  - (2) the Trustee resigns from that office by notice in writing signed on its behalf by two of its Directors and causes a copy of such notice to be published in a daily newspaper circulating in the capital city of each of the States of the Commonwealth of Australia and in the Australian Capital Territory.
- (b) Upon the office of trustee becoming vacant National Mutual shall forthwith appoint a new Trustee for the purposes of this Deed.
25. The Trustee shall keep -
- (a) minutes of the decisions of its Directors and officers relating to the carrying out of the provisions of this Deed; and

- (b) a record for each Member and Undischarged Ex-Member showing his full name and address and the particulars of the Policies effected in respect of him pursuant to this Deed and the premiums payable to keep the same on foot and particulars of any additional contributions made by that Member or Undischarged Ex-Member pursuant to paragraph (c) of clause 6 hereof PROVIDED THAT the Trustee may appoint National Mutual as its agent to keep the records referred to in this paragraph and in such case the keeping by National Mutual of those records which it is required to keep pursuant to any Statute from time to time in force shall be deemed to be the keeping by the Trustee of the records it is required to keep pursuant to this paragraph.
26. The Trustee in the exercise of the authorities powers and discretions hereby vested in it shall have an absolute discretion and may exercise or enforce all or any of such powers authorities or discretions from time to time and at any time or may refrain from exercising all or any such powers authorities or discretions from time to time or at all.
27. Any power authority or discretion vested in the Trustee hereunder may be exercised on its behalf by its Directors as a Board, and the Board may appoint such of the employees of the Trustee as it thinks fit to exercise for or on behalf of the Trustee all or any of the powers authorities and discretions exercisable by the Trustee under the provisions of this Deed.
28. The Trustee may in carrying out and performing the duties discretions and obligations on its part to be carried out or performed by Power of Attorney by writing or otherwise appoint any person to be the attorney or agent of the Trustee for such purposes and with such powers authorities and discretions (not exceeding those vested in the Trustee) as it thinks fit with power for any such attorney or agent to sub-delegate any such power or authority AND authorize the issue in the name of the Trustee of documents bearing facsimile signatures of officers of National Mutual or of the attorney or agent either with or without the proper manuscript signatures of its officers thereon AND remove supersede or suspend any such attorney or agent for such cause or reason as the Trustee in its sole discretion thinks sufficient and either absolutely or for such time as it may think proper PROVIDED THAT the Trustee in any such Power of Attorney and the attorney or agent by the terms of any such sub-delegation may insert such provisions for the protection and convenience of those dealings with any such attorney agent or sub-delegate as it or they may think fit.

29. The Trustee shall not be liable for -
- (a) any losses except losses arising from its own wilful default or the wilful default of any of its Directors or officers;
  - (b) any act or acts done bona fide in conformity with the decision of its Directors hereunder; or
  - (c) the neglect or default of any solicitor banker accountant or other agent employed in good faith by the Trustee.
30. The Trustee may act on the advice or opinion of any actuary barrister solicitor accountant medical practitioner or any other professional person (whether or not such advice or opinion shall be or have been obtained by it) and shall not be responsible for anything done or suffered by it in good faith in reliance upon such opinion or advice.
31. Except in the case of dishonesty or the wilful commission or omission of an act known to be a breach of trust the Trustee shall be indemnified out of the Fund against all liabilities incurred by it in the execution or attempted execution or arising from the nonexecution of the trusts authorities powers and discretions hereof and shall have a lien on and may use any moneys for the time being in its hands for such indemnity and generally for the payment of all proper legal and other costs of administering the Fund and otherwise performing its duties under this Deed. The indemnity hereby provided shall extend to any payment made to any person whom the Trustee bona fide believes to be entitled to the same.
32. (a) If during the period of any Financial Year the Trustee is obliged for the purposes of this Deed to determine the amount of interest which has accrued on the whole or any portion of the Benefit of a member since the expiration of the preceding Financial Year then the Trustee is hereby empowered and shall determine a rate per centum per annum which shall be the rate used by the Trustee for that purpose during the Financial Year then current and such rate shall be the rate applicable for that purpose during each Financial Year thereafter until the Trustee shall determine a different rate which shall itself be subject to alteration in manner aforesaid.
- (b) The Trustee shall be at liberty to receive and apply for its own use and benefit any payment made to it by National Mutual by way of commission or otherwise in respect of any policy or any premium or instalment or premium paid in respect thereof.

(c) The Trustee shall not be liable for any failure to perform or do any act or thing which by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory thereof or any Ordinance rule regulation or by-law made pursuant thereto or of any decree order or judgment of any competent Court the Trustee shall be hindered prevented or forbidden from doing or performing.

(d) The Trustee shall not be liable to account to any Member Undischarged Ex-Member or otherwise for any payments made by the Trustee in good faith to any duly empowered fiscal authority of the Commonwealth of Australia or any State or Territory thereof for taxes or other charges upon the Fund or with respect to any transaction under this Deed notwithstanding that any such payment ought to or need not have been made.

(e) The Trustee shall not incur any liability by reason of any false or incorrect statement in any proposal or other document made by a Member or Undischarged Ex-Member in relation to a Policy effected on his life whereby that Policy is cancelled or voided in any way by National Mutual or whereby the amount assured or endowed or the amount of the annuity as the case may be under that Policy is reduced.

(f) The Trustee shall not in any event be liable to the Members or Undischarged Ex-Members to any greater extent than in respect of the Fund or such part thereof which ought to be vested in the Trustee.

33. The Trustee may in its absolute discretion enter into and execute all such contracts deeds and documents and do all such acts matters and things as it deems expedient for the carrying out of the trusts authorities powers and discretions conferred upon it by this Deed.

34. The Trustee is hereby authorized and empowered for the purpose of carrying out any provision or requirement of this Deed to surrender to National Mutual the whole or any portion of the amount assured or endowed or the amount of the annuity as the case may be under any Policy held in respect of a Member or Undischarged Ex-Member in the Fund.

35. (a) The Trustee may from time to time in the exercise of its absolute discretion make any amendment modification or variation to this Deed (including if thought fit the revocation or restriction of this present clause) which in its opinion may be expedient for the more convenient economical or advantageous working or management or administration of the trusts herein declared and contained or which is required as a condition of the continuance of the approval of the Commissioner of Taxation \*and the Minister administering the Stamps Act of Victoria to the terms and conditions of the Fund and which the Trustee may think proper having regard to all the circumstances of the case. Upon any such amendment modification or variation being made this Deed shall take effect as amended modified or varied accordingly.
- (b) After any such amendment modification or variation as aforesaid has been made the Trustee shall determine in the exercise of its discretion whether the Members and Undischarged Ex-Members should be advised of the effect thereof.
- (c) In addition to the powers conferred by paragraph (a) hereof the Trustee may from time to time with the consent of two-thirds in number of the members of the Fund make any amendment modification or variation to this Deed (including if thought fit the revocation or restriction of this present paragraph) \*PROVIDED ALWAYS THAT no such amendment modification or variation shall apply to members who are from time to time domiciled in the State of Victoria and/or whose benefits are payable in that State save where such amendment modification or variation has received the prior approval of the Minister administering the said Stamps Act of Victoria.
- (d) Any amendment modification or variation made pursuant to this clause shall be in writing made by the Trustee and any amendment modification or variation so made and for the time being in force shall have the same validity as if it had been contained in this Deed when executed and shall be itself subject in like manner to amendment modification or variation PROVIDED ALWAYS THAT the benefit of any Member or Undischarged Ex-Member already secured at the date of any such amendment modification or variation shall not be detrimentally affected thereby without his consent in writing.

\*applicable to Victoria only

36. (a) The Trustee may make an advance to a Member or an Undischarged Ex-Member by way of loan out of the Fund upon such terms and conditions of repayment and at such rate of interest as the Trustee thinks fit PROVIDED THAT
- (1) the amount lent to any Member or an Undischarged Ex-Member together with any other loan made to him pursuant to the provisions of this clause shall not exceed the aggregate at the date of such loan of
    - (aa) the amount of his contributions to the Fund
    - (bb) the amount of any additional benefit which has become payable pursuant to the terms thereof under any Policy on his life effected or acquired pursuant to the provisions of this Deed, and
    - (cc) any other accretions of a capital nature to his Benefit in the Fund;
  - (2) the loan shall only be granted to a Member or an Undischarged Ex-Member if the Trustee is satisfied that the Member or Undischarged Ex-Member is unable to borrow from any other source from which money may usually be borrowed on reasonable terms and that he would be in serious financial difficulties if such loan were not granted by the Trustee.

For the purposes of this clause the Trustee may if the surrender value of the Policy on the life of that Member or Undischarged Ex-Member held in the Fund will permit borrow from National Mutual on the security of that Policy the amount to be so lent upon such terms and conditions and at such rate of interest as National Mutual charges from time to time in respect of loans made on the security of its policies and National Mutual shall not be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed.

- (b) Notwithstanding anything to the contrary herein otherwise contained the amount of any such loan together with interest shall unless previously repaid be deducted from the Benefit when the same becomes payable to that Member or Undischarged Ex-Member or to any person claiming through him.



37. (a) Any notice required to be given to a Member or Undischarged Ex-Member hereunder shall be deemed to have been duly given if given in writing to that Member or Undischarged Ex-Member as the case requires by letter addressed to him at his respective address appearing in the register. Any notice given by post shall be deemed to have been served at the time when it was posted and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted and a statement signed by the Trustee that it was so posted and when shall be conclusive evidence of that fact.
- (b) Any notice or document sent by post to or left at the registered address of a Member or Undischarged Ex-Member in pursuance of these presents shall notwithstanding that such Member or Undischarged Ex-Member be then dead and whether or not the Trustee shall have had notice of his death be deemed to have been duly served and such service shall be deemed sufficient service on any person claiming to be interested.
38. A copy of this Deed shall be kept by the Trustee at its registered office and shall be open to inspection by any Member or Undischarged Ex-Member at all reasonable times. Every person when making application to become a Member shall be entitled to be supplied with a copy of this Deed on request.

IN WITNESS WHEREOF the Common Seal of N.M. SUPERANNUATION PROPRIETARY LIMITED was hereunto affixed this 28<sup>th</sup> day of Decembre One thousand nine hundred and seventy-three.

THE COMMON SEAL of N.M. SUPERANNUATION )  
PROPRIETARY LIMITED was hereunto affixed )  
by order of the Directors. )

(Signed) *Lawrence J. Horn* Director

(Signed) *R. C. Walsh* Secretary

