

Master / Trust Deed

# Delaney LAWYERS

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Our Ref: MJD:JAR:031632  
Your Ref: Martin Heffron

Glenwood.

Contact:  
Michael Delaney  
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1 December 2006

Mr M Heffron  
Heffron Consulting  
PO Box 20  
NORTH MAITLAND NSW 2320

**By Registered Post**

Attn: Julie Taylor

Dear Madam

**RE: WILSON**

We confirm that the transfer has now been lodged with the Office of State Revenue.

We enclose the following original documents:-

1. Stamped Transfer.
2. Deed of Retirement.
3. Amendment to the Ross MCL Wilson Super Fund (Deed by Kekatos & Associates).
4. Deed dated 29 June 1990

Yours faithfully  
**DELANEY LAWYERS**



*This office will be closed from 1.00pm  
Friday, 22 December 2006 and  
will re-open at 9.00am Monday, 8 January 2007  
We wish you a very Merry Christmas  
and a Happy New Year*

56078

Delaney Lawyers Pty Ltd  
A.B.N. 75 100 610 526



Form: 01T  
Licence: 01-05-025  
Licensee: Delaney Lawyers

# TRANSFER

Leave this space clear. Affix additional pages to the top left-hand corner.

New South Wales  
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

### STAMP DUTY

Office of State Revenue use only

NEW SOUTH WALES DUTY  
17-11-2006 0003878448-001  
SECTION 54(1)

### (A) TORRENS TITLE

If appropriate, specify the part transferred  
593/701972

DUTY \$ \*\*\*\*\*10.00

### (B) LODGED BY

Delivery Name, Address or DX and Telephone  
Box

CODES

T  
TW

(Sheriff)

Reference (optional):

### (C) TRANSFEROR

ROSS MCL WILSON PTY LTD

### (D) CONSIDERATION

The transferor acknowledges receipt of the consideration of NIL and as regards PURSUANT TO ORDER OF THE FAMILY COURT OF AUSTRALIA DATED 30 MAY 2006 IN PROCEEDINGS SYF 2011 OF 2006.

### (E) ESTATE

the land specified above transfers to the transferee an estate in fee simple.

### (F) SHARE TRANSFERRED

### (G) Encumbrances (if applicable):

### (H) TRANSFEREE

GAVENWOOD NOMINEES PTY LTD

### (I)

TENANCY:

### DATE

29 May 2006

(J) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

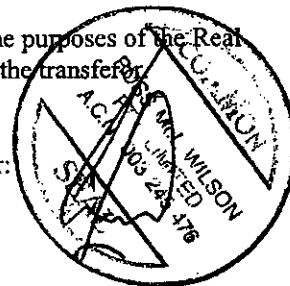
Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the transferor

Signature of transferor:



Certified correct for the purposes of the Real Property Act 1900 by the person whose signature appears below.

Signature:

Signatory's name:

Signatory's capacity: Solicitor for the Transferee

**DEED OF RETIREMENT  
AND APPOINTMENT OF NEW TRUSTEE  
OF  
ROSS MCL WILSON SUPERANNUATION FUND (THE  
"FUND")**

**Binetter Vale Lawyers  
Level 12  
111 Elizabeth Street  
SYDNEY NSW 2000**

**Telephone: 02 9993 3833  
Facsimile: 02 9993 3830**

**THIS DEED** is made on 29 May 2006

**BETWEEN:** Ross McL Wilson Pty. Limited (ACN 003 245 476) of  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320 (the "**Retiring Trustee**")

**AND:** Gavenwood Nominees Pty. Ltd. (ACN 002 638 664)  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320 (the "**New Trustee**")

**WHEREAS**

- A. The superannuation fund known as Ross McL Wilson Superannuation Fund (the "**Fund**") was established by a Deed of Trust made on 9 June 1987 by the Retiring Trustee as the trustee of the Fund. The Fund is governed by its Trust Deed, as amended from time to time.
- B. The Retiring Trustee wishes to retire immediately as trustee of the Fund.
- C. The New Trustee and its director have consented to their appointment as trustee of the Fund with immediate effect.
- D. The member of the Fund has consented to the appointment of the New Trustee.
- E. The parties have entered into this Deed of Retirement and Appointment to confirm and formally record the retirement of the Retiring Trustee and appointment of the New Trustee as aforesaid.

**NOW THIS DEED WITNESSES** as follows:

- 1. The Retiring Trustee retires at the time of appointment of the New Trustee as trustee of the Fund.
- 2. Pursuant to the powers conferred in the Trust Deed, the Retiring Trustee hereby appoints the New Trustee as trustee of the Fund in place of the Retiring Trustee and to act for all purposes as trustee of the Fund upon the powers contained in the Trust Deed of the Fund as amended, which appointment shall commence from the time of execution by the last party to this Deed of Retirement and Appointment.

3. The New Trustee hereby confirms by its execution of this Deed, its consent to appointment as trustee of the Fund from the time of execution by the last party to this Deed of Retirement and Appointment and agrees to administer the Fund in accordance with the trusts and powers contained in the Trust Deed of the Fund for all purposes.
4. The Retiring Trustee hereby acknowledges that the assets of the Fund and the income therefrom held as trustee of the Fund now vests in the New Trustee.
5. The Retiring Trustee will do all things reasonably requested of it to assist with the transfer of all assets of the Fund in its possession or under its control to the New Trustee.
6. With immediate effect the New Trustee indemnifies and releases the Retiring Trustee from any liabilities past, present or future, save and except for any antecedent breach of the Trust Deed or law, arising from the Retiring Trustee acting in its capacity as trustee of the Fund PROVIDED THAT the New Trustee is not liable to indemnify and/or release the Retiring Trustee in respect of any liabilities past, present or future:
  - (a) which exceed in aggregate the lesser of;
    - (i) the total value of assets received by the New Trustee from the Retiring Trustee; and
    - (ii) the aggregate net remaining value in the Fund at the relevant time of accumulation balances remaining in the Fund; or
  - (b) which are the subject of an accepted claim under an indemnity insurance policy or a successful claim against a third party for compensation by the Retiring Trustee or any director of it or individual who comprises part or the whole of it; or
  - (c) to the extent that the liabilities are attributable to conduct in respect of which a trustee of a regulated superannuation fund, or a director of any company acting as such a trustee, may not be indemnified under the Superannuation Industry (Supervision) Act 1993 or regulations thereto, or involve penalties imposed by any governmental authority; or
  - (d) to the extent the liabilities may be created by or in respect of the Retiring Trustee without the consent of the New Trustee (such consent not to be withheld unreasonably),

PROVIDED FURTHER THAT the New Trustee is also not liable to indemnify the Retiring Trustee to the extent to which such liability may result in any amount being payable to the Retiring Trustee other than in accordance with and from the Fund.

**IN WITNESS** the parties have duly executed this Deed on the date first above.

**Retiring Trustee:**

THE COMMON SEAL of Ross McL Wilson Pty. Limited was duly affixed to this document in accordance with its Constitution:

  
\_\_\_\_\_  
Signature of Director/Secretary

*Ross McL Wilson*

\_\_\_\_\_  
Name of Director/Secretary - please print



**New Trustee:**

THE COMMON SEAL of Gavenwood Nominees Pty. Ltd. was duly affixed to this document in accordance with its Constitution:

  
\_\_\_\_\_  
Signature of Director/Secretary

*Heather Wilson*  
\_\_\_\_\_  
Name of Director/Secretary - please print



*Gavenwood 15 North West  
OCT.*

# Ross Edwards & Associates

A Division of Computax Pty Ltd ABN 56 002 975 573

Public Accountants & Tax Agents

Suite 20, 14 Edgeworth David Avenue Hornsby

PO Box 1745 Hornsby Westfield 1635

Tel 9477-6966 Fax 9482-2272

Email: [computax@tpg.com.au](mailto:computax@tpg.com.au) Web Address: [www.computax.com.au](http://www.computax.com.au)

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14 August, 2006

MS J TAYLOR  
HEFFRON CONSULTING  
PO BOX 20  
NORTH MAITLAND NSW 2320

17 AUG 2006

Dear Ms Taylor,

As requested, I now enclose amendment to the Ross McL Wilson Superfund

Yours faithfully,

  
Ross Edwards

THIS DEED made

29<sup>th</sup> day of June

, 1990



BETWEEN ROSS MCL WILSON PTY LIMITED of 4/37-39 Smith Street, Parramatta in the State of New South Wales the Trustee of the ROSS MCL WILSON PTY LIMITED SUPERANNUATION FUND (hereinafter called "the Trustee")

AND ROSS MCL WILSON PTY LIMITED of 4/37-39 Smith Street, Parramatta in the said State (hereinafter called "the Company")

WHEREAS

- A. The trustee is the trustee of an employer Superannuation Fund established by Deed of Trust dated 15th June, 1987, (herein called "the Fund") with the Company Employer.
- B. The trustee and Company are desirous of amending the Deed to ensure that the provisions of the Occupational Superannuation Standards Act, 1987 ("the Act") are incorporated in the Deed to ensure compliance with the relevant provisions of the legislation.

NOW THIS DEED WITNESSES and the parties hereby covenant and agree as follows:


1. The Deed shall be amended as from the date hereof to incorporate the provisions of the Act and where the provisions of the Deed are inconsistent with the Act, the

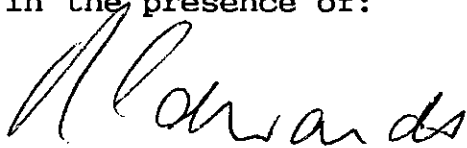


provisions of the Deed shall be deemed to be amended so as to comply with the Act.

IN WITNESS WHEREOF the parties hereto have set their hands and seals on the date first hereinbefore mentioned.

THE COMMON SEAL of )  
ROSS MCL WILSON PTY LIMITED )  
was hereunto duly affixed )  
in accordance with it's )  
Articles of Association )  
in the presence of: )

  
.....  
.....



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**PENSION FUND**

---

KEKATOS & ASSOCIATES,  
Solicitors,  
Unit 4,  
37-39 Smith Street,  
PARRAMATTA 2150

DX 28420 PARRAMATTA  
TEL: 633 4066  
t5

INDEX TO THIS DEED

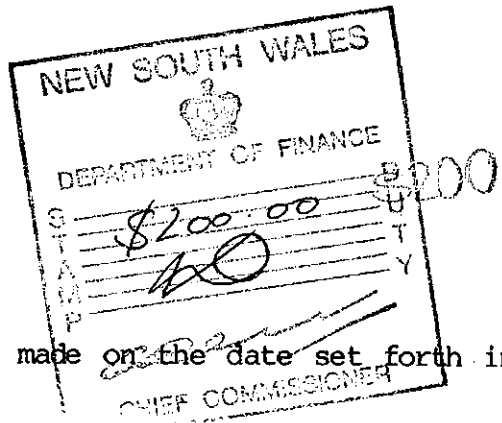
Marginal Headings	Synopsis of Contents	Page No.	Clause No.
Interpretation	Rules giving meanings to expressions used in the Deed	2-4	1
Commencement Date	Term of the Deed	4	2
Membership	How persons may apply for Membership	4	3
Assets	Of what assets funds may consist and how assets may be increased	4-5	4
Contributions	Who may make these and in what Circumstances	5	5
Refusal of Contributions to prevent Excess Benefits	How and when excess benefits may be prevented from increasing the Fund	6	6
Style of Accounts for Contribution	Nomenclature for funds to be kept by Trustee distinguishing between monies contributed by employee and those by employer	6	7
Revenue Account	How income of fund is to be dealt with by Trustee	7	8
Credit of Contribution	Obligation of Trustee to bank all money received	8	9
Payments of Benefits	Obligation of Trustee to pay (see also Clause 13)	8	10
Fund Records	Obligation of Trustee to keep records	8	11
Retirement Payments of Benefits	Specifies retiring ages and in what circumstances monies are to be paid (see also Clauses 13-18)	9	12
Irrevocable Resolution for Entitlement	How payments may become obligatory	10	13
Approved Earlier Termination and Service after Retiring Age	If approved - benefits vest on termination	11	14
Unapproved Voluntary Retirement or dismissal	If not approved - no right to benefit	12	15

Death Before Retiring Age	Trustees at their discretion may pay	12	16
Cessation of Member's Entitlement	Automatic disentanglement in certain Circumstances	13	17(1)
Discretionary payments	Trustees may pay to alleviate	14	17(2)
Reimbursement for Defalcation	Trustees are given power to reimburse the employer for loss arising from members defalcation out of monies standing to members credit in the fund	14	17(3)
Use of Forfeited Benefits	How these are to be applied	14	18
Benefits under Other Funds	Members to provide information or these upon request from Trustee	15	19
On Death deciding dependants	Trustees to decide whom to benefit within 2 months	15	20
Costs and Proceeds of Insurance	For whom and from where they are to be credited and debited	15	21
Transfer of Policy	Rules for portability of insurance	16	22
Payment of Amount of Member's Benefit	Rules establishing quantum payable	16	23
Limitation of Benefits	No excess benefits - creation of excess benefits fund	17-18	24
Restriction of Benefit	Employer may resolve to restrict number of members of Fund	18	25
Refund to Company	Power to Trustee to surrender policy to reimburse employer for employee of defalcation etc.	19	26
No dealing with Policy	Members are precluded from assigning or mortgage policy	19	27
Refusal of Contribution from Member	Trustees may decline members contribution	19	28
Auditing of Accounts	Employer may demand audit	19	29
Investment of Powers	(a)(i) transpose investments	20	30
	(ii) types of investments		
	- general statement	20	30
	(b)(i) loans - generally	21-22	30
	(ii) mortgages of freehold land	22	30
	(c) Annuities	22	30

	(d) Deal in real or personal property	23	30
	(e) Deal in insurance policies	23	30
	(f) To pay expenses of admin., including taxes	23	30
	(g) powers to deal with shares	24	30
	(h) to carry on business	25	30
	(i) power to subdivide and partition land	26	30
	(j) to promote and establish companies	26	30
	(k) power to appropriate assets (i.e. to distribute to beneficiaries in assets rather than pay a share in cash only)	26	30
	(l) power to decide whether assets are treated as increases of capital or income	27	30
	(m) to decide whether any particular receipt is capital or income	27	30
	(n) to take Counsel's advice	28	30
	(o) to transfer assets to another fund or to new trustees	28	30
	(p) loans to members in certain circumstances (see also Clause 45)	28	30
Investment - Firms and Companies in which Trustees are Shareholders	Abrogation of the "Keech and Sandford" rule	29-33	31
Action on Trustee vacancy	Trustees have power to co-opt and may act notwithstanding vacancy	33	32
Who may be Trustee	All parties who may act	34	33
Method of Appointment	Trustees to be appointed by Deed	34	34
Trustee Meetings	How these are to be conducted	34	35
Decision of Trustees	Simple majority rules	35	36
Trustees' Obligations and Powers with Respect to Decisions and Accounts	Signed resolutions sufficient without formal meeting	35-37	37
Trustees may be Directors	Mutual directorship in abrogation of "Keech and Sandford" rule	37	38
Execution of Powers	Concurrence in exercise of powers notwithstanding "Keech and Sandford" rule	38	38

Appointment of Managers	Power to appoint servant to do work	38	38
Alternate Trustee	Power to appoint alternate trustee	38	38
Liability of Trustees	(i) only conscious fraud etc. is a personal liability	39	38
	(ii) trustees right of indemnity out of trust assets	39	
Trustees' Discretion	Discretion is absolute	39	38
Receipts	Sole trustee may give receipt	40	38
Professional Charges	Professional persons may charge normal fees	40	38
Trustees' Commissions	Rate of commission allowed	40	38
Power of Attorney	Members appoint trustees their attorney	40	39
Transfer of Performance	If new employer takes over the business Trustees may accept its performance in lieu of present employer	41	40
Action on Company Ceasing Business	How trustees may deal with assets of the fund	41-42	41
Powers of Realisation	Total discretion to trustee in disposal of assets	42	42
Action on Company Liquidation	What happens on winding up of employers business	42	43
Workers Compensation not affected	Nothing in Deed to affect employees rights to same	43	44
Loans on Security	Loans to members only on security (see also 30(o))	43	45
Company's rights not Waived	Nothing in deed prevents employer from dismissing employee	43	46
Privilege	Trustees must not breach employer's confidence	44	47
Amendments to this Deed	How these may be done	44	48
Approval	Commissioner of Taxation must approve the Deed and any amendments thereto	44	49

Notices	Manner of service	45-46	50
Marginal Headings	Not to be used in interpretation of the Deed	46	51
Law	What law applies in interpretation	46	52



THIS DEED is made on the date set forth in Item 1 of Schedule One hereto

B E T W E E N the party whose name is set forth in Item 2 of Schedule One hereto (hereinafter called "the Company") whose address for service of notices is set forth in Item 3 of Schedule One hereto of the one part

A N D the party whose name is set forth in Item 4 of Schedule One hereto (hereinafter called "the Trustees") whose address for service of notices is set forth in Item 5 of Schedule One hereto of the Other Part

WHEREAS:

A. THE Company has determined to make provision for individual personal benefits for present and future eligible employees (hereinafter called "the Members") by way of the establishment of a superannuation fund (hereinafter called "the Fund") to which the Company intends from time to time to make contributions for the benefit of such Members as are nominated to the Trustees by the Company and who apply to become members in accordance with the terms of Clause 3 hereof.

B. THE Trustees have agreed to act as the first trustees of the Fund as is testified by their execution of this Deed and to administer the Fund by and in accordance with the terms hereinafter stated

NOW THIS DEED WITNESSES that for the purpose of carrying the said scheme into effect and in pursuance of the said Agreement the Company HEREBY COVENANTS with the Trustees and the Trustees HEREBY COVENANT with the Company as far as the agreements and stipulation herein contained are or ought to be performed or observed by the Company and Trustees respectively (but so that no personal liability shall be incurred by the Trustees or any of them except in respect of their individual trusteeship of the Fund hereinafter mentioned) in the following manner that is to say:-



1. INTERPRETATION

IN this Deed unless the context or subject matter otherwise requires:-

- (a) "person" includes a company and a corporation
- (b) "company" and "corporation" have the meanings assigned thereto in Section 5 of the Companies (New South Wales) Code 1980 and "interest" where that word appears in Clause 31(a), (b) and (c) of this Deed shall have the meaning assigned thereto in Section 76 of that Act
- (c) "relative" has the meaning assigned thereto in Section 6(1) of the Income Tax Assessment Act 1936 of Australia
- (d) any clause in which more persons than one covenant shall bind and extend to such persons and any two or greater number of them jointly and each of them severally
- (e) any covenant or promise made by any party hereto shall extend to and bind his or their or its executors, administrators, successors and assigns
- (f) words herein importing the singular shall import the plural and vice versa and reference to any gender shall include all other genders
- (g) The "Trustees" means the party or parties whose name or names is or are set forth in the Schedule hereto besides the words "The Trustees" or otherwise the trustee or trustees for the time being of this Fund.
- (h) The expression "eligible employee" and "employee" means an eligible employee as defined for the purposes of subdivision AA of Division 3 of Part III of the Act and shall also include Directors, Managers and the Secretary of the Company.
- (i) "Member" means an eligible employee who is nominated for and accepts membership of this Fund in accordance with the provisions of Clause 3 of this Deed.

- (j) The expression "the Employer" and "the Company" shall mean the person, company or corporation the name of which is set forth in Item 2 of Schedule One hereto besides the words "The Company".
- (k) The word "dependant" means the spouse of the Member any child of the Member or any person who at the time of the Member's death or when any benefit hereunder is paid or approved the Trustees, acting as experts and not arbitrators, decide as a fact to have been dependant upon the Member for maintenance and sustenance.
- (l) The "Act" means the Income Tax Assessment Act, 1936 as amended from time to time and any Act in substitution for same.
- (m) "The Fund" and "the Trust Fund" means the Superannuation Fund the name of which is set forth in Item 7 of Schedule One hereto and is the fund created by the terms hereof.
- (n) "Associated Employer" means any company, corporation or partnership or person which or who may be nominated in writing by the Company to the Trustees as a party entitled to make contributions to the Fund in accordance with the provisions of this Deed and who ipso facto shall be entitled to enroll by application in writing addressed to the Trustees one or more or all of its employees as Members of the Fund.
- (o) "Retirement" means the termination of a Member's service with his employer other than by reason of death and "retire" shall have a corresponding meaning.
- (p) "Accounting period" means the period from the date hereof to the next ensuing thirtieth day of June or the next ensuing allocation from the revenue account to the Members A and B accounts, whichever first occurs.

- (q) "Salary" shall mean the remuneration payable to a Member as an employee at a fixed or specified rate per week or per month or per annum and shall for the purposes of this Deed include fees and commission.
- (r) "actuary" means a fellow or associate of the Institute of Actuaries of Australia or London.

2. COMMENCEMENT DATE

THE Fund shall come into operation as from the date described in Item 1 of Schedule One hereto and shall subject to Clauses 41 and 43 hereof continue in operation until 21 years after the death of the last survivor of the descendants now living of His Late Majesty King George VI of England and shall be known by the name set forth in Item 7 of Schedule One hereto.

3. MEMBERSHIP

- (a) THE Members of the Fund shall consist of those employees of the Company or of an associated employer who are invited by the Company to join and participate in the Fund upon the terms and conditions herein set forth and within a reasonable period thereafter apply in writing so to do PROVIDED THAT application is consented to by the Company.
- (b) Application for Membership shall be made in the form set forth in Schedule Two hereto
- (c) Membership shall commence on and from the date the Company consents to the said application.

4. ASSETS

- (i) The fund shall consist of:-
  - (a) Such contributions as may be made to it from time to time by the Company for the credit of Members individually together with interest and profits arising from the investments of the monies of the Fund.

- (b) Such contributions (if any) as are deducted by the Company from the wages salaries fees and emoluments of Members in accordance with these presents.
  - (c) All assets property benefits and policies of assurance or insurance in which any monies which formed part or the whole of the Fund are invested or by which they are represented and all income and gains derived therefrom.
  - (d) Such contributions (if any) as a Member may make to the Fund at any time as provided in Clause 5 (c) hereof.
- (ii) No contributions shall be accepted from any person outside the class or classes described in paragraph (2) of Section 23F of the Act.

5. CONTRIBUTIONS

- (a) THE Company may pay from time to time to the Trustees such sum or sums having regard to the amount available to it in order to provide individual personal pension benefits for its eligible employees by way of a superannuation fund and shall furnish to the Trustees a list of the members in respect of whom each such allocation is made and the amount thereof which is to be allocated in respect of each such member.
- (b) A Member may pay to the Trustees of the Fund such amount as the Trustees and the Member agree upon from time to time and consequent upon such agreement the Company is hereby authorised to deduct the agreed amount from the wages salary fees or emoluments of the Member either by weekly or other periodical or annual deductions as the Company and the Member may agree and determine from time to time.
- (c) Should a Member's wages salary fees or emoluments due at the time of the deduction be insufficient to pay the amount of contribution agreed to be deducted then that Member may otherwise personally pay such amount as may be necessary to constitute a full payment of his contribution.

- (d) In the absence of agreement to the contrary a Member shall be under no obligation to make contributions to the Fund and notwithstanding may be and remain a Member of the Fund.
- (e) The Company shall give notice in writing of the existence of the rights herein provided to any eligible Member at the time of or before making a first contribution to the Fund in respect of such Member.

6. REFUSAL OF CONTRIBUTIONS TO PREVENT EXCESS BENEFITS:

IF at the time the Company and/or a Member informs the Trustees of it or his or her intention to contribute an amount to the Fund to be held pursuant to the provisions of this Deed for the benefit of the Member and the Trustees are of the opinion that the benefits which such Member would then be entitled to receive from the Fund either alone or when aggregated with the benefits which the Member is entitled to receive from any other Fund are excessive in amount having regard to the provisions of sub-section 2 of Section 23F of the Act or any amendments thereof the Trustees may refuse to accept such contributions in whole or part provided that such a refusal by the Trustees shall not operate so as to relieve either the Company or the Member from its or his responsibility for making further contributions as and when they become due.

7. STYLE OF ACCOUNTS FOR CONTRIBUTION:

THE amounts contributed to the Fund by a Member with the consent of the Company shall be credited to a personal account in the books of the Fund opened in the name of the Member and styled the Member's "Account A" account. All contributions by the Company shall be allocated as directed by it and credited to personal accounts opened in the names of the Members and styled the Members' "Account B" account.

8. REVENUE ACCOUNT

- (i) The Trustee shall establish a Revenue Account to which shall be credited from time to time:-
  - (a) the income from investments;
  - (b) any amounts carried to the credit of the Revenue Account pursuant to the provisions hereof.
- (ii) All losses and expenses (including income tax, if any) incurred by the Fund shall be debited to the Revenue Account.
- (iii) Any capital profits arising from the realisation of investments shall be credited to the excess benefits fund established pursuant to Clause 24(e) hereof.
- (iv) As soon as is practicable after the 30th June in each year and likewise as soon as practicable after the death or retirement from the Fund of any Member and on the winding up of the Fund the credit balance (if any) in the Revenue Account shall be allocated amongst each Member's "A" and "B" accounts including the Account A and Account B accounts of the deceased and/or retiring member in the proportion in which each such account bears to the whole fund immediately after the previous allocation save and except for the first allocation which shall be distributed amongst each Member's "A" and "B" accounts in the proportion in which each such account bears to the whole Fund at the date of allocation.
- (v) On the winding up of the Fund and at such other times as the Trustees determine the Trustees shall cause to be made a valuation of all investments in order to ascertain what is the value of the assets of the Fund and consequently what is the net cash available to the Fund if its assets were realised. Any appreciation in value of the Fund shown by the valuation of all assets of the Fund accrued up to the date of such event shall be carried to the credit of the excess benefits fund referred to in Clause 24(e) hereof. Any depreciation to the value of the Fund as at such date shall be debited to the excess benefits fund in

order to make up the deficiency and if that fund be exhausted then the profits earned in that accounting period which would have been credited to the Revenue Account of that year shall be debited to that account until the loss is made up and if that account in that accounting period be exhausted before the loss is made up then the Member's Account B accounts shall be debited with the amount of the loss in proportion to the amount standing to the credit of each member in such account as at the previous 30th June, until the loss is made up.

9. CREDIT OF CONTRIBUTION

THE Company shall pay the amount of its contribution and the Member's contributions (if any) to the credit of the Trustees' bank account for the Fund. For this purpose and the general purposes of this Deed the Trustees shall have power to open and operate on such bank accounts as they may think desirable. All monies cheques and other negotiable or transferable instruments and all receipts for monies paid to the Fund shall be signed drawn accepted endorsed or otherwise executed as the case may be in such manner as the Trustees shall from time to time determine.

10. PAYMENTS OF BENEFITS

THE Trustees shall out of the Fund pay such individual personal benefits pensions or retiring allowances to Members or dependants of Members as shall be payable in pursuance of these presents in accordance with the terms set forth in Clause 12 hereof and any other clause or clauses.

11. FUND RECORDS

THE Trustees shall keep a complete record of the persons becoming entitled to individual personal benefits pensions or retiring allowances hereunder and other matters essential for the working of the Fund.

12. RETIREMENT PAYMENTS OF BENEFITS

- (a) AS and when any Member shall after reaching the retiring age of sixty five (65) years in the case of a male or sixty (60) years in the case of a female member or such lesser or greater retiring age as the Company and the Member may agree upon, retire from the service of the Company the Member shall be entitled to be paid a retirement pension equal to seventy five per centum (75%) of the mean average of the salaries including directors fees (if any) received by the member during his or her final three (3) years' employment by the Company. On the death of the member his or her spouse shall, until the death of the spouse, be entitled to a pension equal to two-thirds (2/3) of the pension being received by the member at the date of his or her death. The pension amount shall be paid to the member out of the sum of the monies credited to the member's A and B Accounts during the period of his or her membership and if there be insufficient funds for the purpose of meeting that pension obligation then the Trustees shall appropriate out of the excess benefits fund an amount sufficient for that purpose in order to pay the same. Immediately after the death of the member and his or her spouse whichever shall occur later, any monies still credited to the member's A and B accounts (other than monies appropriated from the excess benefits fund) shall be paid to the member's dependants or such one or more of them as the Trustees in their absolute discretion shall determine. If there be no dependants in existence any balance which remains shall be credited to the excess benefits fund.
- (b) Should the Company or an associated employer suspend or reduce the contributions payable by it, the Trustees may, acting on the advice of an actuary, vary the benefits arising pursuant to the terms of this Deed from the date on which such suspension or reduction takes place, provided that at all times each member shall be entitled to a retirement benefit, the level of which shall be determined by the Trustees acting on the advice of an actuary.



- (c) A member, at any time during the period of twelve (12) months next succeeding his or her retirement may commute his or her pension entitlement up to a maximum of twenty-five per centum (25%) of the amount which forms the sum of the total of the amounts credited to his or her A and B accounts at the time of retirement. In the event that the member so exercises his or her right of commutation, the pension to which he or she shall be entitled shall be pro rata reduced and an amount constituting the amount so commuted shall be paid to the member within 28 days after the request for commutation is made.
- (d) If it be so stipulated by the Commissioner of Taxation the quantum of the pension granted in terms of sub-clause (a) of this Clause 12 shall be reduced pro rata to the number of years less than thirty which the member may be capable of serving the Company as an employee from the date of his or her employment to the date upon which he or she retires.

13. IRREVOCABLE RESOLUTION FOR ENTITLEMENT

IN the event that the Trustees shall pass a resolution in respect of any member in or to the effect of the following:-

"Resolved -

- (1) That this resolution shall be irrevocable
- (2) That the sum of \$                    shall be paid to being a member of the Fund, and /or
- (3) That all monies standing the Member's credit shall be paid to him upon ceasing to be a member of the Fund notwithstanding the circumstances of him ceasing to be such Member,"

then notwithstanding any other provision in this Deed contained or implied (including dismissal for cause) the amount or value of the monies so resolved to be:

- (a) Credited to the Member's B account and

(b) Upon him ceasing to be a Member the monies shall be payable and paid accordingly

14. APPROVED EARLIER TERMINATION AND SERVICE AFTER RETIRING AGE:

(a) IF any Member shall with the consent and approval of the Company (testified to the Trustees by the Company by a Certificate under the Company's seal)

(i) retire from the service of the Company before reaching retiring age on the grounds of ill-health and whether upon becoming disabled or not or

(ii) if he should be dismissed from the service of the Company for any reason (other than his fraud dishonesty defalcation or serious misconduct or unsatisfactory conduct in relation to the Company or its affairs)

the Trustees shall within one (1) calendar month of his retirement or dismissal subject to consent and approval as aforesaid being given pay to the Member a pension out of the whole of the amount standing to the credit of such Member in his A and B accounts in the books of the Fund at the time of his retirement or dismissal as aforesaid together with the additional monies which are credited to the Member's Account B account out of the Revenue Account in consequence of his retirement pursuant to the provisions of Clause eight (8) of this Deed. The amount of such pension shall be determined by the Trustees who shall make such determination upon the advice of an actuary whose advice shall be given as expert and not arbitrator. The consent and approval as herein referred to may be withheld at the whim and/or discretion of the Company which need assign no reason for refusing to give such consent and approval.

(b) At the absolute discretion of the Company the Trustees upon being so directed by the Company shall increase the amount

standing to the credit of the Member in his Account B account by crediting from the excess benefits fund (if any) such an amount of monies as is specified and set forth in the direction given to them by the company.

- (c) The Certificate in writing under the seal of the Company that consent has or has not been given shall be final and conclusive and binding upon the Trustees and notwithstanding that the Trustees or any of them or if the Trustees or any of them be a company or corporation any director or member or relative of a director or member shall employ the member of the fund or that the member of the fund is a Trustee or is a director or member of any company or corporation which is a Trustee or is a relative of any such person.

15. UNAPPROVED VOLUNTARY RETIREMENT OR DISMISSAL:

IF any Member shall voluntarily retire from the service of the Company before reaching the retiring age of sixty five (65) or sixty (60) years (as the case may be) or any agreed retiring age or if any Member shall be dismissed from the service of the Company on the grounds of unsatisfactory conduct (not amounting to his fraud dishonesty defalcation or serious misconduct) the Member shall not in either such case be entitled to any portion of the amount outstanding to this credit in the books of the Fund other than any amount standing to his credit in his Account A account and any such latter entitlement shall nevertheless be subject to the provisions of Clause 17 (3) of this Deed.

16. DEATH BEFORE RETIRING AGE:

IN the event of the death of a Member before retiring age and upon receiving satisfactory proof of death and identity the Trustees may at their absolute discretion pay the whole or any part of the monies standing to the credit of the Member in his A and B accounts and either by way of pension or lump sum as shall

at the date of death of the member be credited in those accounts together with such additional monies as shall be credited to the Member's Account B account out of the Revenue Account in consequence of his death pursuant to and in conformity with the provisions of Clause 8 of this Deed to such Member's dependants or to any such one or more of them to the exclusion of the other or others of them as the Trustees in their absolute unfettered discretion shall decide and if they do not exercise their discretion as aforesaid or if there be in the opinion of the Trustees no dependants then all such monies shall be dealt with as though they were forfeited benefits and shall be applied in accordance with Clause 18 hereof.

17. CESSATION OF MEMBER'S ENTITLEMENT

(1) ANY Member who:-

- (a) in the opinion of the Company based on reasonable grounds commits any fraud, dishonesty, defalcation or gross wilful or serious misconduct in relation to the Company or its affairs,  
or
- (b) Assigns or charges or attempts to assign or charge his estate in the Fund,  
or
- (c) Is adjudicated bankrupt or assigns his estate for the benefit of his creditors,  
or
- (d) Is declared an insane or incapable person,  
or
- (e) Does or attempts to do or suffers any act or thing or if any event happens whereby if his benefit or any part thereof were payable to him absolutely he would be deprived of the right to receive it or any part of it or it would be disposed of or dealt with otherwise than in accordance with this Deed,  
or

(f) Is suffering from any physical or mental disability which in the opinion of the Trustees renders him unable to manage his own affairs;

shall in any such event cease to be presently or presumptively entitled to any and all benefits conferred by this Deed.

(2) DISCRETIONARY PAYMENTS:

IN any such event as aforesaid the Trustees may in their absolute discretion apply the amount of his benefit then remaining in their hands or under their control for the maintenance and support or otherwise for the benefit of such Member and/or such one or more of his dependants as the Trustees may in their absolute discretion determine PROVIDED THAT whilst a Member remains in the employ or service of the Company any such application by the Trustees shall be restricted to the maintenance and support of the Member and/or his said dependants to the extent necessary to relieve his or their genuine financial hardship sickness accident or other misfortune causing hardship. The payment or application of monies by the Trustees in pursuance of this sub-clause shall be a complete discharge to the Trustees therefore.

(3) REIMBURSEMENT FOR DEFALCATION:

ON any forfeiture for any of the reasons mentioned in the sub-clause (1)(a) hereof the Trustees shall at the request of the Company reimburse to the Company out of the Member's benefits all costs and losses (including the costs of all proceedings both civil and criminal) incurred by the Company as a result of or incidental to or arising out of the Member's fraud dishonesty defalcation or gross wilful or serious misconduct in relation to the Company or its affairs.

18. USE OF FORFEITED BENEFITS:

ANY benefits or amounts lost or forfeited by persons who cease to be Members of the Fund shall be applied by the Trustees for all or any of the following purposes:-

- (i) The reduction of the amount that the Company or any Associated Employer would otherwise be required to contribute on behalf of the Members of the Fund in order to provide the benefits which the Members or their dependants have rights to receive from the Fund.
- (ii) The provision of benefits for other Members of the Fund or their dependants.
- (iii) The provision for other Members of the Fund who have rights to receive benefits from the Fund or for their dependants of additional benefits on a basis that is reasonable having regard to all the circumstances; and
- (iv) For any other purposes approved from time to time by the Commissioner of Taxation.

19. BENEFITS UNDER OTHER FUNDS:

A Member shall whenever required by the Trustees furnish to the Trustees in writing information concerning any benefits pensions and allowances that have been or are being or may be provided from another superannuation or provident fund for the Member or his dependants.

20. ON DEATH DECIDING DEPENDANTS:

WITHIN two (2) months of the death of a Member the Trustees shall determine and declare in writing the dependant or dependants to whom in their opinion the monies standing to the credit of such Member shall be paid by way of individual personal benefits pensions or retiring allowances and shall notify such dependant or dependants accordingly by prepaid letter post.

21. COSTS AND PROCEEDS OF INSURANCE:

WITH respect to any policy or policies of life endowment or other assurance or insurances including disability insurance the

cost of any such policy shall be debited and the proceeds of any such policy shall be credited to the Account B account of the Member. The annual cost of any policies of insurance or assurance shall be deducted from the Member's B account before allocating to that account any proportion of the revenue account pursuant to Clause 8 hereof. No such policies shall be taken into account for the purpose of the valuation of assets referred to in Clause 8 of this Deed. Each policy effected on the life of any Member shall be taken out by the Company or the Member and transferred to the Trustees to be held subject to the provisions of this Deed. The Company may require such evidence of health and age as it deems necessary as a condition precedent to the application for any policy or policies.

22. TRANSFER OF LIFE POLICY:

IF the Trustees in their discretion hereunder determine to pay to the dependants of a member the whole or any part of the amount standing to the Member's credit in the Trustees' books and the same includes any policy of any kind on the life of the Member (and whether the amount becomes due on disability or not) the Trustees may in their discretion and in lieu of surrendering such policy assign the same to such Member's dependants or to such one or more of them to the exclusion of the other or others as the Trustees in their discretion may determine and the Trustees and the Company shall not be liable to pay any premiums thereafter becoming due and owing under the said policy as from the date of such assignment.

23. PAYMENT OF AMOUNT OF MEMBER'S BENEFIT:

THE first pension payment to a member after retirement or to the dependants of a deceased member shall be made not later than one (1) month after the member's death or retirement (as the case may be).

24. LIMITATION OF BENEFITS:

- (a) It is intended that the benefits which a Member has or his dependants have the right to receive under this Deed shall not be excessive in amount having regard to the matters referred to in Section 23F(2)(h) of the Act.
- (b) The Trustees shall not accept a contribution or contributions to the Fund from or in respect of a Member where it appears that, should they do so, the benefits that Member or his dependants would have the right to receive from the Fund would be excessive in amount having regard to the matters specified in Section 23F(2)(h) of the Act.
- (c) If at any time the Trustees have notice that any benefits payable or which become payable in respect of a Member in accordance with the terms of this Deed when aggregated with the benefits pensions or allowances that they have been or may be provided by any other superannuation fund or funds in respect of that Member is or is likely to be excessive within the meaning of Section 23F(2)(h) of the Act the Trustees shall forthwith reduce the said benefit by such amount (hereinafter called "the Excess") as the Trustees in their absolute discretion shall determine in order to ensure that the income of the Fund shall be exempt from taxation under the Act or if not exempt by failing to satisfy the requirements of the Act with regard to Public and other investments shall in all other ways satisfy the provisions of Section 23F of the Act.
- (d) In making any reduction in accordance with paragraph (c) of this Clause the Trustees may in their absolute discretion refuse to accept all or any future contributions payable to the Fund in respect of the Member or may reduce such contributions by such amount as they shall determine and in any of such events they may do so either temporarily or permanently.
- (e) The Trustees shall establish in addition to the Fund named in Item 7 of Schedule One hereto a separate and distinct fund known



as the Excess Benefits Fund (not being a fund the income of which is exempt from income tax either in whole or in part) which is vested in the Trustees and subject to the same trusts powers authorities and provisions contained in this Trust Deed but excluding the provisions of paragraphs (c) and (d) of this Clause and in addition to their obligations pursuant to Clause 8(iii) and (v) of this Deed the Trustees may transfer to such Excess Benefits Fund the amount which represents the Excess and may pay to such Excess Benefits Fund the amount of contributions which would or could but for the provisions of paragraph (d) of this Clause have been paid to the Fund named in Item 7 of Schedule One hereto PROVIDED THAT if in the event it subsequently appears that the benefits being accumulated in the last mentioned fund are not excessive or likely to be excessive for the purposes of Section 23F of the Act and that all or part of the amount standing to the credit of the Excess Benefits Fund could be transferred to the fund named in Item 7 of Schedule One hereto without prejudicing any tax concession that the last mentioned Fund may have the Trustees may transfer all or part of such credit back to the Fund named in Item 7 of Schedule One hereto.

- (f) In conformity with the terms of (c) above the Trustees shall have power to reduce any sum insured or make the same fully paid up or otherwise vary the policy or policies (if any) on the life of any Member and to arrange with any insurer that any policy or policies on the life of the Member may be surrendered and any monies so received as a result of such surrender shall fall into and become part of the capital of the Fund.

25. RESTRICTION OF BENEFITS:

- (a) The Company may by Resolution of its Directors restrict or confine the benefits of the Fund to Members existing at the date of such resolution or some subsequent specified date.

- (b) No monies forming part of the unallocated account shall be advanced to or lent by the Trustees to the Members or any of them save in the circumstances set forth in Clause 45 hereof.

26. REFUND TO COMPANY:

SHOULD the Company be entitled to any reimbursement from the Member pursuant to or under the provisions of this Deed then the Trustees shall if so requested by the Company surrender any policy on the life of that Member and hold the proceeds thereof in satisfaction of or towards the amount to be so reimbursed.

27. NO DEALING WITH POLICY:

A Member shall not surrender assign transfer mortgage charge or in any way encumber any policy or any of the bonuses attaching thereto before the policy shall be assigned to him by the Trustees.

28. REFUSAL OF CONTRIBUTION FROM MEMBER:

NOTWITHSTANDING anything expressed or implied in Clauses 4 or 5 hereof or elsewhere in this Deed the Trustees have the right at any time to decline to accept all or any part of any contribution from any Member or any Associated Employer without having to assign any reason for so doing.

29. AUDITING OF ACCOUNTS:

THE Trustees shall keep complete and accurate books of account and records of all receipts and expenditures on account of the Trust Fund and promptly after the close of each Accounting period the Trustees shall prepare a written accounting report (prepared in accordance with normally accepted accounting procedures) for such period consisting of a balance sheet, a statement of income and expenditure and a list of assets held at the close of the period and a copy thereof shall be furnished

upon the request to the Company and the accounting report shall include the names and addresses of all the persons or firms having custody of all or any portion of the assets of the Trust Fund and the Trustees shall be entitled but not obliged to have such accounts audited by an auditor appointed by the Trustees at the expense of the Trust Fund but if audited the report of any such auditor must be endorsed on or attached to the balance sheet relating to the period in respect of which the auditor's report relates.

30. INVESTMENTS:

THE Trustees shall have the following absolute powers and discretions which they may exercise either themselves or jointly with any other person or persons:-

(a) (i) TRANSDPOSE INVESTMENTS:

Notwithstanding that the Trust Fund consists of trust monies to apply the same to deal with and manage and transdpose and realise all investments and all property constituting the Trust Fund entirely as they think fit and with such powers in all respects as if the Trustees were the absolute owners thereof.

(ii) TYPES OF INVESTMENTS:

To apply all monies at any time forming part of the Trust Fund in any such investments and property whether involving liabilities or not or upon personal credit with or without security and upon such terms and conditions as the Trustees shall in their absolute discretion think fit and to the intent that the Trustees shall have the same powers in all respects as if they were the absolute owners beneficially entitled including without diminishing the generality of the foregoing the subscription for the taking up on allotment and the purchase of any shares stocks bonds mortgages debentures obligations or securities of any Government authority or company incorporated in any part of the world or units in any Unit Trust and the

taking or the purchase or acquisition of the whole or any part of share or interest in (including a minority part or share of interest in) any business or partnership and the goodwill and assets thereof and the purchase or acquisition of any real or personal property whatsoever situate or any part or share or interest therein and notwithstanding that the same may not be income producing or be wasting or speculative to exercise all rights and privileges and perform all duties and obligations appertaining or incidental thereto AND the Trustees may make or purchase any such investments or property for cash or in consideration of any annuity or otherwise and upon such terms and conditions as the Trustees shall in their absolute discretion think fit and they may make or purchase any such investment or property for a sum greater than the amount of the Trust Fund for the time being and they may agree to pay for any such investments or property wholly or in part from any future monies which may come into their hands including dividends profits interest or other income paid or payable in respect of any such investments or property.

(b) (i)

LOANS:

To advance and lend monies to and to borrow raise monies from and to secure by mortgage bill of sale lien or charge fixed or floating legal or equitable or otherwise howsoever the payment of any money to any persons firms companies corporations or governmental or municipal bodies upon such terms with or without security or interest as the Trustees shall deem fit and the Trustees are hereby expressly empowered to join with any other company or person in executing any mortgage or other document for the purpose of securing the payment of money to the Trustees jointly with any other person or company or for the purpose of securing the payment of money to any other person or company and if the Trustee is a company to give and to execute a registerable floating charge under the Companies (New South

Wales) Code 1980 and the Trustees may exercise the powers provided by this paragraph (b) for the purpose of assisting the exercise of any other of the powers set out in the instant clause and notwithstanding that the sum to be borrowed or secured exceeds the value of the Trust Fund. For the purpose of these Trusts the same protection for Trustees shall be deemed incorporated herein as if any loan made by the Trustees were a loan on security of property and were a loan within the meaning of Section 16 of the Trustee Act, 1925 of New South Wales save that the term of five years in Section 16(1) shall be read as if thirty years were substituted therefore and the Trustees may lend for a period of up to thirty years with or without security. Where the situs of this Trust is Queensland or Victoria reference to the Trustee Act herein shall be read as though it were reference to the Trustee Act of such State and in lieu of Section 16 of the Trustee Act there shall be substituted Sections 30 and 11 of the Trustee Acts of Queensland and Victoria respectively.

(ii) MORTGAGES OF FREEHOLD LAND:

The Trustees may in addition to any other power of investment in this Deed given and in augmentation of any power of investment may invest the Fund upon contributory mortgages of freehold lands in Australia in their name or in the joint names of some other persons provided always that the Trustees receive upon payment of monies by them an acknowledgment under seal that the monies are invested for the Fund and it shall not be obligatory for the Trustees to retain possession of mortgage security including deeds.

(c) ANNUITIES:

To agree to pay and to charge the Trust Fund with the payment of any annuity or annuities or any other payment or payments of an annual nature.

(d) REAL OR PERSONAL PROPERTY:

To hold use purchase construct demolish maintain repair renovate reconstruct develop improve exploit transfer convey surrender let lease exchange take and grant options or rights in alienate mortgage charge pledge reconvey release or discharge or otherwise deal with any real or personal property and in particular to apply for shares debentures or securities of any company and with or without deferred restricted qualified or special rights relating thereto.

(e) INSURANCE POLICIES:

To purchase acquire or effect any reversionary or deferred property or rights of any description of any life or life-endowment or sinking fund or term or other policy or policies of insurance on the lives of the Members of whatsoever nature and at or subject to any premium or premiums whether single or payable periodically and with or subject to any option rights benefits conditions provisions whatsoever and the Trustees shall have power to pay such monies as are required to keep the same current out of the unallocated account and may accordingly debit the same with the cost of premiums or otherwise act as shall be necessary for the effecting or maintenance of any such policy or policies whether owned by the Trustees or otherwise or for the exercise or enjoyment of any option right or benefit thereunder and any surrender of any such policy or policies shall for all the purposes of this Trust Fund be deemed to be a sale thereof.

(f) EXPENSES AND INCOME TAX:

To pay out of the Trust Fund or the income thereof all costs charges and expenses incidental to the constitution management administration operation and winding up of the Trust Fund or to the exercise of any power authority or discretion herein contained or carrying out or performing the trusts hereof which the Trustees may at any time incur including all income tax or other taxes payable in respect of the Trust Fund costs in any

way connected with the preparation and execution of these Presents or the gift of settlement hereby effected or in respect of any additional monies or investments paid or transferred to the Trustees upon the trusts hereof and whether under the laws of the Commonwealth of Australia or any of the States or Territories thereof or of any other country.

(g)

SHARES HELD BY THE TRUSTEES:

With respect to any company in which the Trustees hold shares stock or debentures or are otherwise interested or concerned or which is formed to acquire all or any of the assets of or to carry on the business of any such company to exercise the following powers in addition to the powers conferred by Statute or otherwise by law:-

- (i) to pay calls on any shares or to permit any such share to be forfeited and sold;
- (ii) to purchase any further shares stock or debentures and to take up any shares stock or debentures of a new issue of any such company;
- (iii) to lend money to any such company whether secured by debentures or in any other way or not secured and at such rate of interest and upon such terms as the Trustees think fit;
- (iv) to hold any shares stock or debentures acquired by the Trustees pursuant to the powers conferred by Statute or otherwise by law or by this Clause for as long as the Trustees think fit;
- (v) to sell any shares stock or debentures held by the Trustees at such price as the Trustees think fit (whether or not such price is less than the sum that appears from the accounts of the company to be the value of such shares stock or debentures) and upon such terms with or without security as the Trustees think fit;
- (vi) to assent to or join in any arrangement relating to the

sale or transfer or exchange of any such shares stock debentures or interest or modifying any rights or privileges or interest in relation thereto and to agree to any scheme or arrangement for the increase or reduction of the value of amounts of any shares or stock or of the capital of any company in which any shares stock or investments forming the whole or any part of the Trust Fund for the time being may be invested or by which any such shares stock or investments are substituted or given in exchange either wholly or partly for other shares stock or investments whether in the same company or not; and for any such purpose to deposit surrender or exchange any scrip or document of title relating thereto; and to pay out of the capital of the Trust Fund or the income thereof any contribution or incur any necessary expense in connection with any such scheme or arrangement and generally to manage and deal with any such shares stock or investments as if the Trustees owned them beneficially;

(vii) to agree in respect of a winding up of any company in which the Trustees may for the time being hold shares or are otherwise concerned or interested with the liquidator of such company or any Member or Members of such company or any other person in all things as the Trustees shall in their absolute discretion think fit for the division or partition in kind or specie of the assets or property of whatsoever nature or kind and to accept any of such assets and property in payment or satisfaction of any interest of the Trustees in such company with power to pay any monies by way of equality of division or partition.

(h)

CARRY ON BUSINESS:

To acquire carry on or join in carrying on any business either alone or in partnership with any other person or persons at the discretion of the Trustees during such period as they shall



think fit or proper with power for that purpose to employ therein such part or parts of the capital of the Trust Fund as they think fit and employ at such salary as they think fit as manager of the said business any person or persons (whether Trustees or a Trustee of or otherwise interested in the Trust Fund or not) or to leave the entire management of such business to any partner therein and to renew partnerships and generally to act in all matters relating to such business or businesses as if they were beneficially entitled thereto and without responsibility for loss.

(i) SUBDIVISION OF LAND:

To partition or agree to the partition of or to subdivide or agree to the subdivision of any land or other property which or any interest in which may for the time being be subject to the trusts hereof and to pay any monies by way of equality or partition.

(j) ESTABLISH COMPANY:

To establish promote or acquire any company or companies or join in the promotion or establishment of any company or companies.

(k) APPROPRIATION OF SHARES:

To appropriate without obtaining any of the consents required by Statute or otherwise by law any part or parts of the Trust Fund either in the actual condition or state of investment thereof or by setting apart or crediting in the books of accounts of the Trust any sum or sums in or towards the satisfaction of any share or shares whether vested or contingent to which any person or persons is or may be entitled in the Trust Fund and for that purpose to make or cause to be made a valuation or valuations of the Trust Fund or any part or parts thereof or of any interest therein as the Trustees may deem necessary either themselves or by such person or persons whether duly qualified or not as they may appoint and in such manner and at such respective times as the Trustees consider just and proper and every valuation and

every appropriation made by the Trustees shall bind all persons interested whether in the share to which the appropriation is made or in any other shares or otherwise interested in the Trust Fund notwithstanding that such person may not be in existence or may be infants lunatics or defectives or cannot be found or ascertained at the time of such appropriation or that the Trustees or any one or more of the Trustees for the time being or any person who is a director or shareholder of the Trustee making the appropriation are or may be beneficially interested either directly or indirectly as a result of the exercise by the Trustees of the power of approval as aforesaid.

(l)

DETERMINATION OF TRUSTEES:

To determine whether any real or personal property or any increase or decrease in amount number or value of any property or holdings or property or any receipts or payments gains or losses from for or in connection with any real or personal property shall be treated as and credited or debited to capital or to income and generally to determine all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the trusts and powers of this Trust Fund and every determination of the Trustee in relation to any of the matters aforesaid whether made upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustees in relation to the Trust Fund shall bind all parties interested therein and shall not be objected to or questioned on any ground whatsoever.

(m)

POWER TO DISTINGUISH TYPES OF INCOME:

The Trustees may, if they see fit, treat as income of the Fund any receipt profit or gain which is assessable income for the purpose of the Act AND The Trustees may if they so choose distinguish between income of any type or character as referred to in the Federal Income Tax Assessment Act from the income of any other type or character as referred to in that Act and may

deal with any type or character of income in one manner and any other type or character of income or types or characters of income in a different manner.

(n)

TO TAKE COUNSEL:

Without derogating from the generality of any other power herein provided to take and act upon the opinion (given in writing) of Counsel of not less than five years' standing practising in any country where the Fund or any part thereof may for the time being be invested in relation to the interpretation or effect of these Presents or any other document of Statute or as to the administration of the Trusts hereof without being liable to any of the persons beneficially interested in respect of any act done by the Trustees in accordance with such opinion provided that nothing in this provision shall prohibit or impede the Trustees from applying to any Court if they shall think fit or prohibit any of the Members hereof from so doing.

(o)

TRANSFER TO NEW TRUSTEES:

In any conditions or circumstances which the Trustees think expedient to appoint either in respect of the whole of the Trust Fund or any part thereof new trustees in any country in the world and to transfer assign and set over the investments for the time being representing the Trust Fund or any part thereof to any such new Trustees upon similar trusts and subject to similar terms and conditions to those declared in these Presents and either subject to the control of the Trustees of these Presents or to the exclusion of such control AND the Trustees of these Presents shall be indemnified and held harmless against any loss which may arise from the exercise of this power.

(p)

LOANS TO MEMBERS:

(i)

If any Member and/or his dependant offers to comply with the circumstances set forth in Clause 45 of this Deed the Trustees shall be at liberty so to do, and in those circumstances the following considerations and terms shall apply hereto.

- (ii) The Trustees shall be the sole judges as to whether any loan or loans should be made and any monies so lent and any interest charged upon such monies and remaining unpaid shall stand charged upon the monies from time to time to the credit of the account of such member in the books of the fund and all monies payable by a Member to the Trustees in respect of any such loan or loans shall be deducted from any monies that might otherwise be payable to such Member or to his dependants or his legal personal representative. The Trustees must require such Member to enter into a document of charge or agreement or any form of security for repayment of any such loan or loans.

31. INVESTMENTS IN FIRMS AND COMPANIES IN WHICH TRUSTEES ARE SHAREHOLDERS:

- (a) NOTWITHSTANDING anything herein to the contrary or otherwise contained or implied the Trustees in the event that the Trustees or any of them be a natural person such an individual shall have power at their absolute discretion to sell transfer hire lease or dispose of any real or personal property forming the whole of any part of the Trust Fund or to lend or advance any monies thereof to the Trustees in their personal capacity or in their capacity as Trustees of other Trust Funds or to a relative of the Trustees or any of them or otherwise howsoever or to any company corporation or partnership whatsoever notwithstanding that such a Trustee is a member or director or partner of any such company, corporation or partnership or to any company, corporation or partnership in which a relative of the Trustee or any of them is a member or director or of which any of them is a partner or in which any of them has interest AND to buy transfer acquire hire or lease any real or personal property or to borrow any monies from the Trustees in their personal capacity or in their capacity as Trustees of other Trust Funds or otherwise howsoever or from any company, corporation or partnership whatsoever notwithstanding that the Trustee who is a

natural person is a member or director or partner of such company, corporation or a member of such partnership or from any relative of his or any partner thereof and notwithstanding that any relative of the Trustee is a member or director or partner of the party with whom the Trustees are dealing or that a relative of the Trustee is in a fiduciary relationship (howsoever arising) to the members for the time being of the fund or any of them and as though the Trustee was entitled beneficially to the assets of the fund and did not stand in any such fiduciary relationship but was as of right entitled and/or empowered and authorised to make such a loan or borrowing and such loan or borrowing may be at any rate of interest whatsoever and may be re-invested by the Trustee if he borrows from himself in his capacity as Trustee hereof either by way of loan at a higher rate or by way of some other investment and any profit which thereby accrues and which but for these presents would be accountable to the members of the fund or some one or more of them shall not be so accountable but may be retained by him for his sole use and benefit absolutely without liability to account in any way whatsoever AND in further exculpation of the Trustee he shall be at liberty in his capacity as Trustee of the Trust Fund to carry on or carry out any profit making undertaking or scheme either on his own behalf or in partnership with any other Trustees for the time being hereof or any of them and whether in their personal capacity or in their capacity as Trustees of other Trust Funds or otherwise howsoever or with any company, corporation or partnership whatsoever notwithstanding that the Trustee is a member or director or partner of such company, corporation or partnership or that any relative of the Trustee is a member or director or partner thereof or has an interest therein AND generally to deal with the Trustee in his personal capacity in all respects as if there were two separate persons to the dealing acting at arm's length to each other AND without

limiting the generality of anything herein contained and whether the Trustee shall have notice that it is intended to appoint additional or other Trustees of this Trust Fund to sell to himself in his capacity as Trustee of other Trust Funds either for cash or upon terms any assets being shares or a joint or undivided interest in property where other shares in the same company or corporation or another joint or undivided interest in the same property are held by the Trustees in such other capacity as aforesaid AND to divide assets in specie between the Trust Fund and such other Trust Funds in such manner as the Trustees shall think fit.

- (b) Notwithstanding anything herein to the contrary or otherwise contained or implied the Trustees in the event that the Trustees or any of them be a company or corporation (hereinafter in this sub-clause called "the Trustee") it shall have the power at its absolute discretion TO SELL transfer hire lease or dispose of any real or personal property forming the whole of any part of the Trust Fund or to lend or advance any monies thereof to the director of the Trustee or any one or more of them (which director or directors shall hereinafter be called "the said director") in his or their personal capacity or in his or their capacity as Trustee of other Trust Funds or to a relative of his or otherwise howsoever or to any company or corporation or partnership whatsoever notwithstanding that the said director is a member or director of such company, corporation or partnership or to any company, corporation or partnership in which any relative of his is a member or director of or of which any of them is a partner or in which any of them has an interest AND to buy transfer acquire hire or lease any real or personal property or to borrow any monies from the said director in his personal capacity or in his capacity as Trustee of other Trust funds or otherwise howsoever or from any company, corporation or partnership whatsoever notwithstanding that the said director is

a member or director of such company or a member of such partnership or from any relative of the said director or from any partner thereof Notwithstanding that any relative of the said director is a member or director or partner thereof or is in a fiduciary relationship (howsoever arising) to the members for the time being of the fund or any of them and as though the said director was entitled beneficially to the assets of the fund and did not stand in any such fiduciary relationship but was as of right entitled and/or empowered and authorised to make such a loan or borrowing and such loan or borrowing may be at any rate of interest whatsoever and may be re-invested by the said director if he borrows from himself in his capacity as Trustee hereof either by way of loan at a higher rate or by way of some other investment and any profit which thereby accrues and which but for these presents would be accountable to the members of the fund or some one or more of them shall not be accountable but may be retained by him for his sole use and benefit absolutely without liability to account in any way whatsoever AND in further exculpation of the said director he shall be at liberty in his capacity as Trustee of the Trust Fund to carry on or carry out any profit making undertaking or scheme either on his own behalf or in partnership with any other of the directors of the Trustee hereof or any of them and whether in their personal capacity or in their capacity as Trustees of other Trust Funds or otherwise howsoever or with any company, corporation or partnership whatsoever notwithstanding that the said director is a member or director or partner of such company or corporation or partnership or that any relative of the said director is a member or director or partner thereof or has an interest therein AND generally to deal with the said director in his personal capacity in all respects as if there were two separate persons to the dealings acting at arm's length to each other AND without limiting the generality of anything herein

contained and whether the said director shall have notice that it is intended to appoint additional or other Trustees of this Trust Fund to sell to the said director in his capacity as Trustee of other Trust Funds either for cash or upon terms any assets being shares or a joint or undivided interest in property where other shares in the same company or companies or another joint or undivided interest in the same property are held by the said director in such other capacity as aforesaid AND to divide assets in specie between the Trust Fund and such other Trust Funds in such a manner as the Trustee shall think fit.

- (c) In the event that by the terms of this Deed or any amendment thereof an obligatory investment should be made whereby monies are loaned to or invested with the Trustees or any of them in their personal capacity or in their capacity as Trustees of other Trust Funds or otherwise howsoever or to or with any company or corporation or partnership whatsoever notwithstanding that the Trustees or any of them is a member or director or partner of such company or corporation or a member of such a partnership or that any relative of a Trustee is a member, director or partner thereof or where the Trustee or a Trustee of this fund is a company or corporation then notwithstanding that a director or member of such company or corporation or a relative of any such director or member is either directly or indirectly to benefit from or in consequence of the terms of the obligatory investment then the Trustees in such other capacity and/or such other related party may demand and the Trustees shall be obliged to lend at the rate stipulated by the obligatory borrower and may if they or any of them has an interest in or is the obligatory borrower act in that capacity as though they were not in a fiduciary relationship to the members of the fund but were entitled beneficially and did not stand in any such fiduciary relationship but were as of right entitled and/or empowered and authorised to make such a demand



and such borrowing may be at the rate of interest set forth in Item 6 of Schedule One hereto (but so that such rate shall not be less than six (6) percentum per annum) and may be re-invested by the obligatory borrower either by way of loan at a higher rate or by way of some other investment and any profit which thereby accrues and which but for these presents would be accountable to the beneficiaries or some one or more of them shall not be accountable but may be retained by the party so benefiting without liability to account to any party in any way whatsoever AND in the event that by the terms of the obligatory investment the Trustees are directed to acquire the capital (in whole or part) of any company or corporation or an option over the unissued capital thereof then they shall do so notwithstanding that such an investment is or may subsequently be thought to be imprudent or would in other circumstances be regarded as hazardous or give rise to an action for loss against the Trustees and especially but without limiting the generality of the foregoing notwithstanding that dividends are not or are not in the foreseeable future likely to be declared and notwithstanding that the Trustees or any of them or any company, corporation or partnership of which they or one of them or any company, corporation or partnership of which they or one of them or any company, corporation or partnership of which a relative of any director or member of the Trustees or any of them has loaned money to any such company or corporation and whether such loan was with or without interest and without regard to the terms of repayment of any part of the whole of such monies.

32. ACTION ON TRUSTEE VACANCY:

ANY vacancy occurring in the office of the Trustee shall as soon as possible be filled by the Company. Any continuing or surviving Trustee or Trustees may act notwithstanding any vacancy for the time being in their body.

33. WHO MAY BE TRUSTEE:

ANY Company or person including every Director of the Company and the Company itself and every Member shall be eligible for appointment by the Company as a Trustee provided that no Trustee being a Member shall adjudicate upon or participate in the determination of any claim in which as a Member he may be personally interested.

34. METHOD OF APPOINTMENT:

ANY appointment or revocation of appointment of a Trustee shall be by Deed and authorised by resolution of the Company and shall be notified in the minute book of the Fund and registered pursuant to the Registration of Deeds Act, New South Wales or any Act replacing same. If any such appointment or revocation be made in any other State or Territory of Australia then appropriate action shall be taken pursuant to any similar legislation in such other State or Territory.

35. TRUSTEE MEETINGS:

THE Trustees may meet together and may regulate their meetings as they may themselves from time to time determine and until otherwise so determined a meeting of the Trustees shall be held whenever a meeting is required by any Trustee. Whenever there are two or more Trustees a quorum shall consist of two Trustees present in person or by its duly appointed representative in the case of a company. The Trustees if at any time they are more than one shall act jointly and they may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustees and execute any powers of attorney or other instruments necessary to effectuate such purpose.

36. DECISION OF TRUSTEES:

A decision of the majority of the Trustees for the time being of the Fund shall constitute and be given effect to as a decision of the Trustees. In the event of their being two Trustees the Chairman of Trustees shall have the second or casting vote which notwithstanding any rule of law or procedure or practice to the contrary may be either affirmative or negative.

37. TRUSTEES' OBLIGATIONS AND POWERS WITH RESPECT TO DECISIONS AND ACCOUNTS:

- (a) WITHOUT prejudice to any right of the Trustees under the general law to refuse disclosure of any document it is hereby declared that the Trustees shall not be bound to disclose to any person any of the following documents that is to say:-
- (1) any document disclosing any deliberation of the Trustees (or any of them) as to the manner in which the Trustees should exercise any power or any discretion conferred upon the Trustees by this Deed or disclosing the reasons for any particular exercise or non-exercise of any such power or any such discretion or the material upon which such reasons shall be or might have been based;
  - (2) any other document relating to the exercise or proposed exercise of any power or any discretion conferred on the Trustees by this Deed (not being legal advice obtained by the Trustees at the cost of the Trust Fund or the minutes of the Trustees kept pursuant to sub-clause (b) of the Clause).
- (b) (1) any determination of the Trustees in acting as Trustees of this Trust may be made-
- (a) in writing signed by all the Trustees; or
  - (b) by a resolution of all the Trustees acting personally or through alternates or representatives appointed under Clause 38(c) and (d) of this Deed duly passed at a meeting of all the Trustees attended personally or through alternates or representatives; or

- (c) in the case of a sole corporate Trustee in the manner set out in sub-clause (4) hereof;
  - (d) where any delegation has been made under Clause 38(c) or (d) of this Deed, in such manner as the Trustees at or after the time of such delegation resolve or if there is no such resolution then in writing signed by the Trustees to whom such delegation has been made.
- (2) The Trustees shall keep in a separate Minute Book (hereinafter called "The Principal Minute Book") which shall be part of the property included in the Trust Fund minutes of all decisions and determinations of the Trustees and of a committee of Trustees and a copy of all resolutions of the kind referred to in sub-clause four (4) hereinafter set forth but such Minute Book shall not contain the reasons for any decision or determination or record the actual votes cast for or against a resolution of the Trustees by individual Trustees but only the fact of the passing of such resolution and the date thereof if it was passed and the Trustees may determine to keep separate Minute Books relating to transactions in different countries, states, territories, colonies or possessions and may determine from time to time where such Minute Books shall be kept but a Minute Book of the determination to establish any such separate Minute Book must be made in the principal Minute Book.
- (3) The Minute Book referred to in sub-clause two (2) above shall be available for reasonable inspection by the Company any member and by all Trustees and retired Trustees but nothing in sub-clause two (2) above shall prevent any of the Trustees keeping a separate record or note of the deliberations of the Trustees in such form as that Trustee thinks fit which will not be part of the Trust Fund and will remain the property of that Trustee and will not be available for inspection.

- (4) Every Trustee which is a company or corporation may exercise or concur in exercising any of the powers and may execute or concur in executing any of the Trusts constituted by or under this Deed by a resolution of such company or corporation or by a resolution of its Board of Directors or governing body or may delegate the right and power to exercise or concur in exercising any such power or to execute or concur in executing any such trust to one or more representatives appointed for the purpose by its Board of Directors or governing body and if more than one is so appointed such representatives shall act jointly or severally according to the terms of their appointment;
- (5) Every Trustee not being a sole Trustee which is a company or corporation may attend and vote at meetings of the Trustee or of a committee of the Trustees by its representative appointed under sub-clause four (4) above PROVIDED THAT only one representative of any one corporate Trustee shall attend any one meeting of the Trustees and any determination in writing under sub-clause (b)(1)(a) above may be signed on behalf of a corporate Trustee by a representative appointed under sub-clause four (4) above.

38. TRUSTEES MAY BE DIRECTORS:

- (a) THE Trustees or any of them may become Directors or a Director of or appoint any person to act as a Director on their behalf of any company in which any monies forming part of the Trust Fund are from time to time invested and may receive the remuneration attached to such office or permit their representative to receive such remuneration without being liable to account to the Trust therefore and any such representative may become qualified to act as a Director (if the Articles so allow) by the holding in his name of shares belonging to the Trustees provided that he executed a Declaration of Trust therefore in favour of the

Trustees generally and deposits the same with the Trustees accompanied by the Certificate of such shares and that he accounts to the Trustees for all dividends and bonuses payable in respect thereof.

(b) EXECUTION OF POWERS:

The Trustees may exercise or concur in exercising all powers and discretions hereby or by law given notwithstanding that they or any person being a Trustee or any person being a director or shareholder of a Trustee hereof being a company has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

(c) APPOINTMENT OF MANAGERS, ETC:

The Trustees shall not be bound in any case to act personally but they shall be at full liberty to act as managers or to employ any contractors manager solicitor accountant clerk workmen employees or servants or any agents to transact all or any business of whatever nature required to be done in the premises including the receipt and payment of money and the Trustees shall decide the remuneration to be allowed and paid and all charges and expenses so incurred save and except that at no time shall employment of any such persons save in exceptional circumstances, wholly dissipate the income of the Fund in any one year.

(d) ALTERNATE TRUSTEE:

Each of the Trustees may with the consent of the other or others appoint any person to be an alternate Trustee in his place and so that any such appointment shall have effect during such period only as such Trustee may from time to time be absent from Australia or its Territories and each of the Trustees may by power under hand alter or revoke such appointment as alternate Trustee.

(e) LIABILITY OF TRUSTEES:

- (i) The Trustees shall not be personally liable for any consequence of any error of forgetfulness whether of law or fact on the part of any of the Trustees or of their legal or other advisor or generally for any breach of duty or trust whatsoever unless it shall be proved to have been committed made or omitted in personal conscious fraudulent bad faith by the Trustees charged to be so liable and accordingly all persons claiming any beneficial interest in over or upon the property subject to these trusts shall be deemed to take with notice of and subject to the protection hereby conferred on the Trustees.

INDEMNITY:

- (ii) The Trustees shall not in any circumstances be entitled to indemnity reimbursement or recompense from the Members or any of them but if acting in good faith shall be entitled to be indemnified out of the Trust Fund in respect of all liabilities incurred relating to the execution of any powers duties authorities or discretion vested in them under the provisions of this Deed and in respect of all actions proceedings costs claims and demands relating to any matter or thing done or omitted to be done concerning the Trust Fund.

(f) TRUSTEES' DISCRETION:

Subject always to any express provision to the contrary herein contained every discretion vested in the Trustees shall be absolute and uncontrolled and every power vested in them shall be exercisable at their absolute discretion and the Trustees shall have the like discretion in deciding whether or not to exercise any such power. No Trustees shall be responsible for any loss or damage occasioned by the exercise of any discretion or power hereby or by law conferred on the Trustees or by failure to exercise any such discretion or power or for any loss or damage accruing as a result of concurring or refusing or failing to concur in any exercise of any power or discretion.

(g) RECEIPTS:

A Sole Trustee hereof for the time being is hereby authorised notwithstanding that he is the sole Trustee to receive capital and other monies and to give valid and effectual receipts therefore for all purposes and for the purposes of any statutory enactments including the receipt of capital monies which may or may be deemed to be capital monies for the purposes of any Statute.

(h) PROFESSIONAL CHARGES:

Any Trustee hereof who may be a solicitor or accountant or any firm of which he may be a member shall be entitled to make all usual and proper charges for both his professional and other services in the administration of the trusts hereof and for his time and trouble that he would have been entitled to make if not a Trustee and so employed.

(i) TRUSTEES' COMMISSIONS:

Any Trustee hereunder being a company may from time to time charge and retain out of the Trust Fund reasonable Trustees' commission but not exceeding in any accounting period five per centum of the revenue account arising during such period unless the same shall be allowed by the Master or other appropriate officer of the Court.

39. POWER OF ATTORNEY:

IN consideration of these Presents and the acceptance by the Company of its obligations thereunder each Member doth hereby irrevocably appoint the Trustees his joint and several Attorney and Attorneys to make execute and do all such instruments acts and things as the Trustee may consider necessary or advisable in order to carry out and give effect to this Deed or the powers vested in or the duties imposed upon them hereunder.



40. TRANSFER OF PERFORMANCE:

IN the event that the whole or substantially the whole of the assets of the Company's business are hereafter acquired by another company (hereinafter called "the assignee Company") then the Trustee may elect to accept the performance by that other Company of the obligations of the Company hereunder in lieu of the performance thereunder by the Company. Such acceptance by the Trustees shall discharge the Company from any further obligations under this Deed to the extent that thenceforth this Deed shall be read and construed as if such assignee company were mentioned as the Company herein. The assignee company shall by deed delivered to the Trustees covenant to be bound by the terms of this Deed.

41. ACTION ON COMPANY CEASING BUSINESS:

IF another Company shall acquire the whole or substantially the whole of the assets of the Company and if the acceptance of the Trustees referred to in the preceeding clause should not be made or if the Trusts hereby declared shall otherwise determine then the Trustees may at their discretion either:-

- (a) continue to hold the monies standing to the credit of each Member in the Trustees' books and the investments from time to time representing the same and the income thereof upon the same trusts as are herein declared until whichever of the following events shall first occur namely the termination of the Member's employment by the Company his retirement or death whereupon the provisions of the Deed shall apply to the payment or application of the Member's benefit; or
- (b) Realise the investments representing the amounts standing to the credit of the Members in the Fund and after payment thereof of all the costs of realisation apply the balance

remaining or so much thereof as possible in either effecting in the names of the Trustees a fully paid policy of life assurance on the life of each Member maturing either on the Member reaching the retiring age or on his earlier death whereupon the provisions of this Deed in relation to a life policy shall apply to such policy. The amount to be applied in the purchase of such a fully paid policy of life assurance for each Member shall be the amount of the costs of realisation hereinbefore referred to.

42. POWERS ON REALISATION:

TRUSTEES may on realisation of any assets of the Fund sell dispose and transfer such assets on such terms and conditions as to payment of purchase monies and otherwise as the Trustees in their absolute discretion shall deem advisable and notwithstanding any fiduciary relationship which may exist by reason of the Trustees or any of them being also directors of the company the Trustees may sell or lease any of the assets of the Fund whether real or personal to the Company upon such terms and conditions and in all respects as the Trustees shall in their absolute discretion deem advisable.

43. ACTION ON COMPANY LIQUIDATION:

IF the Company shall go into liquidation whether voluntarily or compulsorily (except bona fide for the purpose of reconstruction or amalgamation) or if the Company be wound up or being a natural person or person be made bankrupt then in any such event the Fund shall be realised and the proceeds of realisation distributed as directed by the person who was managing director of the Company (or the person who, being a natural person, was the employer) immediately prior to liquidation PROVIDED HOWEVER that such realisation and distribution shall not be required:-

- (a) on the happening of either of the events specified in Clauses 40 and 41 hereof; or
- (b) failing this unless all the Members of the Fund cease to be employees of the Company.

44. WORKERS COMPENSATION NOT AFFECTED:

NOTHING in these Presents shall in any way affect the right of a Member or his legal personal representatives or other person to claim damages or compensation at Common Law or under Workers' Compensation Acts or any other Statute in force governing compensation to any employee injured or dying from any accident arising out of and in the course of his employment with the Company for long service leave and the amount payable under these Presents shall not be reduced by reason of any payment that may be made in respect of such damages or compensation or for such leave nor shall the provisions of these Presents be used as a ground for increasing damages in any action brought by any Member against the Company in respect of the termination of his employment by it.

45. LOANS ON SECURITY:

THE provisions of this Deed precluding loans to Members shall not apply to loans to Members or their dependants where the Member and/or his dependants give the Trustees adequate security for any such loan and interest thereupon in the form of a first or second mortgage over the real property owned by the Member and/or his dependants personally. Provided always that the amount of any second mortgage shall not exceed the monies standing to a Member's credit in his A account.

46. COMPANY'S RIGHTS NOT WAIVED:

NEITHER membership of the fund nor anything contained in this Deed shall in any way prejudice or affect the right of the

Company to dismiss any employee or to vary the terms of his employment nor shall such membership or the rights or benefits of a Member under the Deed be used as ground for granting or increasing damages in any action brought by any such employee against the Company whether in respect of any alleged wrongful dismissal or otherwise.

47. PRIVILEGE:

ANY disclosure or communication by the Company to the Trustees in relation to any employee's membership of the fund and/or his right to any benefit hereunder shall be privileged and no employee or any person claiming through or on his behalf shall have any right or claim for loss or damage at law or otherwise in consequence of any such disclosure or communication.

48. AMENDMENTS TO THIS DEED:

THE Company and the Trustees may from time to time by Deed executed by the Company and the Trustees alter or modify all or any of the provisions contained in this Deed. Any alteration or modification so made and for the time being in force shall be of the same validity as if it had been originally contained in this Deed and may in like manner be altered or modified provided however that no such alteration or modification shall be made which in the opinion of the Trustees shall prejudicially affect the existing rights of any Member or Members without his or their written consent. A copy of any such modification or alteration shall be forwarded to the Commissioner of Taxation within 14 days of the making thereof.

49. APPROVAL:

THIS Deed and any modification or alteration thereof shall be submitted to the Commissioner of Taxation for his approval and should he require any further modification or alteration to

enable the income of the Fund to be exempt from taxation pursuant to the provisions of Section 23F of the Act then and in any such case the Company and the Trustees are hereby authorised and required to alter, further alter or modify the provisions of this Deed in whatever manner the Commissioner of Taxation shall require.

50. NOTICES:

- A. ANY notices hereunder shall be in writing and shall be sufficiently served:-
  - (a) if delivered personally;
  - (b) if left at the last known place of abode or business in or out of New South Wales of the person to be served;
  - (c) if sent by post in a registered letter addressed to the person to be served, by name, at his aforesaid place of abode or business and if that letter is not returned through the post office undelivered; and such service shall be deemed to be made at the time when the registered letter would in the ordinary course be delivered;
  - (d) in such manner as the Court may direct.
- B. Any notice given or instrument signed in anywise relating to the terms of this Deed and which is served in accordance with any of the modes of service prescribed in sub-clause A hereof by or on behalf of any party hereto by his solicitor shall be deemed to have been given or served by that party personally; and for all purposes and requirements of this deed any notice or instrument purporting to be given made or executed by a person claiming to be a solicitor for a party hereto shall be deemed to be and to have been duly executed and/or given by the party on whose behalf it purports to have been given.
- C. Any such mode of service shall in all respects be valid and effectual notwithstanding that at the date of such service

any party hereto (if a company) may be in course of liquidation or wound up and notwithstanding any other matter or event whatsoever.

- D. The address for service of a member shall be his last residential address known to the Trustees.

51. MARGINAL HEADINGS:

THE marginal headings at the side of the various clauses to this Deed are an aid to the swift perusal thereof and are not to be used in the construction or interpretation of these presents.

52. LAW:

THIS Deed shall be construed in accordance with the laws of the State or Territory of Australia set forth in Item 8 of Schedule One hereto and the forum for all actions or claims or disputes hereunder shall be the Supreme Court of that State or Territory to the authority of which Court and any appellate jurisdiction thereof the parties unconditionally submit and confine themselves and any reference in this deed to the Court shall mean the Supreme Court of the said State or Territory as aforesaid.

IN WITNESS whereof the parties hereto have hereunto set their hands and affixed their seals the day and year hereinafter referred to in Schedule One hereto.

SCHEDULE ONE

- Item 1: DATE OF MAKING THIS DEED : 9th June, 1987
- Item 2: THE COMPANY : ROSS MCL WILSON PTY LIMITED
- Item 3: COMPANY'S ADDRESS FOR SERVICE : 9 LYNWOOD AVENUE, KILLARA
- Item 4: THE TRUSTEE : ROSS MCL WILSON PTY LIMITED
- Item 5: TRUSTEE'S ADDRESS FOR SERVICE : 9 LYNWOOD AVENUE, KILLARA
- Item 6: INVESTMENT RATE FOR OBLIGATORY INVESTMENTS : Ten (10) per centum
- Item 7: NAME OF FUND : ROSS MCL WILSON SUPERANUATION FUND
- Item 8: PROPER LAW OF THIS TRUST : NEW SOUTH WALES

THE COMMON SEAL OF )  
)  
was hereunto affixed by )  
authority of the Board )  
of Directors in the )  
presence of: )

.....  
Secretary



SCHEDULE TWO

To: The Trustees,

I, .....

of .....

an employee of

having been so invited hereby make application to join the Superannuation Fund as from the day of 19

I undertake to be bound by all the terms and conditions of the Trust Deed dated the day of 19 constituting the Fund and relating thereto and any future variations, amendments or modifications of the said Trust Deed which may hereafter be lawfully made from time to time. I nominate as the party to whom I should like the Trustees to grant benefit as my dependant in the event of a benefit being paid consequent upon my death.

DATED this day of 19

.....  
.....

Witness

Signature

..... Limited hereby consents to the abovementioned application.

DATED this day of 19

SIGNED on behalf of )  
Limited)



Gavenwood →

Master / Trust Deed

**DEED OF AMENDMENT AND RULES**

**OF**

**ROSS MCL WILSON SUPERANNUATION FUND (THE  
"FUND")**

**Binetter Vale Lawyers  
Level 12  
111 Elizabeth Street  
SYDNEY NSW 2000**

**Telephone: 02 9993 3833  
Facsimile: 02 9993 3830**

**THIS DEED OF AMENDMENT** is made on 29 May 2006

**BY:** Ross McL Wilson Pty. Limited (ACN 003 245 476) of  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320 (the "**Trustee**")

**WHEREAS**

- A. By Deed made on 9 June 1987 (the "**Original Deed**") an indefinitely continuing superannuation plan was established to provide superannuation benefits for the Members (the "**Governing Provisions**").
- B. The superannuation plan referred to in Recital A is known as Ross McL Wilson Superannuation Fund (the "**Fund**").
- C. The Deed of Amendment and Rules dated in 1994 has been misplaced.
- D. The Trustee now wishes to execute a replacement document, on terms the Trustee believes are similar to the Deed of Amendment and Rules dated in 1994, by the adoption of the Governing Provisions set out in the Rules annexed to this Deed.
- E. The primary purpose of the Fund is to provide old age pensions to the Members.

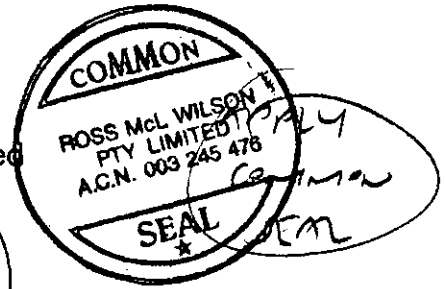
**NOW THIS DEED WITNESSES** as follows:

- 1. The Governing Provisions are, without termination of the trusts thereby constituted, amended and revoked by substitution of the provisions set out in this Deed and the Rules attached.
- 2. The "**Rules**" means the Rules attached to this Deed, as amended from time to time, and they shall have effect as if set out in the body of this Deed.
- 3. The assets of the Fund will continue to be vested in the Trustee upon trust to apply the same in the manner set out in the Rules.
- 4. The Fund will be managed and administered in all respects according to the Rules.
- 5. The power of appointing and removing Trustees shall be as provided in the Rules.

6. The provisions of this Deed may be amended in the manner set out in the Rules.
7. The Trustee hereby declares that the amendment of the provisions of the Governing Provisions affected by virtue of this Deed of Amendment does not prejudicially vary or affect the benefits already accrued to any Member of the Fund.
8. If the Fund was established before 16 December 1985 and from that date to immediately prior to the date of this Deed the Fund at all times retained the power to lend money to Members of the Fund or the Fund had before 16 December 1985 lent money to Members and that lending was not expressly prohibited by the Governing Provisions of the Fund at that time:
  - (a) the Governing Provisions as they relate to the power to lend money to Members are preserved and are not amended or revoked by the substitution of the provisions set out in this Deed and the Rules;
  - (b) any clauses in the Rules that relate to the power to lend money or prohibit the lending of money to Members have no effect.
9. If the Fund was established before 12 May 2004:
  - (a) the Governing Provisions as they relate to a defined benefit pension (as defined by the Superannuation Industry (Supervision) Regulations 1994 as amended) including but not limited to a current or future entitlement, to determination of or payment of such a pension are preserved and are not amended or revoked by substitution of the Provisions set out in this Deed and the Rules; and
  - (b) any clauses in the Rules that relate to the provision for the payment of such a pension have no effect.
10. If any provision of the Rules is prohibited or unenforceable or results in a resettlement of the Fund or change in beneficial entitlement of any Member of the Fund, then such provision shall be ineffective to the extent of such prohibition, unenforceability, resettlement or change in beneficial entitlement without invalidating the remaining provisions of the Rules or affecting the validity or enforceability of such provisions.
11. This Deed and the Rules shall be governed by and construed in accordance with the law of New South Wales.

**IN WITNESS** the party has duly executed this Deed on the date first above.

THE COMMON SEAL of Ross McL Wilson Pty. Limited  
was duly affixed to this document  
in accordance with its Constitution:



*H Wilson* *RW*  
Signature of Secretary

*[Signature]* *RW*  
Signature of Director

HEATHER WILSON  
Name of Secretary - please print

ROSS WILSON  
Name of Director - please print

# Heffron

*consulting*

3 October 2006

**PRIVATE & CONFIDENTIAL**

Mr M Delaney  
Delaney Lawyers  
Level 13  
99 Elizabeth Street  
**SYDNEY NSW 2000**

**Heffron Consulting Pty Ltd**  
ABN 88 084 734 261  
AFS Licence No. 241739

1/50 Belmore Road  
Lorn NSW 2320

Correspondence to:  
PO Box 20  
North Maitland NSW 2320

Phone: (02) 4930 2100  
Fax: (02) 4930 2199  
Email: [heffron@heffron.com.au](mailto:heffron@heffron.com.au)

Dear Michael

**Gavenwood Superannuation Fund (the "Fund") (formerly Ross McL Wilson Superannuation Fund)**

We refer to your letter of 20 June 2006 (copy enclosed) and are now able to provide you with the documents required in respect of the property transfer to Gavenwood Nominees Pty Limited, namely:

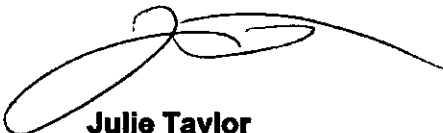
- a copy of the executed deed of retirement and appointment
- a copy of the Australian Taxation Office's website page showing that the fund is a complying fund

We note that we have also enclosed a copy of the minute changing the Fund's name to Gavenwood Superannuation Fund.

We understand that you will now attend to the transfer of the property title to Gavenwood Nominees Pty Limited. We would request a copy of the new title deed once it is issued for the Fund's master records.

Should you have any queries regarding the above please do not hesitate to contact us.

Yours sincerely



**Julie Taylor**  
**Associate**

Encl

# Delaney LAWYERS

Level 13

99 Elizabeth Street  
Sydney NSW 2000

Tel: (02) 9230 1500

Fax: (02) 9223 6788

DX 285 SYDNEY

www.delaneylawyers.com.au

mail@delaneylawyers.com.au

23 JUN 2006

Contact:  
Michael Delaney  
Email [mjd@delaneylawyers.com.au](mailto:mjd@delaneylawyers.com.au)

20 June 2006

Our Ref: MJD:LSL:031632

Your Ref:

Ms J. Taylor  
Heffron Consulting  
PO Box 20  
NORTH MAITLAND NSW 2320

Email: [julie.taylor@heffron.com.au](mailto:julie.taylor@heffron.com.au)

Dear Ms Taylor

E-MAILED  
20/6/06

RE: HEATHER WILSON

Further to our email dated 19 June 2006, we will also require your assistance with transferring the property from the previous trustee, being Ross MCL Wilson Pty Limited to the new trustee, being Gavenwood Nominees Pty Limited.

After enquiries with the Office of State Revenue we have been advised that the following documents will need to be lodged:-

1. Transfer, a copy of which is enclosed
2. A Deed of Appointment in respect of the new transferee, being Gavenwood Nominees Pty Ltd.
3. A Certificate stating that the superannuation fund is a combined fund.

Can you kindly advise if you are able to assist in respect of the Deed of Appointment and the Certificate.

Yours faithfully  
**DELANEY LAWYERS**

Encl

51412



Form: 01T  
Licence: 01-05-025  
Licensee: Delaney Lawyers

# TRANSFER

Leave this space clear. Affix additional pages to the top left-hand corner.

New South Wales  
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

If appropriate, specify the part transferred  
593/701972

(B) LODGED BY

Delivery Box Name, Address or DX and Telephone

CODES

T

TW

(Sheriff)

Reference (optional):

(C) TRANSFEROR

ROSS MCL WILSON PTY LTD

(D) CONSIDERATION

The transferor acknowledges receipt of the consideration of NIL and as regards PURSUANT TO ORDER OF THE FAMILY COURT OF AUSTRALIA DATED 30 MAY 2006 IN PROCEEDINGS SYF 2011 OF 2006. the land specified above transfers to the transferee an estate in fee simple.

(E) ESTATE

(F) SHARE

TRANSFERRED

(G)

Encumbrances (if applicable):

(H) TRANSFEREE

GAVENWOOD NOMINEES PTY LTD

(I)

TENANCY:

DATE

29 May 2006

(J) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

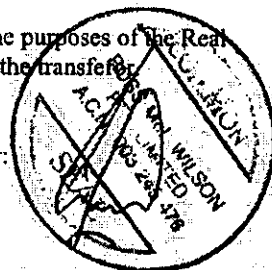
Signature of witness:

Name of witness:

Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the transferor.

Signature of transferor:



Certified correct for the purposes of the Real Property Act 1900 by the person whose signature appears below.

Signature:

Signatory's name:

Signatory's capacity: Solicitor for the Transferee

Cravenwood.

Master / Trust Deed

# Ross Edwards & Associates

A Division of Computax Pty Ltd ABN 56 002 975 573  
Public Accountants & Tax Agents  
Suite 20, 14 Edgeworth David Avenue Hornsby  
PO Box 1745 Hornsby Westfield 1635  
Tel 9477-6966 Fax 9482-2272

Email: [computax@tpg.com.au](mailto:computax@tpg.com.au) Web Address: [www.computax.com.au](http://www.computax.com.au)

11 September, 2006

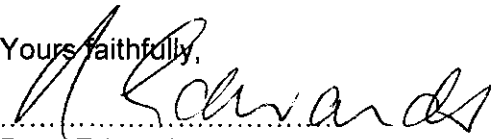
MS J TAYLOR  
HEFFRON CONSULTING  
PO BOX 20  
NORTH MAITLAND NSW 2320

Dear Ms Taylor,

ROSS MCL WILSON SUPERANNUATION FUND

Further to previous correspondence re the abovenamed, I have now perused my files in storage and confirm that no amendment to the fund deed was prepared pursuant to the SIS Act.

Yours faithfully,

  
.....  
Ross Edwards

14 SEP 2006

not conclusion → already amended  
on basis of being  
lost by both previous  
members → now only  
1 member  
fund.





# Heffron

*consulting*

25 August 2006

**PRIVATE & CONFIDENTIAL**

Mrs H Wilson  
"Eelah"  
467 Maitland Vale Road  
**MAITLAND VALE NSW 2320**

**Heffron Consulting Pty Ltd**  
ABN 88 084 734 261  
AFS Licence No. 241739

1/50 Belmore Road  
Lorn NSW 2320

Correspondence to:  
PO Box 20  
North Maitland NSW 2320

Phone: (02) 4930 2100  
Fax: (02) 4930 2199  
Email: heffron@heffron.com.au

Dear Heather

**Ross McL Wilson Superannuation Fund (the "Fund") – Change of Fund Name**

We enclose the various documents needed to document the change of your Fund's name as follows:

- a Trustee resolution recording the change of Fund name.

**This should be signed where indicated and returned to us.**

We have also attended to the following Australian Taxation Office ("ATO") form on your behalf:

- a Change of Details for Superannuation Entities form – this advises the ATO of the change of Fund name

**The form should be signed where indicated and lodged directly with the ATO. A copy is included for your records.**

We note that the documents attached are not considered to be "financial product advice" as defined in the Corporations Act 2001 and should not be regarded as such. The documents have been prepared on the basis of instructions received from you and/or your adviser.

Should you have any queries regarding the above please do not hesitate to contact us.

Yours sincerely

  
**Julie Taylor**  
**Associate**

Encl

*original sent  
to a law  
lawyers  
for property  
inf.*

**DEED OF RETIREMENT  
AND APPOINTMENT OF NEW TRUSTEE  
OF  
ROSS MCL WILSON SUPERANNUATION FUND (THE  
"FUND")**

**Binetter Vale Lawyers  
Level 12  
111 Elizabeth Street  
SYDNEY NSW 2000**

**Telephone: 02 9993 3833  
Facsimile: 02 9993 3830**

**THIS DEED** is made on 29 May 2006

**BETWEEN:** Ross McL Wilson Pty. Limited (ACN 003 245 476) of  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320 (the "**Retiring Trustee**")

**AND:** Gavenwood Nominees Pty. Ltd. (ACN 002 638 664)  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320 (the "**New Trustee**")

**WHEREAS**

- A. The superannuation fund known as Ross McL Wilson Superannuation Fund (the "**Fund**") was established by a Deed of Trust made on 9 June 1987 by the Retiring Trustee as the trustee of the Fund. The Fund is governed by its Trust Deed, as amended from time to time.
- B. The Retiring Trustee wishes to retire immediately as trustee of the Fund.
- C. The New Trustee and its director have consented to their appointment as trustee of the Fund with immediate effect.
- D. The member of the Fund has consented to the appointment of the New Trustee.
- E. The parties have entered into this Deed of Retirement and Appointment to confirm and formally record the retirement of the Retiring Trustee and appointment of the New Trustee as aforesaid.

**NOW THIS DEED WITNESSES** as follows:

- 1. The Retiring Trustee retires at the time of appointment of the New Trustee as trustee of the Fund.
- 2. Pursuant to the powers conferred in the Trust Deed, the Retiring Trustee hereby appoints the New Trustee as trustee of the Fund in place of the Retiring Trustee and to act for all purposes as trustee of the Fund upon the powers contained in the Trust Deed of the Fund as amended, which appointment shall commence from the time of execution by the last party to this Deed of Retirement and Appointment.

3. The New Trustee hereby confirms by its execution of this Deed, its consent to appointment as trustee of the Fund from the time of execution by the last party to this Deed of Retirement and Appointment and agrees to administer the Fund in accordance with the trusts and powers contained in the Trust Deed of the Fund for all purposes.
4. The Retiring Trustee hereby acknowledges that the assets of the Fund and the income therefrom held as trustee of the Fund now vests in the New Trustee.
5. The Retiring Trustee will do all things reasonably requested of it to assist with the transfer of all assets of the Fund in its possession or under its control to the New Trustee.
6. With immediate effect the New Trustee indemnifies and releases the Retiring Trustee from any liabilities past, present or future, save and except for any antecedent breach of the Trust Deed or law, arising from the Retiring Trustee acting in its capacity as trustee of the Fund PROVIDED THAT the New Trustee is not liable to indemnify and/or release the Retiring Trustee in respect of any liabilities past, present or future:
  - (a) which exceed in aggregate the lesser of;
    - (i) the total value of assets received by the New Trustee from the Retiring Trustee; and
    - (ii) the aggregate net remaining value in the Fund at the relevant time of accumulation balances remaining in the Fund; or
  - (b) which are the subject of an accepted claim under an indemnity insurance policy or a successful claim against a third party for compensation by the Retiring Trustee or any director of it or individual who comprises part or the whole of it; or
  - (c) to the extent that the liabilities are attributable to conduct in respect of which a trustee of a regulated superannuation fund, or a director of any company acting as such a trustee, may not be indemnified under the Superannuation Industry (Supervision) Act 1993 or regulations thereto, or involve penalties imposed by any governmental authority; or
  - (d) to the extent the liabilities may be created by or in respect of the Retiring Trustee without the consent of the New Trustee (such consent not to be withheld unreasonably),

PROVIDED FURTHER THAT the New Trustee is also not liable to indemnify the Retiring Trustee to the extent to which such liability may result in any amount being payable to the Retiring Trustee other than in accordance with and from the Fund.

**IN WITNESS** the parties have duly executed this Deed on the date first above.

**Retiring Trustee:**

THE COMMON SEAL of Ross McL Wilson Pty. Limited was duly affixed to this document in accordance with its Constitution:

\_\_\_\_\_  
Signature of Director/Secretary

*Ross McL Wilson*

\_\_\_\_\_  
Name of Director/Secretary - please print



**New Trustee:**

THE COMMON SEAL of Gavenwood Nominees Pty. Ltd. was duly affixed to this document in accordance with its Constitution:

\_\_\_\_\_  
Signature of Director/Secretary

*Heather Wilson*

\_\_\_\_\_  
Name of Director/Secretary - please print



**RESOLUTION OF ROSS MCL WILSON PTY. LIMITED (THE "COMPANY")  
ON 29 MAY 2006**

**Resignation as Trustee  
of the Ross McL  
Wilson Superannuation  
Fund:**

It was noted that a letter to the Trustee of the Ross McL Wilson Superannuation Fund (the "Fund"), giving notice that the Company is to resign as trustee of the Fund, had been received.

A Deed of Retirement and Appointment of New Trustee of the Fund between the Company and Gavenwood Nominees Pty. Ltd. was also tabled.

It was resolved that the director of the Company is severally authorised to execute, date and deliver to the trustee of the Fund:

- (a) the letter giving notice that the Company is to resign as trustee of the Fund; and
- (b) the Deed of Retirement and Appointment of New Trustee of the Fund between the Company and Gavenwood Nominees Pty. Ltd.

Signed as a true and correct record.



---

Ross Wilson

Date: 29 May 2006

The Trustee  
Ross McL Wilson Superannuation Fund  
"Eelah"  
467 Maitland Vale Road  
**MAITLAND VALE NSW 2320**

Dear Sir/Madam

**Ross McL Wilson Superannuation Fund (the "Fund")**

Please be advised that in accordance with the Fund's Trust Deed, Ross McL Wilson Pty. Limited gives notice that it will resign as Trustee of the above named Fund.

For and on behalf of Ross McL Wilson Pty. Limited,



---

Ross Wilson

Date: 29 May 2006

**PRIVATE & CONFIDENTIAL**

Gavenwood Nominees Pty. Ltd.  
"Eelah"  
467 Maitland Vale Road  
**MAITLAND VALE NSW 2320**

Dear Directors

**Gavenwood Nominees Pty. Ltd. (the "Company") – Consent to Act as Trustee**

I, Heather Wilson, hereby consent to the appointment of the Company as trustee of Ross McL Wilson Superannuation Fund (the "Fund") under the provisions of the Superannuation Industry (Supervision) Act 1993 (the "SIS Act") and in accordance with the documents which regulate the Fund.

I confirm that I am not a disqualified person as defined in Section 120 of the SIS Act, an extract of which is shown below:

**Extract: Superannuation Industry (Supervision) Act 1993**

**SECTION 120 DISQUALIFIED PERSONS**

**120(1) Individuals.**

For the purpose of this Part, an individual is a disqualified person if:

- (a) at any time (including a time before the commencement of this section):
  - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
  - (ii) a civil penalty order was made in relation to the person; or
- (b) the person is an insolvent under administration; or
- (c) the Regulator has disqualified the individual under section 120A.

**120(2) Bodies corporate.**

For the purposes of this Part, a body corporate is a disqualified person if:

- (a) subsection (2A) applies; or
- (b) a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the body; or
- (c) an official manager, deputy official manager or administrator has been appointed in respect of the body; or
- (d) a provisional liquidator has been appointed in respect of the body; or
- (e) the body has begun to be wound up.

**120(2A) Convictions.**

This subsection applies if:

- (a) the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is a disqualified person; and
- (b) the body corporate knows, or has reasonable grounds to suspect, that:
  - (i) the person is not eligible under subsection 126B(1) to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (ii) the person is so eligible but will not make an application under subsection 126B(3) within the period allowed for the purpose.



SECTION 126B APPLICATION FOR WAIVER OF DISQUALIFIED STATUS

126B(1) Conditions for application.

An individual may apply to the Regulator for a declaration under section 126D waiving his or her status as a disqualified person for the purposes of this Part only if:

- (a) he or she is a disqualified person solely because of the operation of subparagraph 120(1)(a)(i); and
- (b) the offence leading to him or her being a disqualified person is not an offence involving serious dishonest conduct as described in subsection (2).

126B(2) Offence involving serious dishonest conduct.

For the purposes of paragraph (1)(b), an offence involves serious dishonest conduct if the penalty actually imposed for the offence is:

- (a) a term of imprisonment of at least 2 years or such longer period (if any) as is specified in the regulations; or
- (b) a fine of at least 120 penalty units or such larger fine, if any, as is specified in the regulations.

I hereby confirm that I will carry out my duties as a trustee of the Fund in accordance with the documents which from time to time regulate the Fund.

Yours faithfully



Heather Wilson

Date: 29 May 2006

**To Whom It May Concern:**

Gavenwood Nominees Pty. Ltd. (the "Company") hereby consents to act as trustee of Ross McL Wilson Superannuation Fund.

I confirm that the Company is not a disqualified person as defined in Section 120 of the Superannuation Industry (Supervision) Act 1993, an extract of which is shown below:

**Extract: Superannuation Industry (Supervision) Act 1993**

**SECTION 120 DISQUALIFIED PERSONS**

**120(1) Individuals.**

For the purpose of this Part, an individual is a disqualified person if:

- (a) at any time (including a time before the commencement of this section):
  - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
  - (ii) a civil penalty order was made in relation to the person; or
- (b) the person is an insolvent under administration; or
- (c) the Regulator has disqualified the individual under section 120A.

**120(2) Bodies corporate.**

For the purposes of this Part, a body corporate is a disqualified person if:

- (a) subsection (2A) applies; or
- (b) a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the body; or
- (c) an official manager, deputy official manager or administrator has been appointed in respect of the body; or
- (d) a provisional liquidator has been appointed in respect of the body; or
- (e) the body has begun to be wound up.

**120(2A) Convictions.**

This subsection applies if:

- (a) the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is a disqualified person; and
- (b) the body corporate knows, or has reasonable grounds to suspect, that:
  - (i) the person is not eligible under subsection 126B(1) to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (ii) the person is so eligible but will not make an application under subsection 126B(3) within the period allowed for the purpose.

**SECTION 126B APPLICATION FOR WAIVER OF DISQUALIFIED STATUS**

**126B(1) Conditions for application.**

An individual may apply to the Regulator for a declaration under section 126D waiving his or her status as a disqualified person for the purposes of this Part only if:

- (a) he or she is a disqualified person solely because of the operation of subparagraph 120(1)(a)(i); and
- (b) the offence leading to him or her being a disqualified person is not an offence involving serious dishonest conduct as described in subsection (2).

126B(2) Offence involving serious dishonest conduct.

For the purposes of paragraph (1)(b), an offence involves serious dishonest conduct if the penalty actually imposed for the offence is:

- (a) a term of imprisonment of at least 2 years or such longer period (if any) as is specified in the regulations; or
- (b) a fine of at least 120 penalty units or such larger fine, if any, as is specified in the regulations.

Yours faithfully



Heather Wilson  
Director

**RESOLUTION OF ROSS MCL WILSON PTY. LIMITED (THE "COMPANY")  
AS RETIRING TRUSTEE OF  
ROSS MCL WILSON SUPERANNUATION FUND (THE "FUND")  
ON 29 MAY 2006**

***Retirement of Trustee***

It was noted that a letter from the Company, advising that it intends to retire as trustee of the Fund, had been received.

It was noted that the current Trust Deed permits the Company to resign as trustee.

It was further noted that the current Trust Deed permits the appointment of a new trustee and does not prevent Gavenwood Nominees Pty. Ltd. from becoming the new trustee.

A Deed of Retirement and Appointment of New Trustee, executed by the Company had also been received. It was noted that the proposed New Trustee, Gavenwood Nominees Pty. Ltd., had not executed that deed but proposed to do so immediately after the close of this meeting.

It was resolved that the Deed of Retirement and Appointment of New Trustee is approved and that the retirement of the Company as trustee of the Fund and the appointment of Gavenwood Nominees Pty. Ltd. as the New Trustee of the Fund be approved and take effect from the time of execution by Gavenwood Nominees Pty. Ltd.

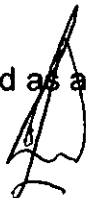
***Member Consent***

It was noted that the member has been notified of and consents to the change of trustee as evidenced by their signature on this resolution.

***Completion of Statutory Forms***

It was noted that a Change of details of Superannuation Entities form had been completed and would be lodged as appropriate.

Signed as a true and correct record.



---

Ross Wilson

**RESOLUTION OF GAVENWOOD NOMINEES PTY. LTD. (THE "COMPANY")  
AS NEW TRUSTEE OF  
ROSS MCL WILSON SUPERANNUATION FUND (THE "FUND")  
ON 29 MAY 2006**

***Appointment of New  
Trustee***

It was noted that Consent to Act as Trustee letters from the Company and its director Heather Wilson, had been received.

It was noted that the current Trust Deed provides general powers to appoint the Company as trustee with immediate effect.

A Deed of Retirement and Appointment for execution by the newly appointed trustee had also been received.

It was resolved that the director of the Company is severally authorised to execute and date the Deed of Retirement and Appointment of New Trustee of the Fund.


***Member Consent***

It was noted that the member has been notified of and consents to the change of trustee as evidenced by their signature on this resolution.

***Completion of  
Statutory Forms***

It was noted that a Change of details of Superannuation Entities form had been completed and would be lodged as appropriate.

Signed as a true and correct record.

  
\_\_\_\_\_  
Heather Wilson

original  
sent to  
Dulany  
Lawyers 12/12/20  
J

**DEED OF AMENDMENT AND RULES**

**OF**

**ROSS MCL WILSON SUPERANNUATION FUND (THE  
"FUND")**

**Binetter Vale Lawyers  
Level 12  
111 Elizabeth Street  
SYDNEY NSW 2000**

**Telephone: 02 9993 3833  
Facsimile: 02 9993 3830**

**THIS DEED OF AMENDMENT** is made on 29 May 2006

**BY:** Ross McL Wilson Pty. Limited (ACN 003 245 476) of  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320 (the "**Trustee**")

**WHEREAS**

- A. By Deed made on 9 June 1987 (the "**Original Deed**") an indefinitely continuing superannuation plan was established to provide superannuation benefits for the Members (the "**Governing Provisions**").
- B. The superannuation plan referred to in Recital A is known as Ross McL Wilson Superannuation Fund (the "**Fund**").
- C. The Deed of Amendment and Rules dated in 1994 has been misplaced.
- D. The Trustee now wishes to execute a replacement document, on terms the Trustee believes are similar to the Deed of Amendment and Rules dated in 1994, by the adoption of the Governing Provisions set out in the Rules annexed to this Deed.
- E. The primary purpose of the Fund is to provide old age pensions to the Members.

**NOW THIS DEED WITNESSES** as follows:

- 1. The Governing Provisions are, without termination of the trusts thereby constituted, amended and revoked by substitution of the provisions set out in this Deed and the Rules attached.
- 2. The "**Rules**" means the Rules attached to this Deed, as amended from time to time, and they shall have effect as if set out in the body of this Deed.
- 3. The assets of the Fund will continue to be vested in the Trustee upon trust to apply the same in the manner set out in the Rules.
- 4. The Fund will be managed and administered in all respects according to the Rules.
- 5. The power of appointing and removing Trustees shall be as provided in the Rules.

6. The provisions of this Deed may be amended in the manner set out in the Rules.
7. The Trustee hereby declares that the amendment of the provisions of the Governing Provisions affected by virtue of this Deed of Amendment does not prejudicially vary or affect the benefits already accrued to any Member of the Fund.
8. If the Fund was established before 16 December 1985 and from that date to immediately prior to the date of this Deed the Fund at all times retained the power to lend money to Members of the Fund or the Fund had before 16 December 1985 lent money to Members and that lending was not expressly prohibited by the Governing Provisions of the Fund at that time:
  - (a) the Governing Provisions as they relate to the power to lend money to Members are preserved and are not amended or revoked by the substitution of the provisions set out in this Deed and the Rules;
  - (b) any clauses in the Rules that relate to the power to lend money or prohibit the lending of money to Members have no effect.
9. If the Fund was established before 12 May 2004:
  - (a) the Governing Provisions as they relate to a defined benefit pension (as defined by the Superannuation Industry (Supervision) Regulations 1994 as amended) including but not limited to a current or future entitlement, to determination of or payment of such a pension are preserved and are not amended or revoked by substitution of the Provisions set out in this Deed and the Rules; and
  - (b) any clauses in the Rules that relate to the provision for the payment of such a pension have no effect.
10. If any provision of the Rules is prohibited or unenforceable or results in a resettlement of the Fund or change in beneficial entitlement of any Member of the Fund, then such provision shall be ineffective to the extent of such prohibition, unenforceability, resettlement or change in beneficial entitlement without invalidating the remaining provisions of the Rules or affecting the validity or enforceability of such provisions.
11. This Deed and the Rules shall be governed by and construed in accordance with the law of New South Wales.

**IN WITNESS** the party has duly executed this Deed on the date first above.



THE COMMON SEAL of Ross McL Wilson Pty. Limited  
was duly affixed to this document  
in accordance with its Constitution:

*[Handwritten Signature]*  
Signature of Secretary

*[Handwritten Signature]*  
Signature of Director



Heather Wilson  
Name of Secretary - please print

Ross Wilson  
Name of Director - please print

## TABLE OF CONTENTS

<b>CONTENTS</b>	<b>PAGE</b>
1. INTERPRETATION.....	1
2. DEFINITIONS.....	1
3. ASSETS AND INVESTMENTS .....	6
4. INVESTMENT STRATEGIES, ACCOUNTS AND RESERVES.....	8
5. ALLOCATION OF EARNINGS AND EXPENSES.....	10
6. ADMINISTRATION.....	11
7. APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES .....	11
8. TRUSTEES GENERALLY .....	12
9. RECORDS, DISCLOSURE OF INFORMATION AND AUDIT.....	17
10. ELIGIBILITY AND MEMBERSHIP.....	18
11. CONTRIBUTIONS .....	19
12. BENEFITS.....	20
13. PAYMENT OF BENEFITS .....	21
14. FORFEITED BENEFITS .....	23
15. TRANSFERS FROM AND TO OTHER FUNDS.....	25
16. TERMINATION OF TRUST.....	26
17. AMENDMENT OF RULES .....	27
18. SUPERANNUATION STANDARDS.....	28

## THE RULES

### 1. INTERPRETATION

Unless the context indicates otherwise:

words importing the singular shall include the plural and vice versa; and

words importing the masculine gender shall include the feminine and neuter genders; and

references to a person shall be construed as references to an individual, firm, body corporate, association, government or governmental authority; and

references to statutes (including any section thereof) shall include all statutes amending, consolidating or replacing the same; and

headings inserted in any Rule are for convenience only and shall not affect the interpretation of the Rules.

### 2. DEFINITIONS

In this Deed and in these Rules unless the context indicates otherwise the following words and expressions have the following meanings:

**"Account"** means a Member's Account, a Suspense Account, an Investment Fluctuation Reserve Account or any other account or reserve account established by the Trustee pursuant to **Rule 4.8**;

**"Accumulated Contributions"** in respect of a Member is the net amount standing to the credit of the Member's Account plus the value at that time of any policy of insurance, assurance or endowment owned by the Trustee in respect of the Member and has been funded from the Member's Account;

**"Act"** means the Superannuation Industry (Supervision) Act 1993 and the Regulations made thereunder;

**"Allocated Investment"** means assets and investments held in whole or in part for a Member or held in an Account as specified by the Trustee in accordance with **Rules 4.1** and **4.2**;

**"Allocated Pension"** means an income stream which is intended to comply with the standards set out in Regulation 1.06(4);

**"Approved Trustee"** has the same meaning as given to the term in the Act;

**“Associate”** has the same meaning as given to the term “Part 8 associate” in the Act;

**“Benefit”** in relation to a Member means the amount equal to a Member's Accumulated Contributions from time to time or in the event that a Complying Life Expectancy Pension, a Complying Lifetime Pension or a Non-Complying Pension is being paid such amount as agreed between the Member and the Trustee;

**“Commissioner”** means a person for the time being who is appointed to supervise the conduct of superannuation funds;

**“Complying Life Expectancy Pension”** means an income stream which is intended to comply with the standards set out in Regulation 1.06(7);

**“Complying Lifetime Pension”** means an income stream which is intended to comply with the standards set out in Regulation 1.06(2);

**“Complying Superannuation Fund”** means a superannuation fund which satisfies all the Statutory Requirements;

**“Constitutional Corporation”** has the same meaning as given to the term in the Act;

**“Dependants”** means the Spouse, widow, widower and children (including posthumous children) of a Member, all persons who are in the opinion of the Trustee in its absolute discretion at the relevant time dependent in whole or in part upon the Member for their maintenance and support and any person with whom the Member has an Interdependency Relationship;

**“Earnings”** includes any increase or decrease in value of the Fund (including profits and losses generated by investments and positive or negative revaluations of assets) that the Trustee determines should be added to or subtracted from each Member's Account or any other Accounts established by the Trustee;

**“Eligible Person”** means any person in respect of whom the Trustee may accept contributions or other payments in accordance with the Statutory Requirements but excludes a spouse (who is not already a Member) of a Member entitled to some or all of the Member's Accumulated Contributions under a Payment Split;

**“Employer”** means a Member's employer who makes contributions to the Fund and includes any person from whom a Member may receive Salary and Wages;

**“Expenses”** means the costs of establishing, operating and terminating the Fund and includes any administrative, insurance and taxation costs or any decrease in value of the Fund that the Trustee determines should be charged against one or more Member’s Accounts or any other Accounts in accordance with these Rules;

**“Financial Year”** means a period of 12 calendar months ending on the last day of June, or any part of such a period that may have occurred at the commencement or termination of the Fund;

**“Guarantee Act”** means the Superannuation Guarantee Charge Act 1992;

**“Interdependency Relationship”** has the same meaning as given to the term in the Act;

**“Investment Fluctuation Reserve Account”** means a reserve account established by the Trustee for the purposes outlined in **Rule 4.5**;

**“Investment Manager”** means a person appointed by the Trustee to invest money of the Fund;

**“Market Linked Pension”** means an income stream which is intended to comply with the standards set out in Regulation 1.06(8);

**“Member”** means

- (a) an Eligible Person who has met all of the requirements of this Fund and has been admitted to membership of the Fund as provided in **Rule 10**; or
- (b) any person not currently a Member who commences to receive Benefits by way of a pension or annuity from the Fund as a consequence of the death of a Member; or
- (c) the legal personal representative of a Member.

The term Member shall include former Members who continue to have rights or contingent rights to Accumulated Contributions under this Fund;

**“Member’s Account”** in respect of a Member is an account in which is recorded:

- (a) contributions by that Member;
- (b) contributions by a person other than a Member to satisfy that person’s obligations under the Guarantee Act or an award;

- (c) contributions by a person as specified pursuant to **Rule 11.5**;
- (d) amounts transferred from a Suspense Account, an Investment Fluctuation Reserve Account, a new interest created as a result of a Payment Split or any other reserve account pursuant to these Rules;
- (e) forfeited benefits credited to the account pursuant to **Rule 14**;
- (f) the proceeds of policies of insurance credited to the account;
- (g) amounts debited to the account representing the Member's share of Expenses;
- (h) amounts debited or credited to the account representing the Member's share of Earnings; and
- (i) amounts credited to the account on transfer of benefits from another superannuation fund or retirement saving account;

**"Non-Commutable Allocated Pension"** has the same meaning as given to the term in Regulation 6.01(2);

**"Non-Commutable Pension"** has the same meaning as given to the term in Regulation 6.01(2);

**"Non-Complying Pension"** means an income stream which is intended to comply with the standards set out in Regulation 1.06(6);

**"Non-Member Spouse"** has the same meaning as given to the term in the Act;

**"Payment Split"** means a payment split under the Family Law Act (1975) and the regulations made thereunder;

**"Permanent Incapacity"** of a Member has the same meaning as given to the term in the Act;

**"Prospective Member"** has the same meaning as given to the term in the Act;

**"Regulation"** means a regulation in the Superannuation Industry (Supervision) Regulations 1994;

**"Required Payment Date"** means any date at which a Member's Retirement Benefit must be paid or commence to be paid as a Pension in order to satisfy the Statutory Requirements;

**“Retire”** has the same meaning as given to the term in the Act;

**“Reversionaries”** means persons who become eligible for pension or annuity benefits from the Fund on the death of a Member who was receiving a Benefit in the form of a pension or annuity at the time of their death;

**“Rollover Fund”** means any entity or fund that is permitted by the Statutory Requirements to accept Accumulated Contributions of Members;

**“Salary and Wages”** has the same meaning as given to the term in section 221A of the Income Tax Assessment Act 1936;

**“Self Managed Superannuation Fund”** has the same meaning as given to the term in the Act;

**“Spouse”** means the legal spouse of a Member and any person regarded by the Trustee in its absolute discretion as a de facto spouse and any previous spouse or de facto spouse who is dependent upon the Member;

**“Statutory Age”** means:

- (a) for a person born before 1 July 1960 - 55 years; or
- (b) for a person born during the year 1 July 1960 to 30 June 1961 - 56 years; or
- (c) for a person born during the year 1 July 1961 to 30 June 1962 - 57 years; or;
- (d) for a person born during the year 1 July 1962 to 30 June 1963 - 58 years; or
- (e) for a person born during the year 1 July 1963 to 30 June 1964 - 59 years; or
- (f) for a person born after 30 June 1964 - 60 years.

**“Statutory Authority”** means as the case may require, any one or more of the Commissioner, the Commissioner of Taxation or any other governmental, department or authority responsible for administering the laws, regulations or any other rules governing the operation or the availability of income tax concessions to superannuation funds;

**"Statutory Requirements"** means the requirements imposed under any law or by any Statutory Authority which must be satisfied by a superannuation fund in order to qualify for income tax concessions or other laws including the Corporations Act 2001 applying to such entities provided that where a pension is taken out by a Member to comply with the requirements of the Social Security Act 1991 or the Veteran's Entitlements Act 1986, the term shall include those acts;

**"Suspense Account"** means an account as established, maintained and operated under **Rule 4.7**.

### **3. ASSETS AND INVESTMENTS**

- 3.1 The assets of the Fund shall be held by the Trustee upon trust to be applied in accordance with the provisions of these Rules.
- 3.2 The Expenses of the operation of the Fund shall be paid out of the Fund.
- 3.3 All moneys received by the Trustee but not required to meet current payments may in the absolute discretion of the Trustee either be and remain on deposit in the name of the Trustee or be reinvested either directly or indirectly in any manner in which the Trustee, if it were personally entitled to such assets, could invest, and without restricting the generality of the foregoing may be invested:
  - (a) in any one or more of the modes of investment authorised by law for the investment of trust funds;
  - (b) on deposit with any bank, company or financial institution;
  - (c) in the purchase or acquisition of or at interest upon the security of such real or personal property of whatsoever nature and wheresoever situate and whether or not subject to encumbrances or involving liabilities of any kind as the Trustee shall think fit;
  - (d) in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-governmental body or public authority;
  - (e) in units of any common fund, property trust or unit trust;
  - (f) in any policies of life insurance, assurance or endowment including policies providing a sum or sums on the death or disablement of a Member;
  - (g) in any policies of salary continuance insurance; or



- (h) in any financial contract described generally as a derivative transaction including but not limited to instruments such as forwards, futures, options, warrants, swaps, share ratios and other composites,

with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively as a person absolutely and beneficially entitled dealing with his own property may do so, provided that the Trustee shall not invest in:

- (i) loans to Members or to any relative of a Member, or provide any other financial assistance to a Member or any relative; or
- (ii) loans to or investments in Employers or Associates of Employers which do not comply with the Statutory Requirements.

- 3.4 The Trustee shall have power to vary, replace and otherwise deal with such investments in such manner as it determines without being responsible for loss occasioned by so varying, transposing or replacing.
- 3.5 The Trustee shall not intentionally acquire an asset from a Member or an Associate of a Member, otherwise than as provided pursuant to the Statutory Requirements.
- 3.6 Any investments may be held in such names including the name of a nominee (whether an individual or a corporation) as the Trustee shall from time to time determine.
- 3.7 The Trustee shall only borrow money in compliance with the Statutory Requirements. Any borrowing which does not comply with the Statutory Requirements shall be immediately repaid.
- 3.8 The Trustee shall not give a charge over or in relation to an asset of the Fund except as permitted by the Statutory Requirements.
- 3.9 The Trustee shall use its best endeavours to ensure that all investments comply with the Statutory Requirements.
- 3.10 The Trustee may enter into an agreement with an Investment Manager pursuant to which money of the Fund is placed under the control of the Investment Manager provided that the Trustee shall:
  - (a) ensure the agreement contains adequate provisions to enable the Trustee to require the Investment Manager to provide information concerning the making and return of investments and to provide information to allow the Trustee to assess the capability of the Investment Manager to manage investments; and

- (b) whenever necessary and desirable to do so, require the Investment Manager to provide the above information.

3.11 If the Trustee is requested to provide a Member with a pension the Trustee may identify the assets of the Fund which are to be used for the payment of such pension. The Trustee may separately invest such assets, which shall be known as segregated current pension assets.

#### **4. INVESTMENT STRATEGIES, ACCOUNTS AND RESERVES**

4.1 The Trustee may offer a Member or a group of Members a choice of two or more investment strategies from which the Member may choose a strategy or combination of strategies for the investment of that part of the Fund which represents the Member's Benefit and which will be held as an Allocated Investment.

4.2 The Trustee may specify that a particular asset or investment, in whole or in part, of the Fund is an Allocated Investment. If the Trustee makes an Allocated Investment the Trustee shall identify the assets of the Fund which make up that Allocated Investment and the Member or Members who are entitled to that Allocated Investment.

4.3 The Trustee may also from time to time, in its absolute discretion, allow a Member or a group of Members to give written directions to the Trustee in relation to those Member's Allocated Investment. The Trustee is under no obligation to comply with these investment directions. However, where the Trustee makes an investment pursuant to any direction made by a Member or a group of Members in accordance with this clause, the Trustee must note in the Fund's records:

- (a) that the investment was made in accordance with an investment direction of a Member or a group of Members; and
- (b) the names of the Members who have made such an investment direction.

4.4 A Member or a group of Members may agree with the Trustee to change their Allocated Investment. The Trustee shall in its absolute discretion determine an amount of Expenses associated with the change of Allocated Investment and debit that amount of Expenses from the relevant Member's Account.

4.5 The Trustee may establish, maintain and operate an Investment Fluctuation Reserve Account as a mechanism to smooth any fluctuations in Earnings that relates to the Fund as a whole or one or more Allocated Investments.

- 4.6 The Trustee may from time to time credit an amount to the Investment Fluctuation Reserve Account from another Account or debit an amount from the Investment Fluctuation Reserve Account to another Account as the Trustee in its absolute discretion considers necessary.
- 4.7 The Trustee may establish, maintain and operate a Suspense Account into which amounts representing:
- (a) contributions accepted in accordance with **Rule 11.1**;
  - (b) Earnings or Expenses of the Fund prior to being allocated amongst the Members' Accounts in accordance with these Rules;
  - (c) forfeited benefits of Members in accordance with **Rule 14**;
  - (d) appropriations made by the Trustee in accordance with the **Rules** from any other Account; or
  - (e) any other amounts which are permitted to be debited from or credited to the Suspense Account in accordance with the Statutory Requirements,

may be credited to the Suspense Account or debited from the Suspense Account to another Account. The Trustee has an absolute discretion to decide the size of the amounts which are debited or credited to the Suspense Account under this Rule, unless otherwise stated by the investment strategy of a particular Allocated Investment and provided further that it is in accordance with the Statutory Requirements.

- 4.8 In addition to the accounts and reserve accounts mentioned in these Rules, the Trustee may establish, maintain and operate such other accounts and reserves as the Trustee deems appropriate.
- 4.9 The Trustee may make payment to or from such other accounts or reserves established under **Rules 4.5, 4.7 and 4.8** for any purpose and to any Account or person permitted by the Statutory Requirements, and accordingly the Trustee in its absolute discretion may appropriate an amount or amounts from such other Account to any Member's Account as the Trustee may decide.
- 4.10 The Trustee may in accordance with the Statutory Requirements, make such rules in respect of any Accounts established under **Rules 4.5, 4.7 and 4.8** as the Trustee determines and without limiting the generality of the foregoing those rules may include rules with respect to:
- (a) the investment strategy applying to each Account;
  - (b) the allocation of contributions, Expenses and Earnings to each Account;

- (c) transfers from one Account to another;
  - (d) Expenses that may be levied in respect of payments from an Account to or in respect of the Member or to another Account; or
  - (e) any special conditions attaching to any Account.
- 4.11 Where a Payment Split is being made the Trustee may create a new interest for a non member spouse that is a Member and combine that new interest with the existing Accumulated Contributions of the Member as the Trustee may decide.

## **5. ALLOCATION OF EARNINGS AND EXPENSES**

- 5.1 Earnings and Expenses of the Fund from time to time may be applied to such Accounts as the Trustee may in its absolute discretion determine.
- 5.2 In ensuring its discretion under **Rule 5.1**, the Trustee must comply with the Statutory Requirements.
- 5.3 In making its determination as to the amounts to be debited or credited from any Account, the Trustee must take into consideration the following matters:
- (a) the balances of that Account and any other Account that the Fund has;
  - (b) the amount of Earnings in respect of the general Fund or any Allocated Investment generated during the Financial Year and expected to be generated in the next Financial Year;
  - (c) the investment strategy applying to a particular Account; and
  - (d) such other matters as the Trustee considers relevant or which are required by the Statutory Requirements.
- 5.4 In exercising the allocation powers in **Rule 5**, the Trustee may in its absolute discretion:
- (a) divide Earnings into different parts including differences in the nature, character or source of those earnings; and
  - (b) determine how tax credits shall be applied or apportioned.

## **6. ADMINISTRATION**

- 6.1 Every Member shall have the right to inspect a copy of these Rules at the address of the Trustee during usual business hours.
- 6.2 Every Member shall from time to time give to the Trustee such information and produce to it such documents as the Trustee considers are required for the purpose of putting these Rules into effect and for arranging insurances for the purposes of the Fund.
- 6.3 Nothing in these Rules shall restrict the right of an Employer to dismiss an employee or be used to increase damages in any action brought against the Employer in respect of such dismissal or affect the rights of a Member or his legal personal representative or other persons to claim damages or compensation at common law or under a workers' compensation act or any other statute in force governing compensation to a Member injured or dying from an accident arising out of or in the course of his employment with the Employer.

## **7. APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES**

- 7.1 The Trustee must be a company which is a Constitutional Corporation as defined in the Act or where the Trustee is not a company which is a Constitutional Corporation then the primary purpose of the Fund is the provision of old age pensions.
- 7.2 The minimum number of corporate Trustees shall be one. The minimum number of individual Trustees shall be two.
- 7.3 If the Fund has fewer than 5 Members and the Fund is not a Self Managed Superannuation Fund then the Trustee must be an Approved Trustee or, if the Fund elects no longer to be a Self Managed Superannuation Fund, then it must appoint an Approved Trustee within 6 months of such election.
- 7.4 In the event that the Fund is a Self Managed Superannuation Fund and the Trustee admits a Member which causes the number of Members to exceed 4 in number, the Trustee must notify the Statutory Authority in accordance with the Statutory Requirements of this event.
- 7.5 In the event that the Fund is a Self Managed Superannuation Fund and a Member ceases to be a Member, then that Member must resign as Trustee or, where the Trustee is a company, must resign as a director of the Trustee company within 6 months of cessation of membership of the Fund.

- 7.6 The Trustees may at any time appoint an additional trustee or additional trustees and any Trustee may at any time resign as Trustee provided that upon such resignation the Trustee appoints in its stead a person or corporation to act as the new Trustee where the resignation would reduce the numbers of Trustees below that specified in **Rule 7.2**.
- 7.7 If not a Self Managed Superannuation Fund the Members may at any time by a notice in writing signed by at least 75% of them and given to the Trustee remove any one or more of the Trustees and appoint another Trustee of the Fund.
- 7.8 In the event that there are more than four (4) members of the Fund at any point of time, then:
- (a) if the Fund has individual trustees - the trustees must consist of equal numbers of employer representatives and member representatives; or
  - (b) if the Fund has a single corporate trustee - the board of the corporate trustee must consist of equal numbers of employer representatives and member representatives.
- 7.9 Any trustee or trustees which are appointed or removed must be appointed or removed in accordance with the Statutory Requirements.

## **8. TRUSTEES GENERALLY**

- 8.1 The Trustee covenants that it shall operate the Fund in accordance with the standards prescribed by the Statutory Requirements from time to time which may include but are not limited to:
- (a) acting honestly in all matters concerning the Fund;
  - (b) exercising in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with the property of another for whom the person felt normally bound to provide;
  - (c) exercising and performing all duties and powers in the best interests of the Members;
  - (d) keeping money and other assets of the Fund separate from any money and assets respectively:
    - (i) that are held by the Trustee personally; or
    - (ii) that are money or assets, as the case may be, of an Employer or an Associate of the Employer;

- (e) not entering into any contract or doing anything else that would prevent it from, or hinder it in, properly performing or exercising its function and powers;
- (f) formulating and giving effect to an investment strategy in accordance with the Statutory Requirements that has regard to the whole of the circumstances of the Fund or to particular Allocated Investments including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investment having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements; and
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) formulating and giving effect to a strategy for the prudential management of any reserve accounts of the Fund, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
- (h) allowing a Member access to any information or any documents prescribed by the Statutory Requirements.

8.2 Upon a change of Trustee the retiring Trustee or Trustees shall execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name of the new Trustee or Trustees or the retiring Trustee or Trustees shall declare that they hold the investments or moneys as bare nominee for the new Trustee or Trustees as permitted by **Rule 3.6**.

8.3 No person who is disqualified under the Statutory Requirements from acting as Trustee shall be appointed as a Trustee. Any Trustee who becomes so disqualified shall immediately resign.

8.4 Without prejudice to the powers vested in the Trustee by the Deed and the Rules or otherwise, the Trustee shall have the following powers, that is to say power:

- (a) to purchase or otherwise acquire and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised to acquire or dispose of on such terms and conditions as it shall think fit;
- (b) to appoint and at its discretion remove or suspend any actuary, auditor, investment managers, administration managers, secretaries, clerks, agents and other servants, appoint them for permanent, temporary or special services as it from time to time thinks fit, determine the powers and duties to be delegated to them and fix their salaries or emoluments and require security in such instances and to such amount as it may think fit and any person so employed or engaged shall be deemed for the purpose of the Rules to be employed or engaged by the Trustee;
- (c) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;
- (d) to refer any claims or demands by or against the Fund to arbitration and observe and perform the awards;
- (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (f) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (g) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- (h) to pay Accumulated Contributions out of the Fund to persons entitled or pay such other benefits as may be allowed by the Statutory Requirements;
- (i) to decide as and when the need shall arise who are Dependents for the purposes of the Rules;



- (j) in case of the mental or physical ill-health, or incapacity of a person entitled to Accumulated Contributions, to pay or apply such Accumulated Contributions or any part thereof at its discretion to or for the benefit of such person and the Dependants of such person or any of them as the case may be without being responsible for seeing to the application of payments under this paragraph or payments made in the exercise of any other power vested in the Trustee by the Deed and the Rules; and
- (k) to take and act upon the opinion of any legal practitioner whether in relation to the interpretation of the Deed, the clauses or any other document or statute or as to the administration of the trusts hereof without being liable to any Members or their Dependants in respect of any act done by it in accordance with such opinion.

8.5 Every Trustee (and if the Trustee is a company, every director) shall be indemnified against all liabilities incurred by it through any act or omission in the exercise of the powers, duties and discretions under the Deed and the Rules or in the bona fide intended or purported exercise of its duties under the Deed and the Rules and shall have a lien on the Fund for such indemnity. The Trustee shall not be liable for any act or default done or omitted to be done in the exercise of its powers, duties and discretions or for any loss or expenses incurred by the Fund through the insufficiency or deficiency of any security in or upon which any of the moneys of the Fund shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities shall be deposited or for any other loss, damage or misfortune whatever.

8.6 The provisions of **Rule 8.5** shall have no application, and neither the Trustee, nor where the Trustee is a company, any of its directors shall be entitled to be indemnified by the Fund in relation to any liability which arises as a consequence of the Trustee, or where the Trustee is a company, any of its directors:

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

- 8.7 For the purposes of the Deed and the Rules the Trustee shall be entitled to regard an exercise of a discretion or the giving of any instruction or other authorisation made orally or written and signed by, or purported to be signed by, the Employer or a director for the time being of an Employer as a valid exercise of discretion, instruction or other authorisation of the Employer.
- 8.8 Where the Trustee consists of more than one person, the Trustees:
- (a) may meet together for the dispatch of business;
  - (b) may adjourn and otherwise regulate their meetings as they think fit;
  - (c) may determine the quorum necessary for the transaction of business;
  - (d) shall appoint a chairman for the time being or from time to time or of each meeting; and
  - (e) may act on any resolution approved by the Trustees.
- 8.9 Where there is more than one Trustee, a resolution in writing, signed by all the Trustees for the time being, shall be as valid and effectual as if it had been duly passed at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Trustees.
- 8.10 If the Trustee is a company, then such company may exercise or concur in exercising any discretion or power conferred on the Trustee by the Deed or by these Rules by a resolution of its directors or governing body in accordance with the company's Constitution or constituent document and may delegate the right and power to exercise or concur in exercising any such discretion or power from time to time to one or more members of its board of directors or governing body appointed by a resolution of its directors or governing body.
- 8.11 Any individual Trustee and (where the Trustee is a company, any director or other officer of the Trustee) may exercise or concur in exercising all powers, authorities and discretions conferred on the Trustee by the Deed or by these Rules or by law given to the Trustee notwithstanding that it or he respectively may have a direct or other personal interest in the mode or result of exercising any such power, authority or discretion but any Trustee or director or officer as aforesaid may nevertheless abstain from acting except as a merely formal party in any manner in which he may be so personally interested.

- 8.12 The Trustee in the exercise of the powers, authorities and discretions vested in it by the Deed and these Rules shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers, authorities and discretions at any time and from time to time or may refrain from exercising all or any of them from time to time or at all.
- 8.13 Where there is more than one Trustee, the Trustees may from time to time delegate to any one or more of their number the right and power on behalf of the Trustees to sign, draw, accept, make, endorse, issue, discount or otherwise execute, as the case may be, all or any cheques, promissory notes, drafts, bills of exchange, bills of lading and other negotiable or transferable instruments, all or any receipts for money paid to the Trustees and all or any other documents connected with the due administration of the Fund or with the Deed or these Rules, and may similarly delegate such rights and powers to any secretary of the Fund or to any administrator or Investment Manager appointed by them.
- 8.14 The Trustee shall ensure that:
- (a) minutes of any proceedings of meetings of the Trustee at which matters affecting the Fund were considered are maintained and retained for at least 10 years; and
  - (b) where the Trustee is a company, the directors of the company shall ensure that, minutes of any proceedings of meetings of the Trustee at which matters affecting the Fund were considered, are maintained and retained for at least 10 years.
- 8.15 Any minutes entered in accordance with **Rule 8.14** in books kept for that purpose shall be evidence of the proceedings and, until the contrary is proved, the meeting shall be deemed to have been duly held and convened.

## **9. RECORDS, DISCLOSURE OF INFORMATION AND AUDIT**

- 9.1 The Trustee shall keep or cause to be kept a complete record of all persons who become Members of the Fund and all other records as required by the Statutory Requirements. All records shall be in the form, and shall be retained for the periods, specified in the Statutory Requirements.
- 9.2 The Trustee shall appoint an auditor to the Fund who shall comply with all the Statutory Requirements, or a firm of such persons, and may remove any such auditor.

- 9.3 The Trustee shall each Financial Year cause to be prepared such accounts and statements of the Fund as shall comply with the Statutory Requirements and within any time limits specified by the Statutory Requirements. The Trustee shall ensure that such accounts and statements are audited by the auditor. The auditor shall have access to all papers, accounts and documents connected with the Fund and shall report in writing to the Trustee in accordance with the Statutory Requirements, within the time limits specified by the Statutory Requirements.
- 9.4 The Trustee shall retain the records described in **Rule 9.1** and the accounts and statements prepared in accordance with **Rule 9.3** for at least five years following the end of the Financial Year to which the records, accounts or statements relate.
- 9.5 The Trustee shall disclose to Members, Prospective Members, Non-Member Spouses or Employers such information, at the time and in the manner, prescribed by the Statutory Requirements to be so disclosed to Members, Prospective Members, Non-Member Spouses or Employers.
- 9.6 The Trustee shall provide to the Statutory Authority such information, at the time and in the manner, prescribed by the Statutory Requirements to be so provided to the Statutory Authority.

## **10. ELIGIBILITY AND MEMBERSHIP**

- 10.1 Any Eligible Person may make application in writing to the Trustee in a form prescribed by the Trustees from time to time to join the Fund.
- 10.2 Subject to **Rule 10.3**, the Trustee may accept or refuse any application for membership from an Eligible Person in its absolute discretion and shall not be required to assign any reason for any refusal.
- 10.3 If the Fund has fewer than 5 Members and is a Self Managed Superannuation Fund then the Trustee cannot accept an Eligible Person as a Member of the Fund if acceptance would cause the Fund to cease to be a Self Managed Superannuation Fund.
- 10.4 An Eligible Person shall become a Member from the date when notice in writing by the Trustee that it approves the application has been given to them, or where a person becomes a Member because of the receipt of Benefits as a consequence of the death of a Member from the date of commencement of receipt of such Benefits.
- 10.5 A person ceases to be a Member on the happening of the first of the following:
- (a) when he dies; or

- (b) when the total amount of all amounts payable under the Rules in respect of his membership has been paid; or
  - (c) when under the Rules any Accumulated Contributions payable to him or any person on his account ceases to be payable.
- 10.6 Each Member shall by virtue of his application be deemed to have consented to be bound by the provisions of the Deed and the Rules.

## **11. CONTRIBUTIONS**

- 11.1 Subject to the provisions of this **Rule 11** any person (including a Member) may contribute (in cash or by in specie transfer of assets) to the Fund in respect of a Member or Members as a whole or to any other Account (not being a Member's Account) at such rate as he determines provided that the Trustee may only accept such contribution in accordance with the Statutory Requirements.
- 11.2 At the time of making such contributions, the Employer, or any other person contributing, shall advise the Trustee of the contribution in respect of each Member, and whether the contributions are made:
- (a) pursuant to an industrial award or agreement; and/or
  - (b) in lieu of the Employer paying the superannuation guarantee charge pursuant to the Guarantee Act.
- 11.3 No person shall make a contribution to the Fund in any Financial Year which would cause the Fund to fail to be a Complying Superannuation Fund.
- 11.4 If any Member of the Fund ceases to be an Eligible Person the Trustee shall not accept any further contribution to the Fund in respect of that Member until the Member shall again become an Eligible Person.
- 11.5 Without limiting the generality of **Rule 11.1** the Trustee may accept contributions from a person (other than the Employer) who, on behalf of the Employer, wishes to contribute to the Fund in respect of any Member (including the contributor, where the contributor is a Member).
- 11.6 Within 60 days of becoming aware that a Member has ceased to be an Eligible Person the Trustee shall refund to the Member, or to the other person making the same as the case may be, any contributions made to the Fund in respect of the Member since he ceased to be an Eligible Person and for the purpose of determining the Member's interest in the Fund it shall be assumed that such contributions were not made to the Fund.

- 11.7 A Member may apply to the Trustee to roll-over, transfer or allot an amount of benefits for the benefit of the Member's spouse in accordance with the Statutory Requirements in which case the Trustee must comply with such request if the Statutory Requirements are satisfied.
- 11.8 The Trustee may in its absolute discretion determine the amount (or such part) as contributed by an Employer or other person on behalf of the Employer in accordance with **Rule 11.5** in respect of a Member to be credited to that Member's Account or a Suspense Account subject to the Statutory Requirements.

## **12. BENEFITS**

12.1 A Member who:

- (a) retires; or
- (b) reaches the age of 65 or such other age as is prescribed in the Statutory Regulations;

shall be entitled to receive their Member's Benefits.

- 12.2 A Member who Retires on the grounds of Permanent Incapacity shall be entitled to receive their Member's Benefit.
- 12.3 On the death of a Member the Member's Benefit shall become payable.
- 12.4 A Member who reaches the Statutory Age and under the Act qualifies for and who requests in writing to the Trustee a Non-Commutable Allocated Pension or a Non-Commutable Pension is entitled to receive their Member's Benefits by way of a Non-Commutable Allocated Pension or a Non-Commutable Pension.
- 12.5 The Trustee may in its absolute discretion pay to a Member such other benefits as are permitted by the Statutory Requirements.
- 12.6 The Trustee may in its absolute discretion augment the benefits of a Member.
- 12.7 Where a Member has unrestricted non-preserved benefits, the Member may request the payment of those benefits or part thereof at any time and the Trustee must comply with such request.
- 12.8 Notwithstanding the above Rules, the whole or any part of the Accumulated Contributions must be paid to a Member or a Non-Member Spouse in accordance with the Statutory Requirements.

### **13. PAYMENT OF BENEFITS**

- 13.1 Subject to **Rule 13.2** and **Rule 13.3**, a Member's Benefit shall be paid by way of annuities, pensions or other periodical payments or lump sum payments or any combination of such methods of payment as the Trustee and the Member shall agree.
- 13.2 In the event of the payment of any Benefit which is paid in the form of a pension, annuity or other series of periodical payments the terms and conditions shall be agreed between the Member and the Trustee and shall be set out in writing prior to the commencement of the payment of the Benefit provided that in the case of payment of:
- (a) an Allocated Pension – the terms and conditions of the payment of an allocated pension must comply with Regulation 1.06(4) and Regulation 1.07A;
  - (b) a Non-Complying Pension– the terms and conditions of the payment of a non-complying pension must comply with Regulation 1.06(6) and Regulation 1.07B;
  - (c) a Complying Lifetime Pension - the terms and conditions of the payment of a complying lifetime pension must comply with Regulation 1.06(2) and Regulation 1.07B;
  - (d) a Complying Life Expectancy Pension - the terms and conditions of the payment of a complying life expectancy pension must comply with Regulation 1.06(7) and Regulation 1.07B;
  - (e) a Market Linked Pension - the terms and conditions of the payment of a market linked pension must comply with Regulation 1.06(8) and Regulation 1.07C;
  - (f) a Non-Commutable Allocated Pension or a Non-Commutable Pension - the terms and conditions of the payment of the pension must comply with Regulation 6.01(2).
- 13.3 The terms and conditions of a pension, annuity or other series of periodical payments as agreed between the Member and the Trustee in accordance with **Rule 13.2** shall form part of these Rules.
- 13.4 Any Benefit paid in the form of an annuity, pension or other periodical payments may incorporate payments to one or more Reversionaries on the death of the Member, subject to the Statutory Requirements.

- 13.5 In respect of payment of a Benefit on the death of a Member pursuant to **Rule 12.3**:
- (a) A Member may designate a Dependant or legal personal representative of the Member as the person entitled to payment of the Benefit in writing to the Trustee in such form as the Trustee may from time to time approve;
  - (b) A Member may make a binding death benefit nomination in the form required to satisfy the Statutory Requirements;
  - (c) A Member may revoke a nomination by completing a new form in the case of a non-binding nomination or in the method set out in the Statutory Requirements in the case of a binding death benefit nomination.
- 13.6 Where a Member has made a valid binding death benefit nomination in accordance with **Rule 13.5** the Trustee must pay the Benefit to the nominated legal personal representative or Dependant of the Member.
- 13.7 Where a Member does not have a binding death benefit nomination in force, any Benefit shall be paid as the Trustee in its absolute discretion decides to such one or more of the nominated beneficiaries (if any) or other Dependents or legal personal representative of the Member.
- 13.8 The Benefit paid under **Rules 13.6** or **13.7** shall be paid by way of annuities, pensions or other periodical payments or lump sum payments or any combination of such methods of payment as the Trustee in its absolute discretion may determine provided that where a Member has made a binding death benefit nomination and has also nominated the method of payment of such Benefit then the Trustee must pay the Benefit in the manner and for at least the term nominated by the Member.
- 13.9 The Trustee may, with the consent of the person entitled, in lieu of paying in cash the whole or part of any Accumulated Contributions or other amount payable pursuant to the provisions of the Deed or the Rules, transfer any of the assets of the Fund of equivalent value to the person so entitled provided that the Trustee shall have proper regard to any costs (including taxation) incurred in effecting, or as a consequence of, the transfer of the assets.
- 13.10 The Trustee may at the request of a person entitled pay all or part of any Accumulated Contributions payable pursuant to the provisions of the Rules to such Rollover Fund or for the purchase of such annuity as permitted by the Statutory Requirements as the person so entitled may request.



- 13.11 (a) The Trustee may offer Members the option of making a binding death benefit nomination;
- (b) Where a Member takes up the offer to make a binding death benefit nomination, the Trustee must give the Member information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the right of that Member to make the binding death benefit nomination;
- (c) The binding death benefit nomination must be in the form approved by the Statutory Requirements;
- (d) If the information provided by the Member in the binding death benefit nomination form is not sufficiently clear to allow the Trustee to pay the Benefit on the death of the Member, the Trustee must seek from the Member a written statement to clarify the information provided as soon as practicable after the Trustee receives the binding death benefit nomination form;
- (e) The Trustee must each year in accordance with the Statutory Requirements notify the Members who have made binding death benefit nominations of the matters required by the Statutory Requirements to enable the Members to confirm, update or revoke the binding death benefit nominations.

#### **14. FORFEITED BENEFITS**

14.1 Accumulated Contributions payable out of the Fund shall be:

- (a) forfeited if, without the prior approval of the Trustee, the person entitled purports to assign, alienate or charge such Accumulated Contributions or part thereof;
- (b) suspended if the person entitled, being either under the Statutory Age or not yet having Retired at the relevant time, becomes or is:
- (i) bankrupt; or
  - (ii) insolvent (including, without limiting the generality of the foregoing, if he signs an authority under Section 188 of, or enters into any deed of assignment or deed of arrangement in pursuance of, Part X of the Bankruptcy Act 1966); or
  - (iii) in the opinion of the Trustee, mentally ill or of unsound mind or incapable of managing himself or his own affairs;  
or

- (c) forfeited upon the occurrence, in respect of the person entitled, not being a Member or being a Member but over the Statutory Age and having retired at the relevant time, of any of the events mentioned in **Rule 14.1(b)**.
- 14.2 The whole of the Accumulated Contributions forfeited by a person under **Rule 14.1(a)** or **Rule 14.1(c)** shall be applied by the Trustee as the Trustee may think fit for the benefit of such person and his Dependants or any one or more of them, provided that while such person is a Member the Trustee shall not make any payment to or for the benefit of the person or his Dependants until the Member attains the Statutory Age other than for personal maintenance and support in case of hardship.
- 14.3 The whole of the Accumulated Contributions to which a person would otherwise have been entitled but which have been suspended under **Rule 14.1(b)** shall be dealt with in accordance with, and shall be subject to, the following provisions:
- (a) Upon such suspension the person shall cease to have any right, title or interest whatsoever to or in such Accumulated Contributions.
  - (b) If, prior to the date upon which the person ceases to be a Member for any reason whatsoever, the person ceases to be one to whom any of **Rule 14.1(b)** applies then the suspension of such Accumulated Contributions shall cease and the Trustee shall thereafter hold such Accumulated Contributions in respect of the person as if the suspension had not intervened.
  - (c) If such Accumulated Contributions remain suspended at the time when the person ceases to be a Member for any reason whatsoever, such Accumulated Contributions shall thereupon be forfeited.
  - (d) While such Accumulated Contributions are suspended the Trustee may pay amounts to or for the benefit of the relevant person or his Dependants for, but only for, personal maintenance and support in the case of hardship.
- 14.4 The Trustee shall subject to the Statutory Requirements be entitled to treat as unclaimed and to forfeit and use for the general purpose of the Fund, any moneys in the Fund to which any person may be entitled whose whereabouts are unknown to it and if after making such enquiries as it deems appropriate it is unable positively to trace any person entitled to the benefit of such moneys.

- 14.5 Where any part of Accumulated Contributions in respect of a Member cannot by reason of the Statutory Requirements be paid to the Member it shall be applied in the provision of additional benefits for or in respect of other Members.
- 14.6 The Trustee may in its absolute discretion determine that a Member's Accumulated Contributions at any point in time shall not include an amount or amounts that may have been previously accounted for as Accumulated Contributions for that Member and apply such an amount or amounts to such other Member's Account or to a Suspense Account pending specific appropriation to any Member's Account as the Trustee may decide provided that the Accumulated Contributions of a Member may not be reduced under this clause unless:
- (a) the Member concerned consents; and
  - (b) the reduction does not reduce benefits of a Member below the required minimum benefit as determined under the Statutory Requirements.
- 14.7 Amounts standing to the credit of a Suspense Account subject to the Statutory Requirements, may be paid to an Employer (not being the reimbursement for Expenses incurred by the Employer on behalf of the Fund).

## **15. TRANSFERS FROM AND TO OTHER FUNDS**

- 15.1 The Trustee may make such arrangements as it thinks proper with any Member, Non-Member Spouse or any previous Employer of the Member or the trustees of any superannuation fund or retirement saving account of which the Member or Non-Member Spouse was or is a member or any of them for any transfer of assets to and/or from the Fund, and may make arrangements about any other matter which in the opinion of the Trustee is incidental to or consequent upon the transfer of such assets to and/or from the Fund.
- 15.2 Should a Member:
- (a) become eligible to join another Complying Superannuation Fund; or
  - (b) open a complying retirement savings account;

the Trustee may, if requested by the Member, in lieu of part or all of to which the Member may be entitled under these Rules, transfer to the trustees of such fund or retirement saving account such portion of the assets of the Fund as the Trustee considers equitable having regard to the Accumulated Contributions of the Member at the date of transfer and also to any costs (including taxation) incurred in effecting, or as a consequence of, the transfer of the assets.

15.3 Any transfer pursuant to this **Rule 15** shall be made in accordance with the Statutory Requirements.

## **16. TERMINATION OF TRUST**

16.1 The trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any of the following events:

- (a) if it shall appear to the Trustee that the Fund is insolvent and it resolves to terminate the Fund;
- (b) if for any reason the Trustee thinks it is appropriate to and does resolve to terminate the Fund;
- (c) if there are no Members in the Fund and the Trustee resolves to terminate the Fund; or
- (d) the eightieth anniversary of the Commencement Date unless the laws governing the Fund provide that the law against perpetuities shall not apply to it.

16.2 Upon the trusts hereof ceasing and terminating in accordance with **Rule 16.1** the Trustee shall give notice in writing to each Employer and the Members, if any, that the Fund shall be wound up on a specified date, such date not being later than any date on which the Fund is required by **Rule 16.1(d)** to be terminated (the "**Closing Date**"). As from the Closing Date the following shall apply:

- (a) no further contributions shall be made by any Employer or any Member, other than arrears of contributions due to the Closing Date; and
- (b) arrears of contributions, if any, shall be called in immediately.

16.3 Upon the trusts ceasing and terminating in accordance with **Rule 16.1** the Trustee shall, after making such provision out of the Fund as is necessary for Expenses and liabilities, provide for the payment of the following Accumulated Contributions in the following order of priority:

- (a) payments which on or before the Closing Date have become payable to Members;
- (b) in respect of each Member, payments to another Complying Superannuation Fund, eligible rollover fund or complying retirement savings account equal to his Accumulated Contributions provided that the payment may be made directly to the Member if the Member so requests and such a payment is permitted by the Statutory Requirements.

- 16.4 Where a Member dies before receiving Accumulated Contributions to which he has become entitled pursuant to **Rule 16.3** such benefit shall be paid to such of the Member's legal personal representatives and Dependants and in such proportions as the Trustee determines.
- 16.5 If after providing Accumulated Contributions for Members and their Dependants in terms of **Rule 16.3** a surplus remains, such surplus shall be paid by the Trustee, to or for the benefit of:
- (a) any Members;
  - (b) any former Members;
  - (c) any Dependants of any such Members or former Members;
  - (d) the legal personal representatives (in their capacities as such) of any such Members, former Members or Dependants; or
  - (e) any Employer or former Employer who has contributed,

as the Trustee in its absolute discretion determines and, if provided to or for two or more persons, in such proportions as the Trustee in its absolute discretion determines, subject, in the case of **Rules 16.5(a)** and **16.5(d)** to **Rule 14.5**.

- 16.6 Subject to **Rule 13.9** the payment to be provided under **Rules 16.3** and **16.5** shall be in cash, life insurance policies, or otherwise as determined by the Trustee, but shall not be payable to or for the benefit of a Member unless permitted by the Statutory Requirements.

## **17. AMENDMENT OF RULES**

- 17.1 (a) Subject to **Rules 17.1(b)**, **17.1(c)** and **17.1(d)** the Trustee may at any time by resolution or by instrument in writing amend all or any of the provisions of these Rules.
- (b) No reduction of the accrued Accumulated Contributions of a Member shall be made without his consent in writing.
- (c) No amendment may be made pursuant to **Rule 17.1(a)** which would cause the trusts contained in the Deed and these Rules to fail by reason of the application of the law against perpetuities.
- (d) No amendment may be made pursuant to **Rule 17.1(a)** which would:

- (i) permit an individual to be appointed as Trustee unless the Rules provide, and will continue to provide after the amendment that the Fund has, as its sole or primary purpose, the provision of old age pensions; or
- (ii) provide that the sole or primary purpose of the Fund would be a purpose other than the provision of old age pensions unless the Rules provide and will continue to provide that the Trustee must be a company.

17.2 Where the Fund is not a Self Managed Superannuation Fund and the Statutory Requirements require, the Trustee shall give to each Member affected by the amendment a written statement explaining the nature and purpose of the amendment.

## **18. SUPERANNUATION STANDARDS**

18.1 Notwithstanding anything expressed or implied to the contrary within the Deed and Rules but subject always to the right of the Trustee to elect otherwise having regard to such advice as it may deem appropriate the Trustee will in the execution and administration of these presents at all times comply in all respects with the Statutory Requirements. This requirement overrides all other provisions of the Deed and Rules.

18.2 Where the Deed and Rules do not deal with a matter permitted by the Statutory Requirements, the Trustee may act in accordance with the Statutory Requirements notwithstanding the absence of a power in this Deed and Rules.

18.3 In the event of any inconsistency between the provisions of the Deed and Rules and the Statutory Requirements, the Trustee shall unless otherwise determined by it act in accordance with the Statutory Requirements.

Date: 29 May 2006

**PRIVATE & CONFIDENTIAL**

Ross McL Wilson Pty. Limited  
"Eelah"  
467 Maitland Vale Road  
**MAITLAND VALE NSW 2320**

Dear Directors

**Ross McL Wilson Pty. Limited (the "Company") – Consent to Act as Trustee**

I, Ross Wilson, hereby consent to the ongoing appointment of the Company as trustee of Ross McL Wilson Superannuation Fund (the "Fund") under the provisions of the Superannuation Industry (Supervision) Act 1993 (the "SIS Act") and in accordance with the documents which regulate the Fund.

I confirm that I am not a disqualified person as defined in Section 120 of the SIS Act, an extract of which is shown below:

**Extract: Superannuation Industry (Supervision) Act 1993**

**SECTION 120 DISQUALIFIED PERSONS**

**120(1) Individuals.**

For the purpose of this Part, an individual is a disqualified person if:

- (a) at any time (including a time before the commencement of this section):
  - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
  - (ii) a civil penalty order was made in relation to the person; or
- (b) the person is an insolvent under administration; or
- (c) the Regulator has disqualified the individual under section 120A.

**120(2) Bodies corporate.**

For the purposes of this Part, a body corporate is a disqualified person if:

- (a) subsection (2A) applies; or
- (b) a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the body; or
- (c) an official manager, deputy official manager or administrator has been appointed in respect of the body; or
- (d) a provisional liquidator has been appointed in respect of the body; or
- (e) the body has begun to be wound up.

**120(2A) Convictions.**

This subsection applies if:

- (a) the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is a disqualified person; and
- (b) the body corporate knows, or has reasonable grounds to suspect, that:
  - (i) the person is not eligible under subsection 126B(1) to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (ii) the person is so eligible but will not make an application under subsection 126B(3) within the period allowed for the purpose

**SECTION 126B APPLICATION FOR WAIVER OF DISQUALIFIED STATUS**

**126B(1) Conditions for application.**

An individual may apply to the Regulator for a declaration under section 126D waiving his or her status as a disqualified person for the purposes of this Part only if:

- (a) he or she is a disqualified person solely because of the operation of subparagraph 120(1)(a)(i); and
- (b) the offence leading to him or her being a disqualified person is not an offence involving serious dishonest conduct as described in subsection (2).

**126B(2) Offence involving serious dishonest conduct.**

For the purposes of paragraph (1)(b), an offence involves serious dishonest conduct if the penalty actually imposed for the offence is:

- (a) a term of imprisonment of at least 2 years or such longer period (if any) as is specified in the regulations; or
- (b) a fine of at least 120 penalty units or such larger fine, if any, as is specified in the regulations.

I hereby confirm that I will carry out my duties as a trustee of the Fund in accordance with the documents which from time to time regulate the Fund.

Yours faithfully



Ross Wilson



Date: 29 May 2006

**PRIVATE & CONFIDENTIAL**

Ross McL Wilson Pty. Limited  
"Eelah"  
467 Maitland Vale Road  
**MAITLAND VALE NSW 2320**

Dear Directors

**Ross McL Wilson Pty. Limited (the "Company") – Consent to Act as Trustee**

I, Heather Wilson, hereby consent to the ongoing appointment of the Company as trustee of Ross McL Wilson Superannuation Fund (the "Fund") under the provisions of the Superannuation Industry (Supervision) Act 1993 (the "SIS Act") and in accordance with the documents which regulate the Fund.

I confirm that I am not a disqualified person as defined in Section 120 of the SIS Act, an extract of which is shown below:

**Extract: Superannuation Industry (Supervision) Act 1993**

**SECTION 120 DISQUALIFIED PERSONS**

**120(1) Individuals.**

For the purpose of this Part, an individual is a disqualified person if:

- (a) at any time (including a time before the commencement of this section):
  - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
  - (ii) a civil penalty order was made in relation to the person; or
- (b) the person is an insolvent under administration; or
- (c) the Regulator has disqualified the individual under section 120A.

**120(2) Bodies corporate.**

For the purposes of this Part, a body corporate is a disqualified person if:

- (a) subsection (2A) applies; or
- (b) a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the body; or
- (c) an official manager, deputy official manager or administrator has been appointed in respect of the body; or
- (d) a provisional liquidator has been appointed in respect of the body; or
- (e) the body has begun to be wound up.

**120(2A) Convictions.**

This subsection applies if:

- (a) the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is a disqualified person; and
- (b) the body corporate knows, or has reasonable grounds to suspect, that:
  - (i) the person is not eligible under subsection 126B(1) to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (ii) the person is so eligible but will not make an application under subsection 126B(3) within the period allowed for the purpose.

**SECTION 126B APPLICATION FOR WAIVER OF DISQUALIFIED STATUS**

**126B(1) Conditions for application.**

An individual may apply to the Regulator for a declaration under section 126D waiving his or her status as a disqualified person for the purposes of this Part only if:

- (a) he or she is a disqualified person solely because of the operation of subparagraph 120(1)(a)(i); and
- (b) the offence leading to him or her being a disqualified person is not an offence involving serious dishonest conduct as described in subsection (2).

**126B(2) Offence involving serious dishonest conduct.**

For the purposes of paragraph (1)(b), an offence involves serious dishonest conduct if the penalty actually imposed for the offence is:

- (a) a term of imprisonment of at least 2 years or such longer period (if any) as is specified in the regulations; or
- (b) a fine of at least 120 penalty units or such larger fine, if any, as is specified in the regulations.

I hereby confirm that I will carry out my duties as a trustee of the Fund in accordance with the documents which from time to time regulate the Fund.

Yours faithfully



Heather Wilson

Date: 29 May 2006

**To Whom It May Concern:**

Ross McL Wilson Pty. Limited (the "Company") hereby consents to continue to act as trustee of Ross McL Wilson Superannuation Fund.

We confirm that the Company is not a disqualified person as defined in Section 120 of the Superannuation Industry (Supervision) Act 1993, an extract of which is shown below:

**Extract: Superannuation Industry (Supervision) Act 1993**

**SECTION 120 DISQUALIFIED PERSONS**

**120(1) Individuals.**

For the purpose of this Part, an individual is a disqualified person if:

- (a) at any time (including a time before the commencement of this section):
  - (i) the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct; or
  - (ii) a civil penalty order was made in relation to the person; or
- (b) the person is an insolvent under administration; or
- (c) the Regulator has disqualified the individual under section 120A.

**120(2) Bodies corporate.**

For the purposes of this Part, a body corporate is a disqualified person if:

- (a) subsection (2A) applies; or
- (b) a receiver, or a receiver and manager, has been appointed in respect of property beneficially owned by the body; or
- (c) an official manager, deputy official manager or administrator has been appointed in respect of the body; or
- (d) a provisional liquidator has been appointed in respect of the body; or
- (e) the body has begun to be wound up.

**120(2A) Convictions.**

This subsection applies if:

- (a) the body corporate knows, or has reasonable grounds to suspect, that a person who is, or is acting as, a responsible officer of the body corporate is a disqualified person; and
- (b) the body corporate knows, or has reasonable grounds to suspect, that:
  - (i) the person is not eligible under subsection 126B(1) to apply to APRA for a declaration waiving his or her status as a disqualified person; or
  - (ii) the person is so eligible but will not make an application under subsection 126B(3) within the period allowed for the purpose.

**SECTION 126B APPLICATION FOR WAIVER OF DISQUALIFIED STATUS**

**126B(1) Conditions for application.**

An individual may apply to the Regulator for a declaration under section 126D waiving his or her status as a disqualified person for the purposes of this Part only if:

- (a) he or she is a disqualified person solely because of the operation of subparagraph 120(1)(a)(i); and
- (b) the offence leading to him or her being a disqualified person is not an offence involving serious dishonest conduct as described in subsection (2).

126B(2) Offence involving serious dishonest conduct.

For the purposes of paragraph (1)(b), an offence involves serious dishonest conduct if the penalty actually imposed for the offence is:

- (a) a term of imprisonment of at least 2 years or such longer period (if any) as is specified in the regulations; or
- (b) a fine of at least 120 penalty units or such larger fine, if any, as is specified in the regulations.

Yours faithfully



Ross Wilson  
Director



Heather Wilson  
Director

**MINUTES OF A MEETING OF ROSS MCL WILSON PTY. LIMITED (THE  
"COMPANY")  
AS TRUSTEE OF  
ROSS MCL WILSON SUPERANNUATION FUND (THE "FUND")  
ON 29 MAY 2006**

**PRESENT** Ross Wilson  
Heather Wilson

***Deed of Amendment*** A Deed of Amendment and Rules of Ross McL Wilson Superannuation Fund (the "Fund") together with Consent to Act letters from Ross McL Wilson Pty. Limited and its directors, Ross Wilson and Heather Wilson, were tabled.

It was noted that the Deed of Amendment and Rules dated in 1994 governing the Fund had been misplaced, possibly inadvertently destroyed. It was therefore not possible to identify with certainty the rules governing the Fund or the identity of the Trustee.

Based on the evidence available, it is believed that Ross McL Wilson Pty. Limited is the Trustee of the Fund and that Ross Wilson and Heather Wilson are directors of this company.

It was proposed that the Company confirm its consent to act as the Trustee of the Fund and adopt the Deed of Amendment and Rules tabled.

It was resolved that the Consent to Act letters be signed and that the Deed of Amendment and Rules be executed in accordance with the Company's Constitution to replace the Deed of Amendment and Rules dated in 1994 in order to provide clarity in relation to the rules governing the Fund.

***Member Consent*** It was noted that the members have been notified of and consent to the adoption of the Deed of Amendment and Rules as evidenced by their signatures on this minute.

There being no further business, the meeting closed.

Signed as a true and correct record.

  
\_\_\_\_\_  
Chairperson



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Ross Wilson



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Heather Wilson

# ROSS MCL WILSON SUPERANNUATION FUND (THE "FUND")

## Product Disclosure Statement ("PDS")

This PDS is issued by the Trustee and describes the main features of the Fund.

Trustee: Ross McL Wilson Pty. Limited

Contact Details: "Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320

Received By: Ross Wilson

Signature:

  
\_\_\_\_\_

Date:

29/5/2006

The Fund is a self-managed superannuation fund ("SMSF") consistent with the definition contained in section 17A of the Superannuation Industry (Supervision) Act 1993 and its associated Regulations ("SIS Act"). Under the SIS Act the Fund can have up to four members and all of the members must be individual trustees or directors of the corporate trustee of the Fund.

The Trustee is ultimately responsible for every aspect of the operation of the Fund but it may outsource some functions (for example, administration/ accounting function, compliance function and investment advising function). Notwithstanding this, the Trustee remains responsible for ensuring the Fund complies with the relevant legislation applicable to the operation of the Fund.

In general, the advantages of holding your superannuation in an SMSF are as follows:

- Control, such as full discretion over fund membership and service providers
- Flexibility in investment choice
- Potential for a reduction of operating and investment costs
- Benefit design flexibility
- Greater estate planning control

There are a number of risks faced by members of the Fund, including:

- Investment risk – the risk that the Fund's investments do not perform adequately.
- Liquidity risk – the risk that the Fund's investments will not be sufficiently liquid to enable the Trustee to pay expenses or benefits from the Fund as they become due and payable.

- Diversification risk – the risk that the Fund's investments will not be adequately invested across a range of asset classes.
- Compliance risk – the risk of the Trustee breaching legislative requirements in relation to the operation of the Fund resulting in penalties to the Trustee and Fund.
- Fraud risk – the risk of Fund monies being misappropriated.
- Legislative risk – the risk associated with future legislative changes.

The Trustee is conscious of these risks and to the extent that these risks can be influenced by the Trustee, will act appropriately to minimise the possibility of them occurring.

The following costs may be incurred in the operation of the Fund:

- Establishment Costs – for the preparation of the Fund Trust Deed and other documents as required by legislation.
- Administration Costs – for the ongoing maintenance of Fund records and production of reports required by legislation.
- Insurance Costs – for salary continuation, death only, death and total and permanent disablement insurance. These costs are specific to the member and may be paid directly from the members' account.
- Adviser Costs – for the provision of advice in relation to, for example, investments, compliance and retirement planning.
- Investment Manager Costs – for the provision of portfolio services.
- Professional, Regulatory & Other Costs – for the provision of specialist professional skills required by the Fund (such as audit and actuarial services), lodgment fees dictated by government and any other general expenses of the Fund.

These costs may vary from year to year depending on the complexity of the Fund, type and extent of investments, age of the members and legislative change. Unless, otherwise indicated, members incur these costs indirectly as they reduce investment earnings before they are credited to member accounts. The Trustee will provide details of the amount of each cost on request.

Commissions may also be payable from the assets of the Fund as negotiated from time to time by the Trustees with service providers.

### **Member Benefits**

In general the member benefits you are entitled to at a particular point in time will be the amount held in your account balance at that time. Under some circumstances (eg death or disablement) you may have arranged for insurance to supplement your benefit and if this is the case, the proceeds of the insurance policy will be paid in addition to your account balance.



Your benefits will vary depending on the extent to which your account:

- receives contributions;
- is credited with investment earnings; and
- is reduced by taxation (including superannuation surcharge) and benefit payments.

In addition, the benefits paid out to you and the associated taxation will vary depending on the form in which you choose to withdraw your benefits.

### **Contributions**

Under your Trust Deed, anyone can contribute to your fund providing they are permitted to do so by law. Currently, this would include:

- members who make contributions in their own names.
- individuals who contribute for their spouse who is a member (whether or not the individual is also a member of the fund).
- employers of Fund members.
- the Commonwealth government.

Contributions may be in cash or by "in-specie" transfer of assets. You could, for example, transfer personal shareholdings into the Fund by transferring ownership from your own name to that of the Fund. This would be an "in-specie" contribution. Note, however, that there are capital gains tax, stamp duty and other consequences associated with doing so and you should therefore seek advice.

Contributions can be accepted for all members under the age of 65.

Once you are aged between 65 and 74, contributions can generally only be accepted for you if:

- you have worked at least 40 hours in a period of not more than 30 consecutive days in the financial year; or
- the contributions are mandated employer contributions.

Only mandated (award) employer contributions can be made on your behalf once you turn 75 years of age.

Note that changes to the rules regarding the acceptance of contributions have been proposed as part of the May 2006 Budget to take effect from 1 July 2007.

There are essentially two types of superannuation contributions:

- “undeducted contributions” for which no tax deduction is claimed by the contributor. As a general rule, unless you are an eligible person, any contributions you make to the fund from your personal savings or from your after-tax income will be undeducted contributions.

Note that a cap on the amount that can be contributed as an undeducted contribution in a financial year has been proposed as part of the May 2006 Budget to take effect from 9 May 2006;

- “deductible contributions” which are contributions that have been claimed as a tax deduction. Generally, unless you are an eligible person, only your employer’s contributions will be deductible contributions. If you have a “salary sacrifice” arrangement with your employer, you are effectively exchanging a lower cash salary for higher employer superannuation contributions. These extra employer contributions are classified as “deductible contributions”. If you are an eligible person, you can claim some of the contributions you make as a tax deduction and the remainder will be treated as undeducted contributions (currently the first \$5,000 contributed plus 75% of any excess over this is tax deductible) up to a maximum age based limit.

Note that changes to the rules regarding the acceptance of deductible contributions and the amount which is deductible for eligible persons have been proposed as part of the May 2006 Budget to take effect from 1 July 2007.

Employers and eligible persons who make deductible contributions can only claim a tax deduction up to a limit. This limit depends on your age *on the day the last contribution for that financial year is made*.

Currently, the limits are as follows:

Age	Maximum Tax Deduction for Superannuation Contributions	
	2006/07	2005/06
Under 35	\$ 15,260	\$ 14,603
35 – 49	\$ 42,385	\$ 40,560
50 & over	\$105,113	\$100,587

## Taxation

Superannuation is taxed at three different points:

- Contributions into the system are taxed;
- Investment income within the system is taxed; and
- Benefits paid out of the system are taxed.

## **Contributions tax**

Because *undeducted contributions* come from funds which have already been taxed (ie, your personal savings or after tax income), they are not taxed when they are paid into a fund.

*Deductible contributions* are taxed at 15% on receipt by the Fund.

Note that a cap on the amount of deductible contributions that will be concessionally taxed in the hands of the superannuation fund has been proposed as part of the May 2006 Budget to take effect from 1 July 2007.

## **Investment income tax**

Investment income in most superannuation funds is taxed at 15%. This means that even if there is no direct tax concession involved in contributing money to the fund (for example, there is no tax deduction available for undeducted contributions), it may still be worth doing because the future investment earnings on that money will be concessionally taxed. If a superannuation fund starts paying a pension, at least part of the Fund's income is *completely tax free*. This is an extremely valuable tax benefit as it effectively allows you to invest your retirement savings in a tax free environment.

## **Superannuation benefits tax**

The way in which a superannuation benefit is taxed depends on whether you take a lump sum benefit or a superannuation pension.

In either case, the first step is to compare your benefit to your "reasonable benefit limit" (or RBL).

Your RBL is the maximum amount of superannuation that you can take out of the system on a concessionally taxed basis over your lifetime. Everyone has two RBLs – a pension RBL and a lump sum RBL. The pension RBL is the higher of the two but in order to qualify for it, you must meet certain conditions. These involve taking a significant part of your super in the form of a particular type of pension.

If your benefit exceeds your RBL, the amount over and above your RBL is referred to as your "excessive component".

If this excessive component is taken as a lump sum, it is taxed at a tax rate of either 39.5% or 46.5%. The tax treatment of the balance of your benefit (ie, the part within the RBL) is complex but the key points (in most cases) are as follows:

- "undeducted contributions" are not taxed when you draw them out as a benefit (this makes sense since they were originally paid in from money on which you had already paid income tax);

- the rest of your benefit (ie, the “deductible contributions” and any investment income that your super has earned) is taxed. Your whole benefit (ie, including your undeducted contributions) is split into pre and post 1 July 1983 components based on the length of your “service” before and after 1 July 1983.
  - The pre – 1 July 1983 component is taxed by adding 5% of it to your assessable income in the year it is received.
  - The post – 1 July 1983 component *less* any undeducted contributions is taxed at rates which depend on a number of factors, including your age at the time you receive the benefit.

If you are over 55 at the time:

- you can also take a certain amount of post – 1 July 1983 component out *completely tax free*. For 2006/2007 the amount is \$135,590 and it increases each year.
- anything above this limit (other than undeducted contributions) is taxed at 16.5%.

If you are under 55 at the time:

- there is no tax free part
- the entire component is taxed at 21.5%.

Note that your lump sum may also include various other components, ie, concessional component, post-June 1994 invalidity component, CGT exempt component etc. There are special rules that apply to the tax treatment of each of these components when they are drawn as a lump sum.

Pensions are taxed quite differently. They are treated just like ordinary income (eg salary) but with two important and valuable exceptions:

- a portion of each pension payment is tax free (this amount is worked out by determining how much of each pension payment is effectively “paying back” the undeducted contributions (and certain other components) that have been paid in). This tax free part is known as the “deductible amount”; and
- the recipient is entitled to a 15% tax rebate on the remainder of the pension as long as the pension was within the taxpayer’s RBL. If the pension comes from money which exceeds the taxpayer’s RBL, the rebate is reduced.

Note that the removal of RBLs and changes to the way in which benefits are taxed have been proposed as part of the May 2006 Budget to take effect from 1 July 2007.

### Taxation of Death Benefits

The taxing of benefits distributed as a result of the death of a member depends on whether the member was in accumulation or pension phase at the time of death. It also depends on the form in which the benefits are paid (ie. lump sum payment, income stream or reversionary income stream).

The taxation of death benefits is quite complex and professional advice should be sought in determining the form in which death benefits are paid.

Note that changes to the way in which death benefits are taxed have been proposed as part of the May 2006 Budget to take effect from 1 July 2007.

### **Benefit Payments**

Your benefit can be paid to you either in the form of a pension or lump sum or a combination of the two. The Trust Deed establishing your fund gives very broad powers to pay your benefits in a number of forms – essentially anything permitted by the relevant legislation can be accommodated.

Most superannuation benefits are “preserved” which means that they generally cannot be paid to you in the form of a lump sum until you “retire” or reach age 65. To “retire”, you must either:

- have worked at some point in the past, reached a particular age (known as your “preservation age”) and decided that you never intend to work again for more than 10 hours per week. The relevant age depends on when you were born – for people born before 1 July 1960, it is 55 and for people born after 30 June 1964 it is 60. For people born in between it is between 55 and 60; *or*
- reach 60 years of age and leave your current job (even if you fully intend to work again in the future).

(There are also other circumstances when preserved benefits can be paid as a lump sum – eg, death, disability – you should obtain advice if these apply).

You can, however, start certain pensions with your superannuation any time after you reach your “preservation age” (see the definition of retirement above). This applies even if you have not yet retired - although there are some restrictions on your ability to take lump sums from your pension until you do retire.

## **Payment of Death Benefits**

Unless a binding death benefit nomination is in force at the time a member dies, the Trustee must pay the benefits in accordance with the governing rules of the Fund and the SIS Act. This usually results in the Trustee having absolute discretion to decide who to pay the death benefit to.

The Trustee would usually take a non-binding nomination of beneficiary into account when exercising its discretion in determining who will receive a death benefit payment.

If a valid binding death benefit nomination is put in place it will override the usual discretion that the Trustee has in relation to the payment of a death benefit.

## **Reporting**

The Trustee will provide reports to members at least annually consistent with relevant legislation. Reports may be provided more frequently if the Trustee considers this appropriate.

## **Dispute Resolution Mechanisms**

There is no legislative requirement for the Trustee to have dispute resolution mechanisms in place. Furthermore the Superannuation Complaints Tribunal does not have jurisdiction to deal with complaints in relation to the operation of SMSFs.

## **Cooling Off Period**

There is no legislative requirement for the Trustee to have a cooling off period and the Trustee does not have one. The Trustee therefore recommends you carefully consider your options prior to electing to become a member of the Fund.

## **Ethical Investment Considerations**

Generally, labour standards, environmental, social and ethical considerations are not taken into account by the Trustee in relation to the selection, retention or realisation of investments.

## **Further Information**

The Trustee will provide further information that in its opinion is reasonable to the assessment of this Fund on request.

# ROSS MCL WILSON SUPERANNUATION FUND (THE "FUND")

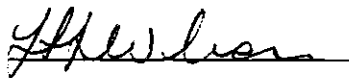
## Product Disclosure Statement ("PDS")

This PDS is issued by the Trustee and describes the main features of the Fund.

Trustee: Ross McL Wilson Pty. Limited

Contact Details: "Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320

Received By: Heather Wilson

Signature:  Date: 28/8/06

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## **Further Information**

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Ross McL Wilson Pty. Limited  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320

Date: 29 May 2006

**PRIVATE & CONFIDENTIAL**

Mr Ross Wilson  
C/- Ross Edwards & Associates  
Suite 20  
14 Edgeworth David Avenue  
**HORNSBY NSW 2077**

Dear Ross

**Ross McL Wilson Superannuation Fund (the "Fund")**

We are writing to advise that the Trustee of the above named Fund has recently amended its Trust Deed (the "Deed").

A new schedule of Rules has been adopted with the purpose of updating the Deed for legislative change.

The amendment does not have a detrimental impact on members' accrued entitlements under the Fund.

Yours sincerely



Heather Wilson  
Director

Ross McL Wilson Pty. Limited  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320

Date: 29 May 2006

**PRIVATE & CONFIDENTIAL**

Mrs Heather Wilson  
"Eelah"  
467 Maitland Vale Road  
**MAITLAND VALE NSW 2320**

Dear Heather

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The amendment does not have a detrimental impact on members' accrued entitlements under the Fund.

Yours sincerely



Ross Wilson  
Director



Date = 29/5/06

Trust Deed Amendment Procedure

Fund: Ross MFL Wilson Superannuation Fund
Type: Corporate/Individual 1 Member/2+ Members Lost Original Deed
Internal Administration (Heffron) or Clark Jacobs/ External Client (including Direct Consulting) Direct Admin

Reviewing Current Deed Provisions Complete

- 1 What is the date of the Original Deed or has it been lost? 9/6/87
2 Has the deed been amended previously? (Yes) No Most recent amend date 1994 - lost
3 Determine amending provision - Clause/Rule not main see attached.
4 Is the Principal Employers consent required? Yes (No)
5 Does a Regulatory Body or other entity need to be notified? Yes (No) Who?
6 Are there any Non Amendable clauses? Yes (No) Clauses
7 Current deed is governed by law of which State? NSW Is Trustee address same State (Y)N

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Preparing Documents Complete

- 1 Check Trust Deed Amendment form to ensure all details are clear
2 Based on information above, complete Standard documents - ensure you remove appropriate sections if no Principal Employer
3 Print & Compile for sending - source Superfund rules from Establishment standards
4 Produce invoice in MYOB using FSU client code - Don't forget to change client code back
5 Take 2 copies, add one to File copy and write "FSU" on the other one and give it to Lauren
6 Enter in Purchase Order for KMA Corporate Services, print and attach to file copy
7 If External - copy all except Superfund rules and file in direct consulting or referral source file
8 If Internal - copy cover letter only, attach invoice and checklist for filing in Master/Trust Deed Record - Date received, Date docs sent out, Billed Date, Purchase Order No & Invoice No, Date returned in Referral Source Database
9 Give to Manager for signing

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Inv # 4141 / deed amend x change trustee

Scanning Documents Complete

- 1 Count number of pages and write on this procedure
2 Scan the file
3 Save the scanned file to the client's K:/ drive folder as "Client Name - Deed Amend scanned file - date"
4 Verify scanned file total pages to the count at the front page of the file
5 Recycle the documents

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Review completed by: [Signature]
Date: 13/8/06
Documents prepared by: A. Baker
Date: 25.8.06
Documents reviewed by: [Signature]
Date: 26/8/06

# Heffron

*consulting*

Date of Invoice 25/08/2006

Gavenwood Superannuation Fund  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320

**Heffron Consulting Pty Ltd**  
ABN 88 084 734 261  
AFS Licence No. 241739

1/50 Belmore Road  
Lorn NSW 2320

Correspondence to:  
PO Box 20  
North Maitland NSW 2320

Phone: (02) 4930 2100  
Fax: (02) 4930 2199  
Email: heffron@heffron.com.au

## Tax Invoice

Invoice 00007141

Professional Fees for:

Trust Deed Amendment documents; and	\$350.00
Trustee change documents for Gavenwood Superannuation Fund.	

*Our terms are 14 days from the date of this invoice.*

GST:	\$35.00
Total Inc GST:	\$385.00
<b>Balance Due:</b>	<b>\$385.00</b>

**- please detach and forward with payment**

Date of invoice **25/08/2006**

Invoice Number **00007141**

Gavenwood Superannuation Fund  
"Eelah"  
467 Maitland Vale Road  
MAITLAND VALE NSW 2320

Balance Due: **\$385.00**

Cheque attached / Visa / Bankcard / Mastercard (please c

Card Number: \_\_\_\_\_

Expiry date: \_\_\_ / \_\_\_

Name on card: \_\_\_\_\_

Cardholder's Signature:

Please forward payment

Heffron Consulting  
ATTN: Accounts  
PO Box 20  
NORTH MAITLAND NSW 2320

**Thank you**

**Julie Taylor**

---

**From:** GregVale@taxlegal.com.au  
**Sent:** Thursday, 11 May 2006 4:53 PM  
**To:** Julie Taylor  
**Subject:** Re: Spam:FW: FW: Lost Deeds

Julie

Do you know the date of the amendment deed. If so, I would do a second deed of amendment. If you do not know the date I would still do a deed of amendment to a deed "amended from time to time".

Is it possible to identify who prepared the amendment and ask them for the pro-forma to confirm the amendment process? If not I would just have the trustee as the party to the second amendment deed.

Regards

GREG VALE

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KEVIN MUNRO & ASSOCIATES  
Level 12, 111 Elizabeth St, Sydney NSW 2000  
Tel: +61 2 9993 3888 Fax: +61 2 9993 3800 E-mail: kma@taxlegal.com.au

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---

"Julie Taylor" <julie.taylor@heffron.com.au>

11/05/2006 09:56 AM

To: <GregVale@taxlegal.com.au>  
cc:  
Subject: Spam:FW: FW: Lost Deeds

Hi Greg,

Are you able to advise on this yet?

Thanks

Julie

-----Original Message-----

15/05/2006

Example

**MINUTES OF A MEETING OF BOMILFORD PTY LIMITED (THE  
"COMPANY")  
AS TRUSTEE OF  
BOMILFORD SUPERANNUATION FUND (THE "FUND")  
ON**

**PRESENT**

Lionel Jackson  
Jane Jackson

***Deed of Amendment***

A Deed of Amendment and Rules of Bomilford Superannuation Fund (the "Fund") together with Consent to Act letters from Bomilford Pty Limited and its directors, Lionel Jackson and Jane Jackson, were tabled.

It was noted that the Deed of Amendment and Rules dated 22 February 1995 governing the Fund had been misplaced, possibly inadvertently destroyed. It was therefore not possible to identify with certainty the rules governing the Fund or the identity of the Trustee.

Based on the evidence available, it is believed that Bomilford Pty Limited is the Trustee of the Fund and that Lionel Jackson and Jane Jackson are directors of this company.

It was proposed that the Company confirm its consent to act as the Trustee of the Fund and adopt the Deed of Amendment and Rules tabled.

It was resolved that the Consent to Act letters be signed and that the Deed of Amendment and Rules be executed in accordance with the Company's Constitution to replace the Deed of Amendment and Rules dated 22 February 1995 in order to provide clarity in relation to the rules governing the Fund.

***Member Consent***

It was noted that the members have been notified of and consent to the adoption of the Deed of Amendment and Rules as evidenced by their signatures on this minute.

**THIS DEED OF AMENDMENT** is made on

**BY:** Bomilford Pty Limited (ACN 002 784 081) of  
15 York Street  
BEECROFT NSW 2119 (the "**Trustee**")

**WHEREAS**

- A. By Deed made on 1 October 1984 (the "**Original Deed**") an indefinitely continuing superannuation plan was established to provide superannuation benefits for the Members (the "**Governing Provisions**").
- B. The superannuation plan referred to in Recital A is known as Bomilford Superannuation Fund (the "**Fund**").
- C. The Deed of Amendment and Rules dated 22 February 1995 has been misplaced.
- D. The Trustee now wishes to execute a replacement document, on terms the Trustee believes are similar to the Deed of Amendment and Rules dated 22 February 1995, by the adoption of the Governing Provisions set out in the Rules annexed to this Deed.
- E. The Trustee now wishes to amend the Governing Provisions by the adoption of new Governing Provisions as set out in the Rules annexed to this Deed. The Trustee considers that all requirements in order to amend the Governing Provisions in this way have been met.
- F. The primary purpose of the Fund is to provide old age pensions to the Members.

**NOW THIS DEED WITNESSES** as follows:

- 1. The Governing Provisions are, without termination of the trusts thereby constituted, amended and revoked by substitution of the provisions set out in this Deed and the Rules attached.
- 2. The "**Rules**" means the Rules attached to this Deed, as amended from time to time, and they shall have effect as if set out in the body of this Deed.
- 3. The assets of the Fund will continue to be vested in the Trustee upon trust to apply the same in the manner set out in the Rules.
- 4. The Fund will be managed and administered in all respects according to the Rules.

**Julie Taylor**

**From:** Julie Taylor  
**Sent:** Thursday, 24 August 2006 8:32 AM  
**To:** 'Computax Pty Ltd'  
**Subject:** FW: Ross McL Wilson  
**Importance:** High

no notification  
 → treat as  
 lost.

Mr Edwards

I understand you have been on leave - are you yet able to advise per below.

Thank you,

**Julie Taylor**  
**Associate**

Heffron Consulting Pty Ltd  
 AFS Licence No 241739  
 T: (02) 4930 2100  
 F: (02) 4930 2199  
 E: [julie.taylor@heffron.com.au](mailto:julie.taylor@heffron.com.au)  
 W: [www.heffron.com.au](http://www.heffron.com.au)

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---

**From:** Julie Taylor  
**Sent:** Monday, 21 August 2006 10:43 AM  
**To:** 'Computax Pty Ltd'  
**Subject:** FW: Ross McL Wilson  
**Importance:** High

Dear Mr Edwards,

Sorry to be pushy but I go on leave this Friday for 2 weeks and would dearly like to resolve the paperwork regarding the divorce before then. Can you please advise regarding below ASAP.

Thank you,

**Julie Taylor**  
**Associate**

Heffron Consulting Pty Ltd  
 AFS Licence No 241739  
 T: (02) 4930 2100  
 F: (02) 4930 2199

24/08/2006

E: [julie.taylor@heffron.com.au](mailto:julie.taylor@heffron.com.au)

W: [www.heffron.com.au](http://www.heffron.com.au)

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---

**From:** Julie Taylor  
**Sent:** Thursday, 17 August 2006 11:12 AM  
**To:** 'Computax Pty Ltd'  
**Subject:** Ross McL Wilson

Dear Mr Edwards,

Thank you for your letter of 14 August 2006 enclosing an amendment to the deed for Ross McL Wilson Superannuation Fund.

However, the amendment is dated 1990 to update for the OSSA legislation and a subsequent one should have been done in 1994 for the SIS Act.

Could you please confirm if the 1994 amendment was done and whether or not you have a copy of it on your files.

Thank you for your assistance.

**Julie Taylor**  
**Associate**

Heffron Consulting Pty Ltd

AFS Licence No 241739

T: (02) 4930 2100

F: (02) 4930 2199

E: [julie.taylor@heffron.com.au](mailto:julie.taylor@heffron.com.au)

W: [www.heffron.com.au](http://www.heffron.com.au)

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24/08/2006

**Julie Taylor**

---

**From:** Computax Pty Ltd [computax@tpg.com.au]  
**Sent:** Friday, 25 August 2006 8:50 AM  
**To:** Julie Taylor  
**Subject:** RE: Ross McL Wilson Superfund

G'day Julie,

A deed of amendment would have been prepared to comply with the SIS legislation as for the OSSA legislation.

I have been unable to locate it in my files and shall have to leave it to you to attend to.

Sorry for the inconvenience.....

Ross Edwards

-----Original Message-----

**From:** Julie Taylor [mailto:julie.taylor@heffron.com.au]  
**Sent:** Thursday, 24 August 2006 8:32 AM  
**To:** Computax Pty Ltd  
**Subject:** FW: Ross McL Wilson  
**Importance:** High

Mr Edwards

I understand you have been on leave - are you yet able to advise per below.

Thank you,

**Julie Taylor**  
**Associate**

Heffron Consulting Pty Ltd  
AFS Licence No 241739  
T: (02) 4930 2100  
F: (02) 4930 2199  
E: [julie.taylor@heffron.com.au](mailto:julie.taylor@heffron.com.au)  
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---

25/08/2006



**Julie Taylor**

**From:** Computax Pty Ltd [computax@tpg.com.au]  
**Sent:** Friday, 11 August 2006 1:40 PM  
**To:** Julie Taylor  
**Subject:** RE: Ross McL Superannuation Fund

lost

Ms Taylor,

Thank you for clarifying the situation re appointment of two different accounting firms.

We had not been able to make contact with Mrs Wilson to resolve this.

The RMW Superfund trust deed was in fact amended to comply with the SIS Act.

I intend to visit our storage location on the weekend and will endeavour to find the amendment required.

Ross Edwards

-----Original Message-----

**From:** Julie Taylor [mailto:julie.taylor@heffron.com.au]  
**Sent:** Friday, 11 August 2006 7:13 AM  
**To:** Computax Pty Ltd  
**Subject:** RE: Ross McL Superannuation Fund

Dear Mr Edwards,

We are aware that Mrs Wilson's has appointed Dianne Allen to manage her personal and business affairs (our only business is self managed superannuation).

Could you please advise if you are able to assist with our query below.

Thank you for your assistance,

**Julie Taylor**  
**Associate**

Heffron Consulting Pty Ltd  
 AFS Licence No 241739  
 T: (02) 4930 2100  
 F: (02) 4930 2199  
 E: [julie.taylor@heffron.com.au](mailto:julie.taylor@heffron.com.au)  
 W: [www.heffron.com.au](http://www.heffron.com.au)

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11/08/2006

**Julie Taylor**

---

**From:** Julie Taylor  
**Sent:** Thursday, 10 August 2006 3:42 PM  
**To:** 'computax@tpg.com.au'  
**Subject:** Ross McL Superannuation Fund

Dear Mr Edwards,

We refer to your letter of 31 July 2006 in response to our letter of 31 May 2006.

We note that the trust deed we received for the fund is dated 9 June 1987 and that we did not receive a copy of any amendments to the deed. However, at a minimum the deed should have been amended in 1994 for the introduction of the Superannuation Industry (Supervision) Act.

Could you please advise if you are aware if this amendment was done (if so, we understand that you do not have a copy on hand).

Thank you for your assistance.

**Julie Taylor**  
**Associate**

Heffron Consulting Pty Ltd  
AFS Licence No 241739  
T: (02) 4930 2100  
F: (02) 4930 2199  
E: [julie.taylor@heffron.com.au](mailto:julie.taylor@heffron.com.au)  
W: [www.heffron.com.au](http://www.heffron.com.au)

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SCHEDULE ONE

- Item 1: DATE OF MAKING THIS DEED : 9th June, 1987
- Item 2: THE COMPANY : ROSS MCL WILSON PTY LIMITED
- Item 3: COMPANY'S ADDRESS FOR SERVICE : 9 LYNWOOD AVENUE, KILLARA
- Item 4: THE TRUSTEE : ROSS MCL WILSON PTY LIMITED
- Item 5: TRUSTEE'S ADDRESS FOR SERVICE : 9 LYNWOOD AVENUE, KILLARA
- Item 6: INVESTMENT RATE FOR OBLIGATORY INVESTMENTS : Ten (10) per centum
- Item 7: NAME OF FUND : ROSS MCL WILSON SUPERANUATION FUND
- Item 8: PROPER LAW OF THIS TRUST : NEW SOUTH WALES

THE COMMON SEAL OF )  
)  
was hereunto affixed by )  
authority of the Board )  
of Directors in the )  
presence of: )

.....  
Secretary



**Julie Taylor**

**From:** Julie Taylor  
**Sent:** Thursday, 11 May 2006 9:56 AM  
**To:** 'GregVale@taxlegal.com.au'  
**Subject:** FW: FW: Lost Deeds

N/A → deed has  
 been amended.

Hi Greg,

Are you able to advise on this yet?

Thanks

Julie

-----Original Message-----

**From:** Julie Taylor  
**Sent:** Tuesday, 2 May 2006 1:24 PM  
**To:** 'GregVale@taxlegal.com.au'  
**Subject:** RE: FW: Lost Deeds

Hi Greg,

Our current situation (that I haven't come across before) is for a Fund that has it's original deed but only part of the deed of the amendment that was done subsequent to the original (they don't have a copy of the part dealing with amendments).

Should we do a "lost deed" amendment (on the basis that the amendment is lost) or just do a "deed amendment" of the original (and ignore the amendment that has been done)?

Thanks

Julie

-----Original Message-----

**From:** GregVale@taxlegal.com.au [mailto:GregVale@taxlegal.com.au]  
**Sent:** Tuesday, 2 May 2006 1:06 PM  
**To:** Julie Taylor  
**Subject:** Re: FW: Lost Deeds

Dear Julie

The correct procedure is to execute a new deed as a replica. The difficulty in executing a deed as a replica is that the replica must have the same terms as those contained in the original deed. This may be difficult to prove if you can not find the original or a copy of it. Once this is done (if possible) you then need to consider stamping of the replica. Section 272 of the Duties Act provides that duty of the lesser of \$10 and the amount payable on the original deed is payable on the replica deed. For deeds executed after 30 June 2001 no duty is payable on the original so no duty payable on the replica. For original deeds executed before 1 July 2001 \$20 duty was payable on the original so the replica must be stamped at \$10. The attached declaration (<http://www.osr.nsw.gov.au/pls/portal/docs/page/downloads/other/oda019.pdf>) must be completed for the Commissioner to be satisfied that stamp duty was paid. Given that the duty on the deed would most probably have been stamped using an adhesive stamp it will be necessary to amend the declaration to try and provide other evidence of the stamping.

As this process is difficult (particularly if no copy of the original can be found or the client can not recall who prepared the original deed) then a "shortcut" is to enter into a deed of variation of the original deed. The risk of this strategy is that the deed of amendment may not be effective as