

DEED OF AMENDMENT AND RULES
FOR THE
MCKASAH FAMILY SUPERANNUATION
FUND



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THIS DEED OF AMENDMENT is made on

BY: WADIH MCKASAH and WENDY ANNE MCKASAH (the "**Trustees**")

WHEREAS:

- A. By Deed made on 10 October 2002 (the "**Original Deed**") an indefinitely continuing superannuation scheme known as the McKasah Family Superannuation Fund (the "**Fund**") was established to provide superannuation benefits for the Members (the "**Governing Provisions**").
- B. By clause 17 of the current Governing Provisions the Trustees may amend the Governing Provisions.
- C. The Trustees now wish to amend the Governing Provisions by the adoption of new Governing Provisions as set out in the Rules annexed to this Deed.

NOW THIS DEED WTTNESSES as follows:

1. The Governing Provisions are, subject to clauses 8 and 9 of this Deed and 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 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 Trustees 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 is as provided in the Rules.
6. The provisions of this Deed may be amended in the manner set out in the Rules.
7. The Trustees hereby declare that the amendment of the provisions of the Governing Provisions effected 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 Rules 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 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.
10. 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 written.

SIGNED SEALED AND DELIVERED by)
 WADIH MCKASAH in the presence of:)

)

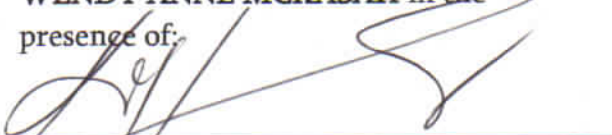
Signature of Witness)

KENNETH WILLIAM HOLLANDS)

Name of Witness - please print)



SIGNED SEALED AND DELIVERED by)
 WENDY ANNE MCKASAH in the)
 presence of:)

)

Signature of Witness)

KENNETH WILLIAM HOLLANDS)

Name of Witness - please print)

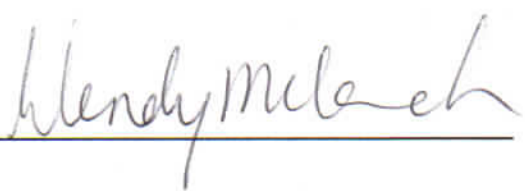


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THE RULES

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 Reserve Account or any other account or reserve account established by the Trustee pursuant to **Rule 5.8**;

"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;

"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 Investment Account**" means the Account in which an Allocated Investment is held;

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

"**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 as agreed between the Member and the Trustee, from time to time, not exceeding the amount equal to a Member's Accumulated Contributions;

"**Binding Death Benefit Nomination**" means a notice given to the Trustee by a Member to require the Trustee to provide any Benefits of the Member on the death of the Member to a person or persons nominated in the notice.

"**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;

"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;

"Interdependency Relationship" has the same meaning as given to the term in the Act;

"Investment Manager" means a person appointed (if any) by the Trustee to invest money of the Fund;

"Investment Reserve Account" means an account described in **Rule 5.2**;

"Investment Strategy" has the meaning as described in section 52(2) of the Act;

"Legal Advisor" means Munro Lawyers or such other legal firm as nominated from time to time by the Trustee;

"Legal Personal Representative" and **"legal personal representative"** has the same definition as in the Statutory Requirements;

“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 11**;
- (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 under this Fund;

“Member’s Account” means an account as described in **Rule 5.1**;

“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;

“Old-Age Pensions” has the 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;

“Pension” means a payment to a Member from the Benefits of such Members in accordance with these Rules;



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

"**Regulations**" means the regulations 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;

"**Retirement Savings Account**" has the same meaning as given to the term "RSA" in the Act;

"**Reversionaries**" means persons who become eligible for pension or annuity benefits from the Fund on the death of a Member;

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

"**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 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 Act and all 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 described in **Rule 5.4**.

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 shall be paid out of the Fund.
- 3.3 All moneys received by the Trustee may in the absolute discretion of the Trustee either be and remain on deposit in the name of the Trustee or be invested 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;
- (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; or
- (i) in any business (whether directly or indirectly) and with the power to conduct such business on its own behalf or with other persons,

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 any manner which does 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 or custodian (whether an individual or a corporation) as the Trustee shall from time to time determine.
- 3.7 The Trustee has the power to borrow or raise money or to draw, accept and discount commercial bills or arrange other financial accommodation from time to time and at any time upon the security of the Trust Fund with or without security and for this purpose to mortgage or charge in favour of the lender the whole or any part of the Trust Fund provided that 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 has the power to guarantee, indemnify, or become surety for the due performance of any contract, agreement, covenant, or obligations and to indemnify itself from and make good any loss it thereby suffers or any liability it thereby incurs out of the assets of the Trust Fund and/or to give security over the Trust Fund or any

part thereof to secure any such guarantee or indemnity or surety provided that the Trustee shall not give a guarantee, indemnify, or become surety 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.

4. INVESTMENT STRATEGIES

- 4.1 The Trustee will from time to time determine the Investment Strategy for the Fund or for that part of the Fund which represents Allocated Investments.
- 4.2 The Trustee may enter into an agreement in writing with the members of the Fund on terms including:
- (a) a particular asset or investment, in whole or in part, of the Fund is an Allocated Investment and the Allocated Investment Account relating to that Allocated Investment;
 - (b) the Earnings, Expenses and net proceeds of sale of the Allocated Investment are for the sole benefit and cost of the relevant Allocated Investment Account; and

- (c) in the event that the value of the Allocated Investment exceeds the amount of the benefit in the Allocated Investment Account, the terms to apply for the internal charges to apply between the Allocated Investment Account and the other Account or Accounts of the Fund.

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 the investment of Allocated Investments. The Trustee is under no obligation to comply with these investment directions. 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.

5. ACCOUNTS

5.1 The Trustee must establish, maintain and operate a Member's Account for each Member in which is to be recorded:

- (a) contributions by that Member;
- (b) contributions by a person other than a Member for that Member;
- (c) amounts transferred from a Suspense Account, an Investment Reserve Account, a new interest created as a result of a Payment Split or any other reserve account pursuant to these Rules;
- (d) forfeited benefits credited to the account pursuant to **Rule 15**;
- (e) the proceeds of policies of insurance credited to the account;
- (f) amounts debited to the account representing the Member's share of Expenses;

- (g) amounts debited or credited to the account representing the Member's share of Earnings;
 - (h) amounts credited to the account on transfer of benefits from another superannuation fund or retirement saving account;
- 5.2 The Trustee may establish, maintain and operate an Investment 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.
- 5.3 The Trustee may from time to time credit an amount to the Investment Reserve Account from Earnings or debit an amount from the Investment Reserve Account to another Account as the Trustee in its absolute discretion considers necessary.
- 5.4 The Trustee may establish, maintain and operate a Suspense Account and the Trustee may in respect of such Suspense Account:
- (a) allocate Earnings or Expenses of the Fund;
 - (b) credit forfeited benefits of Members in accordance with **Rule 15**; and
 - (c) appropriate amounts which are permitted to be debited from or credited to the Suspense Account in accordance with the Statutory Requirements.
- 5.5 In addition to the Accounts referred to in this **Rule 5**, the Trustee may establish, maintain and operate such other Accounts as the Trustee deems appropriate.
- 5.6 The Trustee in its absolute discretion may appropriate an amount or amounts from Accounts to any Member's Account as the Trustee may decide.
- 5.7 The Trustee may in accordance with the Statutory Requirements, make such rules in respect of any Account as the Trustee determines.
- 5.8 Where a Payment Split is being made the Trustee may create a new interest for a person who is not a Member being a Spouse of a Member and combine that new interest with the existing Accumulated Contributions of the Member as the Trustee may decide.

6. ALLOCATION OF EARNINGS AND EXPENSES

6.1 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 provided that the Trustee must comply with the Statutory Requirements.

6.2 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 Fund or any Allocated Investment generated during the Financial Year and expected to be generated in Financial Years;
- (c) the Investment Strategy (if any) applying to a particular Account; and
- (d) such other matters as the Trustee considers relevant or which are required by the Statutory Requirements.

6.3 In exercising the allocation powers in this **Rule 6**, 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.

7. ADMINISTRATION

7.1 Every Member shall have the right to inspect a copy of these Rules at the address of the Trustee during usual business hours.

7.2 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.

8. APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES

- 8.1 The Trustee must either be a company which is a Constitutional Corporation or persons being individuals. In the event that the Trustees are individuals the Fund has as its sole or primary purpose the provision of Old Age Pensions.
- 8.2 In the event that the Trustee is a Constitutional Corporation then the Fund must have only one Trustee being that Constitutional Corporation. The Constitutional Corporation must have each Member as a director and have no other persons as a director provided that where there is only one Member of the Fund then the Constitutional Corporation must have either that member as the sole director or no more than two directors one of which is not required to be a Member.
- 8.3 If the Fund does not have a Constitutional Corporation as Trustee then each Member must be a Trustee and no other persons shall be a Trustee provided that if there is only one Member of the Fund then that Member must be a Trustee together with one other individual who is not required to be a Member of the Fund.
- 8.4 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.
- 8.5 In the event that 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.
- 8.6 If a person ceases to be a Member (other than as a consequence of death), then that person must resign as a Trustee or, where the Trustee is a Constitutional Corporation, that person must resign as a director of the Constitutional Corporation within 6 months of cessation of membership of the Fund.
- 8.7 If a person is admitted as a Member then the Trustee if a Constitutional Corporation must appoint that new Member as a director or if the Trustees are individuals then the Trustees must appoint that person as an additional trustee.
- 8.8 A Trustee being a Constitutional Corporation may appoint another Constitutional Corporation as a Trustee in its stead or appoint the Members as Trustees subject to the other requirements of this **Rule 8**.

- 8.9 Trustees being individuals may appoint a Constitutional Corporation as Trustee in their stead subject to requirements of this **Rule 8**.
- 8.10 Trustees being individuals may appoint or remove other individuals as Trustees subject to the other requirements of this **Rule 8**.
- 8.11 Any Trustee or Trustees which are appointed or removed must be appointed or removed in accordance with the Statutory Requirements, or by deed or by notice in writing, delivered to the Trustee.
- 8.12 Notwithstanding Rules 8.2 and 8.3, a Legal Personal Representative of a Member may be appointed:
- (a) as the sole trustee (in case of a Constitutional Corporation) or as an additional trustee (in case of an individual) of the Fund, or
 - (b) as a director of the Trustee if a Constitutional Corporation.
- 8.13 In the event that Rule 8.12 applies and the Legal Personal Representative of a Member ceases to be the Legal Personal Representative of the Member, then that person must resign as a Trustee or, where the Trustee is a Constitutional Corporation, that person must resign as a director of the Constitutional Corporation.

9. TRUSTEES GENERALLY

- 9.1 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 that are held by the Trustee personally or on trust for purposes other than in connection with the Fund;
- (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;
- (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;
- (h) allowing a Member access to any information or any documents prescribed by the Statutory Requirements.

9.2 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 such person (including the retiring Trustee or Trustees) as bare nominee for the new Trustee or Trustees as permitted by **Rule 3.6**.

9.3 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.

9.4 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, inclusive of the power to lease for any term;
- (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 Benefits out of the Fund as may be allowed by the Statutory Requirements;
- (i) to decide as and when the need shall arise who are Dependants for the purposes of the Rules;
- (j) in case of the mental or physical ill-health, or incapacity of a person entitled to Benefits, to pay or apply such Benefits 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;



- (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; and
- (l) to exercise or concur in exercising all the powers and discretions conferred on it by this Deed or by law notwithstanding that the 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 (whether as trustee of any other trust fund or in its personal capacity or as a shareholder, director, member, or partner of any company or partnership or otherwise) 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.

9.5 Every Trustee (and if the Trustee is a Constitutional Corporation, 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.

9.6 The provisions of **Rule 9.5** shall have no application, and neither the Trustee, nor where the Trustee is a Constitutional Corporation, 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 Constitutional Corporation, 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 Constitutional Corporation, any of its directors, was required to exercise; or
- (c) incurs a liability for a monetary penalty under a civil penalty order.

9.7 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.

9.8 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.

9.9 If the Trustee is a Constitutional Corporation, then such Constitutional Corporation 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 Constitutional Corporation'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.

9.10 Any Trustee who is an individual and (where the Trustee is a Constitutional Corporation, any director 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.

- 9.11 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.
- 9.12 Provided that the Fund is a Self Managed Superannuation Fund, the Trustee may (either in writing or otherwise) from time to time delegate all or any of the powers or discretionary authorities conferred on the Trustee pursuant to the Deed or these Rules and may execute any powers of attorney or other instruments in connection with such delegation.
- 9.13 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 Constitutional Corporation, the directors of the Constitutional Corporation 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.
- 9.14 Any minutes entered in accordance with **Rule 9.13** 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.

10. RECORDS, DISCLOSURE OF INFORMATION AND AUDIT

- 10.1 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.



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All records shall be in the form, and shall be retained for the periods, specified in the Statutory Requirements.

- 10.2 The Trustee shall appoint an Approved Auditor to the Fund who shall comply with all the Statutory Requirements, or a firm of such persons, and may remove any such Approved Auditor.
- 10.3 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 Approved Auditor. The Approved 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.
- 10.4 The Trustee shall retain the records described in **Rule 10.1** and the accounts and statements prepared in accordance with **Rule 10.3** for at least five years following the end of the Financial Year to which the records, accounts or statements relate.
- 10.5 The Trustee shall disclose to Members, and Non-Member Spouses such information, at the time and in the manner, prescribed by the Statutory Requirements.
- 10.6 The Trustee shall provide to the Statutory Authority such information, at the time and in the manner, prescribed by the Statutory Requirements.

11. ELIGIBILITY AND MEMBERSHIP

- 11.1 Any Eligible Person may become a Member.
- 11.2 The Trustee may refuse to allow a person to become a Member in its absolute discretion and shall not be required to assign any reason for any refusal.
- 11.3 An Eligible Person shall become a Member from the date the Trustee nominates 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.

- 11.4 A person ceases to be a Member on the happening of the first of the following:
- (a) when the Member dies;
 - (b) when the total amount of all amounts payable under the Rules in respect of the Member's membership has been paid; or
 - (c) the date of a request in writing by a Member for the payment of a lump sum amount of the total of the Member's Accumulated Contributions.

11.5 Each Member shall be deemed to have consented to be bound by the provisions of the Deed and the Rules.

12. CONTRIBUTIONS

- 12.1 Subject to the provisions of this **Rule 12** any person (including a Member) may contribute to the Fund in respect of a Member provided that the Trustee may only accept such contribution in accordance with the Statutory Requirements.
- 12.2 No person shall make a contribution to the Fund which would cause the Fund to fail to be a Complying Superannuation Fund.
- 12.3 A Member may apply to the Trustee to roll-over, transfer or allot the whole or part of the Accumulated Contributions of the Member for the benefit of the Member or the Member's spouse in accordance with the Statutory Requirements. Such application must be complied with by the Trustee if the Statutory Requirements are satisfied.

13. BENEFITS

- 13.1 A Member is entitled to receive the Benefits of the Member in accordance with the Act. The Member may request the payment of those Benefits or such part of those Benefits at any time and the Trustee must comply with such request.
- 13.2 On the death of a Member, the Member's Benefit shall become payable.
- 13.3 The Trustee may in its absolute discretion pay to a Member such other benefits as are permitted by the Statutory Requirements.

- 13.4 The Trustee may in its absolute discretion augment the benefits of a Member.
- 13.5 Notwithstanding the above Rules, the whole or any part of the Benefits of a Member or a Non-Member Spouse must be paid to the Member or the Non-Member Spouse in accordance with the Statutory Requirements.

14. PAYMENT OF BENEFITS

- 14.1 Subject to the provisions of this **Rule 14**, a Member's Benefit may 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 provided that the payment of the Member's Benefit complies with the Regulations.
- 14.2 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);
 - (g) an Account-Based Pension – the terms and conditions of the payment of an account-based pension must comply with Regulation 1.06(9A) and Regulation 1.07D;
 - (h) A Transition to Retirement Income Scheme – the terms and conditions of the payment of the pension must comply with Regulation 6.01(2).
- 14.3 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 14.2** shall form part of these Rules.
- 14.4 Any pension, annuity or other series of periodical payments commenced to be paid to the Member may be altered in amount, temporarily discontinued or permanently discontinued at any time of the request of the Member subject to the Statutory Requirements.
- 14.5 A Member may:
- (a) state in writing the Member's wishes as to the payment of the Member's Benefits in the event of the death of the Member; or
 - (b) make a Binding Death Benefit Nomination.
- 14.6 A Member may revoke a nomination by completing a new form pursuant to **Rule 14.5**.
- 14.7 Where a Member has made a Binding Death Benefit Nomination the Trustee must pay the Benefit to the nominated person or persons.
- 14.8 Where a Member does not make a Binding Death Benefit Nomination, any Benefit shall be paid as the Trustee in its absolute discretion decides (after taking into consideration the Member's wishes as provided in accordance with **Rule 14.5(a)**) to such one or more of the nominated beneficiaries (if any) or other Dependants or a legal personal representative of the Member.

- 14.9 The Benefit payable on the death of a Member may 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 then the Trustee must pay the Benefit in the manner nominated by the Member. Any Benefit payable on the death of a Member 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.
- 14.10 The Trustee may, with the consent of the person entitled, in lieu of paying in cash the whole or part of any Benefit 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.
- 14.11 Where any Benefit is to be paid as a lump sum then the amount of the Benefit no longer forms part of the Member's Benefit under the Fund as and from the date of a request in writing from the Member to pay the Member's Benefit as a lump sum and the amount of the Benefit concerned is held by the Trustee as a trust separate from the Fund on trust for the Member absolutely with power to the Trustee pending payment over to the Member to invest or apply or deal with the amount of the Benefit or any income in the manner provided for in these Rules or as directed by the Member.
- 14.12 Where a Member dies and immediately prior to the date of death that member was receiving an Account Based Pension then, subject to any Binding Death Benefit Nomination, and by agreement pursuant to Rule 14.1, the Account Based Pension reverts immediately to any surviving spouse of the Member.

15. FORFEITED BENEFITS

- 15.1 Accumulated Contributions of a Member shall be:
- (a) forfeited if, without the prior approval of the Trustee, the Member purports to assign, alienate or charge such Accumulated Contributions or part thereof;
 - (b) suspended if the Member, becomes or is:

- (i) bankrupt;
- (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.

15.2 The Accumulated Contributions forfeited by a Member shall be applied by the Trustee as the Trustee may think fit for the benefit of such Member and the Member's Dependents or any one or more of them, provided that the Member otherwise would become entitled to receive payment of the Benefit pursuant to the Statutory Requirements.

15.3 The Accumulated Contributions to which a Member would otherwise have been entitled but which have been suspended under **Rule 15.1(b)** shall be dealt with in accordance with, and shall be subject to, the following provisions:

- (a) Upon such suspension the Member 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 15.1(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 Dependents for, but only for, personal maintenance and support in the case of hardship.



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- 15.4 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.
- 15.5 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.
- 15.6 Subject to the Statutory Requirements 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.

16. TRANSFERS FROM AND TO OTHER FUNDS

- 16.1 The Trustee may make such arrangements as it thinks proper with any Member, Non-Member Spouse 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.
- 16.2 Any transfer pursuant to this **Rule 16** shall be made in accordance with the Statutory Requirements.

17. TERMINATION OF TRUST

- 17.1 The trusts hereby declared shall cease and terminate and the Fund shall be wound up as 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;
 - (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.
- 17.2 Upon the Fund ceasing and terminating the Trustee shall give notice in writing to each Member, that the Fund shall be wound up on a specified date (the "**Closing Date**"). As from the Closing Date the following shall apply:
- (a) no further contributions shall be accepted from any person, other than arrears of contributions due as at the Closing Date; and
 - (b) arrears of contributions, if any, shall be called in immediately.
- 17.3 Upon the Fund ceasing and terminating 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, Rollover Fund or Retirement Savings Account equal to the Accumulated Contributions of the Member 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.

- 17.4 Where a Member dies before receiving Accumulated Contributions to which he has become entitled such Benefit shall be paid to such of the Member's legal personal representatives and Dependants and in such proportions as the Trustee determines.
- 17.5 If after providing Accumulated Contributions for Members and their Dependants in terms of **Rule 17.3** 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; or
 - (d) the legal personal representatives (in their capacities as such) of any such Members, former Members or Dependants,

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.

18. AMENDMENT OF RULES

- 18.1 The Trustee or the Legal Advisor may at any time by resolution or by instrument in writing amend all or any of the provisions of these Rules provided that:
- (a) No reduction of the accrued Accumulated Contributions of a Member shall be made without his consent in writing.
 - (b) No amendment may be made which would cause the trusts contained in the Deed and these Rules to fail by reason of the application of the law against perpetuities.

- (c) No amendment may be made 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 Constitutional Corporation.

18.2 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.

18.3 Where the amendment is made by the Legal Advisor then the Legal Advisor should give to the Trustee a copy of the Rules as Amended on request by the Trustee.

19. SUPERANNUATION STANDARDS

19.1 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.

19.2 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.

19.3 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.



20. TRUSTEE ACT 1925

- 20.1 The provisions of sections 6, 14A, 14B and 14C of the Trustee Act 1925 of the State of New South Wales shall be and are hereby expressly excluded and forbidden from and shall not apply to this Deed.
- 20.2 The provisions of section 14D of the Trustee Act 1925 of the State of New South Wales shall be and are hereby expressly included and shall apply to this Deed.