

**SMF ELIGIBLE ROLLOVER FUND  
TRUST DEED**

**Consolidated Working copy as at 1 November 2006**

**Made 3 July 1995**

**Incorporating variations made**

**26 March 1999, 1 May 2000, 24 March 2003,  
21 October 2003, 31 December 2004, 2 February 2005, 15 June 2005 and  
2 February 2005**

## TABLE OF CONTENTS

Rule No.		Page No.
1.	THE FUND	1
1.1	Name of the Fund	1
1.2	Objects of the Fund	1
2.	PROPER LAW	1
3.	DATE OF COMMENCEMENT	1
4.	THE TRUSTEE	1
5.	INTERPRETATION	1
5.1	General	1
5.2	Definitions	2
6.	ADMISSION OF MEMBERS	6
6.1	Beneficiary of Transferor Fund	6
6.2	Membership – Shortfall Component to be Paid to the Fund	6
6.3	Application for Membership by a Non-Member Spouse	7
6.4	Acceptance of Membership – Non-Member Spouse	7
7.	CONTRIBUTIONS	7
8.	Deleted	7
9.	INVESTMENTS	8
9.1	Investment Power	8
9.2	Types of Investments	8
9.3	Variation of Investments	8
9.4	Acquisition of Assets from Members or Relatives	8
9.5	Investment Strategy	8
9.6	Agreement with Investment Manager	8
9.7	Charge over Assets	9
9.8	Statutory Obligations	9
10.	POLICIES OF INSURANCE AND ANNUITIES	9
10.1	Investment in Life Policies and Annuities	9
10.2	Payment of Premiums and Application of Proceeds	9

11.	RECORDS, ACCOUNTS AND AUDITING	9
11.1	Records	9
11.2	Auditor	10
11.3	Keeping the Accounts and Records	10
11.4	Compliance with Reporting Standards/Maintaining Records	10
12.	VALUATIONS AND ALLOCATIONS OF PROFITS OR LOSSES	10
12.1	Allocation of Profits or Losses	10
12.2	Valuation of Assets of the Fund	10
12.3	Interim Earning Rate	11
12.4	Requirements of the Act	11
12.5	Adjustments for Tax	11
13.	UNCLAIMED MONEYS	11
14.	MEMBER'S RIGHTS TO BENEFITS	11
15.	MEMBER'S RIGHTS TO STATEMENTS	12
16.	INFORMATION TO THE SUPERANNUATION COMMISSIONER	12
17.	COPY OF TRUST DEED TO THE SUPERANNUATION COMMISSIONER	12
18.	DISPUTE RESOLUTION	12
19.	TRUSTEE: APPOINTMENT AND REMOVAL	12
19.1	Eligibility for Appointment as a Trustee	12
19.2	Ceasing to Act as Trustee	13
19.3	Appoint a New Trustee	13
19.4	Consent to Act as a Trustee or Director	14
19.5	Records of Changes in Trustees or Directors	14
19.6	Trustee Fee	14
20.	POWERS OF TRUSTEE	14
21.	TRUSTEE: EXERCISING DISCRETIONS AND ANTI-DISCRIMINATION LAW	16
22.	LIABILITY OF TRUSTEE, DIRECTORS AND MEMBERS	16
22.1	Liability of Trustee and Directors	16
22.2	Members' Liability	16
23.	TRUSTEE'S AND DIRECTORS' INDEMNITY	16
24.	REMUNERATION OF TRUSTEE	16
25.	REMUNERATION OF PROFESSIONAL PERSONS	16

26.	TRUSTEE AS MEMBER'S ATTORNEY	17
27.	TRUST DEED AVAILABLE FOR INSPECTION	17
28.	VARIATION OF TRUST DEED	17
28.1	Variation of Trust Deed	17
28.2	Notification to Superannuation Commissioner	18
29.	FUND TO BE AN ACCUMULATION FUND	18
30.	TRUSTEE TO COMPLY WITH ACT	18
31.	TRANSFER OF BENEFIT TO ANOTHER FUND	18
31.1	Transfer to Another Fund	18
31.2	Preserved Benefits	18
32.	BENEFITS PAYABLE IN AUSTRALIAN CURRENCY	18
33.	TERMINATION OF THE FUND	19
33.1	Termination of the Fund by the Trustee	19
33.2	Termination of Fund	19
33.3	Amount Remaining in the Fund	19
33.4	Preserved Benefits	19
33.5	Perpetuity Period	19
34	BENEFIT PAYABLE ON RETIREMENT OR ATTAINING AGE 65	19
34.1	Payment on Retirement or at Age 65 – Non-Employer Sponsored Member	19
34.2	Continuation of Gainful Employment on a Part-Time Basis after Age 65	20
34.3	Continuation of Employment on a Full-Time Basis after Age 65	20
34.4	Member to Inform Trustee	20
34.5	Payment of Unclaimed Money to the Superannuation Commissioner	20
35.	BENEFIT PAYABLE ON DEATH	21
35.1	Benefit Payable on Death	21
35.2	Payment to Legal Personal Representative	21
35.3	Payment other than to Dependant or Legal Personal Representative	21
35.4	Unclaimed Benefits	21
35.5	Benefit Payable on Death of a Non-Member Spouse	21
36.	BENEFIT PAYABLE ON DISABLEMENT	22
37.	BENEFIT PAYABLE TO MEMBER WHICH IS ALLOWED UNDER THE ACT	22
38.	PAYMENT OF BENEFITS TO MINORS	22

38A.1	Adjustment of Members' Interests	22
38A.2	Non-Member Spouse's Membership Status	22
38A.3	Payment of Transferable Benefit	23
38A.4	Treatment of any Fund Membership of a Non-Member Spouse Prior to a Payment Split	23
38A.5	Trustee Powers under Family Law Requirements	24
39.	DEDUCTION OF INCOME TAX	24
40.	MODE OF PAYMENT OF BENEFITS	24
40.1	Lump Sum or Annuity	24
40.2	Transfer in Species	24
41.	BENEFIT PAYABLE ON THE GROUNDS OF FINANCIAL HARDSHIP	25
42.	BENEFIT PAYABLE IN OTHER CIRCUMSTANCES	25
43.	PERSON REQUEST PAYMENT	25
	APPENDIX A	26

## **1. THE FUND**

### **1.1 Name of the Fund**

The trust fund constituted by this Trust Deed shall be called the SMF Eligible Rollover Fund (Fund).<sup>1, 2, 3</sup>

### **1.2 Objects of the Fund**

The Fund shall consist of all money (including amounts transferred to the Fund from the trustee of a Standard Employer Sponsored Fund and amounts the Trustee accepts from the Tax Commissioner which are payments of Shortfall Components and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Trust Deed who shall hold the same on trust for objects and the purposes of this Trust Deed.

### **1.3 Purpose of the Fund**

While the Fund is operated as an Eligible Rollover Fund, the Trustee shall ensure that the only purpose for which the Fund is operated is to be a temporary repository for amounts transferred to the Fund from other regulated superannuation funds in circumstances allowed by the Act.<sup>4</sup>

## **2. PROPER LAW**

This Trust Deed shall in all respects be governed and construed in accordance with the law of the State of New South Wales.

## **3. DATE OF COMMENCEMENT**

The Fund was constituted on the day and year mentioned above.

## **4. THE TRUSTEE**

The expression the "Trustee" shall include a replacement trustee.

## **5. INTERPRETATION**

### **5.1 General**

(a) This Trust Deed shall be read and construed on the basis that the provisions of the Act and the regulations made thereunder are incorporated herein to the extent that they impose requirements on the Trustee or are required by the Act to be so incorporated but this Trust Deed shall not be so read or construed and no such provision or regulation shall be so incorporated if to do so would constitute a breach of the power granted by Rule 28 to vary, add to or rescind the provisions of this Trust Deed. Where there is any inconsistency between a provision in this Trust Deed and a provision in the Act or regulations which is so incorporated, the latter shall prevail over the former.

---

<sup>1</sup> Deed of Variation dated 1 May 2000, effective 1 May 2000

<sup>2</sup> Deed of Variation dated 21 October 2003, effective 1 October 2003

<sup>3</sup> Deed of Variation dated 2 February 2005, effective 1 January 2005

<sup>4</sup> Deed of Amendment dated [#date of deed of amendment].

- (b) If any Rule or part thereof is judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of the remainder of the Trust Deed and such invalid Rule or part thereof shall be deemed to have been deleted from this Trust Deed.
- (c) Headings are for convenience only and shall not affect the interpretation of the Trust Deed.
- (d) Words denoting one gender include other genders.
- (e) Words denoting the singular number include the plural number and vice versa.

## 5.2 Definitions

In this Trust Deed, unless the context otherwise requires:

**“Act”** means the Superannuation Industry (Supervision) Act, 1993 (C’t) and regulations, declarations or orders made or issued thereunder or any replacement or additional legislation in respect of the regulation of superannuation funds. Any reference in this Trust Deed to the provisions or requirements of the Act includes provisions or requirements which must be complied with in order to obtain the maximum income tax concessions available in respect of superannuation.

**“Account”** has the meaning attributed to it in Rule 11.1.<sup>5, 6</sup>

**“Approved Benefit Arrangement”** means a fund or benefit arrangement, other than the Fund, including without limitation another superannuation fund, an approved deposit fund the Superannuation Holding Accounts Reserve created by the Small Superannuation Accounts Act 1995, a retirement savings account and a deferred or immediate annuity to which a payment may be made from the Fund, or from which a payment may be accepted into the Fund, without causing the Fund to be in breach of or to fail to comply with any applicable requirement under the Act.<sup>7</sup>

**“Approved Form”** means the form approved by the Trustee for the purposes of a Member applying to the Trustee for the payment of his or her Member’s Benefit.

**“Beneficiary”** has the meaning attributed to it in the Act.

**“Constitutional Corporation”** has the meaning attributed to it in the Act.

**“Dependant”** means in relation to a person who is a Member:

- (a) the person’s Spouse;
- (b) any Child of the person;
- (c) any person whom the Member has or had an interdependency relationship within the meaning given to it in the Act; or

---

<sup>5</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>6</sup> Deed of Variation dated 31 December 2004, effective 31 December 2004

<sup>7</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

- (d) any person who in the opinion of the Trustee is or was at the relevant time wholly or partially financially dependent upon the Member for maintenance and support.<sup>8</sup>

**“Disqualified Person”** means a person who is disqualified by the operation of the Act from being a trustee, or a Responsible Officer of a trustee, of a superannuation fund which is regulated under the Act.

**“Eligible Rollover Fund”** has the meaning attributed to it in the Act.

**“Family Law Legislation”** means:

- (i) the Family law Act 1975, and the Regulations made under the Act; and
- (ii) any other legislation or requirement under the Act, that imposes legal requirements regarding the dealing with the interests of a beneficiary of a superannuation fund in connection with a marital relationship, including on the breakdown of such a relationship, and associated matters.<sup>9</sup>

**“Family Law Requirement”** means any requirement whatsoever under Family Law Legislation relating to superannuation benefits or parties or former parties to a marriage and incidental matters, including, without limitation, requirements regarding Payment Splits and the imposition of any other condition or restriction on, or variation of, a Member’s interest in the Fund.<sup>10</sup>

**“Full-Time Basis”** means a Member who is Gainfully Employed on a full-time basis within the meaning of the Act.<sup>11</sup>

**“Gainfully Employed”** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

**“Member”** means a person who the Trustee has admitted as a member of the Fund. A person shall cease to be a Member when the whole of that person’s benefit entitlement under the Trust Deed has been paid or when the Member dies.

**“Member’s Benefits”** in respect of a Member is the net amount standing to the credit of his or her Account plus the value (if any) at the time of any policy of insurance owned by the Trustee on the life of that Member or paid for out of that Member’s Account, provided that a Member’s Benefit must not be less than the amount(s) the Trustee has received in respect of the Member, subject to:

- (i) the deduction by the Trustee of amounts required by the Tax Act to be deducted; and
- (ii) the deduction by the Trustee of any other amounts allowed to be deducted under the Act.

---

<sup>8</sup> Deed of Variation dated 15 June 2005, effective 1 January 2005

<sup>9</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>10</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>11</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999



**“Non-Member Spouse”** has, in relation to an interest in the fund, the same meaning as in the Family Law Act 1975.<sup>12</sup>

**“Operative Time”** has the same meaning as in the Family Law Act 1975.<sup>13</sup>

**“Part-Time Basis”** means a Member who is Gainfully Employed for at least 10 hours per week or such other number of hours as are prescribed under the Act, but who is not Gainfully Employed on a Full-Time Basis.

**“Payment Split”** has the same meaning as in the Family Law Act 1975.<sup>14</sup>

**“Payment Split Interest”** means the interest of a Non-Member Spouse arising from a Payment Split in favour of the Non-Member Spouse prior to:

- (i) any transfer of an amount representing that interest to another fund as Transferable Benefits;
- (ii) any payment of an amount representing that interest to the Non-Member Spouse as a lump sum;
- (iii) where the Non-Member Spouse was a Member prior to the Operative Time of the Payment Split, the amalgamation of that interest with the Non-Member Spouse’s existing membership interest in the Fund; or
- (iv) where the Non-Member Spouse becomes a Member pursuant to Rule 38A.2 the crediting of that interest to the Account of the Non-Member Spouse.<sup>15</sup>

**“Payment Split Member”** means a person admitted as a member following a Payment Split pursuant to Rule 6.4.<sup>16</sup>

**“Permanently Disabled” and “Permanent Disablement”** means:

- (i) such disablement as, in the opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainfully employment for which the Member is reasonably qualified by training, education or experience: or
- (ii) where any part of the benefit payable on permanent disablement is insured, the definition of permanent disablement or permanent and total disablement contained in the policy document evidencing the contract of insurance, provided that, for the purposes of payment of a Preserved Benefit, the Trustee shall only regard a Member as being permanently disabled or incapacitated in the circumstances provided for in the Act in relation to the payment of such as benefit.

**“Preserved Benefit”** means any benefit (or part thereof) which is required by the Act, to be preserved for the Member in the Fund or in another fund until the Member has retired from the workforce and attained age 55 (or such other age prescribed in the Act as being the preservation age for that

---

<sup>12</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>13</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>14</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>15</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>16</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

Member) or until the Member's earlier death or Permanent Disablement or payment of the benefit in such other circumstances as are permitted by the Act.

**"Reserve Account"** has the meaning attributed to it in Rule 11.1.

**"Responsible Officer"** means:

- (i) a director; or
- (ii) a secretary; or
- (iii) a person, by whatever name called and whether or not a director of the body corporate, who is concerned, or takes part, in the management of the body corporate.

**"Rules"** mean the provisions of this Trust Deed and any alteration to, addition to or variation thereof made from time to time.

**"Shortfall Component"** has the meaning attributed to that expression in the Superannuation Guarantee (Administration) Act, 1992 (C'th).

**"Superannuation Commissioner"** means the Insurance and Superannuation Commissioner or any person who is appointed by an Act of Parliament to supervise the conduct of superannuation funds.<sup>17</sup>

**"Tax"** includes all actual or anticipated:

- (a) actual or anticipated stamp, financial institution, registration and other duties;
- (b) bank accounts debits tax and other taxes, levies, imposts, deductions, surcharges and charges.
- (c) Interest, fines and penalties (if any) associated with payment or failure to pay amounts referred to in paragraphs (a) or (b); and
- (d) Any charges, fees or other amounts payable in respect of any amounts referred to in paragraphs (a) to (c) (inclusive); and

shall also include any instalment or part payment of any amounts referred to in paragraphs (a) to (d) (inclusive) of this definition.<sup>1</sup>

**"Tax Act"** means the Income Tax Assessment Act, 1936 and 1997, (C'th).<sup>18</sup>

**"Tax Commissioner"** means the Commissioner of Taxation.

**"Transferable Benefits"** has the same meaning as in the Superannuation Industry (Supervision) Regulations 1994.<sup>19</sup>

---

<sup>17</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>18</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>19</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

**“Transferor Fund”** means an Approved Benefit Arrangement the trustee of which may, or is required, by the Act to transfer an amount attributable to a beneficiary of that Approved Benefit Arrangement to the trustee of an Eligible Rollover Fund.<sup>20</sup>

**“Trust Deed”** means this Trust Deed and any alteration to, addition to or variation thereof made from time to time.

**“Unrestricted Non-Preserved Benefit”** has the meaning attributed to it in the Act.

## **6. ADMISSION OF MEMBERS**

### **6.1 Beneficiary of Transferor Fund**

- (a) The Trustee must accept a beneficiary of a Transferor Fund as a Member, if the trustee of the Transferor Fund advises that it wishes the Trustee to accept an amount in respect of that beneficiary which the Trustee is required to accept under the Act and may accept a beneficiary of a Transferor Fund as a Member in other circumstances if permitted by the Act and authorised hereunder.<sup>21</sup>
- (b) Upon acceptance of a person as a Member, the person is bound by this Trust Deed in all respects as if he or she were an original party to this Trust Deed.
- (c) The Trustee of the Transferor Fund shall provide the Trustee with such information as is required by the Act and such additional information as the Trustee may request the trustee of the Transferor Fund to provide to it.

### **6.2 Membership – Shortfall Component to be Paid to the Fund**

- (a) A person who wishes the Trustee to accept a Shortfall Component in respect of him or her from Tax Commissioner, may apply for membership by completing the form of application in Appendix “A” or such other form of application as the Trustee decides upon.
- (b) The application for membership must provide the Trustee with such information as the Trustee may require, including proof of his or her correct age.
- (c) Upon acceptance of a person as a Member, the person is bound by this Trust Deed in all respects as if he or she were an original party to this Trust Deed.

---

<sup>20</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>21</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

### **6.3 Application for Membership by a Non-Member Spouse<sup>22</sup>**

The following provisions of this Rule 6.3 apply to the admission of a person being a Non-Member Spouse following the Operative Time of a Payment Split:

- (a) the Trustee may require the relevant Non-Member Spouse to complete any form or application that it prescribes; and
- (b) the Trustee may require the relevant Non-Member Spouse to complete any other documentation or provide any other information that it reasonably requires having regard to any conditions that the Trustee may impose under Rule 38A.2 or otherwise.

### **6.4 Acceptance of Membership – Non-Member Spouse<sup>23</sup>**

A Non-Member Spouse becomes a Member following the Operative Time of a Payment Split:

- (a) on the date when the Trustee has approved his or her application in accordance with Rule 6.3; or
- (b) on any other date approved by the Trustee for this purpose.

## **7. CONTRIBUTIONS<sup>24</sup>**

**7.1** The Trustee may only accept payments to the Fund which are:

- (a) payments of shortfall components; or
- (b) otherwise permitted by the Act to be received into an Eligible Rollover Fund.

**7.2** The Trustee must accept payments into the Fund which the Act requires it to accept.

**7.3** The Trustee may refuse to accept any payment to the Fund which it is not required to accept under the Act.

**7.4** The amount accepted for a Member shall be credited to the Member's Account.

**7.5** If the Trustee finds that it has received a payment which cannot be accepted into the Fund, the Trustee must repay it to the person who paid it. If the Act permits, the Trustee may deduct an amount for expenses in relation to the payment.

**8.** Deleted<sup>25</sup>

---

<sup>22</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>23</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>24</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>25</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

## **9. INVESTMENTS**

### **9.1 Investment Power**

Subject to the provisions of the Act and provided investments are made on an arm's length basis, the Trustee may invest the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any investments of any kind which the Trustee, in exercising its absolute discretion, determines.

### **9.2 Types of Investments**

Without limiting the generality of Rule 9.1, the Trustee may invest either directly or indirectly in:

- (a) investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) the purchase of or improvement of or mortgages of real property of any tenure whether improved or unimproved;
- (c) any bank or building society or any other company, partnership or person either with or without security and on such terms as the Trustee, in its absolute discretion determines provided that the Trustee may not lend any part of the moneys or assets of the Fund to Members or relatives of Members or give any financial assistance to Members or relatives of Members;
- (d) shares, stock, options, debentures, bonds, unsecured notes or other securities including commodities;
- (e) units or sub-units of any unit trust;
- (f) bills of exchange and other negotiable instruments.

### **9.3 Variation of Investments**

The Trustee shall have power to vary, transpose and replace such investments in such manner as it determines without being responsible for loss occasioned by so varying, transposing or replacing.

### **9.4 Acquisition of Assets from Members or Relatives**

The Trustee shall not acquire assets from Members or relative of Members except in the circumstances permitted under the Act.

### **9.5 Investment Strategy**

The Trustee shall, from time to time, formulate and give effect to an investment strategy in accordance with the requirements of the Act. While the Fund is operated as an Eligible Rollover Fund, a single diversified investment strategy is to be adopted in relation to all assets of the Fund.<sup>26</sup>

### **9.6 Agreement with Investment Manager**

---

<sup>26</sup> Deed of Amendment dated [#date of deed of amendment].

If the Trustee appoints or has appointed a company as an investment manager for the Fund or any part of it, the agreement with the investment manager must be in writing and contain provisions which comply with the Act.

### **9.7 Charge over Assets**

The Trustee shall not give a charge over, or in relation to, an asset of the Fund except in the circumstances prescribed in the Act.

### **9.8 Statutory Obligations**

Subject to the Act, all obligations of the Trustee with regard to its investment powers for the Fund and which obligations might otherwise be imposed or implied by law, equity or Statute, are expressly excluded to the maximum extent allowed by such law, equity or Statute.<sup>27</sup>

## **10 POLICIES OF INSURANCE AND ANNUITIES**

### **10.1 Investment in Life Policies and Annuities**

- (a) The Trustee may, in its absolute discretion, invest or apply the whole or any part of the Fund in the payment of premiums of a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest or in payment of the consideration for an annuity.
- (b) The Trustee may effect such policies or annuities with such company on such terms and conditions and for such periods as the Trustee determines. The Trustee has the power to accept an assignment of a policy of life, disability or accident insurance or of any annuity on such terms as the Trustee, in its absolute discretion, determines.
- (c) The Trustee has the power to continue such policies or annuities for such periods as the Trustee determines and to discontinue or surrender such policies or annuities.

### **10.2 Payment of Premiums and Application of Proceeds**

- (a) The premiums for such policies or consideration for such annuities shall be paid for out of the amount standing to the credit of the Member's Account.
- (b) The proceeds of such policies shall be credited to the Member's Account.

## **11. RECORDS, ACCOUNTS AND AUDITING**

### **11.1 Records**

The Trustee shall keep such accounts and records as correctly record and explain the transactions and financial position of the Fund including:

---

<sup>27</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

- (a) a **minute book** in which proceedings and resolutions of the Trustee are recorded which shall be retained for 10 years or for such other period required by the Act;

- (b) an **Account** for each Member in which is recorded:
- (i) the amount of which the Trustee accepts in respect of that Member pursuant to Rule 7;<sup>28</sup>
  - (ii) Deleted<sup>29</sup>
  - (iii) profits or losses of the Fund credited or debited to the account pursuant to Rules 12.1 and 12.2;
  - (iv) amounts debited to the account to pay premiums on policies of insurance or the consideration for an annuity pursuant to Rule 10.2;
  - (v) the proceeds of policies of insurance credited to the account pursuant to Rule 10.2;
  - (vi) amounts debited to the account to pay Tax and expenses;<sup>30</sup>
  - (vii) amounts which are not required to meet Tax liabilities and which are credited to the account pursuant to Rule 11.1(c);<sup>31</sup>
  - (viii) other amounts which are credited to the account pursuant to Rule 11.1(c);<sup>32</sup>
  - (ix) amounts debited to the account to take account of a Payment Split and any other Family Law Requirement pursuant to Rule 38A.1.<sup>33</sup>
- (c) a **Reserve Account** to which shall be credited profits in accordance with Rules 12.1 and 12.2, and amounts set aside by the Trustee to pay Tax<sup>34</sup> and to which shall be debited Tax<sup>35</sup> paid, such of the expenses of the Fund as the Trustee determines to debit to this account, and amounts which the Trustee determines from time to time to transfer to the Members' Accounts on such basis as the Trustee determines. The amount in the Reserve Account shall be transferred to the Members' Accounts in accordance with this paragraph prior to the winding-up of the Fund.

## 11.2 Auditor

The Trustee shall appoint an auditor or a registered company auditor (as required by the Act) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the Fund complies with the relevant requirements of the Act.

<sup>28</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>29</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>30</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>31</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>32</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>33</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>34</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>35</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999



### **11.3 Keeping the Accounts and Records**

The accounting records of the Fund must be retained for at least 5 years, or for such other period required by the Act, must be kept in Australia and must be kept in the English Language or in a form in which they are readily accessible and readily convertible into the English language.

### **11.4 Compliance with Reporting Standards/Maintaining Records**

The Trustee shall comply with such reporting standards and shall maintain such records as are required under the Act including a statement of the financial position of the Fund and an operating statement (when required) for each financial year of the Fund. Such accounts and statements must be signed by a least 2 directors of the Trustee.

## **12. VALUATIONS AND ALLOCATION OF PROFITS OR LOSSES**

### **12.1 Allocation of Profits or Losses**

- (a) After the end of each financial year of the Fund, the profits or losses arising from the investment of the assets of the Fund during the preceding financial year; or
- (b) on the winding-up of the Fund or whenever the Trustee determines it to be necessary, the profits or losses arising from the investment of the assets of the Fund during the current financial year,

less such provision for depreciation, liabilities, losses and Tax<sup>36</sup> as the Trustee, in its absolute discretion, deems prudent, shall be credited or debited by the Trustee to the Members' Accounts in proportion to the amount standing to the credit of such accounts at the beginning of the Fund's financial year for which the accounts are being prepared or on such other basis as the Trustee determines. The Trustee may, in its absolute discretion, credit such proportion as it determines of the amount that would otherwise be credited to the Members' Accounts to the Reserve Account.

### **12.2 Valuation of Assets of the Fund**

- (a) The Trustee may make a valuation of the assets of the Fund (other than policies of life insurance and annuities) after the end of each financial year of the Fund, and whenever it determines, in such manner as the Trustee determines and deduct therefrom the amount of outstanding liabilities and expenses, the estimated costs of realising the investments and such provision for Tax<sup>37</sup> as the Trustee, in its absolute discretion, deems to be prudent.
- (b) If the net value of the assets of the Fund determined in accordance with this Rule exceeds or is less than the aggregate of the net amount standing to the credit of all of the Members' Accounts at the date the Trustee shall credit the surplus or debit the deficit to the Members' Accounts in proportion to the amounts standing to their respective

---

<sup>36</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>37</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

credits at the beginning of the Fund's financial year for which accounts are being prepared or on such other basis as the Trustee determines.

- (c) The Trustee may, in its absolute discretion, credit to the Reserve Account such proportion as it determines of the amount that would otherwise be credited to the Members' Accounts.

### **12.3 Interim Earning Rate**

The Trustee may allocate to the Account of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made under Rule 12.1 or 12.2 to the date on which the benefit is being paid.

### **12.4 Requirements of the Act**

Notwithstanding Rules 12.1, 12.2 and 12.3, the Trustee shall only credit or debit an amount to a Members' Account if to do so would not breach the requirements of the Act.

### **12.5 Adjustments for Tax<sup>38</sup>**

Notwithstanding any other provision of this Deed the Trustee may, if applicable and subject to the Act, reduce any benefits which are payable or may become payable from the Fund to or in respect of a Member, or any other person, to take account of:

- (a) any Tax; or
- (b) any other matter relating to Tax that the Trustee considers fair and reasonable to take into account in respect of particular Members or Members generally; and
- (c) to the extent that no adjustment has been made in respect of that Tax or other matter under any other provision of this Deed.

## **13. UNCLAIMED MONEYS**

The Trustee shall comply with the requirements of the Act in relation to the payment of unclaimed money.

## **14. MEMBERS' AND NON-MEMBER SPOUSES' RIGHT TO BENEFIT<sup>39</sup>**

- (a) Except as provided for in this Trust Deed:
  - (i) a Member shall have no right to or interest in their Member's Benefit;
  - (ii) a Non-Member Spouse shall have no right to or interest in their Payment Split Interest;
- (b) The rights of the Members and their Dependants and Non-Member Spouses and their Dependants to receive benefits from the Fund shall be those set out in this Trust Deed.

---

<sup>38</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>39</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

- (c) The rights of the Members and their Dependants and Non-Member Spouses and their Dependants to receive the benefits payable under this Trust Deed shall be fully secured within the meaning of the Act and the Family Law Legislation.

## **15. MEMBER'S RIGHTS TO STATEMENTS**

- (a) The Trustee shall provide to the Members, or cause the Members to be provided with, such statements, notices, documents and information concerning the administration of the Fund as is required by the Act.
- (b) The Trustee shall retain for so long as they are relevant and, in any event, for at least 10 years or for such further period as is required by the Act, copies of all reports given to the Members.
- (c) On the request of a beneficiary of the Fund, the Trustee shall provide that person, or cause that person to be provided, with such information as is required by the Act.

## **16. INFORMATION TO THE SUPERANNUATION COMMISSIONER**

The Trustee shall provide the Superannuation Commissioner with such notices, statements and other information as are required by the Act.

## **17. COPY OF TRUST DEED TO THE SUPERANNUATION COMMISSIONER**

If the Superannuation Commissioner requests, in writing, to be provided with a copy of the Trust Deed, the Trustee must, as soon as possible after receiving the request, give a copy of the Trust Deed to the Superannuation Commissioner.

## **18. DISPUTE RESOLUTION**

If required by the Act, the Trustee shall take all reasonable steps to ensure that there are at all times arrangements under which:

- (a) a Beneficiary may enquire into, or complain about, the operation or management of the Fund in relation to that person; and
- (b) enquiries or complaints so made will be properly considered and dealt with within 90 days after they were made.

## **19. TRUSTEE: APPOINTMENT AND REMOVAL**

### **19.1 Eligibility for Appointment as a Trustee**

The Trustee must be a Constitutional Corporation and, unless allowed by the Act, the Trustee must not be the trustee of another Eligible Rollover Fund or an associate of the trustee of another Eligible Rollover Fund.

## 19.2 Ceasing to Act as Trustee

A Trustee shall cease to be a Trustee if:

- (a) it resigns from office;<sup>40</sup> or<sup>41</sup>
- (b) both:
  - (i) a Responsible Officer of the Trustee is a Disqualified Person:  
and
  - (ii) the Responsible Officer was a Disqualified Person at all times during the immediately preceding period of 28 days (or such other period specified under the Act); or
- (c) a receiver, or a receiver and manager is appointed in respect of property beneficiary owned by the Trustee; or
- (d) an official manager or deputy official manager is appointed in respect of the Trustee; or
- (e) a provisional liquidator is appointed in respect of the Trustee; or
- (f) the Trustee commences to be wound up; or
- (g) the Trustee is otherwise disqualified from acting as the trustee of an Eligible Rollover Fund by an Act of Parliament.<sup>42</sup>

## 19.3 Appoint a New Trustee

- (a) If the Trustee:
  - (i) resigns from office pursuant to paragraph (a) of Rule 19.2; or
  - (ii) ceases to be the Trustee under paragraphs (b), (f) or (g) of Rule 19.2;

it shall appoint a Constitutional Corporation, which is not a trustee of another Eligible Rollover Fund or an associate of the trustee of another Eligible Rollover Fund, as the replacement Trustee within 90 days (or such other number of days as is provided for in the Act) of the date on which the vacancy occurred provided that the failure to fill a vacancy shall not invalidate any subsequent appointment.<sup>43, 44</sup>

- (b) If the Trustee ceases to be the Trustee under paragraphs (c), (d) or (e) of Rule 19.2<sup>45</sup>, the receiver and manager, official manager, deputy official manager or provisional liquidator may appoint a Constitutional Corporation, which is not:
  - (a) a trustee of another Eligible Rollover Fund; or

---

<sup>40</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>41</sup> Deed of Variation dated 31 December 2004, effective 31 December 2004

<sup>42</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>43</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>44</sup> Deed of Variation dated 31 December 2004, effective 31 December 2004

<sup>45</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

(b) an associate of the trustee of another Eligible Rollover Fund,  
as the replacement Trustee within 90 days (or such other number of days as is provided for in the Act) of the date on which the vacancy occurred. The failure to fill a vacancy shall not invalidate any subsequent appointment.<sup>46</sup>

(c) If the Act prohibits the Trustee from appointing a replacement trustee under paragraph (a) of the Rule 19.3, the Superannuation Commissioner shall appoint the replacement trustee.

(d) If the Act prohibits<sup>47</sup> the receiver, receiver and manager, official manager, deputy official manager or provisional liquidator, as the case may be, from appointing a replacement trustee under paragraph (b) of this Rule 19.3, the Superannuation Commissioner shall appoint the replacement trustee.<sup>48</sup>

#### **19.4 Consent to Act as Trustee or Director**

(a) An individual shall only be a director of the Trustee if that person consents in writing to the appointment. Each written consent shall be retained by the Trustee for 10 years or for such other period required by the Act.

(b) A company shall only be appointed a trustee if that company consents in writing to the appointment. Each written consent shall be retained by the Trustee for 10 years or for such other period required by the Act.

#### **19.5 Records of Changes in Trustees or Directors**

The Trustee shall maintain a record of changes in Trustee and changes in the directors of the Trustee for 10 years or for such other period required by the Act.

#### **19.6 Trustee Fee<sup>49</sup>**

The Trustee is entitled to a fee from the Fund payable monthly in arrears and calculated at the rate of 0.10% per annum of value of the assets of the Fund as at month end. Such fees may be reviewed each year at 1 January.

### **20. POWERS OF TRUSTEE**

The Trustee shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted herein and conferred upon trustees by statute and general law, exercise any of the following powers:

(a) to pay out of the Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;

(b) to pay out of the Fund expense incurred in:

---

<sup>46</sup> Deed of Variation dated 31 December 2004, effective 31 December 2004

<sup>47</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>48</sup> Deed of Variation dated 31 December 2004, effective 31 December 2004

<sup>49</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

- (i) providing for the secretarial work required for proper record keeping and administration to be performed;
  - (ii) having the accounts of the Fund audited;
  - (iii) having taxation returns and Government returns prepared; and
  - (iv) engaging such persons as the Trustee considers appropriate for the proper administration and maintenance of records of the Fund;
- (c) to enter into such contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
  - (d) to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee on such terms and conditions as the Trustee, in its absolute discretion, determines and the Trustee shall not be responsible for any loss incurred as a result of such delegation;
  - (e) to take and act on the advice of a barrister, solicitor, accountant, actuary, or any other adviser in relation to the administration of the Fund or to protect the rights of Members;
  - (f) to commence, carry on and defend any legal proceedings that the Trustee, in its absolute discretion, determines to undertake for the proper administration of the Fund or to protect the rights of Members;
  - (g) to open and maintain such bank accounts as the Trustee determines;
  - (h) to sell the assets of the Fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms and in such other manner and on such other terms as the Trustee determines;
  - (i) to borrow any sum of money for the purposes permitted by the Act and secure the repayment thereof in such manner and upon such terms and conditions and a such rate of interest as the Trustee determines and, in particular, by charging or mortgaging all or any of the assets of the Fund and no lender shall 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 money borrowed;
  - (j) to act on a direction given by a Court, the Superannuation Commissioner or the Superannuation Complaints Tribunal established under the Superannuation (Resolution of Complaints) Act, 1993 (C'th);
  - (k) to comply with covenants of trustees imposed by the Superannuation Industry (Supervision) Act, 1993 (C'th);
  - (l) to do those things permitted or required by the Act; and
  - (m) generally to do all such things and perform such acts as the Trustee, in its absolute discretion, determines to be appropriate in the

administration of the Fund and the performance of its obligations under this Trust Deed.<sup>50, 51</sup>

**21. TRUSTEE: EXERCISING DISCRETIONS AND ANTI-DISCRIMINATION LAW**

In administering the Fund and in exercising the trusts, powers and authorities vested in it, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising such trusts, powers and authorities, provided however that the Trustee shall not discriminate against any person in a way which infringes any law of the Commonwealth or of a State or Territory law, that is applicable to the Fund, in respect of discrimination.

**22. LIABILITY OF TRUSTEE, DIRECTORS AND MEMBERS**

**22.1 Liability of Trustee and Directors**

The Trustee, and each director of it, shall not be liable for any acts or omissions other than those that are:

- (a) dishonest; or
- (b) attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a trustee.

**22.2 Members' Liability**

Each of the Members shall not be liable for any action taken or omitted in administering the Fund.

**23. TRUSTEE'S AND DIRECTOR'S INDEMNITY**

The Trustee and each of the directors of the Trustee shall be indemnified out of the Fund against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund other than in the circumstances stated in Rule 22.1 and shall have a lien on the Fund for such indemnity. The Trustee and the directors of the Trustees shall not be indemnified out of the Fund for any penalty imposed on them under the Act.

**24. REMUNERATION OF THE TRUSTEE**

- (a) Subject to (b), the Trustee shall be entitled to be paid and retain out of the Fund such remuneration as it determines to be reasonable.
- (b) While the Fund is operated as an Eligible Rollover Fund, the Trustee shall only charge fees in the manner required and as permitted under the Act in respect of Eligible Rollover Funds.<sup>52</sup>

**25. REMUNERATION OF PROFESSIONAL PERSONS**

Any person who is an accountant, actuary, solicitor, barrister or other professional person and is a director of the Trustee, who is called upon or

---

<sup>50</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>51</sup> Deed of Variation dated 31 December 2004, effective 31 December 2004

<sup>52</sup> Deed of Amendment dated [#date of deed of amendment].

whose firm is called upon to perform any service in relation to the Fund shall be entitled to make the same professional charges for such service that he would make had he not been a director of a company acting as Trustee.



## **26. TRUSTEE AS MEMBER'S ATTORNEY**

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

## **27. TRUST DEED AVAILABLE FOR INSPECTION**

- (a) A copy of this Trust Deed shall be kept by the Trustee and be available for inspection by any Member at all reasonable times.
- (b) If required by the Act, the Trustee shall provide a Beneficiary with a copy of this Trust Deed.

## **28. VARIATION OF TRUST DEED**

### **28.1 Variation of Trust Deed**

The Trustee may at any time by deed vary, add to or rescind all or any or any of the provisions from time to time of this Trust Deed<sup>1</sup> and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner but no such variation, addition or rescission shall be made:<sup>53</sup>

- (a) if it has the effect of the Fund ceasing to be an accumulation fund, unless the Superannuation Commissioner approves in writing of the Fund ceasing to be an accumulation fund; or
- (b) if it breaches the requirements of the Act or if it has the effect of:
  - (i) reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable to a Member, before the date of the variation, addition or rescission; or
  - (ii) reducing the amount of a benefit, other than a benefit referred to in paragraph (a) of this Rule, that is, or may become, payable in relation to a period before the date of the variation, addition or rescission;

unless:

- A the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
- B the reduction is required to enable the Fund to comply with the Act; or
- C the Member so affected approves in writing of the reductions; or
- D the Superannuation Commissioner approves in writing of the reduction.

---

<sup>53</sup> Deed of Variation dated 31 December 2004, effective 31 December 2004

## **28.2 Notification to Superannuation Commissioner**

As soon as possible after a provision of the Trust Deed is varied, added to or rescinded, the Trustee shall, if required by the Act, give to the Superannuation Commissioner a copy of the deed of amendment which had the effect of varying, adding to or rescinding any provisions of this Trust Deed.<sup>54, 55</sup>

## **29. FUND TO BE AN ACCUMULATION FUND**

Unless the Superannuation Commissioner approves in writing, the Fund shall be an accumulation fund.

## **30. TRUSTEE TO COMPLY WITH ACT<sup>56</sup>**

Deleted.

## **31. TRANSFER OF BENEFIT TO ANOTHER FUND**

### **31.1 Transfer to Another Fund**

- (a) Subject to Rule 31.2, the Trustee shall on receiving the written request of a Member, transfer the Member's Benefit to the trustees of another regulated superannuation fund which the Trustee is satisfied complies with the Act, or transfer the Member's Benefit to an approved deposit fund which the Trustee is satisfied complies with the Act.
- (b) The receipt of the trustee of such fund shall be a complete discharge to the Trustee in respect of any liability to that Member and persons claiming through him or her in relation to the amount so transferred.

### **31.2 Preserved Benefits**

A transfer of any Preserved Benefit pursuant to Rule 31.1 shall only be made if it is a condition of such transfer that the amount of any Preserved Benefit transferred shall not be paid from the transferee fund prior to the Member retiring from the workforce and attaining age 55 (or such other age prescribed in the Act as being the preservation age for that Member) except in the event of the Member's death or Permanent Disablement or in such other circumstances as are permitted under the Act and if it is a condition of such transfer that the Preserved Benefit will not be transferred from the transferee fund except on the aforesaid terms and conditions.

## **32. BENEFITS PAYABLE IN AUSTRALIAN CURRENCY**

The benefits payable hereunder shall be calculated in and be payable in Australian currency.

---

<sup>54</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>55</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

<sup>56</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

### **33. TERMINATION OF THE FUND**

#### **33.1 Termination of the Fund by the Trustee**

- (a) The Trustee may resolve to terminate the Fund at any time.<sup>57, 58</sup>
- (b) If required by the Act, the Trustee shall advise the Superannuation Commissioner of its decision to terminate the Fund.

#### **33.2 Termination of Fund**

- (a) Upon termination of the Fund, the Trustee shall, subject to the provisions of this Trust Deed, pay or cause to be paid or transfer or cause to be transferred to the Members, benefits in accordance with the provisions of the Trust Deed, after deducting from the assets of the Fund the cost of administering and winding up the Fund.
- (b) Such payment or transfer shall be accepted by Members in full discharge of all claims in respect of the Fund.

#### **33.3 Amount Remaining in the Fund**

If any amount remains in the Fund after all of the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependants in such proportions as the Trustee determines to be equitable.

#### **33.4 Preserved Benefits**

Notwithstanding anything contained in Rule 33.2, the Trustee shall not, in this case of a Preserved Benefit, pay or transfer the benefit to a Member, until the Member retires from the workforce and attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, except in the event of the Member's earlier death or Permanent Disablement or the payment of the benefit in such other circumstances as are permitted under the Act.

#### **33.5 Perpetuity Period**

The Trusts constituted by this Trust Deed shall endure for such periods as is allowed by law for the duration of the trusts hereby established.

### **PAYMENT OF BENEFITS**

#### **34 BENEFIT PAYABLE ON RETIREMENT OR ATTINING AGE 65**

##### **34.1 Payment on Retirement or at Age 65 – Non-Employer Sponsored Member**

- (a) Subject to the provisions of these Rules, the amount of the Member's Benefit shall be paid to a Member who retires from the workforce and attains age 55, or such other age prescribed in the Act as being the preservation age for that Member.

---

<sup>57</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

<sup>58</sup> Deed of Variation dated 31 December 2004, effective 31 December 2004

- (b) The Member's Benefit shall also be paid to a Member on attaining age 65 if he or she continues to be Gainfully Employed after that age but the number of hours worked are insufficient for the Member to be Gainfully Employed on a Part-Time Basis.
- (c) Notwithstanding Rules 34.2 and 34.3, the Member's Benefit shall be paid to a Member who having attained age 65, continues to be Gainfully employed but requests payment of his or her benefit by handing the Trustee a completed Approved Form.

#### **34.2 Continuation of Gainful Employment on a Part-Time Basis after Age 65**

In the event that the Member is and continues to be Gainfully Employed on a Part-Time Basis after attaining age 65, the Member's Benefit shall be paid to the Member when he or she requests payment, by handing the Trustee a completed Approved Form, or upon the Member attaining age 70 or if the number of hours that the Member works reduces below the level required to be Gainfully Employed on a Part-Time Basis, whichever occurs first.

#### **34.3 Continuation of Employment on a Full-Time Basis after Age 65**

- (a) In the event that the Member is a continues to be Gainfully Employed on a Full-Time Basis after attaining age 65, the Member's Benefits shall be paid to the Member when he requests payment, by handing the Trustee a completed Approved Form, or upon the Member ceasing to be Gainfully Employed on a Full-Time Basis.
- (b) If the Member, after age 65, becomes Gainfully Employed on a Part-Time Basis after having ceased to be Gainfully Employed on a Full-Time Basis, then Rule 34.2 shall apply.

#### **34.4 Member to Inform Trustee**

A Member shall inform the Trustee as soon as practicable after the Member ceases:

- (a) to be Gainfully Employed on a Part-Time Basis after age 65; or
- (b) to be Gainfully Employed on a Full-Time Basis after age 65.

#### **34.5 Payment to Unclaimed Money to the Superannuation Commissioner**

If a benefit has become payable under the Rule 34 and the Trustee is unable to pay the benefit because the Trustee, after making reasonable efforts to trace the person to whom the benefit is payable, is unable to do so, the Trustee shall treat the benefit as unclaimed money and pay it in accordance with the requirements of the Act.<sup>59</sup>

---

<sup>59</sup> Deed of Variation dated 26 March 1999, effective 26 March 1999

## **35. BENEFIT PAYABLE ON DEATH**

### **35.1 Benefit Payable on Death**

If a Member dies before payment or commencement of payment of a benefit under Rule 34, the amount of the Member's Benefit shall be held by the Trustee on trust for the benefit of such one or more of the Member's Dependants, to be paid in a lump sum in such shares and proportions as the Trustee, in its absolute discretion, determines. The Trustee shall take account of any nomination of beneficiaries made by the Member, but shall not be bound by it.

### **35.2 Payment to Legal Personal Representative**

If the Trustee is unable to establish within 6 months after the Member's death that there are any dependants, the Member's Benefit shall be paid to the Member's legal personal representative.

### **35.3 Payment other than to Dependant or Legal Personal Representative**

If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative of the deceased Member, the Trustee may, if permitted by the Act, pay the benefit to a person or persons selected by the Trustee.

### **35.4 Unclaimed Benefits**

Subject to Rule 35.3, if a grant or probate or letters of administration is not made in respect of the estate of the Member within 3 years after his or her death (or such longer periods as the Trustee determines), the benefit payable hereunder shall be treated as unclaimed money and shall be applied in the manner provided for in the Act.

### **35.5 Benefit Payable on Death of a Non-Member Spouse<sup>60</sup>**

On the death of a Non-Member Spouse having a Payment Split Interest the Trustee must pay a Member's Benefit in relation to that Payment Split Interest:

- (a) pursuant to Rule 35.1, as if references to the Member were to the Non-Member Spouse; or
- (b) as otherwise required by the Family Law Requirements.

For the purposes of this Rule 35.5 the term "Member's Benefit", as defined in Rule 5.2, is to be interpreted as if:

- (a) the words "or a Non-Member Spouse having a Payment Split Interest" were added immediately after the appearance of the word "Member"; and
- (b) the words "or Payment Split Interest" were added immediately after the appearance of the word "Account".

---

<sup>60</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

**36. BENEFIT PAYABLE ON DISABLEMENT**

Subject to the provisions of these Rules, if, before a benefit is paid or commences to be paid under Rule 34, a Member becomes Permanently Disabled, the Member's Benefit shall be paid to the Member or, if he or she is unable to manage his or her own affairs, to such of his or her Dependants and in such proportions as the Trustee, in its absolute discretion, determines.

**37. BENEFIT PAYABLE TO MEMBER WHICH IS ALLOWED UNDER THE ACT**

Subject to the Act, if the Member requests the Trustee, by handing the Trustee a completed Approved Form, to pay him or her that part of the Member's Benefit which is an Unrestricted Non-Preserved Benefit, the Trustee shall pay that part of the Member's Benefit to the Member. The balance of the Member's Benefit shall remain in the Fund until it is either paid to the Member in accordance with these Rules or transferred to the trustee of another fund in accordance with Rule 31.

**38. PAYMENT OF BENEFITS TO MINORS**

Where a person to whom benefits are payable hereunder is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.

**38A FAMILY LAW PAYMENT SPLITS<sup>61</sup>**

**38A.1 Adjustment of Members' Interests**

Notwithstanding any other provision of this Trust Deed, the Trustee must vary the interest of a Member (Affected Member) in the Fund to take account of a Payment Split and any other Family Law Requirement. Without limiting this Rule 38A.1, to the extent relevant:

- (a) the value of the Member's interest in the Fund will be adjusted accordingly; and
- (b) the amount of any benefit payable from the Fund in respect of the Member (whether in the form of a lump sum or an annuity) will be adjusted accordingly.

**38A.2 Non-Member Spouse's Membership Status**

Subject to the Family Law Requirements and the Act, if the interest of a Member in the Fund becomes subject to a Payment Split the relevant Non-Member Spouse is entitled to become a Member of the Fund unless the Trustee decides otherwise.

For this purpose, the Trustee may in its absolute discretion:

- (a) decide that a Non-Member Spouse is not entitled to become a Member of the Fund;

---

<sup>61</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

- (b) decide that a Non-Member Spouse is entitled to become a Member of the Fund subject to certain conditions imposed by the Trustee for this purpose.

To avoid doubt the Trustee may make such decisions or impose such conditions either in particular cases or based on general rules that the Trustee may adopt for this purpose from time to time and vary such decisions or conditions if it thinks appropriate.

### **38A.3 Payment of Transferable Benefit**

Subject to Rule 38A.4, if:

- (a) the interest of an Affected Member in the Fund becomes subject to a Payment Split; and
- (b) the Non-Member Spouse requests the Trustee in writing to pay:
  - (i) to a regulated superannuation fund, approved deposit fund, retirement savings account or Eligible Rollover Fund the Transferable Benefits of the Non-Member Spouse; or
  - (ii) to the Non-Member Spouse, as a lump sum, an amount not exceeding the value of the Payment Split Interest; and
- (c) the payment complies with the Family Law Requirements and the Act;

The Trustee:

- (d) must comply with the request, if the Family Law Requirements require it to do so; and
- (e) may comply with the request, if the Family Law Requirements permit, but do not require it, to do so.

Subject to the Family Law Requirements, the Trustee may pay the Transferable Benefits of a Non-Member Spouse to an Eligible Rollover Fund in the absence of a request from the Non-Member Spouse.<sup>62</sup>

### **38A.4 Treatment of any Fund Membership of a Non-Member Spouse Prior to a Payment Split**

Subject to the Family Law Requirements, if a Non-Member Spouse was a Member immediately prior to the Operative Time for the Payment Split, nothing in Rule 38A.2 is to be taken as:

- (a) affecting the membership status of the Non-Member Spouse; or
- (b) limiting the Trustee's powers under Rule 38A.5(e).

---

<sup>62</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003

### **38A.5 Trustee Powers under Family Law Requirements**

The Trustee has power to do anything necessary or convenient to comply with or give effect to the Family Law Requirements including without limitation:

- (a) power to provide information about Members' entitlements and Payment Splits to relevant parties;
- (b) power to give effect to Payment Splits;
- (c) power to transfer Transferable Benefits;
- (d) power to charge fees;
- (e) power, where a Non-Member Spouse is already a Member immediately prior to the Operative Time of a Payment Split, to credit an amount not exceeding the value of the Payment Split Interest to the Non-Member Spouse's interest in the Fund;
- (f) power to account for any amount credited to a Non-Member Spouse's interest in one or more existing accounts maintained in respect of that person under Rule 38A.5(e) in any manner it thinks appropriate including in one or more existing accounts maintained in respect of that person or by the establishment of separate accounts or sub-accounts; and
- (g) power to recognise interests and entitlements created under the Family Law Requirements.

### **39. DEDUCTION OF INCOME TAX**

The Trustee may deduct from any benefit payable the amount of any income tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Tax Commissioner.

### **40. MODE OF PAYMENT OF BENEFITS**

#### **40.1 Lump Sum or Annuity<sup>63</sup>**

- (a) The benefits payable under Rules 34, 36 or 37 shall be paid in a lump sum unless the Member requests the Trustee to purchase, in the name of the Member, an annuity.
- (b) The benefit payable under Rule 38A.3 shall be paid as a lump sum unless the Non-Member Spouse requests the Trustee, and the Trustee agrees, to purchase, in the name of the Non-Member Spouse, an annuity.

#### **40.2 Transfer in Specie**

The Trustee may, at the request of the recipient of a benefit and, if required under the Act, with the approval of the Superannuation Commissioner, pay

---

<sup>63</sup> Deed of Variation dated 24 March 2003, effective 24 March 2003



benefits by transferring in specie, assets of an equivalent value to the benefit payable.

**41. BENEFIT PAYABLE ON THE GROUNDS OF FINANCIAL HARDSHIP**

Subject to the Act, the Trustee may, in its absolute discretion, pay part or all of the Member's Benefit to a Member who is not entitled to be paid a benefit under the balance of these Rules, if the Trustee is satisfied that the Member would suffer financial hardship if part or the whole of his benefit is not paid to him. Any such payment must first be approved by the Superannuation Commissioner, if the Act so requires.

**42. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES**

The Trustee may, in its absolute discretion, pay part or all of a Member's Benefit to a Member, or another person, in the circumstances provided for in the Act, notwithstanding the restrictions imposed by these Rules.

**43. PERSON REQUEST PAYMENT**

If a person considers that he or she is entitled to be paid a benefit from the Fund, the person may apply to the Trustee for Payment of that benefit by completing an Approved Form.

**Executed** as a deed.

**APPENDIX "A"**  
**APPLICATION FOR MEMBERSHIP**  
**OF**  
**SMF ELIGIBLE ROLLOVER FUND<sup>64, 65, 66</sup>**  
**("the Fund")**

1. I,  
of  
apply for membership of the Fund which is administered in terms of the Trust Deed governing the Fund.
2. In consideration of my admission to membership, I agree to abide by and be bound by the provisions of the Trust Deed governing the Fund.
3. **NOMINATION OF BENEFICIARIES**  
  
Whilst I acknowledge the discretion the Trustee has to determine who the benefit is paid to, I nominate the following persons to receive the benefit payable by the Trustee in the event of my death:

<b>PERSON</b>	<b>RELATIONSHIP</b>	<b>PERCENTAGE</b>
		%
		%
		%

Date:

Applicant's Signature:

Witness:

---

<sup>64</sup> Deed of Variation dated 1 May 2000, effective 1 May 2000

<sup>65</sup> Deed of Variation dated 21 October 2003, effective 1 October 2003

<sup>66</sup> Deed of Variation dated 2 February 2005, effective 1 January 2005