
Schedule

1. The Fund

1.1 Name of the Fund

The trust fund constituted by this Deed is called the NSW Bookmakers Superannuation Fund (Fund).

1.2 Objects of the Fund

The Fund consists of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Deed who holds the same on trust for the objects and the purposes of this Deed.

1.3 Purpose of Paying Old-Age Pensions

If, at any time, the Trustee is not a Constitutional Corporation, the primary purpose of the Fund is, for so long as that situation prevails, the payment of old-age pensions in accordance with the requirements of these Rules.

2. Governing Law

This Deed is governed by and construed according to the laws of New South Wales.

3. Date Of Commencement

The Fund was constituted on 10 June 1974.

4. The Trustee

The expression the "Trustee" includes replacement or additional trustees.

5. Interpretation

5.1 General

- (a) This Deed shall be read and construed on the basis that the provisions of the Act and the regulations made thereunder are incorporated into the Deed to the extent that they impose requirements on the Trustee or are required by the Act to be so incorporated but this 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 26 to amend the provisions of this Deed. Where there is any inconsistency between a provision in this Deed and a provision in the Act or regulations which is so incorporated, the latter shall prevail over the former.

- (b) If any Rule or part thereof is judged to be invalid for any reason whatsoever, the invalidity shall not affect the validity or operation of the remainder of this Deed and the invalid Rule or part of a Rule is deemed to have been deleted from this Deed.

*compliance
clause.*

- (c) Headings are for convenience only and do not affect the interpretation of the Deed.
- (d) Words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa.
- (e) The word "includes" in any form is not a word of limitation.
- (f) A reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time.

5.2 Definitions

In this Deed, unless the context otherwise requires:

- (a) **Act** means the Superannuation Industry (Supervision) Act 1993, the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Superannuation Guarantee (Administration) Act 1992, the Family Law Act 1975, the Corporations Act 2001, the Privacy Act 1988, the National Privacy Principles, and the regulations made under those Acts together with any other legislation which applies to regulated superannuation funds at a particular time. It also includes any direction or rule issued by the Australian Taxation Office, the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission which must be complied with to avoid a detriment to the Trustee, the Fund or a Member.
- (b) **Actuary** means the actuary for the Fund as appointed by the Trustee.
- (c) **Administrator** means the person appointed to administer the Fund under Rule 15.2.
- (d) **Approved Trustee** means a trustee approved by the Regulator as an approved trustee in accordance with the Act. */ outdated term*
- (e) **Beneficiary** has the meaning attributed to it in the Act.
- (f) **Complying Superannuation Fund** has the meaning given in the SIS Act.
- (g) **Constitutional Corporation** has the meaning attributed to it in the Act.
- (h) **Contributions Tax** means the tax or surcharge payable under the Superannuation Contributions Tax (Assessment and Collection) Act 1997.
- (i) **Custodian** means the custodian appointed by the Trustee in accordance with Rule 12.5.
- (j) **Deed** means this Deed and any amendment made to it from time to time.
- (k) **Dependant** means the Spouse, widow, widower or child of a Member ~~or any other person who, in the opinion of the Trustee, was dependent on the Member at the relevant date or who, in the opinion of the Trustee, the Member had a legal or moral obligation to support at the relevant date.~~ *→ replaced O&A 5/5/05*
- (l) **Disclosure Document** means any document offering participation in or membership of a Division issued by the Trustee in accordance with the Act.

- (m) **Division** means any division of the Fund constituted pursuant to this Deed and a Division may have sub-divisions at the discretion of the Trustee.
- (n) **Eligible Person** means a person who is gainfully employed on a full time or part time basis by an Employer or who otherwise is a person in respect of whom the Trustee may accept contributions without contravening the Act.
- (o) **Employee** means a person in the employ of a Participating Employer and includes any person who is a director of a Participating Employer and any person in respect of whom the Participating Employer wishes to make a contribution to the Fund in lieu of the Participating Employer paying the Superannuation Guarantee Charge under the Superannuation Guarantee Charge Act 1992, as amended from time to time.
- (p) **Employer** means a Member's Participating Employer who makes contributions to the Fund.
- (q) **Employer Sponsored Member** means a Member whose Employer is contributing to the Fund at the relevant time.
- (r) **the Fund** means the indefinitely continuing superannuation or retirement fund set up under this Deed governed controlled and administered under this Deed.
- (s) **Insurer** means a life insurance company which has issued a life policy to the Trustee covering a Member or group of Members.
- (t) **Investment Manager** means a person appointed in accordance with this Deed as Investment Manager for the whole of or any part of the assets of the Fund.
- (u) **Member** means anyone who has been admitted as a Member of the Fund by the Trustee and continues to be a Member and includes former Members who are entitled to receive or are receiving pensions from the Fund or who continue to have rights or to contingently be entitled to receive Benefits from the Fund.
- (v) **Member's Benefit** is the amount standing to the credit of the Member's account or such amount or amounts which a Member or a person claiming through a Member is entitled to receive from the Fund.
- (w) **Non-Employer Sponsored Member** means a Member who is not, at the relevant time, an Employee or whose employer (if any) is not contributing to the Fund.
- (x) **Participating Employer** means an employer who has been admitted by the Trustee, in accordance with Rule 30, to be a participant in the Fund.
- (y) **Permanently Disabled and Permanent Disablement** means:
 - (1) such disablement as, in the opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainful employment for which the Member is reasonably qualified by training, education or experience; or
 - (2) 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 a benefit.

- (z) **Policy Committee** means the policy committee established in respect of a group of standard employer sponsored Members of a Division in accordance with Rule 19.4 and the Act.
- (aa) **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 or superannuation arrangement until the Member has retired from the workforce and attained the age prescribed in the Act as being the preservation age for that 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.
- (bb) **Regulated Superannuation Fund** has the meaning given in the SIS Act.
- (cc) **Regulator** means the relevant body appointed by an Act of Parliament to regulate superannuation funds, including but not limited to ASIC and APRA.
- (dd) **Rules** mean the provisions of this Deed and any alteration to, addition to or variation thereof made from time to time.
- (ee) **SIS Act** means the Superannuation Industry (Supervision) Act 1993^{and SIS Regs → inserted DOA 5/5/05} as in force from time to time and any substitute or further legislation in force from time to time which provides for prudent management of superannuation funds and the supervision of entities engaged in the superannuation industry.
- (ff) **SIS Regulations** means the regulations or any of the regulations from time to time made under the SIS Act.
- (gg) **Spouse** means 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 and includes a person who, in relation to a Member, comes within the definition of "spouse" in the Act.
- (hh) **Strategy** means an investment strategy established in accordance with Rule 6.
- (ii) **Tax or Taxes** means any tax payable by the Trustee with respect to the Fund under the Income Tax Assessment Act or under the Superannuation Contributions Tax (Assessment and Collection) Act 1997 or any other tax, charge, levy, impost or duty (including any stamp duty or GST) which may be payable by the Trustee with respect to the Fund or any part of it or with respect to any transaction which the Trustee may enter into with respect to the Fund, under any other law of the Commonwealth or under any law of any State or Territory of the Commonwealth.

6. Strategies

6.1 Strategies

The Trustee may divide the Fund into Strategies and determine what forms of investment are to apply to each Strategy. If the Trustee does so, contributions to the Fund are allocated to the Strategies to which the Member or the Member's Employer has requested that the

contributions be allocated. A Member has an interest in each Strategy into which contributions and other amounts have been paid for the Member.

6.2 Establishment of Strategies

The Trustee may establish a Strategy by resolving to establish it and naming it. The Trustee may change the name of a Strategy.

6.3 Allocation of Assets and Liabilities to Strategies

The Trustee must maintain the records of the Fund to identify which assets and liabilities are attributed to a Strategy and credit income and outgoings to the Strategy to which they are, in the opinion of the Trustee, attributable.

6.4 Variation and Mergers of Strategies

After notifying Members of affected Strategies of its intention to do so, the Trustee may merge two or more Strategies into one, split a Strategy into a larger number of Strategies or terminate a Strategy.

6.5 Switching of Strategies

A Member may request the Trustee to switch amounts between one Strategy and another and the Trustee has an absolute discretion to decide whether to give effect to such a request.

7. Structure Of The Fund

7.1 Nature of Divisions within the Fund

- (a) The Trustee may set up separate Divisions under this Deed.
- (b) All of the property received in relation to a Division is to be held and accounted by the Trustee separately and is to be held solely for the Members of the Division and the persons claiming an interest in a benefit through a Member of the Division.
- (c) The property held by the Trustee as trustee of a Division is not available to meet the liabilities of any of the other Divisions set up under this Deed nor is that property to be used to meet any payments due to Members of any other Division.
- (d) The Trustee is to be the Trustee of each Division set up under this Deed.
- (e) Each Division set up under this Deed starts on whichever of the following first happens:
 - (1) the date of payment to or vesting in the Trustee of a contribution or other money or property in relation to a Division in accordance with the terms and conditions of this Deed relating to that Division; or
 - (2) the date specified in the resolution by the Trustee to establish the Division.

Each Division will continue until it is terminated under Rule 47.

- (f) The rights of Participating Employers with respect to a Division and the entitlements of Members to benefits from a Division are to be governed by the provisions of this

Deed and by provisions relating to the Divisions set out in any rules relating to that Division.

- (g) Participating Employers and Members may participate in more than one Division.
- (h) The investment of the assets of one Division in another Division is not a breach of this Deed.

7.2 Badged Divisions

- (a) The Trustee may, in accordance with the Act enter into arrangements with a promoter to offer participation in a Division (**a badged Division**). A Disclosure Document with respect to participation interests in a badged Division may with the approval of the Trustee carry the name of the promoter or a name chosen by such promoter and approved by the Trustee for the badged Division.
- (b) The provisions of this Deed apply to a badged Division in the same way as they apply to any other Division

8. Admission Of Members

8.1 Offering of superannuation interests in a division and disclosure of information

A person can only become a Member of the Fund pursuant to an application made to the Trustee. Any application by an employer or an Eligible Person to participate in the Fund must be made in the form approved by the Trustee, include the information required under this Deed and the Act, and be lodged with the Trustee at its registered office or at whatever place or places as the Trustee may from time to time decide.

8.2 Acceptance of Applications of Members

- (a) Any Eligible Person who wishes to participate in the Fund and is eligible to be a Member under the Fund, must apply to the Trustee in writing in the form from time to time approved by the Trustee.
- (b) The Trustee may require that an application for membership of the Fund be accompanied by the documents and other information specified by the Trustee.
- (c) The Trustee may impose any conditions on admission of the applicant as it thinks fit and may accept or may refuse an application for membership in its absolute discretion and is not required to give any reason for any refusal.
- (d) Where the Trustee has set conditions for eligibility for membership the Trustee may waive any or all of those conditions so that it may admit or retain as a Member an Eligible Person who would not otherwise be eligible to be a Member.
- (e) The Trustee must not accept an application from a person to participate in the Fund unless the Trustee has given to the applicant a Disclosure Document and any other information, statements or reports which are required to be given to the applicant by the Trustee under the Act.

- (f) The cooling off provisions set out in the Act applying to the Fund are to be treated as being set out and included in this Deed and the Trustee must fully comply with those provisions.
- (g) All application money and other monies received by or deposited with the Trustee in respect of an application to participate in the Fund must be held by the Trustee upon trust for the applicant until the Trustee decides to approve the application to participate in the Fund. The Trustee must comply with all of the provisions in the Act relating to how application money held on trust is to be dealt with.
- (h) Subject to the Act, if any application money is received by the Trustee without an accompanying completed application form, the Trustee will as soon as practicable return that application money to the applicant or will attempt to obtain a properly completed application from the applicant.
- (i) Subject to the Act, where application monies are received by the Trustee without a properly completed application form and a properly completed application form is not given to the Trustee within 30 days after the money is received by the Trustee, the Trustee must return the application money and any interest to the person who has paid the money to the Trustee.
- (j) The Trustee may in its complete discretion reject or accept any application by an Eligible Person to participate in the Fund without giving any reason for its decision. The Trustee must not accept an application for participation in the Fund unless any relevant prerequisites for acceptance of an application for participation of the relevant Division have been fully satisfied (if applicable). The Trustee must decide whether to accept or reject an application within one month after the application is received and any application not accepted within that period is to be treated as being rejected.
- (k) The Trustee may admit to the Fund or may refuse to admit to the Fund any Eligible Person who is unable to or fails to:
 - (1) submit evidence of health to satisfy the Trustee or an Insurer;
 - (2) pass any medical tests which the Trustee or an Insurer may prescribe; or
 - (3) submit proof to the satisfaction of the Trustee of any statement in his application for admission.
- (l) Subject to the Act, the Trustee may accept an application for a Spouse of a Member or the Spouse of an Eligible Person to become a Member of the Fund. An application for a Spouse to become a Member must be in writing in the form from time to time specified or approved by the Trustee. The provisions elsewhere in this Deed relating to applications for membership and to issuing of Disclosure Documents will apply to applications by a Spouse to become a Member of the Fund.
- (m) When the Trustee accepts an application for participation in the Fund, the Trustee must:
 - (1) ensure that the applicant is given a participation number and that the applicant's name is entered in the relevant register of Members;
 - (2) ensure that any required Members' account or other account is established in respect of the Member; and

- (3) ensure the Member is given all other information required to be given to a Member under the Act including without limitation a summary of the benefits to which the Member will be entitled from the Fund and any other details the Trustee considers appropriate.
- (n) If after an application by an Eligible Person to become a Member has been accepted any statement made or evidence submitted to the Trustee in support of or in connection with that application is found to contain any mis-statement, error or mistake the Trustee may make any adjustments to the benefits to be provided by the Fund for that Member and/or the contributions (if any) to be paid to the Fund by that Member as it, in its absolute discretion, considers appropriate.
- (o) Every Eligible Person on becoming a Member will be deemed to have approved of and be bound by this Deed.

8.3 Register of Members

The Trustee must maintain a register of Members.

9. Contributions

9.1 Employer Contributions

- (a) An Employer, or any other person authorised by the Act to make contributions to the Fund, may contribute to the Fund.
- (b) At the time of paying the contributions to the Trustee, the Employer shall advise the Trustee of the amount of the contribution in respect of each Employee.

9.2 Member Contributions

A Member or a Member's Spouse may contribute to the Fund for the Member or the Member's Spouse.

9.3 Payment on Behalf of a Member

An Employer may pay, on behalf of a Member, contributions that are payable by the Member and any contributions so paid by the Employer shall, if the Trustee is so advised, be deemed to be contributions made by the Member.

9.4 Refusal to Accept Contributions

The Trustee must refuse to accept contributions in respect of a Member and shall refund any contributions made where:

- (a) the contribution is being made by a person other than a person permitted by the Act to contribute to the Fund; or
- (b) the acceptance of the contributions is contrary to the requirements of the Act.

9.5 Crediting of Contributions

If the Trustee has established Strategies, contributions shall be allocated to Strategies in accordance with Rule 6.1.

10. Accounts

10.1 Members' Accounts

The Trustee must maintain for each Member a Member's Account to which contributions in respect of that Member, investment earnings, insurance proceeds and other amounts attributable to the Member are credited and to which fees, expenses, taxation, insurance premiums, benefits paid and other amounts attributable to the Member are debited.

10.2 Allocation of Interim Earning Rate

The Trustee may allocate to the Member's 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 in respect of which an allocation to that account was last made to the date on which the benefit is being paid.

10.3 Reserve Account

Subject to the Act, the Trustee may credit such amounts as it thinks fit to a Reserve Account and may make payments out of that Account or may transfer amounts from that Account to Members' Accounts.

10.4 Other Accounts

The Trustee may establish and administer such other accounts that the Trustee determines to be appropriate.

11. Fees And Charges

11.1 Remuneration

Subject to the Act, the Trustee may pay itself out of the assets of each Division and debit against any expense reserve account maintained for that Division as remuneration for its service:

- (a) a fee which is set out in any Disclosure Document which is current at the time contributions started to be made to that Division;
- (b) where there was no relevant and current Disclosure Document, a fee as determined by the Trustee and as notified by the Trustee in writing to the Participating Employers and/or Members of the Division before contributions commenced to be made to the Division; or
- (c) where contributions have commenced to be made to the Division, the fee notified in writing by the Trustee to the Members of the Division, subject to such fee taking effect at least 30 days (or such other period in accordance with the Act) after the notification under this sub-rule.

For the avoidance of doubt, the Trustee may receive a different fee for each Division subject to the current Disclosure Document or notice for the Division setting out the amount of the fee or the basis of calculation of the fee.

11.2 Trustee must keep separate account of commission or brokerage

The Trustee must keep a separate account showing all amounts that are paid or applied directly or indirectly as commission or brokerage to a person in return for the relevant member's admission to a Division or for procuring or agreeing to procure applications to participate in a Division.

11.3 Commission or Brokerage only payable to certain persons

The Trustee must not pay commission or brokerage in relation to acceptance of applications in relation to a Division unless it is in accordance with the Act and the person is:

- (a) the holder of an Australian Financial Services Licence in accordance with the Act;
- (b) an authorised representative of an Australian Financial Services Licensee in accordance with the Act; or
- (c) otherwise exempted from the provisions in the Act with respect to licensing.

11.4 Expenses

The Trustee must pay out of the Fund all expenses of and incidental to the management and administration of the Fund including but not limited to the expenses related to the Administrator, and the Investment Manager .

12. Investments

12.1 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 and of each Strategy in any investments of any kind, including derivatives, which the Trustee, in exercising its absolute discretion, determines.

12.2 Investment Strategy

The Trustee must, from time to time, formulate and give effect to an investment strategy or strategies in accordance with the requirements of the Act.

12.3 Variation of Investments

The Trustee has power to vary, transpose and replace the investments in such manner as it determines and is not responsible for any loss occasioned by so varying, transposing or replacing.

12.4 Appointment of Investment Managers

The Trustee may appoint investment managers to invest the assets of the Fund. The agreements with the investment managers must comply with the requirements of the Act.

12.5 Custodians

The Trustee may appoint custodians to hold assets of the Fund on behalf of the Trustee.

13. Policies Of Insurance And Annuities

- (a) The Trustee may, in its absolute discretion, apply 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 the policies or annuities with an Insurer on the terms and conditions and for the periods of time that 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 determines.
- (c) The Trustee has the power to continue the policies or annuities for such periods of time that the Trustee determines and to discontinue or surrender the policies or annuities.

14. Splitting Orders Or Agreements Under The Family Law Act

In accordance with the Act, in particular the Family Law Act 1975 (**Family Law Act**) or by a court order and despite anything elsewhere in this Deed, the Trustee:

- (a) may not while a payment flag or similar restriction applies in relation to a Member's Benefit payable to a Member pay any part of the Member's Benefit payable from the Fund affected by the payment flag or other restriction to the Member and must establish procedures to record whether a payment flag or similar restriction operates with respect to a Member's Benefit payable from the Fund;
- (b) may establish procedures to record any financial agreement under the Family Law Act or court order binding on the Trustee under which a spouse or former spouse of a Member is entitled to be paid any part of the Benefit otherwise payable from the Fund to the Member under any payment splitting agreement;
- (c) with respect to any Member's Benefit covered by a financial agreement or payment flag under the Family Law Act or court order binding on the Trustee requiring that the whole or part of the Member's Benefit be paid to the spouse or former spouse of the Member, pay to that spouse the amount to which they are entitled under the agreement or order in accordance with the Act;
- (d) may provide in accordance with the Act to the Member, the spouse of the Member or anyone who intends entering into a financial agreement under the Family Law Act with a Member who makes application to the Trustee in the manner required by the payment split legislation or the regulations made under that legislation the information about the interest of the relevant Member in the Fund;
- (e) may treat the spouse or former spouse of a Member as if they were a member of the Fund and may establish whatever accounts within the Fund relating to the interest of a spouse or former spouse of a Member in the Member's Benefit otherwise payable to the Member that the Trustee thinks fit; and
- (f) may do any other things which the Trustee thinks appropriate to give effect to a payment flag or to an agreement or court order binding on the Trustee to split a Member's Benefit between the Member and the spouse or former spouse of the Member.

15. Records, Administration, Accounts And Auditing

15.1 Records

The Trustee must keep accounts, records and copies of resolutions which correctly record and explain the transactions and financial position of the Fund.

15.2 Appointment of Administrator and delegation by Trustees

- (a) The Trustee may appoint an Administrator to administer the Fund.
- (b) The Trustee may delegate to the Administrator on any terms which the Trustee thinks fit any of the powers, duties or discretions conferred upon it by this Deed as long as it does not contravene the Act by delegating those powers. The Trustee will not be liable for any loss occasioned by any omissions or acts of the Administrator to whom it delegates any powers, duties or discretions unless the omission or the acts have resulted from fraud, wilful misconduct or a known breach of trust, by the Trustee. Subject to the Act and any agreement with the Administrator, the Trustee may at any time revoke any delegation or vary the terms of any delegation of any of the Trustee's powers under this rule.
- (c) The Trustee is not bound to act personally but may employ and remunerate accountants, actuaries, advisers, auditors, bankers, barristers, brokers, consultants, custodian trustees, investment trustees, managers, solicitors and other persons, firms, corporations or companies as it may consider desirable for the proper administration of the Fund in accordance with this Deed. The Trustee will not be liable for the neglect, default or misconduct of any adviser, person, firm, corporation or company engaged by it or for allowing trust funds or securities to remain in the custody or control of any person for any time however long unless that action is the result of fraud, wilful misconduct or a known breach of trust by the Trustee.

15.3 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.

15.4 Investment manager

The Trustee may appoint a company or person as the Investment Manager of the Fund to maintain records of investments and manage the investments of the Fund on behalf of the Trustee subject to the Act.

15.5 Provision of information to an Administrator

- (a) If an Administrator is appointed to administer the Fund, a Participating Employer or Member must provide to the Administrator such information as is required by the Administrator for it to properly administer the Fund.
- (b) The Trustee may require the Administrator to provide to it details of any benefit paid or benefit to which a Member is entitled including the details upon which a benefit calculation was based.

- (c) The Administrator may act on any information provided to it by a Participating Employer and Members and is not liable for any error in that information.
- (d) The Trustee may rely on:
 - (1) a certificate of the Administrator that the Fund records have been maintained in accordance with the information supplied to it by Participating Employers and Members, and that benefits have been calculated in accordance with those records;
 - (2) a certificate of a Participating Employer that the Participating Employer has contributed the amounts it is required to contribute under the Rules, andis not liable for any error in any such certificate.

15.6 Actuary

- (a) The Trustee may at any time appoint an Actuary to a Division and must appoint an Actuary to a Division if required to do so by the Act.
- (b) Where an Actuary has been appointed to a Division the Trustee may obtain the advice of the Actuary before determining the amount of any contribution to be made to the Division or the amount of any pension or other benefit to be paid or the amount of any lump sum into which a pension or part of a pension is to be commuted.
- (c) Where an Actuary has been appointed to a Division the Trustee may at any time and must when required by the Act arrange for the Actuary to conduct an actuarial investigation of the Division and report in writing to the Trustee regarding the position of the Division. The Actuarial report must cover the matters required to be covered by the Act and may cover any other matters which the Trustee or the Actuary think appropriate.
- (d) The Trustee may deal with any surplus or deficiency disclosed by the actuarial report by decreasing or increasing rates of contribution or by changing the entitlement to benefits or by making any other arrangements including repayment to any Participating Employer who may have contributed to the Fund in respect of Members but the Trustee may only deal with any surplus in a manner which is allowed by, and after obtaining any consents which are required to be obtained under the Act.
- (e) The Trustee must request an Actuary to provide all certificates and reports which must be provided by an Actuary in relation to the Fund or the interests of Members in the Fund under the Act at the time and in the manner required under the relevant requirements.

15.7 Significant Adverse Change

Subject to and in accordance with the Act, if the Trustee becomes aware of the occurrence of an event having a significant adverse effect on the financial position of the Fund, the Trustee must give written notice to the Regulator setting out details of that event no later than three (3) business days after becoming aware of the event.

16. Forfeiture Of Benefits

- (a) A Member who has not yet become entitled to be paid a benefit shall cease to be entitled or contingently entitled to the Member's Benefit at the discretion of the Trustee if:
 - (1) in its opinion, the Member has attempted to assign, alienate, charge or encumber all or part of his or her Member's Benefit;
 - (2) the Member is declared mentally ill or becomes liable to have his or her affairs dealt with under the laws relating to mental health; or
 - (3) the Member's whereabouts cannot be traced by the Trustee after making reasonable enquiries.
- (b) The Trustee shall apply the amount so forfeited for the benefit of the Member or such of the Member's Dependants as the Trustee, in its absolute discretion, determines, or in whatever manner the Trustee determines to be appropriate.

17. Member's And Employer's Rights

17.1 Rights of Members

The rights of the Members and their Dependants to receive benefits from the Fund are those set out in this Deed.

17.2 Statements to Members

The Trustee must provide to the Members, or cause the Members to be provided with, statements, notices, documents and information in accordance with the requirements of the Act.

17.3 Notices and Statements To Employers

The Trustee shall provide an Employer with a copy of the Deed and any other document, notice, statement and information which is required by the Act.

17.4 Employer's Right to Terminate Employment

Nothing in this Deed restricts the right of an Employer to dismiss or otherwise terminate the employment of a Member or remove a director of the Employer from office and being a Member shall not be taken as guaranteeing continuation of employment or as a director.

17.5 Auditors Requested by Employers/Non-Employer Sponsored Members

The Trustee shall, whenever requested to do so by the majority of the Participating Employers or a majority of the Non-Employer Sponsored Members, appoint auditors approved by the Employers or a majority of the Non-Employer Sponsored Members (as the case may be) to report on the affairs of the Fund and such report shall be produced to the Employers or the Non-Employer Sponsored Members (as the case may be).

18. Enquiries And Complaints

The Trustee must take reasonable steps to ensure that arrangements are in force under which Members and Beneficiaries can make enquiries and complaints.

19. Trustee: Appointment And Removal

19.1 Eligibility for appointment as Trustee

The Trustee of the Fund must be a Constitutional Corporation which is an Approved Trustee and is not disqualified from acting as a trustee.

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19.2 Removal and Resignation of Trustee

- (a) The Trustee may resign as Trustee of the Fund by giving at least one month's notice of intention to retire as Trustee to all of the Members of the Fund and at the end of the period of the notice executing a deed under which it retires and appoints another Constitutional Corporation which is an Approved Trustee as the Trustee of the Fund in its place.
- (b) The Regulator may suspend or remove a Trustee and appoint an acting trustee in accordance with the provisions of the Act.
- (c) The Trustee must when it ceases to be a Trustee of the Fund for any reason cause the assets of the Fund to be transferred to the new trustee of the Fund and must deliver to the new trustee all books, documents and records (however they may be kept) and all other information and property relating to the Fund. The reasonable costs and expenses of doing this are expenses of the Fund.
- (d) Any delay in the appointment of a new trustee will not invalidate its appointment. Any act or determination by the Trustee is valid, even though a defect may later be found in the appointment of the Trustee.

*outdated
effect of this
section*

A majority of the Members may by resolution or in writing remove the Trustee from office and may, by resolution or in writing, appoint any replacement Trustee or additional Trustee.

19.3 Trustee Company Placed into Receivership

If a company is, at the time of being placed in receivership or liquidation, the sole Trustee of the Fund, the receiver or liquidator shall have the power by deed to appoint a replacement Trustee or Trustees. If the receiver or liquidator fails to appoint a replacement Trustee within 60 days after a vacancy occurs, a majority of the Members shall have the power by deed to appoint a replacement Trustee.

19.4 Policy Committee

The Trustee must whenever required by and in accordance with the Act take all reasonable steps to ensure that at least one policy committee is established in accordance with the Act for each group of standard employer sponsored Members of a Division.

19.5 Expenses of the Policy Committee

In accordance with the Act, the Trustee may debit the Member's Account maintained for each Member in respect of whom a Policy Committee has been established, an appropriate portion of:

- (a) the cost of providing facilities for the Policy Committee to meet;
- (b) the costs incurred by the Trustee in attending the meetings of the Policy Committee; and
- (c) costs incurred by the Trustee in providing information to the Policy Committee.

Despite the above, if the Trustee considers it fair and reasonable, the Trustee may, instead of debiting the costs with respect to a Policy Committee against a Member's account, debit those expenses to the expense reserve account for the Division.

19.6 Dissolution of a Policy Committee

A Policy Committee may dissolve itself. If it does this, the Trustee is taken to have complied with the Trustee's duties to establish a Policy Committee under this rule and under the Act.

19.7 Vacancies

Any vacancy in the office of a Trustee, or a director of a corporate Trustee, shall, where such vacancy is required to be filled, be filled 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.

19.8 Consent to Act as Trustee or Director

A person shall only be appointed as a Trustee or as a director of a corporate 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.

19.9 Records of Changes in Trustees or Directors

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

20. Trustee's Meetings

20.1 Trustee company

Where the Trustee is a company, the meetings of the directors shall, subject to meeting the requirements of the Act, be governed by the constitution of the company.

21. Powers And Discretions Of Trustee

21.1 Powers

The Trustee shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted by this Deed and conferred on 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 expenses incurred in:
 - (1) administration of the Fund;
 - (2) having the accounts of the Fund audited;
 - (3) having taxation returns and Government returns prepared;
- (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 the terms and conditions that the Trustee, in its absolute discretion, determines;
- (e) to take and act on the advice of a barrister, solicitor, accountant, actuary, superannuation consultant or any other adviser in relation to the administration of the Fund and pay out of the Fund the fees payable to these advisers;
- (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 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 at 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 elect that the Fund become a regulated superannuation fund under the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (k) to act on a direction given by a Court, the Regulator or the Superannuation Complaints Tribunal established under the Superannuation (Resolution of Complaints) Act, 1993 (C'th);

- (l) to comply with covenants of trustees imposed by the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (m) to do those things permitted or required by the Act; and
- (n) 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 Deed.

21.2 Discretions

In administering the Fund and in exercising the trusts, powers and authorities vested in it, the Trustee has an absolute and uncontrolled discretion at all times to exercise or refrain from exercising the trusts, powers and authorities.

22. Liability Of Trustee And Members

22.1 Liability of Trustee

The Trustee and its directors and employees are not 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 Limitation of Trustee liability

Subject to the Act and except for the circumstances set out in Rule 22.1, the liability of the Trustee, its directors and employees are limited to the extent of the value of the assets of the Fund.

22.3 Members' Liability

The Members (other than in their capacities as Trustees) are not liable for any action taken or omitted in administering the Fund.

23. Trustee's And Directors Indemnity

The Trustee and each of the directors and employees 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 have a lien on the Fund for this indemnity. The Trustee and the directors and employees of the Trustee shall not be indemnified out of the Fund for any penalty imposed on them under the Act.

24. Trustee As Member's Attorney

Each Member irrevocably appoints the Trustee as his or her 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.

25. Availability Of Deed

25.1 Inspection of Deed

A copy of this Deed shall be kept by the Trustee and be available for inspection during normal business hours by any person who is, or was within the preceding 12 months, a Member or a Beneficiary.

25.2 Providing copy of Deed

If required by the Act, the Trustee shall, on the written request of a person who is, or was within the preceding 12 months, a Member or a Beneficiary, provide that person with a copy of this Deed.

26. Amendment Of Deed

26.1 Variation of Deed

The Trustee may, at any time and from time to time, by deed, amend all or any of the provisions from time to time of this Deed and the new provisions so made shall have the same validity and effect as if they had been originally contained in the Deed and are subject to being amended in like manner but no amendment can be made if it breaches the requirements of the Act or if it has the effect of 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 amendment 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 reduction; or
- (d) the Regulator approves in writing of the reduction.

26.2 Notification to Members

As soon as practicable after a provision of the Deed is amended, the Trustee must, if required by the Act, give to the Members written advice that complies with the Act.

27. Transfer Of Benefit From Another Fund Or RSA

- (a) Where a Member requests that an amount standing to his or her credit or an asset in another superannuation fund or in a retirement savings account or in an approved deposit fund be transferred to the Fund, the Trustee may accept the transfer of this amount or asset to the credit of the Member in the Fund or in the Strategies advised to the Trustee by the Member.
- (b) Where for the purpose of such a transfer the person requesting the transfer is not already a Member, that person may be admitted as a Member and may be granted rights and benefits additional to or in place of those otherwise provided under this Deed as the Trustee may determine.

- (c) Notwithstanding any other rule, the Trustee may set up a Division as a successor fund (within the meaning of the SIS Regulations) to an existing Regulated Superannuation Fund ("original fund") and may take whatever steps the Trustee thinks fit to facilitate the transfer of benefits from the original fund to the Division set up as the successor to the original fund, including without limiting the above:
- (1) setting up any separate Member accounts within the Fund to preserve the rights of transferring members to Benefits;
 - (2) setting up any separate reserve accounts within the Fund to receive reserve or other unallocated amounts transferred to the new Division as the successor fund and to apply the amounts in those accounts solely for the benefit of the transferring members by meeting costs and expenses relating to the interests of the transferring members in the relevant Division and in supplementing or increasing the amounts credited to the Member accounts for transferring members or in paying taxation liabilities arising in relation to the Member accounts for the transferring members.

28. Transfer Of Benefit To Another Fund Or RSA

28.1 Transfer to Another Fund or RSA

- (a) Subject to Rule 28.3, the Trustee may, on receiving the written request of a Member (unless the transfer is to a successor fund within the meaning of the Act), transfer the whole or part of the Member's Benefit to the trustees of another superannuation fund which the Trustee is satisfied complies with the Act or to a financial institution to be credited to a retirement savings account nominated by the Member or, provided termination of employment has occurred, transfer the benefit to an approved deposit fund which the Trustee is satisfied complies with the Act. The Trustee may transfer, without the Member's consent, the whole or part of the Member's Benefit to such a Fund if the Trustee is satisfied that it is a successor fund to the Fund.
- (b) The transfer of the Member's Benefit, or part of the Member's Benefit, is a complete discharge to the Trustee in respect of any liability to that Member and persons claiming through that Member in relation to the amount so transferred. The Trustee may deduct from the amount to be transferred the amount of any taxation that is calculated by the Trustee to be payable in respect of the Member's Benefit.

28.2 Purchase of Annuity

The Trustee may, on receiving the written request of a Member, apply any part of a benefit that the Member is entitled to be paid, in payment of the consideration for an annuity.

28.3 Preserved Benefits

A transfer of any Preserved Benefit pursuant to Rule 28.1 shall only be made if it is a condition of the transfer that the amount of any Preserved Benefit transferred must not be paid from the transferee fund prior to the Member retiring from the workforce and attaining the 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 by the Act.

28.4 Transfer to Eligible Roll-over Fund

- (a) Where a benefit (other than a pension) has become payable under these Rules and the benefit has not been paid, the Trustee may, if permitted to do so by the Act and must, if required to do so by the Act, pay the benefit to an eligible roll-over fund (as defined in the Act) in the manner and circumstances prescribed by the Act.
- (b) The Trustee must not transfer a Member's Benefit to another Complying Superannuation Fund unless the relevant Member has given the Trustee his written consent to the transfer and the trustees of the receiving fund are required by its trust deed to preserve benefits for that Member which are transferred from this Fund, or unless the transfer is to a successor fund.

29. Transfers Of Member Benefits Between Divisions

The Trustee may in its absolute discretion but subject to the Act, transfer between Divisions, part or all of the benefits or benefit entitlements and any applicable assets and may take any other steps to carry into effect such a transfer. The Trustee must in accordance with the Act advise any persons affected by such a transfer.

30. Admission Of Participating Employers To Fund

30.1 Acceptance of Participating Employers

- (a) An employer who wishes to be admitted to the Fund for the purpose of providing retirement and other approved ancillary benefits for its employees must lodge an application with the Trustee to become a Participating Employer in the form required by the Trustee from time to time. At the time of lodgment of an application an applicant must provide to the Trustee any other information specified by the Trustee.
- (b) The Trustee must not accept an application for admission as a Participating Employer unless the applicant has:
 - (1) completed the application and provided all of the other information required by the Trustee;
 - (2) agreed in writing to be bound by and comply with this Deed; and
 - (3) received from the Trustee in writing and in a clear and effective manner, such information, statements and reports in relation to the operation, management and performance of the relevant Fund as the Act requires in the circumstances to be given to the applicant.
- (c) An applicant will become a Participating Employer upon the date of acceptance by the Trustee of the applicant's application or as otherwise specified by the Trustee in the notice of acceptance delivered to the applicant.
- (d) When the Trustee accepts an application for participating as a Participating Employer for a Division, the Trustee must:
 - (1) ensure that the applicant is given a participation number and that the applicant's name is entered in the relevant register of Participating Employers; and

- (2) ensure that any Participating Employer receives confirmation that they have been admitted to participate as an employer in the relevant Division.

31. Withdrawal Of Participating Employers From Fund

A Participating Employer ceases to be a contributor to and a participant in the Fund:

- (a) from the effective date of a written notice that it gives to the Trustee of its intention to cease to be a Participating Employer; or
- (b) with effect from the date it becomes bankrupt or is placed in liquidation or ceases to carry on a business.

32. Benefit Payable On Retirement Or Attaining Age 65

Subject to the provisions of these Rules, the amount of the Member's Benefit shall be paid:

- (a) 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, or who retires from any gainful employment after attaining age 60;
- (b) to a Member on attaining age 65 who requests payment of the benefit;
- (c) to a Member when required to be paid in accordance with the Act.

33. Benefit Payable On Death

33.1 Benefit Payable on Death

If a Member dies before payment or commencement of payment of a benefit under Rule 32, the amount of the Member's Benefit shall be paid to the Member's legal personal representative or to such one or more of the Member's Dependants, 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 is not bound by it unless the nomination is in the form of a binding direction given in accordance with the requirements of the Act, in which case, the Trustee will pay the benefit in accordance with that direction, if it is still current and valid at the date of the Member's death.

33.2 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 or in any other manner.

34. Benefit Payable On Disablement

34.1 Permanent Disablement Benefit

Subject to the provisions of these Rules, if, before a benefit is paid or commences to be paid under Rule 32, a Member becomes Permanently Disabled, the Member's Benefit shall be paid to the Member or, if the Member is unable to manage his or her own affairs, to a trustee

for the Member or to such of the Member's Dependants, in such proportions as the Trustee, in its absolute discretion, determines.

34.2 Temporary Disablement Benefit

Subject to any limitations imposed by the Act, if, prior to a benefit becoming payable under Rule 34.1, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, the proceeds of the policy shall be paid to the Member or, if the Member is unable to manage his or her own affairs, to such of the Member's Dependants and in such proportions as the Trustee, in its absolute discretion, determines.

35. Benefit Payable To An Employer Sponsored Member On Termination Of Employment Before Retiring Age

- (a) If the employment by the Employer of an Employer Sponsored Member is terminated before age 60 otherwise than in the circumstances referred to in Rules 33 or 34 and the Member's new employer does not make any contributions to the Fund on his or her behalf, the Member's Benefit shall, if the Member has attained the age prescribed in the Act as being the preservation age for that Member, and is retiring from the workforce, be paid to the Member.
- (b) If the Member has not attained the age prescribed in the Act as being the preservation age for that Member, or, having attained that age, has not retired from the workforce, the Trustee shall pay to the Member only that part of the Member's Benefit which is not a Preserved Benefit. The balance of the Member's Benefit shall, subject to the provisions of these Rules, be retained in the Fund until it is paid in accordance with this Deed.

36. Benefit Payable On The Grounds Of Financial Hardship

The Trustee may, in its absolute discretion and if permitted by the Act, 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 or her benefit is not paid to the Member.

37. 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.

38. Payment Of Unclaimed Money

The Trustee shall treat a benefit as unclaimed money and pay it in accordance with the requirements of the Act if:

- (a) the benefit (other than a pension) has become payable under this Deed; and
- (b) the person to whom the benefit is payable has reached the eligibility age for an age pension prescribed by the Act; and

- (c) the person to whom the benefit is payable has not applied to the Trustee to have the amount of the benefit paid to him or her; and
- (d) the Trustee is unable to pay the benefit because the Trustee, after making reasonable efforts to find the person to whom the benefit is payable, is unable to do so; or
- (e) the Act permits the payment to be made.

39. Deferment Of Payment Of Benefit

The payment of any benefit payable under these Rules may, at the request of the Member and with the consent of the Trustee, be deferred until the Member requests payment of the benefit. Such deferred benefit shall, however, be paid in the event of the Member's death or Permanent Disablement or when required by the Act to be paid.

40. Payment Of Benefits To Minors

Where a person to whom benefits are payable hereunder is a minor, the Trustee may pay the benefit to a trustee or 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.

41. Mode Of Payment Of Benefits

41.1 Lump Sum or Pension

The benefits payable under the Rules shall, in the discretion of the Trustee, be paid in a lump sum or by way of pension or a combination of the two unless any part of the benefit is required by the Act to be paid by way of lump sum or pension. A benefit that is payable under Rule 32 shall (subject to any permitted commutations by Members and beneficiaries to lump sums) be paid by way of a pension that is an old-age pension within the meaning of Section 51 (xxiii) of the Commonwealth of Australia Constitution Act, 1900 if the Trustee is not, at the time the benefit becomes payable, a Constitutional Corporation.

41.2 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 Regulator, pay benefits by transferring in specie, assets of equivalent value to the benefit payable.

42. Pension Conditions

42.1 Trustee's Discretion

Where a benefit is payable under the Rules by way of pension, the Trustee and the Member may agree that the pension be paid as a lifetime pension in accordance with Rule 43 or as a fixed term pension in accordance with Rule 44 or as an allocated pension in accordance with Rule 45. In the absence of agreement, the Trustee shall determine the basis on which the pension is paid.

*or as a lump allocated pension in accordance with Rule 45A
→ inserted DOA 5/5/05*

42.2 No Assignment or Encumbrance

- (a) Pensions payable from the Fund must not be assigned or otherwise transferred by the person in receipt thereof (except to the extent permitted by the Rules) and must not be mortgaged or encumbered in any manner whatsoever.
- (b) Neither the capital value (if any) of any pension payable from the Fund nor any income from it, may be used as a security for a borrowing.

42.3 Annuities

The Trustee may, in its absolute discretion, (including where an old-age pension is required to be paid) provide pensions payable under these Rules by applying a Member's Benefit to the purchase of an annuity that meets the requirements of the Act.

42.4 Imputation Credits

The Trustee may, in its absolute discretion, debit amounts to the accounts of Members to whom current pensions are not being paid and credit corresponding amounts to the accounts of Members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

43. Lifetime Pensions

43.1 Pension Complies with Act

- (a) A lifetime pension shall be paid, at least, annually throughout the life of the Member.
- (b) A lifetime pension shall comply with the requirements of the Act in relation to such pensions.

43.2 Pension Amount

Subject to meeting the requirements of the Act in relation to the amount of pension payments, the annual amount of a lifetime pension shall be determined by the Trustee and shall be paid by instalments of such amounts and on such dates as the Trustee and Member agree on or, in the absence of agreement, as the Trustee determines.

43.3 Indexation

Subject to meeting the requirements of the Act in relation to pension increases, the amount of a lifetime pension shall be increased annually by the amount (if any) agreed on by the Trustee and the Member or, in the absence of agreement, as the Trustee determines.

43.4 Commutation of Pension

- (a) A person in receipt of or entitled to a lifetime pension may make a written application to the Trustee requesting the Trustee to commute part or all of the pension to a lump sum payment.
- (b) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amount calculated by the Trustee, but only in the circumstances and manner permitted by the Act.

- (c) If the pension is commuted under this Rule 43.4, the amount payable must not be greater than the benefit that was payable before the commutation.
- (d) Notwithstanding Rules 43.4(a) and 43.4(b), if part or the whole of the lump sum amount is a Preserved Benefit, the Trustee shall deal with that benefit in accordance with the requirements of the Act.

43.5 Pension Payable to Reversionary Pensioner on Death of Member

- (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine that, on the death of the Member, a pension shall be paid to a reversionary pensioner or pensioners.
- (b) The amount of the reversionary pension shall be the amount agreed on by the Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.
- (c) The reversionary pension shall only be paid for the period and on the terms permitted by the Act.

43.6 Payment to Reversionary Pensioner or Legal Personal Representative

- (a) Subject to Rule 43.5, in the event of the death of a Member entitled to a lifetime pension, within 10 years after the commencement date of the pension, the Trustee shall pay to a reversionary pensioner of the deceased Member or, if there is not a surviving reversionary pensioner, to the deceased Member's legal personal representative, an amount equal to the total payments that the Member would have received, had the Member not died, from the date of death until 10 years after the commencement date of the pension.
- (b) Subject to Rule 43.5, in the event of the death of a Member entitled to a lifetime pension, within 10 years after the commencement date of the pension, if there is a reversionary pensioner who dies within that 10 year period, the Trustee shall pay to the reversionary pensioner's legal personal representative an amount determined by the Trustee not exceeding the difference between:
 - (1) the sum of the amounts that would have been payable to the deceased reversionary pensioner in the period of 10 years; and
 - (2) the sum of the amounts paid to the deceased reversionary pensioner.
- (c) If a legal personal representative of a deceased Member or reversionary pensioner is not appointed within 3 years after the date of death (or such longer period as the Trustee determines), any assets of the Fund which were funding the lifetime pension shall be treated as forfeited benefits and applied by the Trustee in accordance with Rule 16.
- (d) No benefit is payable in respect of a Member who dies more than 10 years after the commencement date of a pension if the deceased Member does not have a reversionary pensioner to whom a pension is paid or payable under Rule 43.5. Any assets of the Fund which were funding the lifetime pension shall be treated as forfeited benefits and applied by the Trustee in accordance with Rule 16.

44. Fixed Term Pensions

44.1 Pension Complies with Act

- (a) A fixed term pension must be paid, at least, annually for a fixed term agreed on by the Member and the Trustee.
- (b) A fixed term pension must comply with the requirements of the Act in relation to such pensions.

44.2 Pension Amount

Subject to meeting the requirements of the Act in relation to the amount of pension payments, the annual amount of a fixed term pension shall be determined by the Trustee and shall be paid by instalments of such amounts and on such dates as the Trustee and Member agree on or, in the absence of agreement, as the Trustee determines.

44.3 Indexation

Subject to meeting the requirements of the Act in relation to pension increases, the amount of a fixed term pension shall be increased annually by the amount (if any) agreed on by the Trustee and the Member or, in the absence of agreement, as the Trustee determines.

44.4 Commutation of Pension

- (a) A person in receipt of or entitled to a fixed term pension may make a written application to the Trustee requesting the Trustee to commute part or all of the pension to a lump sum payment.
- (b) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amount calculated by the Trustee, but only in the circumstances and manner permitted by the Act.
- (c) If the pension is commuted under this Rule 44.4, the amount payable shall not be greater than the benefit that was payable before the commutation.
- (d) Notwithstanding Rules 44.4(a) and 44.4(b), if part or the whole of the lump sum amount is a Preserved Benefit, the Trustee shall deal with that benefit in accordance with the requirements of the Act.

44.5 Pension Payable to Reversionary Pensioner on Death of Member

- (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that, in the event of the death of the Member, a pension shall be paid to a reversionary pensioner or pensioners.
- (b) The total amount of the reversionary pension or pensions shall be the amount that would have been payable to the deceased Member, had the deceased Member not died, apportioned between the reversionary pensioners on the basis agreed by Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.

44.6 Payment to Legal Personal Representative

- (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that, in the event of the death of a Member and if there is not a surviving reversionary pensioner, the Trustee shall pay to the deceased Member's legal personal representative, an amount equal to the pension payments that the Member would have received, had the Member not died. The Trustee may commute such payments to a lump sum payment of an amount calculated by the Trustee.
- (b) If a pension is paid to a reversionary pensioner who dies within the fixed term for which the pension is payable, the Trustee may either pay to another reversionary pensioner or to the deceased reversionary pensioner's legal personal representative an amount equal to the pension payments that the reversionary pensioner would have received, had the reversionary pensioner not died. The Trustee may commute such payments to a lump sum payment of an amount calculated by the Trustee.
- (c) If a legal personal representative of a deceased Member or reversionary pensioner (to whom an amount is payable under paragraph (a) or (b)) is not appointed within 3 years after the date of death (or such longer period as the Trustee determines), any assets of the Fund which were funding the pension shall be treated as forfeited benefits and applied by the Trustee in accordance with Rule 16.

45. Allocated Pensions

45.1 Allocated Pension

- (a) An allocated pension must be paid, at least, annually.
- (b) The annual amount of an allocated pension must not be greater than nor less than any maximum or minimum amounts stated in the Act and the pension must comply with the requirements of the Act.

45.2 Paid until Member's Account is Exhausted

An allocated pension shall be paid on such dates and by instalments of such amounts as the Trustee and the Member agree on or, in the absence of agreement, as the Trustee determines and shall cease to be payable if the Member's Benefit is reduced to nil.

45.3 Commutation of Pension

A person in receipt of an allocated Pension may commute from time to time part or the whole of the pension to a lump sum payment on making a written application to the Trustee provided that the Trustee will only act on the written application to the extent that doing so will not breach the Act.

45.4 Benefit Payable to Allocated Pension Reversionary Pensioners

- (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that, on the death of a Member to whom an allocated pension is being paid, a pension may be paid to one or more reversionary pensioners. The Trustee shall pay an allocated pension to such of the reversionary pensioners as it, in its absolute discretion, determines.

- (b) The amount and the terms and conditions of the allocated pension paid to a reversionary pensioner under this Rule shall be agreed on by the reversionary pensioner and the Trustee, but in the absence of agreement, the amount and the terms and conditions of the allocated pension shall be determined by the Trustee.
- (c) Notwithstanding Rule 45.4(b), if the allocated pension has to be paid on some other basis for the Fund to comply with the Act, it shall be paid on that basis.
- (d) The annual amount of the allocated pension must not be greater than nor less than any maximum or minimum amounts stated in the Act.
- (e) The allocated pension payable under this Rule 45.4 ceases to be payable:
 - (1) if the Member's Benefit is reduced to nil; or
 - (2) on the death of the reversionary pensioner.

45.5 Payment to Members Dependants

- (a) When, in respect of a deceased Member, an allocated pension:
 - (1) ceases to be payable to all of the Member's reversionary pensioners under Rule 45.4(e); or
 - (2) is not payable because the Member has no reversionary pensioners; or
 - (3) is not payable because the Trustee has determined to not pay an allocated pension to any of the Member's reversionary pensioners,the balance of that Member's Benefit (if any) shall be:
 - (A) 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; and/or
 - (B) paid to the Member's legal personal representative.
- (b) When deciding to whom to pay a death benefit, the Trustee shall take account of any nomination of beneficiaries made by the Member, but shall not be bound by it.
- (c) 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.
- (d) Subject to Rule 45.5(c), if a grant of probate or letters of administration is not made in respect of the estate of the Member within 3 years after his death (or such longer period as the Trustee determines), the benefit payable under this Rule 45.5 shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or, in the absence of any such provision, shall be applied by the Trustee in accordance with the provisions of Rule 16.

- (e) If payment of all or part of the benefit payable under this Rule 45.5 does not comply with the requirements of the Act, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied by the Trustee in accordance with the provisions of Rule 16.

← inserted Rule
FSA Term Allocated
Persons
DOA 5/5/05

46. Deduction Of Taxation

The Trustee may deduct from any benefit payable the amount of any taxation that is calculated by the Trustee to be payable in respect of the Member's Benefit.

47. Dissolution Of The Fund Or Division

Subject always to the Act and the discretion of the Trustee, Rule 47 will apply equally to the termination or dissolution of a Division of the Fund to the extent that the context permits.

47.1 Dissolution of the Fund

- (a) The perpetuity period applicable to the trusts and dispositions contained in this Deed is the period or eighty (80) years commencing on the date of execution of this Deed. The Fund, unless sooner determined under the provisions of this Deed, will terminate and be wound up on the expiration of that period.
- (b) If the office of the Trustee of the Fund becomes vacant and a new Trustee is not duly appointed within one (1) month of the vacancy occurring the Fund shall terminate and be wound up.
- (c) If the Trustee determines that the Fund is to be terminated, the Fund must terminate and be wound up.
- (d) Upon the termination of the Fund the Trustee shall hold the assets of the Fund and each Division upon trust for the Members of that Division and the Fund and all Divisions shall be wound up.
- (e) The Trustee must give notice to each Member of the Fund that the Fund is to be wound up on a specified date (**the Closing Date**) and as from the Closing Date no further contributions (other than arrears) may be made to the Fund and that all arrears of contributions must be paid immediately.
- (f) As from the Closing Date the Trustee must:
- (1) immediately make a call for any arrears of contributions in respect of the Fund and not, except in the case of contributions received in response to a call, accept further contributions to the Fund; and
 - (2) credit and/or debit, as the case may be, to each relevant Member's Account in a manner the Trustee as being in its opinion fair and equitable, the balance of any reserve accounts including the expense reserve account maintained in respect of the Fund after payment of all expenses associated with the termination of the Fund.
- (g) Upon the termination of the Fund the Trustee must sell call in and convert to cash all of the assets of the Fund and subject to the provisions of this rule allowing postponement or retention of assets to meet liabilities, must complete the realisation

within 180 days. The Trustee may transfer any investment of the Fund to the trustee of any other trust fund (whether or not the Trustee is in any way associated with such other trust) on receiving cash equivalent to the market value of such investment at the date of transfer.

- (h) The Trustee may retain for so long as it thinks fit such part of the investments of the Fund as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Fund or of any investments of the Fund. Any investments or money so retained which are ultimately found not to be needed to meet any liabilities will remain subject to the conditions of this Deed requiring conversion and distribution.
- (i) The Trustee shall retain out of any moneys in its hands full provision for and to pay thereout all costs charges expenses liabilities (whether actual or contingent) claims and demands incurred made or expected by the Trustee in connection with the Fund or arising out of the termination of the Fund including the fees of any agents solicitors bankers accountants or other persons whom the Trustee may employ in connection with the termination of the Fund and is entitled out of the moneys so retained to be indemnified and saved harmless against any of those costs and charges expenses claims and demands provided that any moneys so retained to the extent that they are ultimately found not to be so required shall remain subject to the conditions of this Deed for distribution to Members.

47.2 Distribution on Termination of the Fund

- (a) The Trustee when it has completed the realisation of the investments of the Fund must distribute to Members the net proceeds of realisation together with all other cash forming part of the Fund in the respective proportions that the respective balances in each relevant Member's account as at the date of termination of the Fund bears to the total of all such amounts realised or held on behalf of the Fund by the crediting of such amount available to be distributed to the relevant Member's accounts.
- (b) After receiving the advice of an Actuary if one has been appointed to the Fund the Trustee at its discretion must deal with the benefits and entitlements which have accrued to Members under this Deed at the Closing Date in one or more of the following ways:
 - (1) by paying a benefit to the Member or the Dependants;
 - (2) by rolling over the benefit within the superannuation system;
 - (3) by transferring the benefit to another regulated superannuation fund (as long as the Trustees of that fund are required under the relevant Trust Deed to preserve the Preserved Benefits included in the amount transferred and the relevant Member gives his consent in writing);

BUT the Trustee must not deal with those benefits and entitlements in a manner which would contravene the Act.

- (c) The Trustee may pay the benefits payable on winding up in any form and under any arrangements which the Trustee considers appropriate in the circumstances and every Member will accept the benefits allotted to him by the Trustee in full discharge of all claims in respect of the Fund and will have no further claims at all in respect of

any rights or benefits under this Deed or otherwise in connection with or arising out of their interest in the Fund and all decisions of the Trustee in respect of any benefit will be final and conclusive.

- (d) Where the proceeds of the investments of the Fund realised are subject to a cashing restriction, the Trustee must:
- (1) notify each Member concerned in writing of the details of the cashing restriction;
 - (2) request each Member concerned in writing to nominate to the Trustee within one month of receipt of the request the regulated superannuation fund or approved deposit fund to which the proceeds are to be transferred or applied **(the nomination)**.

The Trustee must not, subject to the following provisions of this rule, transfer the proceeds to a regulated superannuation fund, or approved deposit fund unless:

- (3) so directed by the Member's nomination; and
 - (4) the regulated superannuation fund, or approved deposit fund has the appropriate provisions to ensure that the amount subject to the cashing restriction is not dealt with other than as permitted by the Act.
- (e) The Trustee must use its best endeavours to obtain a nomination upon which the Trustee can act in accordance with the terms of this Deed. Where no nomination is delivered in respect of a Member, or the Trustee forms the opinion that the Member cannot be located the Trustee may at its discretion deal with the Member's interest in the Fund in such manner as is required by and in accordance with the Act.
- (f) The Trustee may from time to time and prior to completion of the realisation of investments of the Fund make such interim distributions to Members on account of their respective entitlements as the Trustee determines.
- (g) Each of those distributions shall be made only against delivery to the Trustee of such form of receipt and discharge as may be required by the Trustee.
- (h) The Trustee may postpone the sale calling in and conversion of any part of the assets of the Fund for such time as it thinks is desirable so to do in the interests of the Members and will not be responsible for any loss attributable to such postponement.
- (i) If the Trustee decides to wind up the Fund because there are no Members left in the Fund the assets of the Fund are to be distributed in any way allowed by the Act and subject to those requirements the Trustee in its discretion may distribute the assets remaining in the Fund to any former Members of the Fund or to any of the Dependants or to the legal personal representative of any Member who has died or to any Participating Employer as a refund of contributions.
- (j) If after the winding up of the Fund and the distribution of the assets as set out earlier in this rule any assets remain in the Fund (surplus assets) the surplus assets are to be distributed to the Members or former Members of the Fund or their Dependants or any of them or refunded to any relevant Participating Employer or otherwise distributed in a manner allowed by the Act as the Trustee in its discretion may decide

after receiving the advice of any Actuary appointed to the Fund but the Trustee may not distribute the surplus assets in any way which would contravene the Act.