

Attachment 1

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B M BEVAN & R J WHITESIDE SUPERANNUATION FUND RULES

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RULES

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 Unless the contrary intention appears:

Accumulated Credit means the balance of the Contribution Account of a Member.

Application Form means the form specified by the Trustee from time to time to be included with a person's application to participate in the Fund.

Binding Nomination means a lawful direction to the Trustee in the last effective Nomination Form made, confirmed or amended by a Member in accordance with the Binding Nomination Rules (as amended) which has not been revoked by the Member and which was given to the Trustee prior to the Member's death.

Binding Nomination Rules means the rules adopted by the Trustee pursuant to rule 5.9.

Child has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

Complying Pension Account means the account kept for a Member under rule 8.7.

Constitutional Corporation has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

Contribution Account means the account kept for a Member under rule 8.6.

Contribution Cap means 'concessional contributions cap' or 'non-concessional contributions cap' as those terms are defined in the Tax Act.

Death Benefit means a benefit payable under rule 4.2.

Deed means the deed establishing the Fund.

Dependant of a Member has the same meaning given to it by Superannuation Law.

Eligible Person means a person able to become a member of the Fund in accordance with the Superannuation Law, and may include a Non-Member Spouse.

Employee means:

- (a) a full-time or part-time permanent employee of an Employer;

- (b) if the Employer is a company - a director of the company;
- (c) any other person nominated by an Employer.

Employer means the Employer by which an Employee is employed or nominated.

Excess Tax Contribution means any part of a transfer of assets to the Fund which would otherwise cause the relevant Member to exceed any applicable Contributions Cap.

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

Flagging Order has the same meaning as in the Family Law Act 1975.

Flag Lifting Agreement has the same meaning as in the Family Law Act 1975.

Fund means the superannuation fund as constituted by the Deed and the Rules.

Gainfully Employed Person means a person who is employed or engaged for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages.

Investment Portfolio means a separate part of the Fund maintained under rule 8.9.

Investment Strategy means the investment strategy of the Fund in accordance with rule 9.10

Legal Personal Representative has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

Member means a person who has been admitted to membership under rule 2.4 and has not ceased to be a Member under rule 2.10.

Non-Binding Nomination means a direction to the Trustee made in accordance with these Rules (as amended) which has not been revoked by the Member and that is not a Binding Nomination.

Nomination Form means a form approved by the Trustee which, if completed and lodged in accordance with these Rules, would constitute a Binding Nomination or Non-Binding Nomination, as applicable.

Non-Member Spouse has the same meaning as in the Family Law Act 1975.

Payment Flag has the same meaning as in the Family Law Act 1975.

Payment Split has the same meaning as in the Family Law Act 1975.

Privacy Act means the Privacy Act 1988.

Reserve Account means an account kept under rule 8.13.

Rules means the rules forming part of the Deed.

Service in relation to a Member who is:

- (a) an Employee means the most recent continuous service of a Member as an Employee and includes:
 - (i) any period during which the Member is off work because of injury or illness and receives workers' compensation, sickness pay or other regular income from either the Employer or any insurance scheme sponsored by the Employer; and
 - (ii) any other period declared by the Employer to be Service; or
- (b) not an Employee means the most recent continuous period in which a Member was a Gainfully Employed Person other than as an Employee.

Shortfall Component has the same meaning as in the Superannuation Guarantee (Administration) Act 1992.

Split means the division of a Member's interest in the Fund pursuant to a Flag Lifting Agreement, a Splitting Order or a Superannuation Agreement.

Splitting Order has the same meaning as in the Family Law Act 1975.

Spouse has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

Superannuation Agreement has the same meaning as in the Family Law Act 1975.

Superannuation Authority means the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, Australian Taxation Office or any other governmental authority or authorities responsible for administering the laws or any other rules governing the prudential supervision or promotion of superannuation funds or the availability of income tax concessions to superannuation funds.

Superannuation Law means any requirements under the Superannuation Industry (Supervision) Act, the Superannuation Entities (Taxation) Act, the Superannuation (Resolution of Complaints) Act, the Superannuation Guarantee (Administration) Act, the Family Law Act 1975, the Corporations Act 2001, the Social Security Act 1991 or any other law in relation to superannuation funds, or by a Superannuation Authority:

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

- (c) which the Fund must satisfy to qualify for the most favourable social security treatment available to members of superannuation funds.

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

Tax means a Commonwealth, State, Territory or local government impost and includes (but is not limited to) income taxes, capital gains taxes, surcharges, duties, levies, rates and goods and services tax.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Termination Date means the date of the earliest occurrence of an event specified in Rule 13.1.

Trustee means the trustee of the Fund at any time.

Interpretation

1.2 Unless the contrary intention appears:

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

Primary Purpose

1.3 The primary purpose of the Fund is the provision of old age pensions.

2. ELIGIBILITY AND MEMBERSHIP

Eligibility

- 2.1 Any Eligible Person may make application on an Application Form to participate in the Fund.
- 2.2 The Fund may not have more than four Members at any one time unless the Trustee otherwise determines.

Membership

- 2.3 Before admitting an Eligible Person as a Member, the Trustee may require the person to
 - (a) provide information which the Trustee considers relevant to the administration of the Fund, and
 - (b) select an investment strategy in accordance with the Fund investment strategy from time to time.

- 2.4 A person becomes a Member on the date when the Trustee has approved the person's application.

If permitted by Superannuation Law, the Trustee and the Member may agree that the Member is to be regarded as having become a Member on an earlier date.

- 2.5 The Trustee may reject an application.
- 2.6 Each Member is bound by the Deed and Rules.

Transfer to Fund

- 2.7 The Trustee may make arrangements it considers appropriate with:
 - (a) a Member; or
 - (b) any current or previous employer of the Member; or
 - (c) the trustees of any superannuation fund or approved deposit fund of which the Member is, or has been, a member; or
 - (d) the issuer of an annuity held by the Member, or
 - (e) any other person permitted by Superannuation Law or the Tax Act;

to transfer assets to the Fund and to provide benefits in respect of the Member, which may be calculated in a different manner than set out in the Rules. The arrangement must comply with Superannuation Law.

Transfer from Fund

- 2.8 If a Member is, or is eligible to be, a member of another superannuation fund or approved deposit fund, or a Member's interest or benefit becomes subject to a Split, the Trustee may transfer assets to the other fund. However:
- (a) the transfer must comply with Superannuation Law; and
 - (b) the Trustee must not transfer more than the Member's Accumulated Credit or more than is requested by the Member or the Non-Member Spouse, as the context requires.
- 2.9 If the transfer satisfies the Member's entitlement to any benefit in respect of the amount transferred the Trustee may declare that it satisfies the Member's entitlement in full. The Trustee is not responsible for the manner in which the trustee of the other fund deals with the amount transferred.

Membership Ceases

- 2.10 A person ceases to be a Member when:
- (a) all benefits which are or may be payable in respect of the Member have been paid; or
 - (b) a transfer is made under rule 2.8 in satisfaction of all the Member's entitlement to benefits; or
 - (b) all the Member's entitlement to benefits is terminated.

3. CONTRIBUTIONS

Member Contributions

- 3.1 A Member may transfer any amount of assets to the Fund, at any rate, as the Member and Trustee agree in accordance with Superannuation Law and the Tax Act.

Contributions by other persons

- 3.2 An Employer may transfer for the benefit of a Member any amount of assets to the Fund for the Member and at any rate as the Employer, Member and Trustee agree in accordance with Superannuation Law and the Tax Act.
- 3.3 Any person not being the Member or Employer may transfer for the benefit of a Member, any amount of assets to the Fund for the Member, in accordance with Superannuation Law and the Tax Act.

General

- 3.4 At the time that they are Accepted and while they continue to be Accepted, transfers of assets to the Fund will be included in the assets held for the purposes of the Fund. Where any or part of any assets transferred to the Fund are no longer Accepted, the Trustee must arrange for the payment or transfer of those assets to the person who transferred them to the Fund, as soon as practicable after the Trustee no longer Accepts those assets. For the purposes of this clause 3.4, Accepted means that the Trustee has:
- (a) assumed legal title to an asset (in the case of an asset other than cash); or
 - (b) credited the asset to the bank account of the Fund (in the case of cash),
- and otherwise included in the asset as an asset held for the purposes of the Fund, but only for so long and to the extent that the Trustee is satisfied that all or part of the assumption or crediting is not an Excess Tax Contribution.
- 3.5 The Trustee may refuse to accept all or part of a contribution from a person without giving any reason.
- 3.6 The Trustee must not accept contributions in the Fund contrary to Superannuation Law.
- 3.7 If the Trustee finds that it has received contributions which cannot be accepted into the Fund, the Trustee must repay them to the contributor. If Superannuation Law permits, the Trustee may deduct an amount for insurance effected or expenses incurred in relation to the contributions.

Contributions splitting

- 3.8 Subject to Superannuation Law, when requested by a Member, the Trustee must apply any assets transferred to the Fund for the benefit of that Member, either wholly or partly to one or more Contributions Accounts of another Member.

Shortfall Component

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

4. BENEFIT ENTITLEMENT

Retirement

- 4.1 A Member who has attained age 65 or other age prescribed for payment of retirement benefits under Superannuation Law but who remains in Service on or after that age and requests payment of his or her benefit is entitled to a benefit equal to the Accumulated Credit.

Death

- 4.2 On the death of a Member the Trustee must pay a death benefit equal to the Accumulated Credit.

Leaving Service and Other Benefits

- 4.3 A Member who leaves Service in circumstances other than those described in rules 4.1 and 4.2, or who is entitled to a benefit in accordance with Superannuation Law, is entitled to a benefit equal to the Accumulated Credit.

Voluntary Deferral

- 4.4 A Member who is entitled to a benefit may ask the Trustee to defer payment of all or part of it. The Trustee may comply with the request if Superannuation Law permits.

Preservation

- 4.5 If the Trustee considers it necessary under Superannuation Law to preserve any part of a benefit, then the Trustee must:
- (a) pay that part of the benefit under rule 5.1, 5.4 or 5.5 to a fund or organisation which also preserves it under Superannuation Law; or
 - (b) retain it in the Fund until it may be paid under Superannuation Law.

Retained Benefits

- 4.6 Any part of a benefit retained under rule 4.4 or 4.5 remains credited to the appropriate Contribution Account pending any transfers made pursuant to the Superannuation Law

until payment and the Trustee must adjust the amount of the benefit on the basis of further credits and debits recorded in the Contribution Account. If the Member dies before the benefit is paid in full then the Trustee must pay the remainder of the benefit as if it were a Death Benefit.

Trustee Determinations

- 4.7 A benefit is only payable if the Rules and Superannuation Law permit it.
- 4.8 The Trustee may act on any proofs or presumptions which it considers satisfactory whether or not they are strictly legal proofs or presumptions.

Assignments

- 4.9 The Trustee is not bound to recognise any purported assignment or charge of a benefit, other than under the Family Law Act 1975.

Interest

- 4.10 The Trustee may credit or debit interest at a rate it considers appropriate to a benefit which is paid after the date it becomes payable. However, the Trustee is not required to do so.

Corporations Law

- 4.11 The Trustee must not pay a benefit to the extent that the payment results in the Trustee or an Employer contravening any law relating to corporations.

Family Law Act Splits

- 4.12 In giving effect to a Split, the Trustee must reduce:
- (a) the amount in the Member's Contribution Account; or
 - (b) any benefit payable to the Member from the Fund.
- 4.13 Subject to Superannuation Law, the manner and basis of the reduction in rule 4.15 (including the apportionment of actual or anticipated costs, charges and expenses between the Member and the Non-Member Spouse) is as determined by the Trustee.
- 4.14 In giving effect to rule 4.13:
- (a) the Trustee will reduce the Member's interest or benefits from the underlying Investment Portfolios or assets of the Fund in such manner and in such proportions as it considers appropriate;

- (b) the Trustee will not reduce the interest or benefits payable in respect of any other Member.
- 4.15 If, at the time a benefit becomes payable in respect of a Member Spouse, a Payment Flag or Flagging Order applies to the interest, the Trustee will defer payment of the benefit until the Payment Flag or Flagging Order is lifted, unless the payment is to a successor fund (as defined in Superannuation Law).

5. PAYMENT OF BENEFITS

Lump sum or income stream

- 5.1 A benefit payable under this Deed, including a Death Benefit, must be paid in either or both a lump sum or income stream form in accordance with the request of the Member and the Superannuation Law, provided that the Trustee has received adequate instructions. The Trustee may determine any terms and conditions in relation to the payment of benefits, in accordance with Superannuation Law and these rules.

Purchase of Annuity

- 5.2 If a Member entitled to a benefit asks the Trustee to apply all or part of it to purchase an annuity in the name of the Member, or of the Member and one or more Dependants, and the purchase complies with Superannuation Law, then the Trustee must comply with the request.

Payment of Pension

- 5.3 If a Member entitled to a benefit asks the Trustee to apply all or part of it to provide a pension from the Fund, then the Trustee may comply with the request. A pension under this rule must be provided according to these rules and Superannuation Law.

Payment to Other Fund

- 5.4 If a person entitled to a benefit asks the Trustee in writing to pay all or part of it to another fund, and the payment complies with Superannuation Law, the Trustee must comply with the request.
- 5.5 The Trustee may pay all or part of a benefit to another fund without the consent of the person entitled to it if Superannuation Law permits.

Unclaimed Benefits

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

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

Death Benefits

- 5.7 On the death of a Member, where there is a Binding Nomination in respect of the deceased, the Trustee will, subject to Superannuation Law and the Binding Nomination Rules, pay the Death Benefit in accordance with the Binding Nomination and the Binding Nomination Rules.
- 5.8 Notwithstanding any other provision of these Rules, or any other agreement between the Trustee and the Member, the Trustee must comply with a Binding Nomination provided it is permitted to do so pursuant to Superannuation Law.
- 5.9 The Trustee may adopt rules governing the operation of Binding Nominations for the purpose of rule 5.7. The Binding Nomination Rules will be as described in Schedule A to these Rules.
- 5.10 On the death of a Member where there is no Binding Nomination in respect of the deceased, the Trustee will:
 - (a) consider a Non-Binding Nomination made by the deceased provided it is permitted to do so by Superannuation Law; and
 - (b) pay the Death Benefit in accordance with Superannuation Law to one or more of the deceased Member's Dependents or the Legal Personal Representative of the Member or any other person to whom payment of the Death Benefit is permitted under Superannuation Law. The Death Benefit will be paid in the manner and in such proportions as the Trustee determines.
- 5.11 Despite any Non-Binding Nomination, the Trustee's discretion concerning the distribution of a Death Benefit is not limited in any way.
- 5.12 Subject to Superannuation Law, if after making reasonably enquiries the Trustee fails to locate any Dependents or a Legal Personal Representative of the deceased Member, the Death Benefit may be paid to any other person that the Trustee determines in its discretion, in any manner or proportion that the Trustee deems fit.

Transfer of Assets

- 5.13 At the request of a person entitled to a benefit the Trustee may, in accordance with Superannuation Law pay the benefit by transferring assets of equivalent value to the person or the person's nominee.

Trustee's Discharge

- 5.14 The Trustee is discharged from all obligations in respect of a benefit if the Trustee pays it in good faith to or on behalf of a person the Trustee believes to be entitled to it.

Financial Incapacity

- 5.15 If the Trustee believes that a person who is entitled to a benefit is unable to manage his or her own financial affairs, and Superannuation Law permits, the Trustee may:

- (a) pay the benefit to another person to be used for the advantage of the person entitled to it; and
- (b) accept the other person's receipt as a good discharge.

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

Tax

- 5.16 The Trustee may deduct from a payment from the Fund any amount which it is required to deduct for Tax.

Unrestricted Benefits

- 5.17 The Trustee may pay a benefit to a Member who has not left Service where:

- (a) the Member requests payment; and
- (b) Superannuation Law permits.

General

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

6. PENSION BENEFITS

Pensions

- 6.1 Where this rule applies, the Trustee must pay a Member a pension permitted by Superannuation Law:
- (a) commencing on the date agreed between the Trustee and the Member which must be not later than necessary to comply with Superannuation Law; and
 - (b) terminating when the Member's Accumulated Credit has been exhausted.

Frequency of Payment

- 6.2 The Trustee must pay the pension to a Member at the times agreed by the Member and the Trustee when the benefit first becomes payable from the Fund in accordance with Superannuation Law.
- 6.3 A Member may change the frequency of the pension payments if:
- (a) the change is approved by the Trustee; and
 - (b) is in a form approved by the Trustee.
- 6.4 If at any time a Member has not made a selection as to the frequency of the pension payments, the Trustee must pay the pension annually.
- 6.5 For so long as the pension is payable, the Trustee must ensure that at least one payment is made during each Financial Year, unless the Superannuation Law does not require a payment to be made in a Financial Year.

Selecting Pension Level

- 6.6 For each Financial Year (or part of a Financial Year), the pension payments to a Member must be in accordance with the rules set out in Superannuation Law for pension benefits of the kind provided by the Fund.
- 6.7 At any time during a Financial Year a Member may select the level of pension payments for that Financial Year within the limits in rule 6.6. The selection must be in a manner approved by the Trustee.

Default Pension Level

- 6.8 If at any time during a Financial Year no selection has been made for that year under rule 6.7 and a pension was being paid in the previous Financial Year, the Trustee must, subject to rule 6.15, continue to pay a pension at the level prevailing at the end of the previous Financial Year. However, the Trustee may adjust the level up to the minimum or down to the maximum so as to comply with rule 6.6.

- 6.9 If, at the time a benefit first becomes payable from the Fund, the Member has not made a selection under rule 6.7, the Trustee must, subject to rule 6.15, pay a pension at the minimum level required under rule 6.6.

Commutation

- 6.10 A Member may commute the whole or a part of the Member's pension at any time by notifying the Trustee in a manner approved by the Trustee. A commutation may only be made as permitted by the Superannuation Law.
- 6.11 On a Member fully commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the Accumulated Credit of the Member.
- 6.12 On a Member partially commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the amount requested by the Member up to the amount of the Member's Accumulated Credit.

Compulsory Commutation

- 6.13 If Superannuation Law requires the Trustee to commute part of a Member's pension, the Trustee must comply with that requirement.

Miscellaneous

- 6.14 Where the Trustee pays a pension under rule 6 or rule 7 then:
- (a) the Trustee must continue to adjust the Member's Contribution Account under rule 8; and
 - (b) on the Member's death, rules 5.7 to 5.12 apply; and
 - (c) the capital value of the pension and the income from it must not be used as security for a borrowing unless Superannuation Law permits; and
 - (d) the pension must not be transferred to another person unless permitted by Superannuation Law.

Family Law Act matters

- 6.15 Where the Trustee pays a pension under rule 6 or rule 7, the Trustee may adjust the frequency and level of pension payments to a Member as is required to give effect to a Split, or as otherwise required by Superannuation Law.

7. COMPLYING PENSIONS

Pensions

- 7.1 Where this rule applies, notwithstanding any pensions payable under rule 6, the Trustee must pay a pension of any kind permitted under Superannuation Law.
- 7.2 The provisions of Superannuation Law, to the extent that they govern the regulation of the pensions described in rule 7.1 are deemed to be incorporated into these rules.

Commutations

- 7.3 Rule 6.13 applies to the pensions payable under rule 7.1.
- 7.4 The Trustee may commute the whole or part of the pensions payable under rule 7.1 but only as permitted under Superannuation Law.

Maintenance of Pension Accounts

- 7.5 Where the Trustee pays a pension under rule 7 then:
- (a) the Trustee must continue to adjust the Member's Complying Pension Account under rule 8;
 - (b) The capital value of the pension and the income from it must not be used as security for a borrowing unless Superannuation Law permits; and
 - (c) The pension must not be transferred to another person unless Superannuation Law permits.

8. RECORDS AND ACCOUNTS

Records

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

Accounts and Audit

- 8.2 The Trustee must appoint an auditor who satisfies Superannuation Law.

- 8.3 For each Financial Year the Trustee must prepare any financial statements for the Fund which comply with Superannuation Law.
- 8.4 The Trustee must ensure that, for each Financial Year, the auditor:
- (a) audits the accounts and records of the Fund; and
 - (b) reports in writing to the Trustee,
- within the time specified by Superannuation Law.
- 8.5 The Trustee must give to the Employer a copy of the financial statements and auditor's report.

Contribution Accounts

- 8.6 The Trustee must record in each Contribution Account:
- (a) all contributions made by or for, the Member;
 - (b) amounts transferred under rule 2.7 which the Trustee decides to credit to the account;
 - (c) life insurance premiums which the Trustee decides to debit to the account;
 - (d) proceeds of life insurance policies to the extent that they were funded by premiums debited to the account;
 - (e) amounts debited to the account for Tax or other expenses;
 - (f) amounts credited or debited to the account for earnings or losses of the Fund;
 - (g) amounts paid as benefits under rule 5 from the account;
 - (h) amounts transferred to other funds under rule 2.8 from the account;
 - (i) amounts paid as pensions under rule 6 from the account;
 - (j) amounts paid under rule 11;
 - (k) amounts paid from or transferred to reserves in accordance with rule 8.13; and
 - (l) amounts which the Trustee is required to credit or debit to the account as the result of a Split.

Complying Pension Accounts

8.7 The Trustee must record in each Complying Pension Account:

- (a) amounts transferred under rule 2.7 which the Trustee decides to credit to the account;
- (b) amounts debited to the account for Tax or other expenses;
- (c) amounts credited or debited to the account for earnings or losses of the Fund;
- (d) amounts paid as benefits under rule 5 from the account;
- (e) amounts transferred to other funds under rule 2.8 from the account;
- (f) amounts paid as pensions under rules 6 and 7 from the account;
- (g) amounts paid under rule 11;
- (h) amounts paid from or transferred to reserves in accordance with rule 8.13; and
- (i) amounts which the Trustee is required to credit or debit to the account as the result of a Split.

Tax and Expenses

8.8 The Trustee may debit to Contribution Accounts:

- (a) Tax incurred by the Trustee;
- (b) expenses of the Fund;
- (c) fees and administration expenses of the Trustee;
- (d) provisions for (a), (b) and (c),

in proportions which the Trustee considers fair and which are consistent with Superannuation Law.

Investment Portfolios

8.9 The Trustee may maintain the Fund in separate parts called Investment Portfolios. For any Investment Portfolio the Trustee must select the assets which comprise the Investment Portfolio.

8.10 The Trustee may transfer assets between different Investment Portfolios.

8.11 The Trustee must divide a Contribution Account into sub-accounts representing the proportions in which the Contribution Account is invested in different Investment Portfolios.

8.12 The Trustee may make rules on when and how Members may give directions to apply:

- (a) future contributions; or
- (b) existing balances in Contribution Accounts,

to Investment Portfolios. The rules must be consistent with Superannuation Law.

Reserve Account

8.13 The Trustee may operate a Reserve Account or multiple Reserve Accounts in a manner that is consistent with Superannuation Law.

9. ASSETS, INVESTMENTS, BORROWINGS

Assets

9.1 The assets of the Fund consist of:

- (a) money or other assets that the Trustee holds for the purposes of the Fund; and
- (b) investments that the Trustee makes and all income on those investments.

9.2 The Trustee holds the assets of the Fund on trust to apply them in the manner set out in the Rules.

Investments

9.3 The Trustee may, subject to rule 9.10, invest all money which is not required to meet current payments in any manner in which it could invest if it were personally entitled to the money, including:

- (a) in investments authorised by the law relating to investment of trust funds;
- (b) in policies of life insurance;
- (c) in trusts or common funds;
- (d) on deposit or loan, with or without security;
- (e) in real property;
- (f) in shares, stocks, notes, options, debentures or other securities;

(g) in options, hedging contracts, futures contracts and other financial instruments.

9.4 If Superannuation Law permits, the Trustee may:

(a) mix investments with investments of other people or trusts; and

(b) vary, replace, encumber and deal with the investments,

as if it were dealing with its own property.

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

9.6 The Trustee may only make a loan or give financial assistance to a person if that complies with Superannuation Law.

9.7 The Trustee may appoint nominees to hold investments. The appointment must comply with Superannuation Law.

Borrowing

9.8 The Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which it thinks fit. The Trustee may only do so to the extent that Superannuation Law permits.

Member Direction

9.9 The Trustee may, subject to the other provisions of this Deed and of the Superannuation Law, accept and act upon a direction from a Member in respect of the investments in which the Contribution Account of the Member is invested.

Investment Strategy

9.10 (a) the Trustee shall adopt and carry out an Investment Strategy for the Fund which complies with Superannuation Law.

(b) the Investment Strategy may provide for separate member strategies in respect of the interests of individual Members or groups of Members.

(c) the Investment Strategy shall be reviewed and may be altered or replaced at any time and from time to time as the Trustee considers appropriate.

10. TRUSTEE

Nature

- 10.1 The Trustee may be a Constitutional Corporation or one or more natural persons as allowed by Superannuation Law.
- 10.2 A person accepting the appointment as Trustee confirms that it is obliged and will observe all the covenants contained in the Superannuation Law.

Removal

- 10.3 The Trustee ceases to be the Trustee when:
- (a) a written notice to that effect specifying the date of cessation and signed by all of the Members is served on the Trustee; or
 - (b) the Trustee retires after having given each Member 30 days' written notice to that effect; or
 - (c) Superannuation Law requires; or
 - (d) the Trustee, being an individual, dies or loses legal capacity; or
 - (e) the Trustee, being a body corporate, goes into liquidation, receivership or administration; or
 - (f) the terms of a court order require it.
- 10.4 A person or body corporate shall cease to be a Trustee if the continued appointment of the person or body corporate will result in the Fund failing to meet the definition of a 'complying superannuation fund' as defined in the Superannuation Law.
- 10.5 If the Trustee is removed or retires under rule 10.3, it (or its legal personal representative or attorney in the case of sub-clause 10.3(d)) must use reasonable endeavors to appoint a replacement trustee.
- 10.6 A Trustee that ceases to be a Trustee under Rules 10.3 and 10.4 must transfer all assets to the new Trustee or its nominee.

Appointment

- 10.7 Subject to Superannuation Law, the Trustee may at any time by notice in writing signed unanimously by them if more than one, appoint a new Trustee or an additional Trustee of the Fund. To be valid, the purported appointment must be accepted in writing and delivered to the Trustee by the new or additional Trustee.
- 10.8 Subject to Superannuation Law, the Members may at any time by notice in writing signed unanimously by them if more than one, appoint a new Trustee or an additional Trustee of the Fund. To be valid, the purported appointment must be accepted in writing and delivered to the Trustee by the new or additional Trustee.

- 10.9 Notwithstanding rules 10.7 and 10.8, if the Trustee who is also a Member ceases to be Trustee under rule 10.3(d), their Legal Personal Representative immediately becomes the replacement trustee. To be valid, the purported appointment must be accepted in writing and delivered to the Trustee by the new or additional Trustee.
- 10.10 If the Trustee who is not also a Member ceases to be trustee under rule 10.3(d), their attorney or Legal Personal Representative does not become a replacement trustee.

Vacancy on Board

- 10.11 Where the Trustee is a body corporate, a vacancy on the board of directors of the Trustee must be filled within the time and in the manner required by Superannuation Law.
- 10.12 Where the Trustee is a body corporate then, subject to the Corporations Act and notwithstanding any provision within its own constitution or other document governing the Trustee, if a director of the Trustee who is also a Member dies or loses legal capacity, their Legal Personal Representative immediately becomes the replacement director. To be valid, the purported appointment must be accepted in writing and delivered to the Trustee by the new or additional director.

Trustee's Powers

- 10.13 The Trustee may do anything it considers appropriate to administer the Fund and comply with Superannuation Law, including:
- (a) giving receipts and discharges;
 - (b) conducting and settling legal proceedings;
 - (c) referring claims to arbitration;
 - (d) compromising any claim;
 - (e) giving any guarantee or indemnity;
 - (f) insuring any risks;
 - (g) acting as an underwriter;
 - (h) making rules for rounding off contributions and benefits;
 - (i) providing for and transferring liability for any tax;
 - (j) electing to be bound by any legislation;
 - (k) applying forfeited amounts to Contribution Accounts or Reserve Accounts;

- (l) applying amounts from Reserve Accounts to Contribution Accounts or otherwise as the trustee determines; and
- (m) purchasing, commencing or terminating the pensions referred to in Rules 6 and 7.

Manager

10.14 The Trustee may appoint any person to administer the Fund or to manage investments of the Fund or both. The appointment must:

- (a) be in writing on terms which the Trustee considers appropriate; and
- (b) comply with Superannuation Law.

Delegation

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

Trustee's Liability

10.16 The Trustee is only liable for its acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it.

Trustee's Indemnity

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

- (a) it results from the Trustee's dishonesty or an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) Superannuation Law prevents it.

10.18 A Member or Employer must indemnify the Trustee for:

- (a) any liability incurred; or
- (b) any overpayment made; or
- (c) any failure to provide for Tax,

as a result of the Trustee relying on information given to it by that Member or Employer.

10.19 The benefit of rules 10.16 to 10.18 also applies to:

- (a) any directors or employees of the Trustee or an Employer;

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

Employer Authorisation

10.20 The Trustee may treat a written or oral authorisation given, or purported to be given, by a director of the Employer as a valid authorisation by the Employer.

Member Authorisation

10.21 The Trustee may treat an authorisation purported to be given by a Member as given by the Member.

Trustee's Discretions

10.22 Unless this Deed and Rules otherwise provides, the Trustee must exercise any power, discretion or duty unanimously.

10.23 Unless this Deed and Rules otherwise provides, the Trustee is completely unrestricted in the exercise of its powers and discretions.

10.24 Subject to Superannuation Law, the Trustee may exercise any of its powers, discretions and duties even though that person has another interest in the result of the exercise.

11. REMUNERATION OF TRUSTEE

Trustee's Fees

11.1 The Trustee may be remunerated for its role as trustee of the Fund, or for other services provided to the Fund, from the assets of the Fund if permitted by Superannuation Law.

11.2 The Trustee is entitled to receive a fee in respect of each of the following:

- (a) a Payment Flag;
- (b) a Payment Split;
- (c) implementing a Flag Lifting Agreement that does not provide for a Payment Split;
- (d) an order terminating the operation of a Payment Flag;
- (e) an application made in accordance with Superannuation Law for information about a superannuation interest; or

- (f) any other thing done by the trustee in relation to a Flag Lifting Agreement, a Superannuation Agreement, a Flagging Order, a Splitting Order or any other order made in accordance with the Family Law Act 1975.

11.3 The Trustee may determine the level of any fee referred to in rule 11.2 in accordance with Superannuation Law.

11.4 The Trustee may debit or charge any fee referred to in rule 11.2 from a Member or Non-Member Spouse in accordance with Superannuation Law.

11.5 The Trustee must disclose to Fund members details of the remuneration received in accordance with the requirements of Superannuation Law.

11.6 The Trustee may realise assets of the Fund to enable its fees to be paid.

11.7 The fees payable to the Trustee under rule 11.1 are inclusive of GST.

11.8 Despite any other provision of these Rules, where the Trustee is satisfied that owing to changed economic circumstances (interpreted as set out below), it is reasonable to vary the fees and charges payable to the Trustee under rule 11.1 and rule 11.2, the fees may be varied by a deed supplemental to these Rules by stipulating such other percentage amount as the Trustee determines, and any variation of the fees must be notified by notice of variation despatched not more than three Business Days after the date of the notice to each member noted in the register on that day provided that any variation of the fees will not become effective prior to the expiration of reasonable notice (being not more than one month after the date of the notice of variation).

11.9 For the purposes of this clause:

“**GST**” means goods and services tax payable under the A New Tax System (Goods and Services Tax) Act 1999 and regulations.

“**changed economic circumstances**” includes, without limitation, any change in the rate of goods and services tax payable on the supply of the Trustee's services, or any amendment to the GST Law, including the *A New Tax System (Goods and Services Tax) Act 1999* and regulations.

12. ADMINISTRATION

Expenses

- 12.1 All the expenses in connection with the Fund or the administration of the Trustee are payable from the Fund.

Deed and Rules

- 12.2 A Member may inspect a copy of the Deed and Rules at the Trustee's office during normal business hours.

Giving of Information

- 12.3 Every person participating in the Fund or claiming a benefit must give the Trustee any information or documents that the Trustee requires to administer the Fund.
- 12.4 The Trustee may require a Member to have a medical examination.
- 12.5 The Trustee must give:
- (a) each Member;
 - (b) each Employer;
 - (c) the Superannuation Authority;
 - (d) the trustee of any other fund to which a benefit is transferred;
 - (e) any other person,
- the information which must be given under Superannuation Law at a particular time.

Confidentiality

- 12.6 The Trustee must treat as confidential any information relating to Members or Employers which it acquires as Trustee and only use the information for the purposes of the Fund or as required by law.

Dispute Resolution

- 12.7 If Superannuation Law requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and

- (b) inquiries or complaints will be considered and dealt with within 90 days after they were made.

Tax File Numbers

- 12.8 The Trustee may and, if Superannuation Law so requires, shall request that all Members provide it with their respective Tax File Numbers. Such Tax File Numbers shall be kept, and can only be disclosed or otherwise used, strictly in accordance with Superannuation Law, Tax Act and the Privacy Act.

Notices

- 12.9 Any notice or other written communication in connection with the Fund is given to a person if it is:
- (a) handed to the person; or
 - (b) delivered to the person's last known address including electronically; or
 - (c) posted by ordinary post from within Australia to the person's last known address.
- 12.10 If the notice or communication is posted, it is taken to be received on the third business day after posting.

Power of Attorney

- 12.11 Each Member irrevocably appoints the Trustee as the Member's attorney to do all things which the Trustee considers appropriate to administer the Fund.

Governing Law

- 12.12 The Fund and the Deed and Rules are governed by the law in force in New South Wales.

13. TERMINATION OF THE FUND

Events of Termination

- 13.1 The Fund will be terminated on the first of the following to occur:
- (a) all of the Members give written notice to the Trustee that the Fund is to terminate at a date specified in the notice, in which case the Fund will terminate on the date specified;

- (b) a replacement trustee is not appointed within six (6) months of the Trustee being removed under rule 10.3(a) or the date of notice given by the Trustee under rule 10.3(b), in which case the Fund will terminate on the day six (6) months after the relevant removal; or
- (c) for any reason the Fund does not have a trustee for a period of six (6) months, in which case the Fund will terminate on the day six (6) months after the first date on which the Fund did not have a Trustee.

Notification

- 13.2 The Trustee shall notify the Members of the termination of the Fund in accordance with Superannuation Law.

Contributions

- 13.3 Any contributions in arrears at the Termination Date must be paid immediately.
- 13.4 The Trustee must not accept any other contributions after the Termination Date.

Application of Fund

- 13.5 On termination, the Trustee must apply the Fund assets in this order of priority:
- (a) to provide for all expenses and liabilities (other than benefits) for which the Trustee is or may become liable;
 - (b) to provide in respect of each Member:
 - (i) any benefit which became payable before the Termination Date; or
 - (ii) if (i) does not apply - a benefit equal to the Accumulated Credit calculated as at the Termination Date; and
 - (c) to increase any benefits as the Trustee decides, including applying any amounts in the Reserve Account to increase the Contribution Accounts of Members.

Payment of Benefits

- 13.6 A Member may not receive a benefit under rule 13.5 before Superannuation Law permits.
- 13.7 If a Member dies before receiving a benefit provided under rule 13.5, the Trustee must pay it as if it were a Death Benefit.

14. AMENDMENT OF DEED AND RULES

Power to Amend

- 14.1 The Trustee may, subject to the Superannuation Law, amend any of the provisions of the Deed or Rules including this rule 14.

Form of Amendment

- 14.2 An amendment must be in writing.

Date of Effect

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

Limitation of Power

- 14.4 No amendment may alter a benefit entitlement contrary to Superannuation Law.
- 14.5 No amendment may enable an individual to be appointed as Trustee unless Superannuation Law permits.

Notification

- 14.6 The Trustee must notify the Members of the nature, purpose and effect of any amendment in accordance with Superannuation Law. However, failure to notify does not invalidate the amendment.

15. SUPERANNUATION LAW

Compliance Rule

- 15.1 All the standards required by Superannuation Law to be included in the governing rules of superannuation funds form part of these Rules, whether or not they are explicitly stated in the Rules.
- 15.2 However, if:
- (a) a standard is no longer required to be included; or
 - (b) the Superannuation Authority, apparently acting within its powers, does not require it to be complied with,

then that standard ceases to be included by this rule.

15.3 A standard included by rule 15.1 prevails over any other rule which is inconsistent with it.

Saving Provision

15.4 If a provision of the Deed or Rules would otherwise be invalid in whole or part because it:

- (a) subjects the Trustee to direction by another person; or
- (b) permits a person to exercise a discretion without the consent of the Trustee,

then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

Schedule A

Rules for Binding Death Benefit Nominations adopted for

B M BEVAN & R J WHITESIDE SUPERANNUATION FUND

Rules for Binding Death Benefit Nominations

Under the terms of the Trust Deed governing the **B M Bevan & R J Whiteside Superannuation Fund**, Members may nominate dependants (and legal representatives) to receive the whole or a specified portion of the benefit payable in the event of the Member's death. The Trust Deed also provides that the Trustee may prescribe rules for the making of binding nominations and any other matter in respect of, or arising from, them.

The Trustee has adopted these rules for that purpose. These rules may be amended by resolution of, or in writing by, the Trustee at any time.

1. DEFINITIONS AND INTERPRETATION

Definitions

Alternate Beneficiary means a person who is nominated as an alternate to the Primary Beneficiary in a Nomination Form to receive a portion of the Death Benefit in respect of a Member.

Eligible Nominated Beneficiary means a person who is nominated to receive a portion of the Death Benefit in respect of a Nominating Member and who is eligible to receive a benefit under the Superannuation Law at the date of the Nominating Member's death.

Nominated Person means a person who is nominated to receive a portion of the Death Benefit in respect of the Nominating Member in a Nomination Form.

Nominating Member means the member of the Fund who makes a Binding Nomination.

Primary Beneficiary means a person who is nominated as a primary beneficiary in a Nomination Form to receive a portion of a Death Benefit in respect of a Member.

SIS Regulations means *Superannuation Industry (Supervision) Regulations 1994* as amended from time to time.

2. MAKING AND CONFIRMING BINDING NOMINATIONS

2.1 The Trustee may prescribe the form and content of Nomination Forms.

2.2 In order for a completed Nomination Form to constitute a Binding Nomination it must:

- (a) comply with these Rules for the making of binding death benefit nominations;
- and

- (b) be delivered into the Trustee's possession prior to the Member's death.
- 2.3 For the purposes of these Rules in order to constitute a Binding Nomination a Nomination Form must be witnessed by two persons who are not referred to in the Nomination Form.
- 2.4 The Trustee will seek clarification from the Nominating Member where required by Superannuation Law.
- 2.5 The Trustee may (but is not required to) ask the Nominating Member to confirm that a Nominated Person is an Eligible Nominated Beneficiary.
- 2.6 Eligibility is determined at the date of death. The fact that a Nominated Person is not an Eligible Nominated Beneficiary at the date the Nomination Form is made or the date the Trustee receives the Nomination Form will not affect the nomination of that person or the validity of the Nomination Form.
- 2.7 The Trustee may require proof that a Nomination Form was actually made by the person by whom it purports to have been made.
- 2.8 A Nominating Member may confirm an existing Binding Nomination prior to its ceasing to have effect by giving to the Trustee a notice to that effect signed and dated by the Nominating Member.

3. EVENTS AFFECTING AN EXISTING NOMINATION

- 3.1 Subject to this Rule 3, a Binding Nomination will be non-lapsing.
- 3.2 A Binding Nomination will cease to have any effect:
 - (a) In circumstances prescribed by Superannuation Law;
 - (b) If the Nominating Member marries, remarries or commences a de-facto relationship (as defined in the *Family Law Act 1975* (Cth)) since the relevant Nomination was made;
 - (c) If the Nominating Member divorces or terminates a de-facto relationship (as defined in the *Family Law Act 1975* (Cth)) since the relevant Nomination was made; or
 - (d) Where the Nominating Member has a child since the relevant Nomination was made.^{3.2}
- 3.3 Binding Nominations may only be amended or revoked by subsequent Binding Nominations.
- 3.4 A Binding Nomination takes effect immediately as it is received by the Trustee and causes all previous Binding Nominations to have no further effect from that time.

Where the most recent nomination does not constitute a Binding Nomination any previous Binding Nomination ceases to have effect immediately.

4. ADJUSTMENTS AND VARIATIONS TO BINDING NOMINATIONS

- 4.1 In the event that the sum of the benefits to be distributed amongst the Primary Beneficiaries is other than 100% of the Death Benefit, and the Trustee has not clarified the matter prior to the death of the Nominating Member, the proportions specified will be adjusted so that the sum of the proportions is 100% with the adjustments being proportional to the initial distributions calculated to one decimal point, in accordance with the following formula:

$$\text{Each Primary Beneficiary's proportional entitlement} = \frac{X}{Y}$$

Where:

‘X’ is the total proportion originally specified by the Nominating Member for that Primary Beneficiary.

‘Y’ is the total of all proportions originally specified by the Member.

For example:

$$A = 60\%$$

$$B = 40\%$$

$$C = 30\%$$

The proportional adjustments would be worked out as follows:

$$A = 60\%/130\% = 46.2\%$$

$$B = 40\%/130\% = 30.7\%$$

$$C = 30\%/130\% = 23.1\%$$

- 4.2 In the event that a Binding Nomination does not specify any proportion of the Death Benefit to be distributed to any Primary Beneficiaries, and the Trustee has not clarified the matter prior to the death of the Nominating Member, the Death Benefit will be distributed equally amongst all of the Primary Beneficiaries.

In the event Rule 4.5 applies, this Rule applies to calculating the Death Benefit to be distributed to Alternate Beneficiaries by replacing references to 'Primary' with 'Alternate'.

- 4.3 In the event that a Binding Nomination specifies a proportion greater than nil in the Death Benefit to be distributed in respect of at least one but not all Primary Beneficiaries, and the Trustee has not clarified the matter prior to the Nominated Member's death, then:
- (a) if the sum of the proportions that are specified is less than 100% - the difference between the sum of the proportions specified and 100% will be distributed equally amongst the Primary Beneficiaries in respect of whom no distribution portion is specified;
 - (b) if the sum of the proportions that are specified is equal to or greater than 100%, the Primary Beneficiaries in respect of whom no distribution is specified will not be entitled to receive any portion of the Death Benefit with the entitlement of the remaining Primary Beneficiaries determined in accordance with Rule 4.2 above.

In the event Rule 4.5 applies, this Rule applies to calculating the Death Benefit to be distributed to Alternate Beneficiaries by replacing references to 'Primary' with 'Alternate'

- 4.4 Subsequent to applying Rules 4.1, 4.2 and 4.3, in the event of any Primary Beneficiary in a Binding Nomination:
- (a) predeceasing the Nominating Member or not surviving them by more than thirty (30) days; or;
 - (b) not being eligible to receive a Death Benefit under Superannuation Law at the date of the Nominating Member's death; or
 - (c) waiving their rights to receive any Death Benefit,

then the portion of the Death Benefit that is specified to be distributed to that Primary Beneficiary will be distributed:

- (d) where the Nominating Member has specified the one Primary Beneficiary and at least one but not more than four Alternate Beneficiaries, to the Alternate Beneficiaries in proportion to the allocations specified on the Nomination Form and, if applicable, Rule 4.5, or
- (e) where the Nominating Member has specified Primary Beneficiaries and no Alternate Beneficiaries, in accordance with Rule 4.6

4.5 Subsequent to applying Rules 4.1 to 4.4, in the event an Alternate Beneficiary in a Binding Nomination:

- (a) predeceasing the Nominating Member or not surviving them by more than thirty (30) days; or;
- (b) not being eligible to receive a Death Benefit under Superannuation Law at the date of the Nominating Member's death; or
- (c) waiving their rights to receive any Death Benefit,

then the portion of the Death Benefit that is specified in the Binding Nomination to be distributed to that Alternate Beneficiary will be distributed in accordance with Rule 4.6.

4.6 If the Death Benefit or a portion of the Death Benefit must be distributed in accordance with this Rule 4.6, the benefit will be distributed to any of the following persons as a nominated by the Member in the Nomination Form to receive that portion of the Death Benefit in respect of the Member:

- (a) the surviving Primary or Alternate Beneficiaries (as the context requires) eligible to receive a Death Benefit and the nominated Legal Personal Representative in equal proportions;
- (b) the Member's Legal Personal Representative; or
- (c) any person determined by the Trustee, in its discretion,

and where a Nominating Member does not specify one of the nominations in Rule 4.5(a), (b) or (c) in a Nomination Form, then that portion of the Death Benefit is payable as follows:

- (d) to surviving Primary or Alternate Beneficiaries (as the context requires) eligible to receive a Death Benefit and the nominated Legal Personal Representative of the Nominating Member in equal proportions; or
- (e) if there are no surviving Primary or Alternate Beneficiaries eligible to receive that portion of the Death Benefit, and the Nominating Member has not nominated a Legal Personal Representative, then that portion of the Death Benefit is to be distributed by the Trustee in its absolute discretion.

5. NEW BINDING NOMINATIONS AND AMENDMENTS TO EXISTING BINDING NOMINATIONS

- 5.1 If the trustee receives a Nomination Form which constitutes a Binding Nomination for a Member the most recent Binding Nomination takes effect immediately and all previous Binding Nominations cease to have any further effect from that time. Where the most recent Nomination Form does not constitute a Binding Nomination the previous Binding Nomination ceases to have effect immediately and any benefit that becomes payable before any Binding Nomination is made by the member will be paid in accordance with the Default Provisions.
- 5.2 Binding Nominations may only be amended or revoked by the Nominating Member by written notice to the trustee signed by the member and witnessed by persons eligible to witness Binding Nominations under Rule 2.